

20 APRIL 2022

THE MUNICIPAL MANAGER
MANGAUNG METROPOLITAN MUNICIPALITY
BLOEMFONTEIN

THE SPEKER
MANGAUNG METROPOLITAN MUNICIPALITY
BLOEMFONTEIN

Mr MOTHEKHE
MANGAUNG METRO MUNICIPALITY
BLOEMFONTEIN

MOTION FOR THE APPOINTMENT OF THE MANGAUNG MUNICIPAL OMBUDSMAN

The Democratic Alliance in accordance with rule 29 of the council's standing rules and orders hereby table a Motion for the establishment of the Mangaung Metro Municipality Ombudsman by Cllr Dirk Kotze and seconded by Cllr Hennie van Niekerk.

We also attach the following Annexures for the convenience of council

1. ANNEXURE A: COUNCIL ANNEXURE 18 MAY 2018 ITEM 50.2 ESTABLISHMENT OF OMBUDSMAN
2. ANNEXURE B: COUNCIL RESOLUTION FOURTH QUARTER 2017/2018

BACKGROUND

During a council meeting held on 18 May 2018, the then serving council approved an item tabled by the then serving Speaker in the Mangaung Metro Council, Cllr Mxolisi Siyonzana, for the establishment of a municipal ombudsman. (Annexure A)

The reported stated that due to various challenges experience at the local government sphere, which include inter alia, financial constraints, historical backlogs, environmental challenges, ensuring complete customer satisfaction is virtually impossible. This inability to meet all the demands all the time often results in service delivery complaints and if matters are not addressed expeditiously, complaints proceed to service delivery protests.

To arrest the growing number of complaints against poor service delivery, the MMM has taken a decision to establishment of an independent Ombudsman Office to assist the MMM in fulfilling its legislative obligation to provide accountable, democratic, and transparent governance to the residents of MMM.

INDEPENDENCE OF THE OMBUDSMAN

It is imperative in the establishment of an office of the Ombudsman, that the "independence" of such office is recognized and given full effect. The Ombudsman must exercise all functions without fear, favour or prejudice and shall directly report Council through the office of the Speaker or Office of the Executive mayor, depending on the nature of the issue, although reporting to the City Manager administratively.

The ombudsman shall always remain independent in order to maintain the integrity of the office and ensure that all persons seeking relief from such office maintain the utmost faith and trust in such office.

FUNCTIONS OF MMM'S OMBUDSMAN

The Ombudsman shall have authority to investigate any complaint lodged with the Customer Care Area and the Customer Care Area Manager and which remains unresolved for a period of sixty days since being lodged and which is related to:

- a) Lack of poor of/or poor service delivery
- b) Improper and/or unfair conduct
- c) Make appropriate recommendations and/or a redress

POWERS OF OMBUDSMAN

We refer your attention to Annexure A page 6 of 8

REPORTING

The Ombudsman shall report directly to the Office of the Speaker of Council/Office of the Executive Mayor, depending on the nature of the complaint and report to the office of the City manager on all matters investigated by his/her office. Reporting to the speaker of Council/Office of the Executive Mayor shall ensure that the Ombudsman operates independently of the administration but shall simultaneously inculcate an environment of responsiveness and responsibility from administration and executive.

RESOLUTION TAKEN BY COUNCIL

It was resolved by council that: (Annexure B page 10 of 16)

- a) That the report on the establishment of the Office of Ombudsman within the MMM be approved.
- b) That the CFO be tasked to secure the relevant budget for the establishment of the Office of the Ombudsman.
- c) That the post of the Ombudsman and supporting staff be advertised as soon as the budget has been allocated

CONCLUSION:

APPOINTMENT AND TERM OF THE CITY OMBUDSMAN

- A. Council must place an advertisement in at least three (3) newspapers, in the three official languages, for the position of the City Ombudsman.
 - (a) Council must establish an ad hoc committee, proportionally composed of members of all parties represented in the Council, to conduct the shortlisting and interviewing stages of the appointment.
 - (b) The ad hoc committee must recommend three candidates who comply with the qualifications to Council.

- (c) Council must recommend the preferred candidate to the Executive Mayor by way of a resolution adopted with a supporting vote of a majority of the members of the Council.
- B. The Executive Mayor, on recommendation of the Council, must appoint the preferred candidate who must be suitably qualified to serve as Ombudsman for the Mangaung Metro.
- C. The National Intervention team appointed by the Minister of Cogta, Dr Nkosazana Dlamini Zuma, must include the office of the Municipal Macro Structure.
- D. The Office of the Ombudsman must report only to council every quarter of a fiscal year.
- E. Complaints can be lodged at the Office of the Ombudsman every Thirty (30) Days after a complaint was registered at the Customer Care Manager if the responsible Manager/Department does not address the complaint.
- F. The appointed Ombudsman must investigate all unresolved disputes registered at the office of the City Manager and report to council within 3 months.



Cllr Dirk Kotze



Cllr Hennie van Niekerk
Seconded

O.B.O
DEMOCRATIC ALLIANCE MANGAUNG METRO

FA



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Your Ref:	Our Ref:
Room 201, Bram Fischer Building	Date: 16 April 2018

Council item
Speaker

ESTABLISHMENT OF OFFICE OF OMBUDSMAN

1. PURPOSE

The purpose of this report is to submit for Council approval a proposal for the establishment of the Office of the Ombudsman in the Mangaung Metro Municipality (MMM). This report further discuss the appointment, powers and functions, procedures, and roles and responsibilities of the Office of the Ombudsman, and to provide for matters incidental thereto.

2. BACKGROUND

The fundamental mandate of Local Government is to ensure service delivery. Public participation and community involvement in decision-making is imperative for an effective and efficiently run local government. The precursor in the Constitution which lays the foundation for the principle of government based on the will of the people can be found its Pre-amble which states that one of the purposes of the Constitution is to "... lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law".

Due to various challenges experienced at the local government sphere, which include *inter alia*, financial constraints, historical backlogs, environmental challenges etc., ensuring complete customer satisfaction is virtually impossible. This inability to meet all the demands all the time often results in service delivery complaints and if matters are not attended to expeditiously, complaints proceed to service delivery protests.

In an effort to arrest the growing number of complaints against poor service delivery, the MMM has taken a decision to establishment of an independent Ombudsman's Office to assist the MMM in fulfilling its legislative obligation to provide accountable, democratic and transparent

governance to the residents of MMM. This Office will further contribute positively towards efficient and effective service delivery and facilitate the management of disputes and complaints against the Municipality.

3. LEGISLATIVE FRAMEWORK

Section 156(2) and (5) of the Constitution provides that a Municipality may make and administer By-laws for the effective administration of matters within the jurisdiction of the Municipality, and to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions.

The following Legislation therefore finds application in the establishment of the Office of the Ombudsman and includes *inter alia* the following:

- The Constitution of the Republic of South Africa Act 108 of 1996.
- Promotion of Administrative Justice Act 3 of 2000.
- Promotion of Access to Information Act 2 of 2000.
- Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.
- Prevention and Combating of Corrupt Activities Act 12 of 2004.
- Preferential Procurement Policy Framework Act 5 of 2000.
- Public Finance Management Act 1 of 1999.
- Municipal Finance Management Act 56 of 2003.
- Public Protector Act 23 of 1994.
- Municipal Systems Act 32 of 2000.
- Municipal Structures Act 117 of 1998.

The establishment of an independent Ombudsman's Office would assist the MMM in fulfilling its legislative obligation to provide accountable, democratic and transparent governance to the residents of MMM.

4. JURISDICTION

The jurisdiction of the Office of the Ombudsman would apply within the geographical area of MMM.

5. BUDGET

The City Manager and Chief Financial Officer to be tasked to identify savings on the present budget which can be allocated to the Office of the Ombudsman. The Chief Financial Officer to be tasked to create an operating budget for the Office of the Ombudsman within either the Office of the Speaker of Council/ Office of Executive Mayor, whichever is decided upon.

Provision must also be made for the appropriate staffing of the Office with appropriate office accommodation, furniture, IT requirements etc.

6. REMUNERATION AND FINANCIAL IMPLICATIONS

- a) The Ombudsman should be remunerated at the level of HOD of the Municipality.
- b) For other staff members, the HOD: Corporate Services to be tasked in establishing the remuneration packages for each of the above staff.

7. INDEPENDENCE OF THE OMBUDSMAN

It is imperative in the establishment of an office of the Ombudsman, that the "independence" of such office is recognized and given full effect. The Ombudsman must exercise all functions without fear, favour or prejudice and shall report directly to Council through the Office of the Speaker or Office of the Executive Mayor, depending on the nature of the issue, although reporting to the City Manager administratively.

The Ombudsman shall at all times remain independent in order to maintain the integrity of the office and ensure that all persons seeking relief from such office maintain the utmost faith and or trust in such office.

The Office of MMM's Ombudsman must:

- a) be a member of the International Ombudsman Institute or International Ombudsman Association or related bodies.
- b) at all times, be impartial and exercise its powers and perform its functions and duties without fear, favour or prejudice.

8. STRUCTURE

The Office of MMM's Ombudsman should consist of MMM's Ombudsman and such other persons who may be necessary for the effective exercise of the powers and performance of the functions and duties. The initial staffing for the Office should entail at least the following: -

- Ombudsman
- One Senior Investigator
- Two Investigators
- Administration Assistant
- Secretary

The Office of MMM's Ombudsman may establish satellite offices for purposes of accessibility to all communities.

9. PROCESS FOR THE APPOINTMENT AND TERM OF MMM'S OMBUDSMAN

The Municipal Council when advertising for the post of Ombudsman, must place an advert in at least two newspapers for the position of MMM's Ombudsman. Council must establish an ad hoc committee, proportionally composed of members of all parties represented in the Council, to conduct the shortlisting and interviewing stages of the appointment. The ad hoc committee must recommend three names to Council.

Council must recommend the preferred candidate to the Executive Mayor by way of a resolution adopted with a supporting vote of a majority of the members of the Council. The Executive Mayor, in consultation and on the recommendation of the Council, must appoint a suitably qualified person as the Ombudsman for MMM's:

MMM's Ombudsman must:

- a) be a South African citizen.
- b) be a fit and proper person to hold that particular office.
- c) have specialised knowledge of or experience, for a cumulative period of at least 10 years, in the administration of justice, public administration, public finance or legal background. or
- d) for a cumulative period of at least 10 years, have been a member of a Municipal Council or International Ombudsman Institute or International Ombudsman Association.

MMM's Ombudsman may be appointed for a period of 5 years with an option to renew for a further period. A person may be re-appointed to the position of MMM's Ombudsman, provided that no more than two consecutive terms are served.

10. FUNCTIONS OF MMM'S OMBUDSMAN

The Ombudsman shall have jurisdiction to investigate any complaint lodged with the Customer Care Area and the Customer Care Area Manager and which remains unresolved for a period of sixty (60) days since being lodged and which is related to:

- a) Lack of/or poor service delivery.
- b) Improper and/or unfair conduct.
- c) Make appropriate recommendations and/or order a redress.

Upon receipt of a complaint, MMM's Ombudsman must conduct a preliminary investigation for the purposes of determining the merits of the complaint. Where the result of the preliminary investigation determines that such complaint:

- a) Is frivolous.
- b) Vexatious.
- c) Carries no merit.

- d) Lacks sufficient evidence.
- e) for any other reason should not be considered.

The complainant will be notified that the complaint will not be considered.

Where a complainant, in the opinion of MMM's Ombudsman, has remedies at his or her disposal and has not exhausted those remedies, MMM's Ombudsman may:

- a) Decline to investigate the complaint concerned.
- b) Inform the complainant of such other remedies that may exist.

Ombudsman may, if on reasonable grounds believes that refusing to investigate a complaint would, because of poverty or lack of capacity on behalf of the complainant, result in a failure of justice, MMM's Ombudsman may investigate a complaint where other remedies have not been explored.

For the purposes of an investigation contemplated herein, MMM's Ombudsman will have the power to:

- a) request reasonable access to any book, record, file or other documents.
- b) demand in writing that any employee appear before him or her, to produce any book, record, file, object or document whether written or in electronic form.
- c) enter any premises owned, controlled or managed by the Council and examine any book, record, file or other documents and physical property in the course of such a visit.
- d) take charge of and remove anything referred to in paragraph (b).
- e) require that an official or department provide relevant information within a stipulated timeframe.
- f) require an official to appear at MMM's Ombudsman's offices for the purpose of providing information relating to any investigation.
- g) exclude from any meeting any person whose presence, in the circumstances, is not desirable.
- h) institute, should the parties consent thereto, informal mediation or other facilitative processes which are aimed at addressing the complaint.
- i) recommend corrective action to the relevant Executive Director, should the Ombudsman deem it necessary, after having completed an investigation or mediation or any other facilitative process.

The Ombudsman shall further ensure

- a) Training of staff of MMM;
- b) Participation in Awareness Campaigns pertaining to the Office of the Ombudsman.
- c) Participation in the process of drafting of By-Laws for the Office of the Ombudsman.

11. POWERS OF OMBUDSMAN

The Ombudsman shall be vested with the powers to:

- a) Receive complaints from residents and investigate after being satisfied that such complaint was first lodged with the Customer Care Unit and Customer Care Manager, having geographical jurisdiction, and such complaint remained unresolved for a period of sixty (60) days since being lodged.
- b) Interview and/ or interrogate any staff member of MMM in matters pertaining to the complaint.
- c) Order, by notice in writing, from the relevant Directorate or staff member employed by MMM, the production of information by way of books, files, written and electronic records or any other information deemed necessary for the purpose of conducting the investigation.
- d) Enter into any Directorate or office within MMM and from which department or office information was requested, for the purpose of conducting such investigation.
- e) Produce a written report in respect of the investigation so conducted.
- f) Make recommendations pertaining to the satisfactory resolution of the complaint.
- g) Record any settlement agreements entered into between the parties and inform the relevant department or staff member of such settlement agreement.
- h) Refer any complaint received to an alternate forum, such as the Human Rights Commission.

12. MATTERS NOT FOR INVESTIGATION BY MMM'S OMBUDSMAN

The Office of MMM's Ombudsman does not investigate any of the following matters:

- a) any legislative or executive decisions by the Council, any of its portfolio committees or Sub-committees.
- b) any matter involving allegations of fraud, corruption or corporate crime as referred to MMM's Ant-Fraud and Corruption Unit.
- c) any matter or dispute which must be dealt with or settled within the field of labour.
- d) any allegation relating to financial irregularities.
- e) any cases where the complainant has not reported the matter to the line Directorate as first port of call.
- f) any alleged irregular conduct of a Councillor.
- g) any complaint that is vexatious or frivolous.
- h) any tender-related matter.
- i) administrative appeals.

13. SUBMISSION OF COMPLAINTS

All complaints submitted to the Office of MMM's Ombudsman must be in writing. Where a complainant is not able to compile a written complaint, he or she will be assisted by an authorised official in the Office of MMM's Ombudsman.

Each complaint must specify:

- a) the nature of the matter in question.
- b) the line Directorate in question.
- c) the grounds on which the complaint against MMM is based.
- d) such facts or other relevant information as are known.

14. ROLE OF CUSTOMER CARE AREA MANAGERS AND CUSTOMER CARE AREAS

The Office of the Ombudsman must be supported and assisted by the Customer Care Unit. Specific provision must be made for the residents/complainants to continue to channel all complaints/queries to the Customer Care Unit as a centre of first instance to the complainant.

15. COMMUNICATION IMPLICATIONS

The establishment of the Office of the Ombudsman will have to be preceded by information sessions within the establishment of MMM as well all residents in order to meet the public participation criteria. The MMM's Communication Sub-directorate must therefore draft a communication strategy for implementation.

16. REPORTING

The Ombudsman shall report directly to the Office of the Speaker of Council/Office of Executive Mayor, depending on the nature of the complaint and also report to the office of the City Manager on all matters investigated by his/ her office. Reporting to the Speaker of Council/Office of the Executive Mayor shall ensure that the Ombudsman operates independently of the administration but shall simultaneously inculcate an environment of responsiveness and responsibility from administration and executive.

17. TERMINATION FROM OFFICE AS OMBUDSMAN

The Ombudsman's contract may terminate under any of the following circumstances:

- Natural termination of his contract period.
- On the basis of continued ill health.
- Participation in active politics.
- Involvement in any criminal offence.
- Not acting impartially and without prejudice in any matter investigated by him/ her.

- Where the Ombudsman is unable to perform any function falling within his/ her office for a continuing period in excess of sixty (60) days in one calendar year.

18. RECOMMENDATIONS

It is therefore recommended that:

- a) The report on the establishment of the Office of the Ombudsman within the MMM be approved.
- b) The CFO be tasked to secure the relevant budget for the establishment of the Office of the Ombudsman.
- c) That the posts of the Ombudsman and supporting staff be advertised as soon as the budget has been allocated.


Adv. Tankiso Mea
City Manager

Date: 14/05/2018

Approved / not approved


Cif Mxolisi Siyonzana
Speaker

Date: 14/05/2018