



# City Improvement District

## Blackheath

committed to making a difference

### CODE OF CONDUCT FOR DIRECTORS

#### 1. **DEFINITIONS**

In this Code of Conduct, words or expressions shall bear the meaning assigned to them and, unless the context indicates otherwise -

**"By-Law"** means the City of Cape Town City Improvement District By-Law (published in Western Cape Provincial Gazette [...]);

**"Board"** means the board of directors of the management body of a City Improvement District, as contemplated in section 66 of the Companies Act, 71 of 2008;

**"Business plan"** means a motivation report, implementation plan and term budget as contemplated in section 5(9)(6)(i) of the By-law, read together with schedule 1 thereto;

**"Chairperson"** means the chairperson of the board;

**"City"** means the City of Cape Town established by Provincial Notice No. 479 of 2000 in terms of s. 12 of the Local Government: Municipal Structures Act, 117 of 1998 (the "*Structures Act*");

**"City Improvement District"** or **"CID"** means a district within the City's jurisdictional area designated as such in terms of section 4 of the By-law, read with section 22 of the Municipal Property Rates Act;

**"Companies Act"** means the Companies Act, 71 of 2008;

**"Company"** (also referred to as the "*CID company*"), means a non-profit company incorporated in accordance with the provisions of the Companies Act and as required under section 8(2) of the By-Law, for purposes of implementing the provisions of the business plan of a CID;

**"Conflict of Interest"** means a conflict between the official duties and the private or personal interests of directors, sufficient to influence, or reasonably appear to influence, the objective exercise of their official duties and responsibilities, irrespective of whether or not the CID company suffers harm as a result of the conflict;

**"Confidential information"** has the meaning assigned to it in section 1 of the Promotion of Access to Information Act, 2 of 2000 ("*PAIA*");

**"Constitution"** means the Constitution of the Republic of South Africa, 1996;

**"Council"** means the Council of the City;

**"Director"** means a member of the board of a CID company, as contemplated in section 66 of the Companies Act, or an alternate director of a CID company, and includes any person occupying the position of a director or alternate director, by whatever name designated;

**"Ex officio director"** means a person who holds office as a director of a CID company as a consequence of that person holding some other office, title, designation or similar status specified in a CID company's Memorandum of Incorporation ("*MOI*");

**"Knowing", "Knowingly" or "Knows"**, when used with respect to a person, bears the same meaning as assigned to these terms under section 1 of the Companies Act;

**“Management Body”** means the management body of a CID to be established in accordance with section 8 of the By-Law;

**“Memorandum of Incorporation”** (“*MOI*”) means the document, as amended from time to time, that sets out rights, duties and responsibilities of shareholders, directors and others within and in relation to a CID company, and other matters as contemplated in sections 1 and 15 of the Companies Act;

**“PAIA”** means the Promotion of Access to Information Act, 2 of 2000;

**“Policy”** means the Policy for the determination of CIDs, or any other policy adopted by the Council in relation to CIDs, as in force from time to time;

**“Potential Conflict of Interest”** means a situation where a director has private interests which are such that a conflict of interest would arise if the director were to become involved in relevant (i.e. conflicting) official responsibilities in future;

**“Private interest”** means: (i) a pecuniary interest which involves an actual or potential financial gain for the director himself or herself; and (ii) non-pecuniary interests of a director in the form of otherwise legitimate private-capacity activity, personal affiliations and associations, and interests of related persons, if those interests could reasonably be considered likely to influence the director’s performance of his/her official duties.

**“Related person”** has the meaning assigned to in section 1 of the Companies Act.

## **2. INTRODUCTION**

### **2.1. Status of the Code**

This policy is binding on all directors of the CID company. Any breach of this code will result in disciplinary action in terms of the procedure prescribed in paragraph 8 below.

### **2.2. Purpose of the Code**

2.2.1. The Code is established to govern the roles and responsibilities of board members of a CID company, as well as to provide guidelines on the legal, management and ethical standards expected of them.

2.2.2. The Code finds application when a person acts in his/her capacity as a board member of a CID company, including participation in meetings of the board (including its committees), and any other time or occasion that he or she represents the board.

2.2.3. Board members must familiarise themselves with the provisions of this Code and, at all times, conduct themselves in compliance with its provisions.

### **2.3. Interpretation of the Code**

Any director who is doubtful about the application of this rule or the propriety of any political activity must request guidance from the Chairperson in writing.

## **3. GENERAL**

### **3.1. Use of Public Funds**

3.1.1. Directors must ensure that public funds paid over to the CID company are applied only pursuant to the provisions of the company’s business plan, and that such funds, as well as publicly funded assets under the company’s management or control, are properly safeguarded and accounted for.

3.1.2. Directors must take appropriate steps to ensure that the CID company employs its resources efficiently, responsibly and in a manner that gives effect to the procurement principles enshrined in section 217 of the Constitution, and to all binding public procurement law.

### **3.2. Gifts and Preferential Treatment**

- 3.2.1. Directors shall not offer or accept any gifts, hospitality, preferential treatment or other benefits that might affect, or could reasonably appear to affect, the recipient's objectivity and ability to make independent judgments.
- 3.2.2. If a director is unsure as to whether the prohibition in paragraph 3.2.1 above applies to a particular gift, hospitality, preferential treatment or other benefit, the director must obtain written approval from the board before offering or accepting same.
- 3.2.3. Subject to the provisions of paragraph 3.2.1 above, a director may offer or accept any gifts, hospitality or other benefits in the ordinary course of the CID company's activities:
  - 3.2.3.1. Which either individually or in aggregate does not exceed R500.00 over a 12-month period; or
  - 3.2.3.2. In respect of which the director has obtained prior written approval of the board, up to a maximum of R2,000.00 over a 12-month period.
- 3.2.4. Directors are obliged to record any gifts, hospitality or other benefits gifts, rewards, meals and entertainment above the value of R200.00 in the CID's Gift and Hospitality Register.

#### **4. UNAUTHORISED USE AND DISCLOSURE OF INFORMATION**

- 4.1. Directors shall not disclose – either during or after their term of office - any information collected or held by the CID company that is not in the public domain, and is confidential, commercially or operationally sensitive, or falls within any person's reasonable expectation of privacy, unless authorised by the board.
- 4.2. Paragraph 4.1 above does not detract from any person's right to access to information under PAIA or the Companies Act.
- 4.3. Directors shall not use information acquired in the course of their official duties in order to further their direct or indirect personal or private financial interests.
- 4.4. Directors must return documentation obtained during their term of office to the Chairperson, or indicate to him or her that all such documentation in their possession has been disposed of appropriately. Former directors who require access to any board documents pertaining to their term of office may approach the Chairperson for this purpose.

#### **5. POLITICAL ACTIVITIES**

- 5.1. Directors may not occupy a salaried political party position or hold a leadership position in any political party.
- 5.2. Subject to paragraph 5.1 above, directors may engage in lawful political activities, provided they:
  - 5.2.1. Are compatible with their CID responsibilities;
  - 5.2.2. Exercise proper discretion, particularly in respect of the activities of the CID company; and
  - 5.2.3. Refrain from making party-political speeches in public, or engage in political activities on matters directly affecting the CID company.
- 5.3. Directors must advise the Chairperson in writing before undertaking any political activity which could give rise to a potential conflict of interest.

#### **6. CONFLICT OF INTEREST**

##### **6.1. General**

- 6.1.1. Directors are duty bound to act in the interests of the CID company and must avoid conflicts of interest.

- 6.1.2. A director, related persons, or the director's friends, associates or associated organisations, may not benefit from the discharge of that director's official duties or deliberations.

## 6.2. Disclosure of Private Interests

- 6.2.1. Upon appointment, each director must declare in writing to the Chairperson his/her private interests which could give rise to a potential conflict of interest.
- 6.2.2. Directors must declare in writing to the Chairperson any new private interests as contemplated in para 6.2.1 above that arise or of which they become aware of during the course of his/her board membership. Such declaration must be effected within one (1) month of acquiring or becoming aware of the interest.
- 6.2.3. Details of disclosed private interests under paragraph 6.2.2 must be kept by the Chairperson in a confidential register designated for this purpose, which must be updated by the Chairperson on an annual basis. Directors must advise the Chairperson in writing of any interim changes in their interests or that of a related person within one (1) month thereof. Access to the register is limited to the Chairperson and Chief Executive Officer of the CID company.
- 6.2.4. Directors shall declare whether or not they have any private interests in the subject-matter of a board meeting which could give rise to a potential conflict of interest before the commencement of such meeting in writing to the chairperson in such format as the latter may require.
- 6.2.5. All disclosure forms contemplated in paragraph 6.2.4 shall be kept in the register referred to in paragraph 6.2.3 above.
- 6.2.6. The minutes of every board meeting shall record whether or not there has been compliance with paragraph 6.2.4.

## 6.3. Examples of Conflicts of Interest

Examples of conflicts of interests include, but are not limited to, situations where:

- 6.3.1. A director is a shareholder or member of a corporate entity, or proprietor of a business, which tenders for and/or enters into a contract with the CID company to perform services or deliver goods.
- 6.3.2. A related person, friend or business associate of a director is a shareholder or member of a corporate entity, or proprietor of a business, which tenders for and/or enters into a contract with the CID company to perform services or deliver goods.
- 6.3.3. A related person, friend or business associate of a director applies or is considered for appointment as an employee of the CID company.
- 6.3.4. A decision to expend funds will not benefit CID residents in general, but rather result in a pecuniary or non-pecuniary benefit to a director, or to a related person, friend, business associate of a director, or to an organisation or entity of which the director is a member.
- 6.3.5. A director has received a gift, hospitality, preferential treatment or other benefits from a person or entity who tenders for the supply of goods or services to the CID, where this might affect, or could reasonably appear to affect, the director's objectivity and ability to make independent judgments.
- 6.3.6. The CID company considers extending the boundaries of the CID in circumstances where the extension will result in a pecuniary or non-pecuniary benefit to a director, or to a related person, friend, business associate of a director, or to an organisation or entity of which the director is a member, where such benefit is not acquired in common with other residents of the proposed extension area.

#### 6.4. Director's Participation in Decision-Making Process

- 6.4.1. In the event a particular matter gives rise to a potential conflict of interest, the implicated director must write in advance to the Chairperson outlining the facts giving rise to the potential conflict of interest.
- 6.4.2. Where a director has declared a potential conflict of interest as contemplated in paragraph 6.4.1, the implicated director must recuse himself or herself from the consideration and deliberation (both formal and informal) of, or voting on, the matter giving rise to the potential conflict of interest.
- 6.4.3. The prohibition contemplated in paragraph 6.4.2 above does not apply if the board, having received full disclosure from the relevant director, has determined that the relevant interest does not in fact give rise to a conflict of interest (including where no reasonable person could consider the relevant interest to give rise to a conflict of interest). A decision that an interest is insufficient to give rise to a conflict of interest and that the relevant director may participate must formally be recorded in the minutes of the board meeting.
- 6.4.4. Where a particular matter implicates the interests of the Chairperson (or related persons), the Chairperson must authorise the Deputy Chairperson or another director to chair the relevant board meeting and recuse himself/ herself from any deliberations or decisions pertaining to such interests.

#### 6.5. Documentation/ Records

- 6.5.1. Any documentation pertaining to a matter in respect of which a director has a potential conflict of interest may not be made available to that director before a final decision has been taken. Once a decision has been taken, the board may notify the relevant director thereof and provide him with relevant documentation, provided such documentation does not contain trade secrets or sensitive commercial information of persons in competition with the interests of the director (or related person).
- 6.5.2. Where a director receives documentation relating to his/her private interests, the director must return the documents to the Chairperson as soon as possible.

### **7. PROCUREMENT**

- 7.1. Directors are duty bound to ensure that the requirements for public procurement, including the principles of s. 217 of the Constitution (where applicable), are adhered to.
- 7.2. Directors must acquaint themselves with s. 217 of the Constitution and all law, regulations and policies that govern public procurement.
- 7.3. As a general principle, the CID company must adopt a competitive tendering process when procuring goods and services.

### **8. BREACHES OF CODE**

#### 8.1. Disciplinary Committee

- 8.1.1. The board must, at its first meeting after every AGM, elect a board member as the Chairperson of the Disciplinary Committee (the "DC"), for a period of one (1) year. If, at any relevant time, the designated Chairperson is unable to perform his/her duties, the board may elect another director to perform such duties.
- 8.1.2. Given their respective duties under this paragraph, the Chairperson of the Board may not be elected to serve as the Chairperson of the DC.

- 8.1.3. In the event the Chairperson of the board is unable to perform any of his/her responsibilities under paragraph 8 of this Code or has a conflict of interest, the Deputy Chairperson of the board shall perform such duties in the interim.
- 8.1.4. The Chairperson of the DC shall, from time to time, present to the board the names of members of the CID company who have consented to serve as members of the DC.
- 8.1.5. Upon consideration of the Chairperson's nominations, the board shall elect the members of the DC. Over and above the Chairperson, the DC shall have at least four (4), but no more than ten (10), members.
- 8.1.6. Members of the DC, excluding its Chairperson-
  - 8.1.6.1. will be appointed for a period of no more than one (1) year; and
  - 8.1.6.2. may resign by delivering their written resignation to the Chairperson of the Board.
- 8.1.7. Upon termination of their initial appointment, the Chairperson and members of the DC may be re-elected for a second and final term, provided that they have retained their membership of the board of directors or the CID company, respectively. They may be considered again for re-appointment (subject to the same conditions), after the lapse of two years after the termination of their second term (or of their first term if they were not re-elected to serve a second term).
- 8.1.8. In the event that any member of the DC has a conflict of interest in relation either to the subject-matter of the complaint or to the director under investigation, such member shall recuse himself/ herself from the disciplinary process.
- 8.1.9. Where members of the DC are unable to attend any of the meetings contemplated in paragraph 8 of this Code, they may request the Chairperson of the DC to facilitate their electronic participation in the meeting.

## 8.2. Complaint

- 8.2.1. Any director, member or employee of the CID company, or the City, or a member of the public may inform the Chairperson of the Board of an alleged violation of this Code of Conduct by a director.
- 8.2.2. This allegation must be in writing and, if possible, accompanied by relevant documentary evidence.
- 8.2.3. The Chairperson of the Board shall record the complaint in a register kept for such purpose and shall refer the complaint and any accompanying documentary evidence to the Chairperson of DC within five (5) calendar days of the date upon which the complaint was lodged.
- 8.2.4. Within three (3) days of receipt of the complaint and any documentary evidence, the Chairperson of the DC shall let the complainant have written confirmation of receipt.

## 8.3. Preliminary Investigation

- 8.3.1. Within five (5) days of receiving the complaint, the Chairperson of the DC shall appoint a member of the DC as Independent Investigator, or an independent and adequately qualified third party in the event the complexity or gravity of the complaint warrants such appointment.
- 8.3.2. In the event the complaint lacks adequate particularity, the Independent Investigator may request the complainant to furnish him/ her with further information and/or documentation.
- 8.3.3. The identity of the complainant shall be protected so far as is reasonably possible, unless the complainant has consented to disclosure of his/her identity in writing.

- 8.3.4. Within five (5) calendar days of his/her appointment, the Independent Investigator, having due regard to confidential or sensitive information contained in the complaint, shall by way of written notice:
- 8.3.4.1. Inform the director of the complaint against him/her;
  - 8.3.4.2. Furnish the director with documentary evidence presented by the complainant, if any;
  - 8.3.4.3. Call for the director's written response to the complaint (if any), within ten (10) calendar days of receipt of the notice; and
  - 8.3.4.4. Advise the director that, in the event the Independent Investigator concludes that the director has a *prima facie* case to meet, the Independent Investigator will recommend to the DC that formal disciplinary proceedings be instituted.
- 8.3.5. Upon receipt of the implicated director's written response, or termination of the time provided therefor, whichever is the soonest, the Independent Investigator shall refer the director's response to the complainant for a reply (if any), within a further period of ten (10) calendar days.
- 8.3.6. Upon receipt of the complainant's response, or termination of the time period provided therefor, whichever is the soonest, the Independent Investigator shall:
- 8.3.6.1. Consider all documents and written representations submitted by the complainant and/or the director; and
  - 8.3.6.2. Within seven (7) calendar days, determine whether or not the complaint constitutes a *prima facie* case and justifies a formal disciplinary hearing, and provide the Chairperson of DC with his/her written report in this regard.
- 8.3.7. The Chairperson of the DC shall convene a meeting of the DC within seven (7) calendar days of receipt of the Independent Investigator's report for consideration.
- 8.3.8. The DC shall consider the Independent Investigator's written report; the complaint; the implicated director's response (if any); the complainant's reply (if any), and any documentary evidence submitted by either of these parties and determine whether or not the director has a *prima facie* case to answer. Where the Independent Investigator is a member of the DC, he/she may only participate in deliberations to clarify aspects of the report and may not vote.
- 8.3.9. If the DC resolves that the implicated director has a *prima facie* case to answer, it must refer the matter to a formal disciplinary hearing for final determination in accordance with paragraph 8.5 below. Alternatively, it must dismiss the complaint for failing to make out a *prima facie* case.
- 8.3.10. The DC's aforesaid decision shall be recorded in the minutes of the meeting, together with any reasons. Within three (3) calendar days thereof, the Chairperson of the DC shall provide the complainant and the implicated director with its reasoned decision in writing and transmit a copy to the Chairperson of the board.

#### 8.4. Precautionary Suspension

- 8.4.1. If the DC resolves to institute a formal disciplinary hearing, the board may place the implicated director on precautionary suspension pending the finalisation of the hearing. The board may resolve thus, if the director's presence at the CID company's premises or board meetings may likely hinder the investigation or pose a threat to the activities of the company.
- 8.4.2. The board must give the implicated director written notice of any such decision, together with any conditions, as soon as duly possible. These conditions may, *inter*

*alia*, prohibit the implicated director from contacting the complainant or directors and employees of the CID company; attending board meetings; accessing any documentation of the board, and attending on the company's premises.

- 8.4.3. The precautionary suspension will automatically lapse if the disciplinary hearing is not concluded within three (3) months thereof. The board of directors may not extend the precautionary suspension beyond this period.

#### 8.5. Procedure in anticipation of Disciplinary Hearing

- 8.5.1. Within five (5) days of the DC's decision to institute a formal disciplinary hearing, the Chairperson of the DC must:

8.5.1.1. Appoint at least two members of the DC (who may not include the Independent Investigator) to serve on the Disciplinary Panel under his chairmanship;

8.5.1.2. Appoint either another member of the DC (who may not be the Independent Investigator), or an independent and adequately qualified third party to prepare the case for presentation to the Disciplinary Panel (the "*Prosecutor*");

8.5.1.3. Determine a hearing date no less than twenty-five (25) calendar days after the DC's decision to institute a formal disciplinary hearing.

- 8.5.2. No less than twenty (20) days before the hearing, the Chairperson of the DC must inform the director in writing of-

8.5.2.1. the date, time and venue of the disciplinary hearing;

8.5.2.2. the allegations against the director;

8.5.2.3. the procedure governing the disciplinary hearing (including that prescribed under paragraph 8.5.3 below);

8.5.2.4. the director's right to be heard; and

8.5.2.5. the director's right to be represented - at his/her own cost - by a director of the board or a member of the CID company, alternatively to legal representation if the Chairperson of the DC permits such representation taking into account the complexity and seriousness of the allegations against the director and/or gravity of the likely sanctions in the event the director is found guilty of the alleged breach.

- 8.5.3. The Prosecutor must by no later than fifteen (15) calendar days before the hearing date-

8.5.3.1. furnish the implicated director with a charge sheet, detailing the allegations against him; copies of any documentary evidence that will be relied upon at the hearing, together with the names of any witnesses;

8.5.3.2. identify the sanctions he/she may likely recommend in the event the Disciplinary Panel finds he is guilty of the alleged breach;

8.5.3.3. invite the director to request further particulars within three (3) calendar days;

8.5.3.4. request the director to provide the Chairperson of the DC with any documentary evidence he/she wishes to rely upon at the hearing, together with the names of any witnesses, no later than five (5) calendar days before the disciplinary hearing; and



8.5.3.5. provide the Chairperson of the DC with a copy of his/her written notice to the implicated director, accompanied by any documentary evidence, for distribution to the Disciplinary Panel.

8.5.4. The Chairperson of the DC shall provide the Disciplinary Panel with copies of all documentation received from the Prosecutor and the implicated director at least four (4) days before the hearing.

## 8.6. Disciplinary Hearing

8.6.1. The Chairperson of the DC will convene the Disciplinary Panel and preside over the disciplinary hearing.

8.6.2. Subject to paragraph 8.6.3 below, the Chairperson of the DC, in consultation with fellow members of the Disciplinary Panel, will determine the procedural rules governing the hearing in accordance with the principles of natural justice.

8.6.3. The procedure will at the very least provide for the following-

8.6.3.1. the Prosecutor must present the allegations against the implicated director, and may submit documentary evidence and call witnesses;

8.6.3.2. the Director or his representative must be afforded an opportunity to question the Prosecutor's witnesses;

8.6.3.3. the Disciplinary Panel may question the Prosecutor's witnesses;

8.6.3.4. the Director or his representative must be afforded an opportunity to present his/her defence, including submitting documentary evidence or calling witnesses;

8.6.3.5. the Prosecutor must be afforded an opportunity to question the director's witnesses;

8.6.3.6. the Disciplinary may question the director's witnesses; and

8.6.3.7. the Prosecutor and the director (or his representative), must be permitted to make final submissions to the Disciplinary Panel.

8.6.4. Within twenty (20) calendar days of the conclusion of the hearing on the merits of the alleged breach of this Code, the Disciplinary Panel shall consider the case, make a finding (by majority vote), as to whether the director is guilty or not of the alleged breach of this Code, and prepare written reasons.

8.6.5. In the event the Disciplinary Panel finds that the director is guilty, the Chairperson of the DC must within five (5) calendar days of the aforesaid decision give written notice to both the Prosecutor and the implicated director of-

8.6.5.1. the Disciplinary Panel's reasoned decision; and

8.6.5.2. the date, time and venue for hearing evidence pertinent to an appropriate sanction, which must be convened within fifteen (15) days of the date of the written notice.

8.6.6. Within ten (10) calendar days of concluding the hearing as to appropriate sanction(s), the Disciplinary Panel may recommend-

8.6.6.1. requiring the director to issue a written apology to the complainant and/or the members of the CID company;

8.6.6.2. a first warning;

8.6.6.3. a final warning in cases where a first warning was issued earlier;

8.6.6.4. suspension of the director for a fixed period;

8.6.6.5. temporary or permanent removal of some or all of the director's additional responsibilities (i.e. duties above and beyond the automatic duties of directors); or

8.6.6.6. removal from the board of directors (in very serious cases).

8.6.7. Within five (5) calendar days of its aforesaid decision, the Chairperson of the DC shall furnish the Disciplinary Panel's findings and recommendations in writing to the Chairperson of the board, as well as the implicated director and the complainant.

#### 8.7. Decision

8.7.1. The Chairperson of the board of directors must convene a meeting to consider the findings and recommendations of the Disciplinary Panel within fifteen (15) calendar days of receipt of the written notice contemplated in paragraph 8.6.7 above.

8.7.2. Having considered the Disciplinary Panel's findings and recommendations, the board by majority vote must decide whether to accept the Panel's findings as to culpability and, if applicable, decide whether to impose the recommended or any other appropriate sanctions.

8.7.3. If the board of directors resolves that the implicated director be removed from office, they must convene a special members' meeting to consider and vote upon his/her removal. A copy of the written findings and recommendations of the Disciplinary Panel must be circulated to members of the CID, together with the agenda of the special members' meeting.

8.7.4. The Chairperson of the board must inform, in writing, the implicated director and the complainant of the board's decision within five (5) days thereof.

8.7.5. No internal appeal lies against the decision of the board.