

# **NAMAKWA**

## **DISTRIKSMUNISIPALITEIT**

## **DISTRICT MUNICIPALITY**



## **TERMS OF REFERENCE**

## **TO THE**

## **DISCIPLINARY BOARD**

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## **TERMS OF REFERENCE: DISCIPLINARY BOARD**

### **1. Introduction**

This document serves as the Terms of Reference for the Municipal Disciplinary Board to conduct the Financial Misconduct allegations against officials, senior management, and councillors.

### **2. Legislation Associated with the Disciplinary Board**

Council approved on **7 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 30<sup>th</sup> 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 Namakwa District Municipality may receive reports of allegations of financial misconduct and offences in terms of sections 171 and 173 of the MFMA. The designated persons are the Accounting Officer in the case of employees and the Executive 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, for Council to consider if an investigation and/or suspension is 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 are 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 these 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 recommendations of the Disciplinary Board as “In-Committee reports” at the 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 Arrangement

Council approved the appointment of **five** permanent Disciplinary Board members consisting of;

| Position                                      | Secundi                                             |
|-----------------------------------------------|-----------------------------------------------------|
| Manager Internal Audit                        |                                                     |
| Senior Manager Corporate & Community Services | Chief Financial Officer or alternate Senior Manager |
| Chairperson of the Audit Committee            | Alternate Audit Committee Member                    |
| Representative from Provincial Treasury       |                                                     |
| Legal Advisor                                 |                                                     |

If a designated official is implicated, that official will be replaced by the 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 the Manager Internal Audit and minutes will only be available to members, 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 have 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 Board's report to the designated person or his/her nominee for disciplinary action and inform Provincial and National Treasury.

7.3. The Disciplinary Board Chairperson's report to the designated person or his/her nominee must indicate;

7.3.1. In the case of a senior manager, 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 the 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 these 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.

## **10. Approval of Terms of Reference**

Approved by the Accounting Officer

Dated signature: .....

Adopted by Council

Date: .....