

**Date: 20 April 2023**

**File Reference: 4/4/1**

**Author: Adv N Mpangane**

**Report Number:**

**Designation: HOD (acting)**

## **NOTING AND APPROVAL**

- 1<sup>st</sup> Level: EMT (Not Applicable)
- 2<sup>nd</sup> Level: Section 80 Committee (Not Applicable)
- 3<sup>rd</sup> Level: MAYCO ( Not Applicable)
- 4<sup>th</sup> Level: Council (25 April 2023)

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## **SUBJECT: DESIGNATION OF COUNCILLOR AS AN ACTING COUNCIL WHIP**

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### **1. PURPOSE**

- 1.1 The purpose of this report is to request the Municipal Council to designate a councillor as the acting Council Whip for the Mangaung Council for period of three months in terms of Section 41F of the local Government Municipal Structures Act, (Act 117 of 1998).

### **2. BACKGROUND**

- 2.1 The position of the Council Whip has once again become vacant due to the *rule nisi* interdict order granted in favour of the African National Congress (ANC) that lodged an urgent application against the Speaker, Mayor and municipality. The basis of the application was that the municipality has allowed 7 expelled ANC councillors from the political party to attend meeting on the 14 April 2023. The relief sought by the ANC was that election of the Mr Papi Mokoena be interdicted to execute duties as the Executive Mayo and that his election was unlawful. By virtue of the fact that the election of the Executive Mayor and Council Whip were held in the same meeting that is deemed to be unlawful, it does not exclude the election of the council whip.

## **2 DISCUSSION**

### **Acting Council Whip**

- 2.1 Section 41(f) of the Municipal Structures Act states that "***If the whip of a municipal council is absent or not available to perform the functions of whip, or during a vacancy, the council must elect another councillor to act as whip.***

### **3. LEGISLATIVE PROVISIONS**

- 3.1 The municipal council is not compelled to follow the procedure prescribed in Schedule 3 of the Municipal Structures Act, to designate of councilor to act in the position of Council Whip, therefore the voting may be by a show of hands, or any other method as prescribed by the Speaker but agreed upon by majority of councillors in the meeting.
- 3.2 Although, the Municipal Structures Act does not prescribe that the acting period of the acting Council Whip, it is in the interest of council and community of Mangaung that the period of acting should be for period of three months from April to July 2023 and or until the position is filled to allow council to address compliance matters without any hindrance.

#### **3.3 Functions of the Council Whip**

The legislative functions of the Council Whip are stipulated in section 41B of the Municipal Structures Act as amended that the Whip of a municipal council must–

- (a) liaise with the different political parties to ensure representation in council and council committees.
- (b) maintains sound relations between the various political parties;
- (c) inform the whips of all parties on important matters on the council agenda;
- (d) assists the speaker to count votes in the council meeting;
- (e) facilitate the interaction between the executive and legislative oversight structures in the municipality; and
- (f) resolve disputes between the speaker, mayor or executive mayor, or members of the mayoral committee.

### **4. DELEGATIONS**

- 4.1 The Whip of Council is enjoined to schedule regular meetings of Troika to ensure effective political management of the municipality. The Troika must convene frequently, to discuss governance matters within the municipality and ensure smooth running of operations, especially when dealing with compliance reports in the council agenda. The Whip of council plays an integral part of the Troika constituted by the Speaker, Executive Mayor, and Whip of Council and it's of crucial importance that the vacancy must be filled.

### **5. IMPLICATIONS**

#### **5.1 Financial**

Council Whip is designated as full-time councillor and his or her salaries and benefits are defined and provided *in Determination of Upper Limits of salaries and benefits for councillors* determined annually by the Minister for CoGTA.

## 5.2 Legal

The designation of Council Whip may be by showing of hands and or any other method prescribed by the Speaker but agreed upon by majority of councillors present in the meeting.

## 5.3 Communication

None

## 5.4 Community & Service Delivery

Urgent filling of the vacancy of the Council Whip in accordance with the legislative requirements is crucial to ensure harmony and compliance with tabling of compliance in council.

## 6. RECOMMENDATION

- (a) That Council take note of the report and
- (b) That the Council designate a councillor to act as the Council Whip on a full-time basis.

## 7. SUPPORTED BY:

  
Adv N Mpangane

**ACTING HOD: CORPORATE SERVICES**

21/04/2023

.....  
**DATE**

## 8. RATIFIED BY:

  
MS Gugu Malaza

pp **NATIONAL CABINET REPRESENTATIVE**

21 April 2023

.....  
**DATE**

## 9. ANNEXURES

- 9.1 ANNEXURE A : HIGH COURT OF SOUTH AFRICA HANDED AT FREE STATEDIVISION, BLOEMFONTEIN



**IN THE HIGH COURT OF SOUTH AFRICA  
FREE STATE DIVISION, BLOEMFONTEIN**

**Case No: 1887/2023**

Before the Honourable Judge **S CHESIWE**

On the 19<sup>th</sup> day of **APRIL 2023**

**In the matter between:**

**THE AFRICAN NATIONAL CONGRESS**

Applicant

and

**THE SPEAKER: MANGAUNG METROPOLITAN  
MUNICIPAL COUNCIL**

1<sup>st</sup> Respondent

**THE EXECUTIVE MAYOR: MANGAUNG  
METROPOLITAN MUNICIPALITY**

2<sup>nd</sup> Respondent

**THE MANGAUNG METROPOLITAN MUNICIPALITY**

3<sup>rd</sup> Respondent

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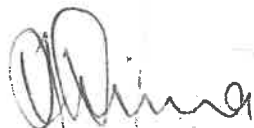
Having considered the documents filed of record and having heard the legal practitioner/s,

**IT IS ORDERED THAT:**

1. The Applicant's non-adherence to this court's rules related to time periods and service is condoned and the application is heard as an urgent application in terms of Rule 6(12).
2. A rule *nisi* do issue, returnable on **Thursday, 1 June 2023**, calling upon the Respondents to show cause, if any, why the following order should not be made final:
  - 2.1 The Second Respondent is interdicted and restrained from in any manner or form performing the functions associated with that of the Executive Mayor of the Third Respondent.
  - 2.2 The Second Respondent is interdicted and restrained from holding himself out of as the Executive Mayor of the Third Respondent.

- 2.3 The Second Respondent is interdicted and restrained from performing any acts and/or in enlisting the assistance of any other person to perform any act in pursuance of his election as the Executive Mayor of the Third Respondent, pursuant to his unlawful election into this postion on **14 April 2023**.
3. The order granted in prayers 2.1 to 2.3 above shall operate as an interim interdict with immediate effect, pending the finaisation of this application.
  4. The orders contained in prayers 2.1 to 2.3 shall further serve as a temporary interdict with immediate effect, pending the finalisation of review proceedings or any other effective relief the Applicant is advised to take, the Applicant shall embark upon within 5 days after the granting of the rule *nisi*, impugning the appointment of *inter alios* the Second Respondent as Executive Mayor of the Third Respondent.
  5. The Applicant shall provide the Respondents with a copy of the transcription of the evidence led on **Friday, 14 April 2023** in this court, on strength of which the Applicant secured an order against the seven former Municipal Councillors mentioned in the Applicant's Founding Affidavit.
  6. Leave is granted to the Respondents to anticipate the return day of this order, with no less than 36 hours' notice to the Applicant, after provision of the transcription mentioned in para 5 above.
  7. The Respondents shall file their Opposing Affidavits, if any, and in the event of them not anticipating the return day as set out in para 6 above, by no later than **Friday, 5 May 2023**.
  8. The Applicant shall reply by no later than **Monday, 22 May 2023**.
  9. Costs of this application on this day shall be adjudicated on the return date.

**BY ORDER OF THIS COURT**



**COURT REGISTRAR**

2023 -04- 19

**SMO SEOBE ATTORNEYS INC**

FSD-BFT-002