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**Delivered by email and by hand**

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**NOTICE OF MOTION: VOTE OF NO CONFIDENCE IN EXECUTIVE MAYOR  
CLLR MXOLISI SIYONZANA**

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**21 March 2022**

Dear Cllr Stefani Lockman – Naidoo

Notice of motion of no confidence in the Executive Mayor of Mangaung Metropolitan Municipality, Cllr Mxolisi Siyonzana is submitted in terms of Rule 29 of the Mangaung Metropolitan Council Standing Rules and Orders. The motion is submitted

 MLU

for your consideration and tabling at the next Municipal Council meeting by AASD Councillor Itumeleng "Pappie" Mokoena and seconded by Councillor Mojalefa "Lucky" Mongale.

This notice of motion primarily relies on the failure to comply with Constitutional and legislative provisions on the duties and obligations of the Executive Mayor. The impact of this failure on hampering Mangaung municipality to fulfil its Constitutional objectives to its citizens. The motion also tacitly relies on the Executive Mayor's continued failure, by commission or omission, to adhere to the country's Constitutional and legislative prescripts governing local government. Furthermore, his behaviour and conduct is tantamount to a breach of Councillors code of Conduct and his oath of office.

### **Background**

The 5<sup>th</sup> Municipal Council of Mangaung Metro was inaugurated on the 22<sup>nd</sup> November 2021 after the Local government election (LGE21) of 1<sup>st</sup> November 2021. The initial inaugural council meeting was scheduled for the 17<sup>th</sup> November 2021 but was rescheduled on short notice to the 22<sup>nd</sup> November 2021.

A handover council meeting was held on the 8<sup>th</sup> December 2021, wherein all reports as per the The Joint Circular No 1 (19/10/2021) issued by Department of Cooperative Governance (DCoG), National Treasury (NT) and South African Local Government Association (SALGA) under Paragraph 4.4 (b) (i)-(xvii) provides guidance of material reports and information that needs to be disclosed to the incoming council.

These handover reports were also supposed to be handed to provincial departments responsible for local government, DCoG, NT and to SALGA by 28<sup>TH</sup> October 2021 (Para 4.4. (d))

It is common course that these handover reports and supporting material were not complied with, as a result impeding councillors to familiarise themselves with the

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challenges and status of affairs in the municipality so as to be able to execute their duties diligently and honestly.

*During 2022, three further Council meetings were held on 26th Jan 2022, 7 February 2022, 28 February 2022.*

### **Constitutional Imperatives and Provisions**

The Constitution of the Republic of South Africa(1996) Chapter 2-Bill of Rights outlines the following:

7(1) that the Bill of rights are considered the cornerstone of our democracy.

7(2) States ' that The state must respect. Protect, promote and fulfil the rights in the Bill of rights.

The Bill of Rights further stipulates a number of rights amongst which are the following;

9. Equality-Everyone is equal before the law and have a right to protection

10. Human Dignity : Everyone has inherent dignity and the right to have their dignity respected and protected

24. Environment: Everyone has a right to an environment that is not harmful to their health or well being

26. Housing: Everyone has right to have access to adequate housing

27. Housing,care,food,water and social security: Everyone has a right to access these services

To give effect to these Constitutional prescripts, the Constitution of the Republic of South Africa 1998, stipulates amongst others the following

*1. Chapter 3 Section 40(1) of the Constitution states*

'In the Republic, government is constituted as national, provincial and local spheres of government which are distinct, inter-dependent and interrelated.'

Section 41(1)(e) further stipulates that 'All spheres of government and all organs of state within each sphere must " respect the constitutional status, institutions, powers and functions in the other spheres".

## 2. *Constitution of South Africa 1996 Chapter 7*

- a. Section 151(2) of Chapter 7 of the Constitution of the RSA, states that 'the executive and legislative authority of a municipality is vested in its Municipal Council'
- b. Section 151(4) of the same chapter states that 'the national or provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its function.
- c. Section 152(1) the objects of local government are -
  - a. to provide democratic and accountable government for local communities;
  - b. to ensure the provision of services to communities in a sustainable manner;
  - c. to promote social and economic development;
  - d. to promote a safe and healthy environment ;and
3. Section 153 of the same chapter on developmental duties of a municipality. a municipality must -
  - a. structure and manage its administration, and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community;...
4. Legislative Framework of Local Government.

In giving effect to the Constitutional objectives of local government, the following main pieces of legislation govern the local sphere of government

- a. Municipal Systems Act (1998) as amended
- b. Municipal Structures Act 117 of (1998) as amended
- c. Municipal Finance Management Act 56 of (2003) as amended



## **Municipal Structures Act 117 of 1998 Chapter 4 ( as amended)**

### *Functions and powers of executive mayors*

56. (1) An executive mayor is entitled to receive reports from committees of the municipal council and to forward these reports together with a recommendation to the council when the matter cannot be disposed of by the executive mayor in terms of the executive mayors delegated powers.

(2) The executive mayor must-

- a. identify the needs of the municipality;
- b. review and evaluate those needs in order of priority;
- c. recommend to the municipal council strategies, programmes and services to address priority needs through the integrated development plan, and the estimates of revenue and expenditure, taking into account any applicable national and provincial development plans: and
- d. Recommend or determine the best way including partnership and other approaches. to deliver those strategies, programmes and services to the maximum benefit of the community.

(3) The executive mayor in performing the duties of office, must -

- a. identify and develop criteria in terms of which progress in the implementation of the strategies, programmes and services referred to in subsection (2)(c) can be evaluated, including key performance indicators which are specific to the municipality and common to local government in general;
- b. Evaluate progress against the key performance indicators;
- c. Review the performance of the municipality in order to improve-
  - (i) the economy, efficiency and effectiveness of the municipality;
  - (ii) the efficiency of credit control and revenue and debt collection

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services: and

(iii) the implementation of the municipality's by-laws.

- d. Monitor the management of the municipality's administration in accordance with the directions of the municipal council;
- e. Oversee the provision of services to communities in the municipality in a sustainable manner;
- f. Perform such duties and exercise such powers as the council may delegate to the executive mayor in terms of section 59 of the Municipal Systems Act;
- g. Annually report on the involvement of communities and community organisations in the affairs of the municipality ;and
- h. Ensure that regard is given to public views and report on the effect of consultation on the decisions of the council.

### **Municipal Finance Management Act 56 of 2003 Chapter 7**

#### *Responsibilities of the Executive Mayors*

52. The mayor of a municipality-

- (a) must provide general political guidance over the fiscal and financial affairs of the municipality;
- b. in providing such general political guidance ,may monitor and, to the extent provided in this Act, oversee the exercise of responsibilities assigned in terms of this Act to the accounting officer and the chief financial officer, but may not interfere in the exercise of those responsibilities;
- c. must take all reasonable steps to ensure that the municipality performs its constitutional and statutory functions within the limits of the municipality's approved budget;
- d. must, within 30 days of the end of each quarter, submit a report to the council on the implementation of the budget and the financial state of affairs of

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the municipality; and

e. must exercise the other powers and perform the other duties assigned to the mayor in terms of this Act or delegated by the council to the mayor.

## **8. Municipal Finance Management Act 56 of 2003 Chapter 7**

### Responsibilities of Mayors

#### *Budgetary control and early identification of financial problems*

54.(1) On receipt of a statement or report submitted by the accounting officer of the municipality in terms of section 71 or 72, the mayor must-

- (a) consider the statement or report;
- (b) check whether the municipality's approved budget is implemented in accordance with the service delivery and budget implementation plan;
- (c) consider and, if necessary, make any revisions to the service delivery and budget implementation plan, provided that revisions to the service delivery targets and performance indicators in the plan may only be made with the approval of the council following approval of an adjustments budget;
- (d) issue any appropriate instructions to the accounting officer to ensure-
  - (i) that the budget is implemented in accordance with the service delivery and budget implementation plan; and
  - (ii) that spending of funds and revenue collection proceed in accordance with the budget;
- (e) identify any financial problems facing the municipality, including any emerging or impending financial problems; and
- (f) in the case of a section 72 report, submit the report to the council by 31 January of each year.

#### **(2) If the municipality faces any serious financial problems, the mayor must-**

- (a) promptly respond to and initiate any remedial or corrective steps proposed

by the accounting officer to deal with such problems, which may include-

(i) steps to reduce spending when revenue is anticipated to be less than projected in the municipality's approved budget;

(ii) the tabling of an adjustments budget; or

(iii) steps in terms of Chapter 13; and

(b) alert the council and the MEC for local government in the province to those problems.

(3) The mayor must ensure that any revisions of the service delivery and budget implementation plan are made public promptly.

a. to encourage the involvement of communities and community organisations in the matters of local government.

e. A municipality must strive, within its financial and administrative capacity, to achieve the objects set out in subsection (1).

**In addition to the Code of Conduct of Councillors as promulgated.**

2. A councillor must-

(a) perform the functions of office in good faith, honestly and in a transparent manner; and

(b) at all times act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised.

Case for a motion of no confidence and if acceded removal from office as Executive Mayor of Cllr Mxolisi Siyonzana:

It is submitted and argued that Cllr Mxolisi Siyonzana by commission or omission is guilty of and has acted in a manner that is inconsistent with his office and duties. The following allegations are made and will be substantiated below.

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11/11



## Allegations/ Charges

1. Gross dereliction of duty
2. Gross incompetence and maladministration
3. Gross negligence and conduct inconsistent with his oath of office
4. Acting in bad faith, dishonestly and in a non-transparent manner
5. Have acted not in the best interest of the municipality and compromised the credibility and integrity of the municipality

**3 BREACH OF CODE OF CONDUCT FOR COUNCILLORS** read with the Municipal Finance Management Act 56(2003) (as amended) and Municipal Structures Act 117 of 1998 as amended

Schedule 1; code of conduct for councillors:

1.12. A councillor must-

(a) perform the functions of office in good faith, honestly and in a transparent manner; and

(b) at all times act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised.

6 (1) A councillor may not use the position or privileges of a councillor, or confidential information obtained as a councillor, for private gain or to improperly benefit another person.

At the special council meeting of December 08 2021, under reports of the Executive Mayor, the Executive Mayor tabled the legally defective letter of October 26 2021 from MEC of Cogta Mr Mxolisi Dukwane directed to the Lead – Exco member Mr Thomas Mkhaza appointing Mr. Sello More as Acting City Manager from 1 Nov 2021- 31 Jan 2022, He should have known about a consequent letter dated November 19 2021 designating Mr Sello More in terms of section 29 (2) of the Municipal structures

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act, 1998 (Act no. 117 of 1998) to preside at the inaugural meeting of council of 22 November 2021( thus the postponement of 17<sup>th</sup> November 2021 meeting) It appears this letter was intended to correct the defect of the letter of 26 Oct 2021 by MEC-COGTA. The Executive Mayor should or ought to have known by then that the respondents in the Kgamanyane and others vs Mangaung Metro, had contested the lawfulness of the appointment by the MEC COGTA(FS)of Sello More as Acting City Manager. In the inaugural meeting of 22 November 2021, Sello More in opening the meeting placed on record that he was the Acting City Manager in the presence of the MEC and HOD, as well as Mr Mkaza. In placing the letter of appointment in the meeting of 8<sup>th</sup> December 2021 without placing all material facts on the table, Executive Mayor misled the council , acted dishonestly, in bad faith and in a manner that is inconsistent with his duties and oath of office.

Allegations 1-5 are sustained.

#### **4 FAILURE TO REPORT AND RECOMMEND ON APPOINTMENT AND CONDITIONS OF EMPLOYMENT FOR THE MUNICIPAL MANAGER BEFORE COUNCIL.**

In terms of section 82 of the municipal structures act, only a municipal council can appoint a municipal manager. Furthermore, section 30(5) of the municipal structures act state(s) that, before a municipal council can decide on the municipal manager, the Executive Mayor must submit a report and recommendations concerning the appointment and conditions for employment of the municipal manager.

During the December 08 2021 special council meeting, the Executive Mayor obtained an approval from the council on a process to fill the vacant municipal manager post. The Executive Mayor failed to report and make recommendations as required by law to best equip the council in fulfilling its statutory mandate of appointing the City Manager for the Mangaung Metropolitan Municipality. On two occasions the Executive Mayor placed and withdrew a report purpoting to appoint the shortlisting and interview panel. The procedures for a fair and transparent process as well as stipulated timelines were as a result missed, leading to the need to readvertise the

 MGA

post. The Council failure to appoint City Manager has an extreme adverse effect into appointment of senior managers reporting directly to City Manager, in terms of section 56 of Municipal Systems Act, 2000 (Act no. 32 of 2000) as majority of these managers fixed term contracts conclude at the end of March.

#### Matters of emphasis

- Mangaung Metro has been without a permanent City Manager since around April 2021. Cllr Siyonzana was Executive Mayor towards end of 4<sup>th</sup> term.
- Mangaung was placed under section 139(5) (a) and (c) of Constitution for a mandatory financial recovery process.
- AGSA reports and council records indicate that the Municipality has been suffering of a weak political and administrative leadership, with extreme breakdown in service delivery.
- Lack of accountability, no consequence management and gross allegations of maladministration and corruption characterise the municipality.

The result of this gross negligence, incompetence tantamount to gross dereliction of duty and not acting in line with his duties.

Allegations 1-5 are sustained

#### **5 Kgamanyane and Others vs Mangaung Metro-Mangaung Metropolitan Police (MMPD) Matter.**

Cllr Siyonzana has been Speaker of Mangaung Metro Council (MMMC) at least since 2016. During that period the matter of MMPD served at different times, including the feedback from national and provincial departments on the unaffordability of the launch. The speaker's role is to ensure that all meetings of Council are lawful and take all lawful and legal decisions. The Speaker's role is all to ensure that oversight committees of Council to fulfil their duties and follow-up on the AGSA and MPAC resolutions on cons consequent management and disciplinary procedures.

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After the inaugural meeting of council of 22 November 2021, the next handover council meeting was held on 8<sup>th</sup> December 2021. The litigation in the Kgamanyane & others matter seems to have been instituted sometime in October 2021, with the Judgement delivered on 15<sup>th</sup> December 2021. Up until the publication on different platforms of this judgement, neither the Executive Mayor nor ACM had provided any information to Council. From correspondence provided at the meeting of 26<sup>th</sup> January 2022, convened as a result of a Section 29 motion, the Speaker on behalf of Council attempted to get information from the Executive Mayor, however this request was unfulfilled.

It is apparent from the reported action of the Executive Mayor that he acted in bad faith and dishonestly. His conduct in the matter is grossly negligent and a dereliction of duty on a very important matter.

Allegation 1-5 are sustained

## 6 ESTABLISHMENT AND FUNCTION OF SECTION 80 COMMITTEES

In terms of the Municipal Systems Act 32 of 2000, Chapter 5 a municipality must

23.1. Undertake developmentally-oriented planning.....

25.1 ...within a prescribed period after the start of its elected term, adopt a single, inclusive and strategic plan for the development of the municipality

30. ...the Executive Mayor of a municipality must in line with Section 29

- a. Manage the drafting of the municipality's IDP,
- b. assign responsibilities in this regard to the city manager and the administration,
- c. submit the draft plan to the Municipal Council for adoption

In terms of section 80 of the municipal structures act, the Executive Mayor must appoint committees to assist the Executive Mayor and these committees must report to the Executive Mayor; which in terms of section 56 of the municipal structures act

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the Executive Mayor is expected to forward to the council together with recommendations.

- a. The handover report tabled by the Executive Mayor and handed to Councillors on the meeting of 8<sup>th</sup> December 2021 was grossly incomplete, deficient in material substance and provided an incomplete and unhelpful view on the factual status of the Municipal Council. It should also be pointed that this report was declared incomplete and inadequate to enable councillors to executive their duties.
- b. The Executive Mayor has appointed mayoral committee members for a period nearing three months , however the Section 80 committees are yet to be convened.
- c. It is evident from the unsigned reports that the Executive Mayor has been submitting to council that he is not just failing in his duties, but is extremely negligent and not acting with skill and care in terms of his duties.
- d. Morale and motivation of staff seems to be at its lowest with the community suffering due to lack of service delivery

The Executive Mayor's failure to direct these committees adversely affect the council efforts to curb the ailing state of our Municipality and lack of public confidence in our council.

The continued non-alignment between the council and the Executive is reflected among other things on the deteriorating state of our road infrastructure (Potholes), running sewages across the city, failure to collect refuse, proper sanitation and provision of clean water to our residents.

Allegations 1-5 are sustained

(4) THE MUNICIPALITY FAILING ON ITS CONSTITUTIONAL OBLIGATIONS AS ENVISAGED IN SECION 152 OF THE CONSTITUTION.

Mangaung metro stinks and is dirty under Executive Mayor stewardship, thus is in contravention of section 152(1)(d) of the Constitution of Republic of South Africa,

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1996 (Act 108 of 1996) which requires of the Municipality to promote safe and healthy environment for residents in its jurisdiction. Provision for service delivery (refuse removal, sanitation removal (buckets collection and honey sucking), response to complaints) isn't sustained across the Metro against section 152(1)(b) of the constitution.

The municipality is failing to take all reasonable steps to fulfil its duties and meet the Bill of Rights as enshrined in the Constitution.

All of this due to the commission or omission of the Executive Mayor, Mxolisi Siyonzana.

In conclusion, Honourable Speaker, fellow councillors, municipal employees and community, it pains us to submit this motion of no confidence against Cllr Siyonzana merely four months (4) after the elections.

However, the Mangaung Community shutdown the city for almost a month last years, requesting for its dissolution due to its failure to meet its duty to citizens.

The voters of Mangaung voted on the 1<sup>st</sup> November 2022, signalling their discontent with the status quo.

The majority of councillors across the political divide have heard your message loud and clear—That there is a need to Fix the Mess in Mangaung

However, there is a group also addicted to maladministration , , malfeasance and corruption;

This group is handled outside of the municipality by vested corrupt interest that is hellbent on undermining the authority of the new council

Mangaung is our City...Our Responsibility and Our Pride.. and we shall defend her

I therefore submit this motion of no confidence against the Executive mayor Cllr Mxolisi Siyonzana as we have compelling case to substantiate the following allegations and ask for his removal.

### **Allegations/ Charges**

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1. Gross dereliction of duty
2. Gross incompetence and maladministration
3. Gross negligence and conduct inconsistent with his oath of office
4. Acting in bad faith, dishonestly and in a non-transparent manner
5. Have acted not in the best interest of the municipality and compromised the credibility and integrity of the municipality

Motion Sponsored by: Cllr Itumeleng John Mokoena

Signature: \_\_\_\_\_

Signed on: 21/03/2022

Motion Seconded by: Cllr Mojalefa William Mongale

Signature: Mojalefa

Signed on: 21 March 2022

Receipt  
 Dean Maasdorp  
 22 March 2022  
 13h 29

Mojalefa  
 Received by: Mojalefa William Mongale  
 22/03/2022