*Ward Councillors*

**9 February 2021**

**THE ACTING EXECUTIVE MAYOR**

**Cllr. LA Masoetsa**

**BY HAND.**

**BRAM FISHER BUILDING,**

**BLOEMFONTEIN**

**9301**

Mr Masoetsa

**RE: LOCAL GOVERNMENT: DISCIPLINARY REGULATIONS FOR SENIOR MANAGERS**

The Democratic Alliance tables the following allegations of mal administration and misconduct by the Municipal Manager, Adv Tankiso Ben Mea, and request a formal investigation in accordance with the Municipal Systems Act Disciplinary regulations for senior managers.

Section 5 of the disciplinary regulations reads as follow.

**Disciplinary procedures**

 (1) Any allegation of misconduct against a senior manager must be brought to the attention of the municipal council.

(2) An allegation referred to in sub-regulation (1) must be tabled by the mayor or the municipal manager, as the case may be, before the municipal council not later than seven [7] days after receipt thereof, failing which the mayor may request the Speaker to convene a special council meeting within seven [7] days to consider the said report.

(3) If the municipal council is satisfied that -

(a) there is a reasonable cause to believe that an act of misconduct has been committed by the senior manager, the municipal council must within seven [7] days appoint an independent investigator to investigate the allegation[s] of misconduct; and

(b) there is no evidence to support the allegation[s] of misconduct against the senior manager, the municipal council must within seven [7] days dismiss the allegation[s] of misconduct.

(4) The investigator appointed in terms of sub-regulation (3)(a) must, within a period of thirty [30] days of his or her appointment, submit a report with recommendations to the mayor or municipal manager, as the case may be.

(5) The report contemplated in sub-regulation (4) must be tabled before the municipal council in the manner and within the timeframe as set out in sub-regulation (2).

(6) After having considered the report referred to in sub regulation (4), the municipal council must by way of a resolution institute disciplinary proceedings against the senior manager.

(7) The resolution in sub-regulation (6) must-

(a) include a determination as to whether the alleged misconduct is of a serious or a less serious nature;

(b) authorise the mayor, in the case of municipal manager, or municipal manager, in the case of the manager, directly accountable to the municipal manager to -

(i) appoint -

(aa) an independent and external presiding officer; and

(bb) an officer to lead evidence; and

(ii) sign the letters of appointment.

The Democratic Alliance attach the following Annexures to serve as evidence against the allegations tabled for your convenience.

1. Annexure A National Acts
2. Annexure B PAIA Application: Request for records Performance reviews
3. Annexure C Highlights MFMA GR 2018-19 Interactive
4. Annexure D Mangaung Signed-standalone-audit-report-
5. Annexure E Municipalities and provinces directions, 25 Mar 2020
6. Annexure F Performance-Agreement-Mr-TB-Mea-10-Sep-2019
7. Annexure G Rule 38 Questions Answered and Unanswered 2017 - 2020 Updated 13 Jan 2021
8. Annexure H LETTER OF DEMAND Delivery of Basic Services in MMM 9 June 2020
9. Annexure I Letter Waste Removal 18 December 2020
10. Annexure J SAMWU Letter of demand 7 January 2021
11. Annexure K Moody's downgrades the ratings of Mangaung Metropolitan 28 January 2020
12. Annexure L Establishment-Ombudsman-Pages-1-8
13. Annexure M Amendment of the South African Police Services Act Section 64
14. Annexure N AARTO Regulation ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES ACT, 1998 (Act No.

**Allegations of misconduct and mal administration**

**ALLEGATION 1** fails to comply with or contravenes any Act, regulation, or legal obligation relating to the employment relationship.

The Democratic Alliance tables the following National Acts that the Municipal Manager did not adhere or comply (Annexure A, Annexure C and Annexure E)

* 1. The metro police do not have any civilian oversight committee, is not functioning since 2017 and no report was tabled in council since April 2020. A huge financial burden on MMM and this rate payers’ monies could have rather been used for service delivery.
	2. The DA submitted a PAIA request regarding the performance overviews of all section 57 managers (Head of Departments) since 2016 and to date the Municipal Manager failed to comply. Ignoring legislation and not providing the DA the opportunity to do proper oversight to ascertain if indeed the administration of MMM are attending to their responsibilities on an acceptable standard.
	3. The municipal manager failed to table the annual report on time, implement and monitor the IDP (Integrated Development Plan) and publish the salary scales and benefits of his position and managers that is directly accountable to him. Non-Compliance with relevant legislation placed there for the purpose of running a Municipality effectively.

* 1. The Municipal manager failed to pay contractors or suppliers within 30 days after completion of work in accordance with service level agreements, did not take steps to ensure budgetary control. One of the many reasons why service delivery in MMM is in disarray.

* 1. The Municipal Manager did not spend funds in accordance with the annual budget and did reduce spending where necessary. We will lose national grants due to underspending of certain budgets and on the other side money is overspend on other items for which those monies are not intended.

* 1. The municipal Manager did not ensure that unauthorised, irregular, or fruitless and wasteful expenditure and other losses were prevented. Currently standing on a staggering R1,36 Billion Rand.
	2. The municipal Manager failed to report under collection, shortfalls, overspending and steps to be taken to the municipal council. Non-compliance with legislation.
	3. The Municipal Manager failed to manage a system for the collection of traffic fines and R 18 million was written of due to non-collection from 2016.Traffic System still not functioning, no summons for traffic offences and millions of Rands lost to the MMM to attend to service delivery.

**ALLEGATION 2**: endangers the lives of self or others by disregarding safety rules or regulations. **(Annexure E)**

* 1. During the Covid 19 lockdown period, the DA received complaints from residents that provision of water and sanitation services were not delivered.

* 1. Residents also complained that Waste management, cleansing and sanitization were also inadequate on a weekly basis.

**ALLEGATION 3** prejudices the administration, discipline or efficiency of a municipality, office, or institution of the municipality**. (Annexure C and Annexure D)**

1. Performance Management
	* 1. No disciplinary action taken against municipal staff for noncompliance or performance.

**ALLEGATION 4** misuses his or her position in the municipality to promote or to prejudice the interest of any political party.

1. Several positions in critical committees and boards were appointed by council with a majority vote by the ANC caucus. All Curriculum Vitaes received by the office of the Municipal Manager were not made available during these council meetings. Only the CV’s of delegates that would serve the purpose of the ANC were tabled for example the appointment Dudu Myeni as chairperson of the Centlec Board but was later declared a delinquent director. Personal appointed by MMM on the Administrative side should have the ability to fulfil their obligations.

**ALLEGATION 5** fails to carry out a lawful instruction without just or reasonable cause. **(Annexure L)**

1. The Municipal Manager was instructed by the Mangaung Metro Council to appoint an Ombudsman for the Mangaung Metro Municipally. To date no Ombudsman was appointed.

**ALLEGATION 6** performs poorly or inadequately for reasons other than incapacity. **(Annexure G)**

**Standing rules and Orders of the Mangaung Metro Council**

1. The Municipal Manager failed elected councillors to do proper oversight as members of the official opposition in council. In accordance with Standing Rules and Orders, councillors may ask questions to do oversight of the metro’s affairs and service delivery. Several questions remain unanswered since 2017.

**ALLEGATION 7** contravenes the Code of Conduct for municipal staff members contained in schedule 2 of the Act.

1. A staff member of a municipality must at all times loyally execute the I awful policies of the municipal council.
	* 1. Noncompliance to several municipal by-laws: None maintenance open parks, Cemeteries, Southern and Northern dumping sites.
2. Commitment to serving the public interest.
	* 1. non-payment of Bloemwater, Mangaung Metro suppliers and Eskom
3. act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised**. (Annexure K)**
	* 1. Downgrade of the Mangaung Metro by credit agencies
4. promote and seek to implement the basic values and principles of public administration described in section 195 (1) of the Constitution.
	* 1. Section 195 of the Constitution sets out the principles and values governing public administration. These include transparency, responsiveness, accountability, and the efficient, economic, and effective use of resources.
5. 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.
	* 1. None Public participation during IDP process.
6. 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.
7. gives false statements or evidence in the execution of his or her duties
	* 1. False statements regarding payments to Bloemwater, Re-establishment of the Mangaung Metro Zoo

During 2019 the Democratic Alliance also requested a formal investigation into mal administration of the Municipal Manager, Adv Tankiso Mea. Due process was not followed by the speaker, Cllr Mxolisi Siyonzana, and was tabled as a motion in council and the ANC caucus voted against the motion. The process clearly states that a special council meeting needs to be called within 7 days by the mayor and if sufficient evidence is tabled during the council meeting, the council must appoint an independent investigator. The Democratic Alliance will also report the mal administration of the Municipal manager to the office of the Auditor General and the office of the Public Protector in the Free State.

To conclude, the DA request that approval or non-approval of the charges against the Municipal Manager must be done on a secret ballot. This is to promote our democracy and give respect to the constitution of South Africa.

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Cllr Hardie Viviers

Caucus Leader

o.b.o Democratic Alliance Mangaung Caucus