

Ref: 4/4/1

Date : 14 April 2022

**THE SPEAKER
COUNCIL ITEM**

**REPORT ON THE AASD, EFF AND DA MOTION OF NO CONFIDENCE AGAINST
COUNCILLOR MXOLISI SIYONZANA, EXECUTIVE MAYOR OF THE MANGAUNG
METRO MUNICIPALITY**

1. PURPOSE

The purpose of this report is to appraise the Municipal Council on the three motions of vote of no confidence received against the Executive Mayor, councillor Mxolisi Siyonzana, and secondly to put forward this motions in line with the Standing Rules and Orders.

2. BACKGROUND

On 21st March 2022, The first motion from **African Association of Social Democrats (AASD)** submitted on the **21st March 2022** by Councillor **Itumeleng Mokoena** and seconded by Councillor **Mojalefa Mongale** (the motion is marked as **annexure A**). The second motion from **Economic Freedom Fighter (EFF)** was submitted on the **22nd March 2022** by Councillor **Gopolang Lipale** and seconded by Councillor **Jankie Sebolao** (the motion is marked as **annexure B**) and. The third motion from the **Democratic Alliance (DA)** was submitted on the **29th March 2022** by Councillor **Johan Pretorius** and seconded by Councillor **Maryke Davies** (the motion is marked as **annexure C**). All The three motions of no confidence against Councillor Mxolisi Siyonzana, the Executive Mayor of the Mangaung Metropolitan Municipality, are submitted within the provisions of the Standing Rules and Orders are fully compliant to the provisions of Rule 29.

3. COMMUNICATION BETWEEN THE SPEAKER AND EXECUTIVE MAYOR

The Speaker communicated with the Executive Mayor and the Acting City Manager on the importance of preparing and responding in detail to the three submitted motions, the written communication from the Speaker is attached as **annexure AA**. The Executive Mayor was further advised on the date of the debates of the motions in Council. The Executive Mayor is required in terms of the Council rules to circulate his written responses prior to the debate and deliberations on the motions during the Council meeting.

The detailed motions are enclosed in this report as indicated above and an excerpts of recommendations made separately is as follows, namely;

The **AASD recommend** in their motion that the Mangaung Metropolitan Municipality Council must resolve:

- a) that the Executive Mayor, brought the Council into disrepute for his gross dereliction of duty;
- b) that the Executive Mayor, brought the Council into disrepute for his gross incompetence and maladministration;
- c) that the Executive Mayor, brought the Council into disrepute for his gross negligence and conduct inconsistent with his oath of office;
- d) that the Executive Mayor, brought the Council into disrepute for acting in bad faith, dishonesty and in a non-transparent manner;
- e) that the Executive Mayor, brought the Council into disrepute for having not acted in the best interest of the municipality and compromised the credibility and integrity of the municipality.

The **EFF key highlights** in their motion that the Mangaung Metropolitan Municipality Council must resolve as follows,

- 1) the Executive failed to act on the recommendations of various committees;
- 2) the Executive Mayor has failed to provide numerous reports as delegated by Council;
- 3) the Executive Mayor is in total contrast with the administration in the running of the municipality;
- 4) the Executive Mayor has failed to follow up and provide leadership on the administration;

The **DA recommend** in their motion that the Mangaung Metropolitan Municipality Council must resolve:

- i) that the Executive Mayor, brought the Council into disrepute for unlawful appointment and payment of political staff;
- ii) that the Executive Mayor, brought the Council into disrepute for his failure to follow through the appointment of the City Manager;
- iii) that the Executive Mayor, brought the Council into disrepute for his incompetence and misguided leadership, **in relation to seven key areas**, namely staff member within Bram Fischer building offices receiving physical violence and harm, political staff causing havoc and blockading entrances in the Bram Fischer Building, service delivery has come to a complete standstill, water crisis in the municipality, potholes are at an all-time high, total collapse of solid waste department and landfill sites plunged in total collapse ;

- iv) that the Executive Mayor, brought the Council into disrepute for the embarrassment caused for attending Parliamentary Select Committee of COGTA unprepared and without a presentation and thus compromised the credibility and integrity of the municipality ;
- v) Given the above-mentioned challenges the **DA request a secret ballot**, to ensure that councillors are not intimidated or victimized for voting according to their conscience.

4. LEGAL ASPECTS

4.1. Standing Rules and Orders of Council

Rule 29 of the Standing Rules and Orders of the Mangaung Metropolitan Municipality stipulate the following:

- "29.1 No matter shall be brought before the council or a committee by any member of the council except upon a notice of motion, which shall be in writing and signed by the member giving the notice as well as the member seconding it: Provided that a person who has a personal electronic mail address from where he or she can be identified by the City Manager, can submit such motion by electronic mail.
- 29.2 Any notice of motion shall be submitted to the Speaker or chairperson before 12:00, ten days prior to the meeting of the council or committee.
- 29.3 A motion shall lapse if the member who submitted the motion is not present at the meeting where the motion is to be debated.
- 29.4 A member submitting a motion shall introduce such a motion and shall have the right of reply thereto.
- 29.5 When a member introduces a motion which is intended to rescind or amend a resolution passed by the council in the preceding three months or which has the purport as a motion that was not supported within the three preceding months shall not be entertained.
- 29.6 When dealing with motions the motion shall be read out together with the number thereof and the name of the mover.
- 29.7 The Speaker or chairperson shall ascertain which motions are unopposed and these shall be passed without debate and thereafter the opposed motions shall be called in accordance with the order of the agenda.
- 29.8 All notices of motion shall be dated and numbered as received by the City Manager and shall be entered on the agenda paper in the order in which it was received, save and except that notices of amendment to motions shall be entered immediately after such notice of motion, irrespective of the time at which the notice shall have been received.

29.9 No member shall have more than two notices of motion on the same agenda at the same time.

29.10 Before any notice of motion is placed on the agenda paper it shall be submitted to the City Manager who must obtain the written technical input from the various heads of department of the municipality, if it is required, and, who, if he/she be of the opinion that it is ultra vires existing legislation, shall cause the giver of the notice to be so informed. The giver of the notice shall, however, have the right to appeal to a sub-committee comprised of the Speaker, Executive Mayor and Whip of the Council, who shall review the matter and decide whether or not such notice of motion be placed on the agenda paper.

29.11 A motion affecting the making or amending of a by-law shall be submitted to the Speaker for a report before the council passes a resolution in this regard.

29.12 The Speaker may disallow a motion which:

- May lead to discussions of a matter already dealt with on the agenda.
- Addresses a matter where the Council has no jurisdiction.
- Addresses a matter where a decision of a judicial or quasi-judicial body is pending.
- Has not been seconded.
- If passed, would be contrary to the law.

29.13 The mover with the consent of the seconder may withdraw a motion or amendment.

29.14 The Speaker or chairperson may call upon any mover of an amendment to a motion to reduce the same to writing, and, after signing it, to hand it to the Municipal Manager to read the amendments for the meeting to either adopt or reject such amendment.

29.15 Except upon the recommendation of the committee to which the council has delegated powers or duties to deal with the particular subject matter, no resolution passed at any meeting of the council shall be revoked or altered at any subsequent meeting unless notice of motion so to revoke or alter such resolution shall have been given to the City Manager at least seven days before such subsequent meeting and the City Manager shall, at least two days before such subsequent meeting, have forwarded a copy of such notice of motion to each councillor.

4.2. Municipal Structures Act (Act No. 32 of 2000) and Constitutional Court Determination

Section 58 of the Municipal Structures Act (Act 117 of 1998) specifically addresses the issue of the removal of the Executive Mayor from Office. This section read as follows:

"A municipal council, by resolution may remove its executive mayor or deputy executive mayor from office. Prior notice of an intention to move a motion for the removal of the executive mayor or deputy mayor must be given. "

The Constitutional Court in its judgement in June 2017 (The UDM versus the Speaker of Parliament) made the following ruling regarding the request for a secret ballot in a motion of no confidence:

"The Speaker has such powers (powers to prescribe secret ballot) but these powers "belong to the people" and they cannot be exercised for the interests of the Speaker of their party. "

"That is the Speakers judgment call to make, having due regard to what would be best procedure to ensure that members (of Parliament) exercise their oversight powers most effectively. "

"As in the case with general elections, where a secret ballot is deemed necessary to enhance the freeness and fairness of the elections, so it is with the election of the president by the National Assembly. This allows members to exercise their vote freely and effectively, in accordance with the conscience of each, without undue influence, intimidation or fear of disapproval by others. "


"The power lies with the Speaker. It is declared the Speaker has the power to prescribe the kind of vote in a motion of no confidence"

5. RECOMMENDATION

- a) the AASD, the EFF and the DA had submitted their motions of no confidence against the Executive Mayor, Councillor Mxolisi Siyonzana according to all relevant applicable legislation.
- b) the Speaker must now according to the stipulation of Rule 29 of the Standing Rules and Orders, place this motion on the agenda of the next Council meeting, and allow the AASD, EFF and DA to debate their motion in Council. The Speaker must also allow the Executive Mayor to respond in writing to the allegations against him, before allowing the Council to vote on this motions.
- c) according to the Constitutional Court case of The UDM vs the Speaker of Parliament, the Speaker must preside over this motion process and she must also decide if she is going to allow a secret ballot in this motion, or not. If the Speaker decides that she is not going to allow a secret ballot, then according to the Constitutional Court ruling, she must provide the Council with a report regarding her fair and valid reasons, of why she has decided against a secret ballot vote in favour of a vote of show of hands.
- d) If the Speaker decides on a secret ballot vote, then she must ensure that the process of voting is free, fair and transparent.

- e) that the entire deliberations regarding the motion of no confidence must be considered in the in-committee Council meeting.

SUBMITTED BY:



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MR. TONYANA SELEBEDI
HOD : OFFICE OF THE SPEAKER

RECOMMENDED/ ~~NOT RECOMMENDED~~



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COUNCILLOR SB LOCKMAN-NAIDOO
SPEAKER