



**ORDINARY MEETING OF THE MAYORAL
COMMITTEE**

**GEWONE VERGADERING VAN DIE
BURGEMEESTERSKOMITEE**

**INTLANGANISO YESIQHELO YEKOMITI
KASODOLOPHU**

A G E N D A

I-AJENDA

**DATE / DATUM / UMHLA :
VENUE / PLEK / INDAWO :**

**28 MAY / MEI / MEYI 2015
BANQUETING HALL / BANKETSAAL
CIVIC CENTRE / BURGERSENTRUM /
IZIKO LOLUNTU
HERMANUS**

TIME / TYD / IXESHA :

10:00

MUNICIPALITY / MUNISIPALITEIT / UMASIPALA WE-OVERSTRAND

Office of the Municipal
Manager
Municipal Offices
HERMANUS

22 May 2015

NOTICE TO ALL ALDERMEN AND COUNCILLORS

NOTICE IS HEREBY GIVEN that an **ORDINARY MEETING** of the **MAYORAL COMMITTEE** will be held in the **Banqueting Hall, Civic Centre, HERMANUS**, on **THURSDAY, 28 MAY 2015** at **10:00** to consider the items set out on the attached agenda.

**C GROENEWALD
MUNICIPAL MANAGER**

22 Mei 2015

KENNISGEWING AAN ALLE RAADSHERE EN RAADSLEDE

KENNIS WORD HIERMEE GEGEE dat 'n **GEWONE VERGADERING** van die **BURGEMEESTERSKOMITEE** gehou sal word in die **Banketsaal, Burgersentrum, HERMANUS**, op **DONDERDAG, 28 MEI 2015** om **10:00** vir oorweging van die items op die meegaande agenda.

**C GROENEWALD
MUNISIPALE BESTUURDER**

22 Mei 2015

ISAZISO ESIYA KUBO BONKE OOCEBAKHULU NOOCEBA

INTLANGANISO YESIQHELO YEKOMITI KASODOLOPHU WE-OVERSTRAND

OKU KUKWAZISA ukuba intlanganiso **YESIQHELO yeKOMITI KASODOLOPHU**, iza kuba se **Banqueting Hall, kwiZiko, eHERMANUS ULWESINE UMHLA, 28 MEYI 2015** ngeye-10:00 ukuqwalasela imicimbi ekule ajenda iqhotyoshelwe apha.

**C GROENEWALD
UMPHATHI KAMASIPALA**

AGENDA/...

1. OPENING

2. APPLICATIONS FOR LEAVE OF ABSENCE

3. CONFIRMATION OF MINUTES

3.1 Minutes of an **Ordinary Meeting** of the **Mayoral Committee** held on **Wednesday, 29 April 2015 at 10:00**

4. STATEMENTS AND COMMUNICATIONS BROUGHT FORWARD BY THE EXECUTIVE MAYOR/EXECUTIVE DEPUTY MAYOR

5. ADDITION TO THE DELEGATION OF POWERS AND DUTIES: LEGAL REQUIREMENTS

2/5/3

D Arrison
30 April 2015

(028) 313 8037

Corporate Head Office

1. Executive Summary

The purpose of the report is to approve additions to the Delegation of Powers and Duties: Legal Requirements which is a section of the Municipality's formal Delegation of Powers and Duties.

2. Service Delivery and Budget Implementation Plan Reference

Directorate: Management Services

3. Compliance with Strategic Priority

Provision of democratic, accountable and ethical governance

4. Delegated Authority

None

5. Legal Requirements

Constitution of the Republic of South Africa, 1996 (Constitution)

Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) (Systems Act)

Municipal Finance Management Act, 2003 (Act 56 of 2003) (MFMA)

6. Background/Discussion

On 24 February 2009 Council adopted the Legal Requirements, Principles and Conditions of Delegation which are applicable on the municipality's system of delegation. Council reconfirmed same on 1 June 2011.

In terms of section 59 of the Systems Act, the responsibility of developing and maintaining a system of delegation vests with the Municipal Council. The responsibility of the Accounting Officer is to manage and implement the system of delegations. In terms of section 79 of the MFMA the Accounting Officer is responsible for ensuring that an appropriate system of delegations is developed to maximise administrative and operational efficiency and provide adequate checks and balances in the municipality's financial

administration. Sections 81 and 82 of the MFMA address the role of the chief financial officer and the delegations of the chief financial officer.

Overstrand Municipality's Delegation of Powers and Duties: Legal Requirements does not address sections 79, 81 and 82 of the MFMA and Council is thus requested to approve the additions.

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

Annexure A: Delegation of Powers and Duties: Legal Requirements

RECOMMENDATION TO THE COUNCIL:

that the additions to the Delegation of Powers and Duties: Legal Requirements, **be approved.**

RESPONSIBLE OFFICIAL :

H VAN TONDER

TARGET DATE FOR IMPLEMENTATION :

28 MAY 2015

Annexure A
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1. LEGAL REQUIREMENTS:

1.1 Sections 59 to 65 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) provide as follows:

59. Delegations.- (1) A municipal council must develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances, and, in accordance with that system, may-

- (a) delegate appropriate powers, excluding a power mentioned in section 160 (2) of the Constitution and the power to set tariffs, to decide to enter into a service delivery agreement in terms of section 76 (b) and to approve or amend the municipality's integrated development plan, to any of the municipality's other political structures, political office bearers, councillors, or staff members;
 - (b) instruct any such political structure, political office bearer, councillor, or staff member to perform any of the municipality's duties; and
 - (c) withdraw any delegation or instruction.
- (2) A delegation or instruction in terms of subsection (1)-
- (a) must not conflict with the Constitution, this Act or the Municipal Structures Act;
 - (b) must be in writing;
 - (c) is subject to any limitations, conditions and directions the municipal council may impose;
 - (d) may include the power to sub-delegate a delegated power;
 - (e) does not divest the council of the responsibility concerning the exercise of the power or the performance of the duty; and
 - (f) must be reviewed when a new council is elected or, if it is a district council, elected and appointed.
- (3) The municipal council-
- (a) in accordance with procedures in its rules and orders, may, or at the request in writing of at least one quarter of the councillors, must, review any decision taken by such a political structure, political office bearer, councillor or staff member in consequence of a delegation or instruction, and either confirm, vary or revoke the decision subject to any rights that may have accrued to a person; and

- (b) *may require its executive committee or executive mayor to review any decision taken by such a political structure, political office bearer, councillor or staff member in consequence of a delegation or instruction.*
- (4) *Any delegation or sub-delegation to a staff member of a power conferred on a municipal manager must be approved by the municipal council in accordance with the system of delegation referred to in subsection (1).*

60. Certain delegations restricted to executive committees or executive mayors.- (1) *The following powers may, within a policy framework determined by the municipal council, be delegated to an executive committee or executive mayor only:*

- (a) *decisions to expropriate immovable property or rights in or to immovable property; and*
- (b) *the determination or alteration of the remuneration, benefits or other conditions of service of the municipal manager or managers directly responsible to the municipal manager.*
- (2) *The council may only delegate to the Municipal Manager the power to make decisions on investments on behalf of the municipality within the municipality's investment policy contemplated in Section 13(2) of the Local Government: Municipal Finance Management Act, Act 56 of 2003.*

61. Referral of matters to delegating authorities for decision.- *A political structure, political office bearer, councillor or staff member of a municipality to whom a delegating authority has delegated or sub-delegated a power to dispose of matters falling within the area of responsibility of that political structure, political office bearer, councillor or staff member may, or must if instructed to do so by the relevant delegating authority, refer a matter before the political structure, political office bearer, councillor or staff member to the relevant delegating authority for a decision.*

62. Appeals.- (1) *A person whose rights are affected by a decision taken by a political structure, political office bearer, councillor or staff member of a municipality in terms of a power or duty delegated or sub-delegated by a delegating authority to the political structure, political office bearer, councillor or staff member, may appeal against that decision by giving written notice of the appeal and reasons to the municipal manager within 21 days of the date of the notification of the decision.*

- (2) *The municipal manager must promptly submit the appeal to the appropriate appeal authority mentioned in subsection (4).*
- (3) *The appeal authority must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.*

- (4) *When the appeal is against a decision taken by-*
- (a) *a staff member other than the municipal manager, the municipal manager is the appeal authority;*
 - (b) *the municipal manager, the executive committee or executive mayor is the appeal authority, or, if the municipality does not have an executive committee or executive mayor, the council of the municipality is the appeal authority; or*
 - (c) *a political structure or political office bearer, or a councillor-*
 - (i) *the municipal council is the appeal authority where the council comprises less than 15 councillors; or*
 - (ii) *a committee of councillors who were not involved in the decision and appointed by the municipal council for this purpose is the appeal authority where the council comprises more than 14 councillors.*
- (5) *An appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable period.*
- (6) *The provisions of this section do not detract from any appropriate appeal procedure provided for in any other applicable law.*

63. Duty to report to delegating authorities.- *A political structure, political office bearer, councillor or staff member of a municipality to whom a delegating authority has delegated or sub-delegated a power or duty, must report to the delegating authority at such intervals as the delegating authority may require, on decisions taken in terms of that delegated or sub-delegated power or duty since the last report.*

64. Withdrawal, amendment or lapsing of delegation or sub-delegation.- *The withdrawal, amendment or lapsing of a delegation or sub-delegation does not invalidate anything done as a consequence of a decision taken in terms of that delegation or sub-delegation.*

65. Review of delegations.- (1) *Whenever it becomes necessary in terms of section 59 (2) (f) to review a municipality's delegations, the municipal manager must submit to the council-*

- (a) *a report on the existing delegations issued in terms of section 59 by the council and other delegating authorities of the municipality; and*
 - (b) *recommendations on any changes to the existing delegations which the municipal manager may consider necessary.*
- (2) *If the municipality has an executive committee or executive mayor, the municipal manager must submit the report and any recommendations to*

the municipal council through the executive committee or executive mayor."

- 1.2 Section 160(2) of the **Constitution, 1996** (referred to in section 59 (1)(a) of the Systems Act) provides as follows:

"(2) The following functions may not be delegated by a Municipal Council:

- (a) the passing of by-laws;*
- (b) the approval of budgets;*
- (c) the imposition of rates and other taxes, levies and duties; and*
- (d) the raising of loans."*

- 1.3 Sections 79, 81 and 82 of the **Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003)** provide as follows:

"79. Delegations (1) *The accounting officer of a municipality-*

- (a) must, for the proper application of this Act in the municipality's administration, develop an appropriate system of delegation that will both maximise administrative and operational efficiency and provide adequate checks and balances in the municipality's financial administration;*
 - (b) may, in accordance with that system, delegate to a member of the municipality's top management referred to in section 77 or any other official of the municipality-*
 - (i) any of the powers or duties assigned to an accounting officer in terms of this Act; or*
 - (ii) any powers or duties reasonably necessary to assist the accounting officer in complying with a duty which requires the accounting officer to take reasonable or appropriate steps to ensure the achievement of the aims of a specific provision of this Act, and*
 - (c) must regularly review delegations issued in terms of paragraph (b) and, if necessary, amend or withdraw any of those delegations.*
- (2) *The accounting officer may not delegate to any political structure or political office-bearer of the municipality any of the powers or duties assigned to accounting officers in terms of this Act.*
- (3) *A delegation in terms of subsection (1)-*
- (a) must be in writing;*

- (b) *is subject to such limitations and conditions as the accounting officer may impose in a specific case;*
 - (c) *may either be to a specific individual or to the holder of a specific post in the municipality*
 - (d) *may, in the case of a delegation to a member of the municipality's top management in terms of subsection (1)(b), authorise that member to sub-delegate the delegated power or duty to an official or the holder of a specific post in that member's area of responsibility; and*
 - (e) *does not divest the accounting officer of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.*
- (4) *The accounting officer may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.*

81. Role of chief financial officer (1) *The chief financial officer of a municipality-*

- (a) ...;
 - (b) *must advise the accounting officer on the exercise of powers and duties assigned to the accounting officer in terms of this Act;*
 - (c) ...
 - (d) *must advise senior managers and other senior officials in the exercise of powers and duties assigned to them in terms of section 78 or delegated to them in terms of section 79; and*
 - (e) *must perform such budgeting, accounting, analysis, financial reporting, cash management, debt management, supply chain management, financial management, review and other duties as may in terms of section 79 be delegated by the accounting officer to the chief financial officer.*
- (2) ...

82. Delegations (1) *The chief financial officer of a municipality may sub-delegate any of the duties referred to in section 81 (1)(b), (d) and (e)-*

- (a) *to an official in the budget and treasury office;*
- (b) *to the holder of a specific post in that office; or*
- (c) *with the concurrence of the accounting officer, to-*

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- (i) any other official of the municipality; or
 - (ii) any person contracted by the municipality for the work of the office.
- (2) If the chief financial officer sub-delegates any duties in terms of subsection (1) to a person who is not an employee of the municipality, the chief financial officer must be satisfied that effective systems and procedures are in place to ensure control and accountability.
- (3) A sub-delegation in terms of subsection (1)-
 - (a) must be in writing;
 - (b) is subject to such limitations or conditions as the chief financial officer may impose; and
 - (c) does not divest the chief financial officer of the responsibility concerning the delegated duty.
- (4) The chief financial officer may confirm, vary or revoke any decision taken in consequence of a sub-delegation in terms of subsection (1), but no such variation or revocation of decision may detract from any rights that may have accrued as a result of the decision."