

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY



RULES GOVERNING THE PROCEEDINGS

OF

THE SPECIAL INDEPENDENT INVESTIGATION COMMITTEE

INVESTIGATING THE ALLEGED UNLAWFULLNESS OF THE ESTABLISHMENT OF THE
GROUP FORENSIC AND INVESTIGATION SERVICES (“**GFIS**”), AS WELL AS
ALLEGATIONS OF IMPROPER AND UNLAWFUL CONDUCT ON THE PART OF GIFS

INTRODUCTION

On 5 September 2023 the Council of the City of Johannesburg Metropolitan Municipality (**the Council**) passed a resolution approving the establishment of the Special Independent Investigation Committee (**SIIC**)¹ to conduct an investigation into the lawfulness or otherwise of the establishment of the Group Forensic and Investigation Services (**GFIS**), as well as allegations of improper and unlawful conduct on the part of GIFS.²

The Council's Resolution above empowers the SIIC to determine its own rules and procedures. The SIIC has accordingly determined these Rules as the Rules that will govern its procedures. The proceedings of the SIIC will be conducted in accordance with the SIIC's Terms of Reference, the Standing Rules and Orders of Council (2016), the Local Government: Disciplinary Regulations for Senior Managers (2010), the Code of Conduct for Councillors, the Code of Conduct for Staff Members and any other applicable law.

PURPOSE OF THE RULES

The purpose of these Rules is to establish procedures governing the SIIC, to provide for the operation of the Committee in a manner which will enable it to perform properly the powers and duties vested in it, including the conduct of hearings, in a fair and impartial manner, consistent with the protection of the rights of persons called to testify at such hearings and the preservation of the public good.

¹ In terms of Regulation 5(3) of the Disciplinary Regulations and Item 16(1)(b) of the Code of Conduct for Councillors.

² Item 50: Resolution dated 5 September 2023 of the City of Johannesburg Metropolitan Municipality Legislature.

1 Definitions

Unless otherwise stated or the context indicates otherwise, in these Rules—

- 1.1. “**Code of Conduct**” means the Code of Conduct for Councillors and Code of Conduct of Staff Members;
- 1.2. “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
- 1.3. “**Chairperson**” means Advocate Pule Seleka SC in his capacity as Chairperson of the SIIC;
- 1.4. “**Days**” means working days (Monday to Friday)
- 1.5. “**Evidence**” includes but is not limited to any document, affidavit, video, sound recording or oral testimony submitted to the SIIC;
- 1.6. “**Hearing**” means any meeting in the course of an investigatory proceeding, other than a preliminary conference or interview at which no testimony is taken under oath, conducted by the SIIC for the purpose of taking testimony or receiving other evidence. A hearing may be open to the public or closed to the public.
- 1.7. “**Legal representative**” means a practicing advocate or attorney;
- 1.8. “**Person**” includes both a natural and a juristic person;
- 1.9. “**Personal information**” means all information of a personal and private nature pertaining to an individual including but not limited to private addresses, private telephone numbers, private family information and details of medical conditions;
- 1.10. “**Public hearing**” means any hearing open to the public, or the proceedings of which are made available to the public.
- 1.11. “**Rules**” means these rules as amended from time to time;
- 1.12. “**Secretary of the SIIC**” or “**The Secretariat**” means the Acting Secretary of Council Mr A Gobinca.
- 1.13. “**SIIC’s Legal Team**” means the team of lawyers appoint to assist the SIIC in the investigation and with the presentation of evidence and arguments before the SIIC in regard to the matters referred to in the Terms of Reference;

- 1.14. **“Special Independent Investigation Committee”** means the SIIC investigation into the lawfulness or otherwise of the establishment of the Group Forensic and Investigation Services (‘GFIS’), as well as allegations of improper and unlawful conduct on the part of GIFS;
- 1.15. **“Terms of Reference”** mean the terms of reference of the SIIC.

2 Conduct of the Hearings

The Chairperson of the SIIC shall preside at all hearings of the SIIC and shall supervise the examination of witnesses.

3 Notice to appear and Notice to produce

- 3.1. The SIIC may issue a Notice to appear requiring the attendance of witnesses and Notice to produce requiring the production of books, documents, or other evidence, in any matter pending before the SIIC.³ This first Notice to appear and/or to produce shall be issued by the Secretary of the SIIC.
- 3.2. In the event the notified person fails to appear or fails to produce the documents so requested by the SIIC after receipt of the first Notice, the Chairperson shall through the Secretary of the SIIC issue a second Notice to appear directing the attendance of witnesses and a second Notice to produce directing the production of books, documents, or other evidence, in any matter pending before the SIIC.
- 3.3. Both notices shall make the notified person aware of the consequences of the failure to appear before the SIIC.

4 Notice to witnesses

- 4.1. Service of a notice or directive requiring the attendance of a person at a hearing of the SIIC shall be made at least ten (10) days prior to the date of the hearing unless a shorter period of time is authorised by the Chairperson in a particular instance when, in his opinion, the giving of ten days’ notice is not practicable. But if a shorter period of time is authorised, the notified person shall be given

³ Rule 119(6) of the Standing Rules and Orders of Council (2016) provides that –“*Every Committee may - call for evidence, summon persons to appear before it and require people to produce an documents that it requires;...*”

reasonable notice of the hearing, consistent with the particular circumstances involved.

- 4.2. Any person who is served with a notice to attend a hearing of the SIIC shall also be served with a general statement informing them of the subject matter of the SIIC's investigation or inquiry, and a notice that they may be accompanied at the hearing by a representative of their own choosing, at their own expense.

5 Witnesses presented by the SIIC's Legal Team

- 5.1. Subject to anything to the contrary contained in these Rules or to the Chairperson's directions regarding any specific witness, the SIIC's Legal Team bears the overall responsibility of presenting the evidence of witnesses to the SIIC.
- 5.2. The SIIC's Legal Team may put questions to a witness whose evidence is presented to the SIIC including questions aimed at assisting the SIIC in assessing the truthfulness of the evidence of a witness. Subject to the directions of the Chairperson, the SIIC's Legal Team may ask leading questions.
- 5.3. If the SIIC's Legal Team intends to present to the SIIC a witness, whose evidence implicates or may implicate another person, it must, through the Secretary of the SIIC, notify that person ("*implicated person*") in writing within a reasonable time before the witness gives evidence:
 - 5.3.1. that he or she is, or may be, implicated by the witness's evidence;
 - 5.3.2. in what way he or she is, or may be, implicated and furnish him or her with the witness's statement or affidavit or relevant portions of the statement or affidavit;
 - 5.3.3. of the date when and the venue where the witness will give the evidence;
 - 5.3.4. that he or she may attend the hearing at which the witness gives evidence;
 - 5.3.5. that he or she may be assisted by a legal representative when the witness gives evidence;
 - 5.3.6. that, if he or she wishes:
 - 5.3.6.1. to give evidence himself or herself;

5.3.6.2. to call any witness to give evidence on his or her behalf: or

5.3.6.3. to cross-examine the witness;

he or she must, within ten days of the date of notice, apply to the SIIC for leave to do so; and

5.3.7. that the Chairperson will decide the application.

- 5.4. An application in terms of Rule 5.3.6 above must be submitted in writing to the Secretary of the SIIC within ten days from the date of the notice referred to in Rule 3.3. The application must be accompanied by a statement or affidavit from the implicated person responding to the witness's statement or affidavit insofar as it implicates him or her. The statement or affidavit must make it clear what parts of the witness's statement or affidavit are disputed or denied and the grounds upon which those parts are disputed or denied.
- 5.5. If an implicated person believes that the Secretary of the SIIC did not give him or her the notice referred to in Rule 5.3 within a reasonable time before the witness could or was to give evidence and that this may be prejudicial to him or her, he or she may apply to the SIIC for such order as will ensure that he or she is not seriously prejudiced.
- 5.6. In deciding an application contemplated in Rule 5.3.6, the Chairperson may, in his discretion and on such terms and conditions as he may deem appropriate, grant leave to an implicated person: (a) to give evidence; (b) to call a witness to give evidence on his behalf and/or (c) to cross-examine the witness implicating him or her.
- 5.7. There shall be no right to cross-examine a witness before the SIIC, but the Chairperson may permit cross-examination should he deem it necessary and in the best interests of the work of the SIIC to do so.
- 5.8. If the Chairperson grants leave to an implicated person in terms of Rule 5.6, a member of the SIIC Legal Team may put questions to any witness who gives evidence pursuant to that ruling, including questions aimed at assisting the SIIC in assessing the truthfulness of the evidence of a witness. Subject to the directions of the Chairperson, the SIIC's Legal Team may ask leading questions.

- 5.9. The Chairperson may, at any time, direct any person against whom allegations are made in a witness's or affidavit or evidence to respond in writing to the allegations relating to him or her in that statement or affidavit or evidence and/or to answer in writing specific questions put to him or her by the Chairperson arising from the witness's statement or affidavit.

6 Hearings to be held in public

- 6.1. Subject to Rule 4.2, the hearings of the SIIC will be held in public.
- 6.2. In an appropriate case, the Chairperson may make an order that a hearing be held in camera. In such a case, the Chairperson shall specify the persons who will be permitted to attend the hearing in camera.
- 6.3. At the request of the witness whose evidence is to be heard in camera or, *mero moto* by the Chairperson, the Chairperson has the discretion to order that the identity of the witness who is to give evidence in camera not be disclosed directly or indirectly.
- 6.4. The hearing or part thereof shall not be televised, filmed or broadcast except with the approval of the Chairperson upon application.

7 Venue for hearings

- 7.1. The hearings of the SIIC will be held at a venue designated for this purpose.
- 7.2. The Chairperson may, in his discretion, direct that a hearing or certain hearings of the SIIC will be held at a venue other than the venue referred to in Rule 5.1. This includes the discretion to make use of a virtual platform for the purpose of a hearing or certain hearings if necessary.

8 Inspection

When the investigation requires any inspection *in loco*, the SIIC shall move to the premises or location to be inspected, provided that the Chairperson shall specify the procedures to be followed.

9 Evidence presented to the SIIC

- 9.1. The SIIC may receive any evidence that is relevant to its mandate, including evidence that might otherwise be inadmissible in a court of law. The rules of

evidence applicable in a court of law need not be strictly applied to the determination of the admissibility of evidence before the SIIC.

- 9.2. Anyone who has knowledge of the matters that fall within the Terms of Reference of the SIIC may deliver to the Secretary of the SIIC a statement or affidavit setting out that information for consideration.
- 9.3. Affidavits or statements that are submitted to the SIIC should:
 - 9.3.1. be formatted in numbered paragraphs, and
 - 9.3.2. include an index and subject matter headings.
- 9.4. Where a person seeks to provide expert evidence to the SIIC, his or her evidence must include a summary of relevant qualifications and experience, a summary of the expert's opinion, as well as an explanation of the relevance of the expert's testimony to the work of the SIIC.
- 9.5. Where the evidence intended to be placed before the SIIC has previously been placed before a Commission or tribunal or Court or body, that fact must be disclosed by the person submitting that evidence, as well as provide the relevant transcript in respect of those proceedings.

10 Oral Evidence at the Hearings

- 10.1. Witnesses will be called to give oral evidence before the SIIC at the discretion of the Chairperson. The Chairperson's decision to call a witness will be informed by the likely significance of the evidence in advancing the work of the SIIC.
- 10.2. A witness appearing before the SIIC may, at his or her own expense, be assisted by a legal representative.
- 10.3. The Chairperson or another person who is generally or specifically authorised by the Chairperson to do so shall administer the oath or affirmation to a witness before the witness may commence giving evidence.
- 10.4. A witness at a hearing, upon his or her request and at his or her own expense, shall be furnished with a transcript of his or her testimony at the hearing.

10.5. Testimony and other evidence given or adduced at a hearing closed to the public shall not be made public unless authorised by the Chairperson, which authorisation shall also specify the form and manner in which the testimony or other evidence may be released.

10.6. All information of a defamatory or highly prejudicial nature received by the SIIC other than in an open or closed hearing shall be deemed to be confidential. No such information shall be made public unless authorised by the Chairperson for legislative purposes, or unless its use is required for judicial purposes.

11 Order of evidence of a witness

The order or sequence in which witnesses will be called before the SIIC shall be subject to the discretion of the Chairperson.

12 Other witnesses

If any person considers that a particular witness should be called to give oral evidence, a written request to this effect should be made to the SIIC and shall include the reasons for the request and the likely value of the evidence of the witness. The decision to call the witness is at the discretion of the Chairperson.

13 City officials and employees to cooperate

The Councillors of the Municipal Council, officers and employees of the CoJ shall cooperate with the SIIC and furnish to it such information as may be called for in connection with the investigation of the SIIC.

14 Limitations

Nothing contained in these Rules shall be construed to limit or prohibit the acquisition of evidence or information by the SIIC through any lawful means not provided for herein.

15 Amendment of Rules

The Chairperson may amend these Rules from time to time.

16 Members of the SIIC and its secretary, not civilly or criminally liable

16.1. A member of the SIIC shall not be civilly or criminally liable in respect of any act performed or anything said or done by him or her in the performance of his or her functions as such a member.

16.2. The provisions of subsection (1) shall *mutatis mutandis* apply in respect of the secretary of the SIIC in relation to any act performed or anything said or done by him in the performance of his duties as such a secretary.

17 SIIC’S Report

17.1. At the conclusion of its inquiry, the SIIC must compile a full written report, and a summary of its report.

17.2. The SIIC’s report with its findings and recommendations, if any, will be submitted to the Speaker of Council by no later than the end December 2024, or by such later date as may be agreed to by the Speaker of Council.

17.3. The Council will determine whether the SIIC’s report should be published.

18 Termination of the SIIC mandate

The SIIC’s mandate terminates once it has submitted its report to the Speaker of Council.

19 Commencement date of the Rules

These Rules shall come into operation upon signature by the Chairperson.

20 Citation of the Rules

These Rules shall be called the Rules of procedure for the SIIC investigation into the unlawfulness or otherwise of the establishment of GFIS, as well as allegations of improper and unlawful conduct on the part of GIFS.

Signed on this 5th day of August 2024



ADV PULE SELEKA SC
Chairperson of the SIIC