



DIRECTORATE
CORPORATE SERVICES

Legal Services

Standard Operating Procedures

for

Legal Services Litigation

Version 1
October 2019

Disclaimer: This Standard Operating Procedure is for internal operations only and shall not be enforceable by third parties against Mangaung Metropolitan Municipality

STANDARD OPERATING PROCEDURES (SOP) FOR LITIGATION

1. INTRODUCTION

Due to the nature of the processes, litigation matters require *inter alia*, expeditious handling based on full and complete documentation, strict adherence to timeframes stipulated in the court Rules, strict compliance with the provisions of the applicable legislation and comprehensive co-operation from instructing Directorates. Complete adherence to the set turnaround times as provided in this SOP and prompt response to investigative questions intended to solicit further facts related to the matter at hand

2. PURPOSE

- 2.1 The purpose of the SOP for litigation matters is to ensure *inter alia*:
- 2.2 Appointment of Attorneys are done in compliance with Supply Chain Management Process
- 2.3 Efficient and effective communication and correspondence management when dealing with:
 - 2.3.1 Summons served on the Municipality;
 - 2.3.2 Institution of litigation against third parties;
 - 2.3.3 Other legal matters
- 2.4 Strict Adherence to timeframes
- 2.5 Appropriate Records management
- 2.6 Updated Database
- 2.7 Establishment of a Litigation Management Team (LMT)
- 2.8 Attorneys are registered on database
- 2.9 Mitigate legal risk to Council/Municipality
- 2.10 Performance Monitoring of legal firms appointed

3. ROSTER SYSTEM FOR UTILISATION OF FIRMS OF ATTORNEYS

3.1 Chapter 11 of the Municipal Finance Management Act 56 of 2003 places a mandatory obligation on the Municipality to ensure that Goods and Services are procured in a fair, equitable, transparent, competitive and cost-effective manner.

3.2 In compliance with the above provision, it is imperative that Supply Chain Management Processes are adhered to, to give effect to this, the following is required:

3.2.1 The municipality must call for expression of interest from firms of Attorneys for various types of legal work on a contract basis;

3.2.2 The SCM Process must be complied with when selecting Firms of Attorneys to represent the Municipality on litigation and other legal issues;

3.2.3 The successful Attorneys will form part of a Panel of Attorneys and will be registered on the database of the SCM Unit as well as Legal Services;

3.2.4 A Service Level Agreement must be entered into with each of the Attorney Firms;

3.2.5 A roster system will be utilised for fair and equitable distribution of work as and when their services are required;

3.2.6 A Standard Fee Tariff must be prescribed for the Panel of Attorneys;

3.2.7 Trimester reports detailing the status of the case as well as its financial implications must be provided by the Attorney Firm on all matters dealt with by that firm.

4. EFFICIENT AND EFFECTIVE COMMUNICATION AND CORRESPONDENCE MANAGEMENT

4.1 The commencement and termination points of litigation communication must be via the office of the General Manager Legal Services.

Litigation Against the Municipality

- 4.2 All legal documents against the municipality are served at the Office of the City Manager then forwarded to the Office of the General Manager Legal Services immediately.
- 4.3 Information about the said Legal documents against the municipality must be captured on the litigation register.
- 4.4 Senior Legal Administration Officer Legal Services opens a file on each litigation matter and ensures that files are properly filed and managed.
- 4.5 Upon receipt of correspondences, the relevant files thereof must be drawn, be attended to and have the correspondences filed in the respective files.
- 4.6 Any Council resolution relevant to a matter must be filed in the file it relates to.
- 4.7 Once the legal documents against the municipality have been received and perused, an attorney must be instructed as per Roster within a period of 2 days.
- 4.8 The instructions to Attorneys must be in writing and signed by the General Manager Legal Services or HOD Corporate Services.
- 4.9 Trimester reports must be submitted by Attorneys to the Manager Litigation on all matters they have been instructed to act as the attorneys for the Municipality.
- 4.10 Heads of Departments must ensure that full co-operation and assistance is given to Legal Services in all legal matters related to their directorates.
- 4.11 Additional legal costs as a result of non-co-operation or lack of assistance from relevant directorate will be borne by the relevant directorate.
- 4.12 The relevant directorate is liable for all payment including the Capital, interest and legal costs of the opposition of a court action/application as per court order occasioned by non-payment of invoices or payment certificates for services rendered.
- 4.13 Legal Services is only liable for payment of legal costs of the attorneys Legal Services appointed.
- 4.14 Legal Services shall pay outstanding claims for services rendered on receipt of an "attachment of property" and the full amount shall be refunded by the relevant department to legal services.
- 4.15 Settlement agreements shall be approved by the City Manager.

Litigation by the Municipality

- 4.16 The directorate instituting court proceedings must hand the memorandum with all relevant information and council resolutions (if relevant to matter) to the General Manager Legal Service to commence with court proceedings.
- 4.17 Legal Services must after the receipt and perusal of the memorandum with all relevant information instruct attorney to represent the Municipality.
- 4.18 The instructions to Attorneys must be in writing and signed by the General Manager Legal Services or HOD Corporate Services.
- 4.19 The directorate must identify and inform Legal Services of the responsible person to deal with the Legal Services and the attorney concerned.
- 4.20 The relevant directorate must respond to queries from the attorney via Legal Services within 2 working days and must ensure that all the necessary information is provided to Legal Services timeously.
- 4.21 All consultations between the attorney and the relevant directorate must be arranged through Legal Services and Legal services must be present at such consultations.
- 4.22 Legal Services must ensure that:
 - 4.22.1 All litigation matters against the municipality are defended timeously;
 - 4.22.2 There is Compliance with SCM Policy;
 - 4.22.3 Breach of Contract by Attorneys is dealt with in terms of procedures set out in the contract entered into with the relevant attorney;
 - 4.22.4 User directorate on request furnishes the Legal Services with all the necessary information within the period specified in this policy or any other period specified by Legal Services.
- 4.23 The Instructing Directorate must ensure its availability:
 - 4.23.1 for meetings with the attorney, senior and/or junior counsel;
 - 4.23.2 to sign required affidavits on matters;
 - 4.23.3 in respect of subpoenas and/or to act as witnesses.

5. STRICT ADHERENCE TO TIMEFRAMES

5.1 Due to its very nature, litigation matters require strict adherence to timeframes.

5.2 Non-compliance with timeframes by one person has a ripple effect on the process as a whole and may result in additional legal costs for the municipality.

6. APPROPRIATE RECORDS MANAGEMENT

6.1 All litigation correspondence which is received by the Municipality as well as which is sent out from the Municipality must be kept in a safe place by the Litigation Team until the matter is finalized.

6.2 All files must be filed in numerical order for easy retrieval.

6.3 Once a matter is finalized, all original documents will be forwarded to Central Records for proper filing and archiving in terms of the National Archives Act.

7. LITIGATION REGISTER

7.1 Legal Service must :

7.1.1 Create a litigation register for all litigation matters;

7.1.2 Ensure that the register is updated monthly and includes as part of the information, cost incurred on each case;

7.1.3 Capture the date summons were received, instructions were sent out and date the matter was finalised;

7.1.4 Provide reasons for why matter was not finalised

8. ESTABLISHMENT OF A LITIGATION MANAGEMENT TEAM (LMT)

8.1 The City Manager must establish a Litigation Management Team (LMT) which must comprise of litigation unit and a representative from other sub-directorate as identified by the City Manager (CM).

8.2 The LMT will be responsible for:

- 8.2.1 The review of this SOP;
- 8.2.2 Assistance of litigation processes applicable to the directorate concerned;
- 8.2.3 The provision of advice to the CM;
- 8.2.4 Obtain written approval from delegated body on all matters;
- 8.2.5 Assist with civil complaints and summonses received and obtain full particulars in each case;
- 8.2.6 LMT will be responsible for the Section 109A application in terms of the Systems Act (application for legal representation for employees or councillors of the municipality) in the event of criminal or civil litigation against any employee or councillors during the course and scope of his/her employment;
- 8.2.7 Assist with the compilation of documents for criminal prosecution of person or persons who allegedly contravene Council's by-laws or other legislation applicable to the municipality in so far as it related to the directorate concerns;
- 8.2.8 Co-ordination of conducting proper consultations with lawyers and witnesses in each case to prepare for the trial, if necessary;
- 8.2.9 Co-ordination of proper communication and recording of the outcome of each case, and the timely payment and claim of legal and other costs;
- 8.2.10 Co-ordinate the signing of all legal documents

9. IMPLEMENTATION & REVIEW

This Standard Operating Procedural Manual on Litigation & Appointment of External Attorneys shall be effective from date of signature of the SOP and shall be reviewed on an annual basis.

Approved by:

ADVOCATE TANKISO MEA

CITY MANAGER