



CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD

# CITY OMBUDSMAN BY-LAW, 2015

APPROVED BY COUNCIL : 29 MAY 2015  
C12/05/15

PROMULGATED 03 JULY 2015  
PG 7419; LA 58145

**CITY OF CAPE TOWN**  
**CITY OMBUDSMAN BY-LAW, 2015**

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**To provide for the appointment, powers and functions of the Ombudsman, to provide for the procedures, roles and responsibilities of the Office of the Ombudsman, and to provide for matters incidental thereto.**

**Preamble**

**WHEREAS** section 156(2) and (5) of the Constitution provides that a Municipality may make and administer by-laws for the effective administration of matters which it has the right to administer, and to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions;

**WHEREAS** the City of Cape Town has identified the need to establish an independent Ombudsman's Office whose primary function is to assist the City of Cape Town in fulfilling its legislative obligation to provide accountable, democratic and transparent governance to those who reside in the area of jurisdiction of the City of Cape Town;

**WHEREAS** there is a need for the establishment of a mechanism whereby residents of the City of Cape Town can formally lodge complaints against alleged acts of maladministration;

**AND WHEREAS** the Council, its political structures and its administration must assist and protect the Office of the City Ombudsman to ensure its independence, credibility, impartiality, dignity and effectiveness.

NOW THEREFORE BE IT ENACTED by the Council of the City of Cape Town as follows:

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## DEFINITIONS

1. In this by-law, unless the context otherwise indicates:

**'alternative dispute resolution'** means to address the complaint in an informal, impartial and confidential manner;

**'authorised official'** means an employee of the City responsible for carrying out any duty or function or exercising any power and includes employees delegated to carry out or exercise such duties, functions or powers;

**'City'** means the City of Cape Town, a municipality established by the City of Cape Town Establishment Notice No. 479 of 22 September 2000, issued in terms of the Municipal Structures Act, 1998, or any structure or employee of the City acting in terms of delegated authority;

**'City Manager'** means the municipal manager appointed in terms of section 54A of the Municipal Systems Act, 2000;

**'City Ombudsman'** means the person appointed as the City Ombudsman in terms of section 5 of this By-law;

**'complainant'** means any person, or body of persons who has lodged a complaint with the Office of the City Ombudsman as provided for in this by-law;

**'complaint'** means any written complaint, against the City that has been lodged with the Office of the City Ombudsman;

**'Constitution'** means the Constitution of the Republic of South Africa, 1996;

**'Council'** means the Municipal Council of the City;

**'councillor'** means a member of the Council;

**'Executive Mayor'** means the Executive Mayor of the City elected in terms of section 55 of the Municipal Structures Act, 1998;

**'maladministration'** means any act or omission committed by the City or by an employee of the City which has the impact of infringing on a person or organisation's right to fair and just administrative action;

**'Mayoral Committee'** means the committee, established in terms of section 60 of the Municipal Structures Act, 1998;

**'municipal entity'** means a private company or a body established by the City in terms of sections 86B and 86H respectively of the Municipal Systems Act, 2000 for the purposes of rendering a service;

**'Municipal Structures Act'** means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

**'Municipal Systems Act'** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

**'policy'** means the City Ombudsman's policy;

**'recommendation'** means a final resolution on a complaint where the outcome of the complaint recommends corrective action to a department;

**'Speaker'** means a person elected in terms of section 36 of the Municipal Structures Act, 1998.

## **APPLICATION**

2. This by-Law applies to the City and all municipal entities, established by the City.

## **THE OFFICE OF THE CITY OMBUDSMAN**

3. (1) The Office of the City 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.

(2) The Council, its political structures and the administration must not interfere with the functioning of the Office of the City Ombudsman.

## **STRUCTURE**

4. (1) The Office of the City Ombudsman will consist of the City Ombudsman and such other persons who may be necessary for the effective exercise of the powers and performance of the functions and duties provided for in this By-law.

(2) The Office of the City Ombudsman may establish satellite offices for purposes of decentralising the services offered by the Office and therefore being accessible to all communities.

## **APPOINTMENT AND TERM OF THE CITY OMBUDSMAN**

5. (1) 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 section 5(3) 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.
- (2) The Executive Mayor, on recommendation of the Council, must appoint the preferred candidate who must be suitably qualified to serve as Ombudsman for the City in terms of section 5(3) of this by-law.
- (3) The City Ombudsman must:
- (a) be a South African citizen;
  - (b) be a fit and proper person to hold that particular office; and
  - (c) have specialised knowledge of or experience, for a cumulative period of at least 10 (ten) years, in the administration of justice, public administration, public finance or legal field;
- or
- (d) for a cumulative period of at least 10 (ten) years, have been in the employment of a municipality or International Ombudsman Institute or International Ombudsman Association;
- or
- (e) have acquired any combination of experience mentioned in paragraphs (c) and (d), for a cumulative period of at least 10 (ten) years.
- (4) The City Ombudsman will be appointed for a period of 5 (five) years.

- (5) A person may be re-appointed to the position of City Ombudsman, provided that no more than two consecutive terms are served.

## **FUNCTIONS AND POWERS OF THE CITY OMBUDSMAN**

6. (1) The City Ombudsman may investigate any complaint submitted in accordance with section 8 of this by-law.

- (2) On receipt of a complaint, the City Ombudsman must conduct a preliminary investigation for the purposes of determining the merits of the complaint.

- (3) Where the result of the preliminary investigation determines that such complaint:

- (a) is frivolous;
- (b) Vexatious;
- (c) carries no merit;
- (d) lacks sufficient evidence, or
- (e) for any similar reason should not be considered in terms of this by-law,

the complainant will be notified in writing that the complaint will not be considered.

- (4) Subject to subsection (5), where a complainant, in the opinion of the City Ombudsman, has remedies at his or her disposal and has not exhausted those remedies, the City Ombudsman may:

- (a) decline to investigate the complaint concerned;

- (b) inform the complainant of such other remedies that may exist.

- (5) Notwithstanding the provisions of subsection (4) of this by-law where the City Ombudsman 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, the City Ombudsman may investigate a complaint where other remedies have not been explored.

- (6) For the purposes of an investigation contemplated in this by-law, the City Ombudsman will have the power to:
- (a) require reasonable access to any book, record, file or other documents as well as physical property of the Council;
  - (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 the City 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 relevant parties consent thereto, informal mediation or other facilitative processes which are aimed at addressing the complaint; and
  - (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.

## **MATTERS NOT FOR INVESTIGATION**

7. The Office of the City Ombudsman does not investigate any of the following matters:
  - (1) any legislative or executive decisions by the Council, any of its portfolio committees or subcouncils;
  - (2) any matter that falls within the domain of Forensics and Ethics as referred to in the City's Fraud Prevention Policy;
  - (3) any matter or dispute which must be dealt with or settled within the field of labour law;
  - (4) any allegation relating to financial irregularities;
  - (5) any cases where the complainant has not reported the matter to the line department as first port of call, subject to section 6(5) of this by-law;
  - (6) any alleged irregular conduct of a councillor;
  - (7) any tender-related matter;
  - (8) administrative appeals.

## **SUBMISSION OF COMPLAINTS**

8. (1) All complaints submitted to the Office of the City Ombudsman must be in writing.
- (2) 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 the City Ombudsman.
- (3) Each complaint must at least specify:
  - (a) the nature of the matter in question;
  - (b) the line department in question, if known to the complainant;
  - (c) the grounds on which the complaint against the City of Cape Town is based;
  - (d) such facts or other relevant information known to the complainant; and
  - (e) any redress sought.

## **OFFENCES AND PENALTIES**

9. (1) No person may:
  - (a) insult or abuse the investigating officer or the Ombudsman;
  - (b) act in a manner that would have the effect of hampering, hindering, obstructing or subverting an investigation;

- (c) do anything in connection with an investigation that would constitute contempt of court had the matter been brought before a court of law.
- (2) Any person found guilty of contravening section 9(1) of this By-Law, shall be guilty of an offence and upon conviction, be liable to a fine or imprisonment of a maximum period of three (3) months.

#### **SHORT TITLE AND DATE OF COMMENCEMENT**

- 10. This by-law will be called the City of Cape Town: City Ombudsman By-law, 2015 and will take effect on the date of publication in the Provincial Gazette.

**STAD KAAPSTAD****VERORDENING OP DIE STADSOMBUDSMAN, 2015**

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Om voorsiening te maak vir die aanstelling, bevoegdhede en funksies van die ombudsman, om voorsiening te maak vir die prosedures, rolle en verantwoordelikhede van die kantoor van die stadsombudsman, en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

**Aanhef**

**NADEMAAL** artikel 156(2) en (5) van die Grondwet bepaal dat 'n munisipaliteit verordeninge kan uitvaardig en administreer vir die doeltreffende administrasie van die aangeleenthede wat hy die reg het om te administreer, en om enige bevoegdheid uit te oefen met betrekking tot 'n aangeleentheid wat redelikerwys nodig is vir, of verband hou met, die doeltreffende verrigting van sy funksies;

**NADEMAAL** die Stad Kaapstad die behoefte geïdentifiseer het om 'n onafhanklike kantoor van die ombudsman daar te stel met die primêre funksie om die Stad Kaapstad behulpsaam te wees met die nakoming van sy wetgewende verpligting om verantwoordbare, demokratiese en deursigtige bestuur aan diegene te voorsien wat in die regsgebied van die Stad Kaapstad woon;

**NADEMAAL** daar 'n behoefte is vir die daarstelling van 'n meganisme waardeur die inwoners van die Stad Kaapstad amptelik klagtes teen beweerde handeling van wanadministrasie kan indien;

**EN NADEMAAL** die Raad, sy politieke strukture en sy administrasie die kantoor van die stadsombudsman behulpsaam moet wees en beskerm om sy onafhanklikheid, geloofwaardigheid, onpartydigheid, waardigheid en doeltreffendheid te verseker;

DERHALWE word daar soos volg deur die Raad van die Stad Kaapstad bepaal:

## **INHOUDSOPGAWE**

1. Woordomskrywing
2. Toepassing
3. Die kantoor van die stadsombudsman
4. Struktuur
5. Aanstelling en ampstermyn van die stadsombudsman
6. Funksies en bevoegdhede van die stadsombudsman
7. Aangeleenthede wat nie ondersoek word nie
8. Indiening van klagtes
9. Misdrywe en strawwe
10. Kort titel en inwerkingtreding

## WOORDOMSKRYWING

1. In hierdie verordening, tensy uit die samehang anders blyk, beteken:

“**aanbeveling**” ’n finale besluit oor ’n klagte waar die uitkoms van die klagte regstellende stappe by ’n departement aanbeveel;

“**alternatiewe geskiloplossing**” om die klagte op ’n informele, onpartydige en vertroulike manier te hanteer;

“**beleid**” die beleid vir die stadsombudsman;

“**burgemeesterskomitee**” die komitee, gestig ingevolge artikel 60 van die Wet op Munisipale Strukture, 1998;

“**gemagtigde beampte**” ’n werknemer van die Stad wat verantwoordelik is vir die vervulling van enige plig of funksie of uitoefening van enige bevoegdheid en sluit werknemers wat gedelegeer is om sulke pligte en funksies te vervul of bevoegdhede uit te oefen, in;

“**Grondwet**” die Grondwet van die Republiek van Suid-Afrika, 1996;

“**klaer**” enige persoon of liggaam van persone wat ’n klagte by die kantoor van die stadsombudsman ingedien het soos bepaal in hierdie verordening;

“**klagte**” enige skriftelike klagte teen die Stad wat by die kantoor van die stadsombudsman ingedien is;

“**munisipale entiteit**” ’n privaat maatskappy of ’n liggaam wat onderskeidelik ingevolge artikel 86B en 86H van die Wet op Munisipale Stelsels, 2000, ingestel is ten einde ’n diens te lewer;

“**Raad**” die munisipale raad van die Stad;

“**raadslid**” ’n lid van die Raad;

**“Speaker”** 'n persoon wat ingevolge artikel 36 van die Wet op Munisipale Strukture, 1998, verkies is;

**“Stad”** die Stad Kaapstad, 'n munisipaliteit wat ingestel is deur die Stad Kaapstad Instellingskennisgewing No. 479 van 22 September 2000, uitgereik ingevolge die Wet op Munisipale Strukture, 1998, of enige struktuur of werknemer van die Stad wat ingevolge gedelegeerde bevoegdheid optree;

**“stadsbestuurder”** die munisipale bestuurder aangestel ingevolge artikel 54A van die Wet op Munisipale Stelsels, 2000;

**“stadsombudsman”** die persoon wat ingevolge artikel 5 van hierdie verordening aangestel is;

**“Uitvoerende Burgemeester”** die uitvoerende burgemeester wat ingevolge artikel 55 van die Wet op Munisipale Strukture, 1998, verkies is;

**“wanadministrasie”** enige daad of versuim deur die Stad of deur 'n werknemer van die Stad wat veroorsaak dat daar op 'n persoon of organisasie se reg op billike en regverdig administratiewe aksie inbreuk gemaak word;

**“Wet op Munisipale Stelsels”** die Wet op Plaaslike Regering: Munisipale Stelsels, 2000 (Wet 32 of 2000);

**“Wet op Munisipale Strukture”** die Wet op Plaaslike Regering: Munisipale Strukture, 1998 (Wet 117 van 1998).

## TOEPASSING

2. Hierdie verordening is van toepassing op die Stad en alle munisipale entiteite wat deur die Stad ingestel is.



## **DIE KANTOOR VAN DIE STADSOMBUDSMAN**

3. (1) Die kantoor van die stadsombudsman moet:

- (a) 'n lid wees van die Internasionale Ombudsman-instituut of Internasionale Ombudsman-vereniging of verwante liggame;
- (b) te alle tye onpartydig wees en sy bevoegdhede en funksies uitoefen en pligte vervul sonder vrees, begunstiging of vooroordeel.

(2) Die Raad, sy politieke strukture en die administrasie moet nie met die funksionering van die kantoor van die stadsombudsman inmeng nie.

## **STRUKTUUR**

4. (1) Die kantoor van die stadsombudsman moet bestaan uit die stadsombudsman en sodanige ander persone wat nodig mag wees vir die doeltreffende uitoefening van die bevoegdhede en funksies en vervulling van pligte wat in hierdie verordening bepaal word.

(2) Die kantoor van die stadsombudsman kan satellietkantore daarstel vir die doel van desentralisering van die dienste wat deur die Stad gebied word en sodoende toeganklik vir alle gemeenskappe wees.

## **AANSTELLING EN AMPSTERMYN VAN DIE STADSOMBUDSMAN**

5. (1) Die Raad moet 'n advertensie vir die pos van die stadsombudsman in minstens drie (3) koerante in die drie amptelike tale plaas.

- (a) Die Raad moet 'n ad hoc-komitee stig wat proporsioneel bestaan uit lede van al die partye wat in die Raad verteenwoordig word, om die kortlys- en onderhoudstadiums van die aanstelling uit te voer.

- (b) Die ad hoc-komitee moet drie kandidate wat aan artikel 5(3) voldoen by die Raad aanbeveel.
  - (c) Die Raad moet die voorkeurkandidaat by die Uitvoerende Burgemeester aanbeveel by wyse van 'n besluit wat aanvaar word met 'n ondersteunende stem van 'n meerderheid van die lede van die Raad.
- (2) Die Uitvoerende Burgemeester moet op aanbeveling van die Raad die voorkeurkandidaat, wat geskikte kwalifikasies moet hê, aanstel om as die ombudsman vir die Stad ingevolge artikel 5(3) van hierdie verordening te dien.
- (3) Die stadsombudsman moet:
- (a) 'n Suid-Afrikaanse burger wees;
  - (b) 'n geskikte en gepaste persoon wees om daardie spesifieke amp te beklee; en
  - (c) vir 'n kumulatiewe tydperk van minstens 10 (tien) jaar gespesialiseerde kennis of ondervinding hê van regspleging, openbare administrasie en openbare finansies, of 'n regsagtergrond hê;
- of
- (d) vir 'n kumulatiewe tydperk van minstens 10 (tien) jaar in diens van 'n munisipaliteit of internasionale ombudsman-instituut of internasionale ombudsman-vereniging wees;
- of
- (e) enige kombinasie van ondervinding genoem in paragraaf (c) en (d) vir 'n kumulatiewe tydperk van minstens 10 (tien) jaar hê.

- (4) Die stadsombudsman word vir 'n tydperk van 5 (vyf) jaar aangestel.
- (5) 'n Persoon kan in die pos van stadsombudsman heraan gestel word, met dien verstande dat nie meer as twee opeenvolgende ampstermyne gedien word nie.

## **FUNKSIES EN BEVOEGHEDE VAN DIE STADSOMBUDSMAN**

6. (1) Die stadsombudsman kan enige klagte ondersoek wat in ooreenstemming met artikel 8 van hierdie verordening ingedien word.
- (2) By ontvangs van 'n klagte, moet die stadsombudsman 'n voorlopige ondersoek instel om die meriete van die klagte te bepaal.
- (3) Waar die resultaat van die voorlopige ondersoek bepaal dat sodanige klagte:
  - (a) onbenullig, of
  - (b) kwelsugtig is,
  - (c) geen meriete het nie,
  - (d) 'n gebrek het aan voldoende bewys, of
  - (e) om enige ander rede nie ingevolge hierdie verordening oorweeg behoort te word nie,sal die klaer skriftelik in kennis gestel word dat die klagte nie oorweeg sal word nie.
- (4) Onderworpe aan subartikel (5), waar 'n klaer, volgens die mening van die stadsombudsman, regs middele tot sy of haar beskikking het en nie daardie regs middele uitgeput het nie, kan die stadsombudsman:
  - (a) weier om die betrokke klagte te ondersoek;

- (b) die klaer van sodanige ander regsmittele wat beskikbaar is, in kennis stel.
- (5) Nieteenstaande die bepalings van subartikel (4) van hierdie verordening, waar die stadsombudsman redelikerwyse glo dat weiering om 'n klagte te ondersoek tot 'n onreg sal lei as gevolg van armoede of gebrek aan kapasiteit aan die kant van die klaer, kan die stadsombudsman 'n klagte ondersoek waar ander regsmittele nie ondersoek is nie.
- (6) Vir die doeleindes van 'n ondersoek beoog in hierdie verordening, het die stadsombudsman die bevoegdheid om:
- (a) redelike toegang tot enige boek, aantekeninge, lêer of ander dokumente asook fisiese eiendom van die Raad te versoek;
  - (b) skriftelik te vereis dat enige werknemer voor hom of haar moet verskyn om enige boek, aantekeninge, lêer, voorwerp of dokument, hetsy in 'n skriftelike of in elektroniese vorm, aan hom of haar voor te lê;
  - (c) enige perseel wat deur die Raad besit, beheer of bestuur word, te betree en om enige boek, aantekeninge, lêer of ander dokumente en fisiese eiendom tydens so 'n besoek te ondersoek;
  - (d) enigiets waarna daar in paragraaf (b) verwys word, oor te neem en te verwyder;
  - (e) te vereis dat 'n beampte of departement tersaaklike inligting binne 'n bepaalde tydraamwerk moet voorsien;
  - (f) te vereis dat 'n beampte by die kantore van die stadsombudsman moet verskyn met die doel om inligting rakende enige ondersoek te verstrek;

- (g) enige persoon wie se teenwoordigheid in die omstandighede nie wenslik is nie, van enige vergadering uit te sluit;
- (h) indien die betrokke partye daartoe instem, informele bemiddeling of ander fasiliterende prosesse in te stel wat daarop gemik is om die klagte te hanteer; en
- (i) regstellende stappe by die betrokke uitvoerende direkteur aan te beveel, indien die stadsombudsman dit nodig ag, nadat 'n ondersoek of bemiddeling of enige ander fasiliterende proses voltooi is.

### **AANGELEENTHEDE WAT NIE ONDERSOEK WORD NIE**

7. Die kantoor van die stadsombudsman ondersoek nie enigeen van die volgende aangeleenthede nie:
- (1) enige wetgewende of uitvoerende besluite deur die Raad, enige van sy portefeuljekomitees of subrade;
  - (2) enige aangeleentheid binne die domein van forensies en etiek soos bedoel in die Stad se bedrogvoorkomingsbeleid;
  - (3) enige aangeleentheid of geskil wat binne die omvang van die arbeidsreg hanteer of geskik moet word;
  - (4) enige aantyging met betrekking tot finansiële onreëlmatighede;
  - (5) enige gevalle waar die klaer nie die aangeleentheid aan die lyndepartement as eerste aangaanplek gerapporteer het nie, onderworpe aan artikel 6(5) van hierdie verordening;
  - (6) enige beweerde onreëlmatige gedrag van 'n raadslid;
  - (7) enige tenderverwante aangeleentheid;
  - (8) administratiewe appèlle.

**INDIENING VAN KLAGTES**

8. (1) Alle klagtes moet skriftelik by die kantoor van die stadsombudsman ingedien word.
- (2) Waar 'n klaer nie in staat is om 'n skriftelike klagte op te stel nie, sal hy of sy deur 'n gemagtigde beampte in die kantoor van die stadsombudsman bygestaan word.
- (3) Elke klagte moet minstens die volgende spesifiseer:
- (a) die aard van die betrokke aangeleentheid;
  - (b) die betrokke lyndepartement, as dit aan die klaer bekend is;
  - (c) die gronde waarop die klagte teen die Stad Kaapstad gebaseer is;
  - (d) sodanige feite of ander relevante inligting waaroor die klaer beskik; en
  - (e) enige herstel wat versoek word.

**MISDRYWE EN STRAWWE**

9. (1) Niemand mag:
- (a) die ondersoekbeampte of die ombudsman beledig of misbruik nie;
  - (b) op 'n wyse optree wat 'n ondersoek sal bemoeilik, hinder, belemmer of dwarsboom nie;

- (c) enigiets in verband met 'n ondersoek doen wat minagting van die hof sou uitmaak indien die aangeleentheid voor 'n geregshof gebring sou word nie.
- (2) Enigiemand wat skuldig bevind word aan 'n oortreding van artikel 9(1) van hierdie verordening is skuldig aan 'n misdryf en is by skuldigbevinding strafbaar met 'n boete of gevangenisstraf vir 'n tydperk van hoogstens drie (3) maande.

### **KORT TITEL EN DATUM VAN INWERKINGTREDING**

- 10. Hierdie verordening heet die Stad Kaapstad: Verordening op die Stadsombudsman, 2015, en tree in werking op die datum van publisering in die Provinsiale Koerant.

## ISIXEKO SASEKAPA

### UMTHETHO KAMASIPALA WESIXEKO WEOFISI KANOZIKHALAZO, 2015

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**Ukubonelela ngokuqesha, amagunya nemisebenzi kaNozikhalazo, ukubonelela ngenkqubo, imigaqo noxanduva lweOfisi kaNozikhalazo; kunye nemiba ehambelana nale.**

#### **Imbulambethe**

**NGENXA YOKUBA** icandelo 156(2) no-(5) loMgaqosiseko lisithi uMasipala angenza ze alawule imithetho kamasipala ukuze alawule ngokukuko imiba anelungelo lokuyilawula, ukunye nokusebenzisa nawaphi na amagunya amalunga nombamba ekufuneka asebenzise amagunya kuwo, ukuze enze umsebenzi wakhe ngempumelelo;

**NGENXA YOKUBA** iSixeko saseKapa sichonge isidingo sokumisela iofisi ezimeleyo kaNozikhalazo, emsebenzi wayo uphambili ikukuncedisa iSixeko saseKapa ngokuzalisekisa uxanduva lwayo lokubonelela ngolawulo olululo, olulolwedemokrasi nolwenza izinto elubala, oko sikwenzela abahlali abahlala kwimimandla elawulwa siSixeko saseKapa;

**NGENXA YOKUBA** kukho isidingo sokumiselwa kwenkqubo apho abahlali beSixeko saseKapa banokukwazi ukuya kufaka izikhalazo ezikhalazela izenzo zolawulo olugxwenxa;

**YAYE NGENXA YOKUBA** iBhunga, amaziko ezopolitiko nolawulo lwawo kufuneka encedise aze akhusele iOfisi kaNozikhalazo weSixeko ukuqinisekisa inkululeko, isidima, ukungathathi cala nokusebenza kwayo ngempumelelo.

**MAWUMISELWE KE NGOKU** liBhunga leiSixeko saseKapa ngolu hlobo lulandelayo:



## **IZIQULATHO**

1. Iinkcazelo
2. Ukusebenza komthetho
3. IOfisi kaNozikhhalazo weSixeko
4. Ubume
5. Ukuqeshwa nethuba eliya kusetyenzwa nguNozikhhalazo weSixeko
6. Umsebenzi namagunya kaNozikhhalazo weSixeko
7. Imiba ekungavumelekanga ukuba iphandwe nguNozikhhalazo
8. Ukungeniswa kwezikhhalazo
9. Amatyala nezigwebo
10. Isihloko esifutshane nomhla oya kuqala ngawo ukusebenza

## IINKCAZELO

1. Kulo mthetho kamasipala, ngaphandle kokuba imeko ibhekisa kwenye into:

**'usombululo olulolunye lwembambano'** luthetha ukuhoywa kwesikhalazo ngendlela engalandeli nkqubo ethile, engenamkhethe neseklusini;

**'igosa eligunyazisiweyo'** ngumsebenzi weSixeko onoxanduva lokwenza nawuphi na umsebenzi okanye lokusebenzisa naliphi na igunya alinikiweyo, yaye oku kubandakanya abasebenzi abanikwe loo misebenzi okanye loo magunya;

**'iSixeko'** siSixeko saseKapa, umasipala omiselwe kulandelwa iSaziso soMiselo lweSixeko saseKapa esinguNomb. 479 sowe-22 Septemba 2000, esakhutshwa kulandelwa umthetho i-Local Government: Municipal Structures Act, 1998, okanye nasiphi isigqeba okanye umsebenzi weSixeko osebenza ngokwegunya alinikiweyo;

**'UManejala weSixeko'** uthetha umanejala kamasipala oqeshwe ngokwecandelo 54A loMthetho weNkqubo ziKaMasipala (Municipal Systems Act), 2000;

**'UNozikhalazo weSixeko'** uthetha umntu oqeshwe njengoNozikhalazo weSixeko ngokwecandelo 5 lalo mthetho kamasipala;

**'umfaki-sikhalazo'** ubhekisa kuye nawuphi umntu okanye iqela labantu elifake isikhalazo kwiOfisi kaNozikhalazo weSixeko njengoko kuchaziwe kulo mthetho kamasipala;

**'isikhalazo'** sithetha isikhalazo esibhaliweyo, esimangalela iSixeko esingeniswe kwiOfisi kaNozikhalazo weSixeko;

**'UMgaqosiseko'** uthetha uMgaqosiseko weRiphabliki yoMzantsi Afrika, ka-1996;

**'iBhunga'** lithetha iBhunga likaMasipala leSixeko;

**'uceba'** uthetha ilungu leBhunga;

**'USodolophu oLawulayo'** uthetha uSodolophu oLawulayo weSixeko owonyulwe ngokwecandelo 55 leMunicipal Structures Act, 1998;

**'ulawulo olugwenxa'** luthetha nasiphi na isenzo okanye nayiphi na into engenziwanga siSixeko okanye ngumsebenzi weSixeko enefuthe lokunyathela ilungelo lomntu okanye lombutho ze loo mntu okanye loo mbutho ungafumani kuhoyeka ngokukuko nangobulungisa;

**'iKomiti kaSodolophu'** ithetha ikomiti emiselwe ngokwecandelo 60 leMunicipal Structures Act, 1998;

**'iziko likaMasipala'** lithetha inkampani okanye iziko elimiselwe siSixeko ngokwamacandelo 86B no-86H ngokulandelelana omthetho iMunicipal Systems Act, 2000 ukuze linikizele ngeenkono;

**'iMunicipal Structures Act'** ithetha iLocal Government: Municipal Structures Act, 1998 (UMthetho Nomb. 117 of 1998);

**'iMunicipal Systems Act'** ithetha iLocal Government: Municipal Systems Act, 2000 (UMthetho Nomb. 32 of 2000);

**'umgaqonkqubo'** uthetha umgaqonkqubo kaNozikhhalazo weSixeko;

**'isindululo'** sithetha isindululo sokugqibela ngesikhhalazo, apho isiphumo sesindululo sindulule ukuba isebe malithathe amanyathelo olungiso;

**'USomlomo'** uthetha umntu owonyulwe kulandelwa icandelo 36 lomthetho iMunicipal Structures Act.

## **UKUSEBENZA KOMTHETHO**

2. Lo mthetho kamasipala usebenza kwiSixeko nakuwo onke amaziko kamasipala amiselwe siSixeko.

## **IOFISI KANOZIKHALAZO WESIXEKO**

3. (1) IOfisi kaNozikhalazo weSixeko kufuneka:

- (a) ibe lilungu le-*International Ombudsman Institute* okanye ele-*International Ombudsman Association* okanye imibutho ebunjalo.
- (b) ngawo onke amaxesha, ingabi namkhethe yaye isebenzise amagunya ayo, yenze nemisebenzi yayo ngaphandle koloyiko, umkhethe nocalulo.

(2) Izigqeba zopoliko zeBhunga, kunye nabalawuli balo kufuneka zingangeneleli kumsebenzi weOfisi kaNozikhalazo weSixeko.

## **UBUME**

4. (1) IOfisi kaNozikhalazo weSixeko iza kuba noNozikhalazo weSixeko kunye nabanye abantu abadingekayo ukuze akwazi ukwenza umsebenzi wakhe nokusebenzisa amagunya akhe ngempumelelo, kunye nokwenza imisebenzi ebonelelwe kulo mthetho kamasipala.

(2) IOfisi kaNozikhalazo weSixeko isenokuba neofisana kwiindawo ezahlukileyo ukwenzela ukuba uluntu lukwazi ukufikelela kuzo.

## **UKUQESHA NETHUBA ELIYA KUSETYENZWA NGUNOZIKHALAZO WESIXEKO**

5. (1) IBhunga kufuneka likhuphe isibhengezo sesikhundla sikaNozikhalazo weSixeko kumaphepha amathathu (3) ubuncinane ngazo zontathu iilwimi ezisemthethweni.

- (a) IBhunga kufuneka limisele ikomiti yethutyana, enamalungu amele amaqela onke amelwe kwiBhunga ngokulinganayo ukuba akhethe kwabo bafake izicelo zalo msebenzi abo bafanele lo msebenzi, ze benze nodliwanondlebe lwabo bakhethiweyo.

- (b) Ikomiti yethutyana kufuneka iphakamise amagama amathathu abagqatswa athobela imiqathango yecandelo 5(3) liwafake kwiBhunga.
- (c) IBhunga kufuneka likhethe umgqatswa ofanelekileyo ze lifake igama lakhe kuSodolophu oLawulayo ngokuthi lifake isindululo ekufuneka samkelwe ngokuthi sivotelwe sisininzi samalungu.
- (2) USodolophu oLawulayo, akufumana isindululo seBhunga, kufuneka aqeshe umntu okhethiweyo oneempepha zokukwazi ukuwenza lo msebenzi njengoNozikhhalazo weSixeko elandela icandelo 5(3) lalo mthetho kamasipala.
- (3) UNozikhhalazo weSixeko kufuneka:
- (a) ibe ngummi waseMzantsi Afrika;
- (b) ibe ngumntu ofanele ukuba abambe esi sikhundla; yaye
- (c) abe nolwazi olulodwa okanye amava awodwa eminyaka eli-10 ubuncinane kwimicimbi yezomthetho, ekarhulumente, eyemali zikarhulumente okanye abe ufundele umthetho;
- okanye
- (d) abe ebesebenza kwamasipala ubuncinane iminyaka eli-10 (elishumi)okanye kwi *International Ombudsman Institute* okanye kwi *International Ombudsman Association* iminyaka elishumi;
- okanye
- (e) abe ufumene indibanisela yamava akhankanywe kwimihlathi (c) no-(d), iminyaka eli-10 (elishumi) ubuncinane.
- (4) UNozikhhalazo weSixeko uya kuqeshwa ukuba asebenze isithuba seminyaka emi-5 (emihlanu).

- (5) Umntu angaphinda aqeshwe kwisikhundla sokuba nguNozikhhalazo weSixeko, kodwa angasebenzi ngaphezulu kwamatyeli amabini alandelelanayo.

### **IMISEBENZI NAMAGUNYA KANOZIKHALAZO WESIXEKO**

6. (1) UNozikhhalazo weSixeko angaphanda nasiphi na isikhhalazo esingeniswe kulandelwa icandelo 8 lalo mthetho kamasipala.

- (2) Akufumana isikhhalazo, uNozikhhalazo weSixeko kufuneka aqale enze uphando lokuqala ukujonga izinto ezikhhalazelwayo.

- (3) Ukuba iziphumo zophando lokuqala zibonisa ukuba eso sikhhalazo:

- (a) asinasihlahla
- (b) sesokucaphukisa nje
- (c) asivakali
- (d) asinabungqina baneleyo, okanye
- (e) ngenxa yesinye isizathu kufuneka singahoywa ngokwemiqathango yalo mthetho kamasipala,

umfaki-sikhhalazo uya kuthi aziswe ukuba isikhhalazo sakhe asizi kuqwalaselwa.

- (4) Kuxhomekeke kwicandelwana (5), apho umfaki-sikhhalazo, ngokokubona koNozikhhalazo weSixeko eneenkqubo anokuzilandela ukusombulula eso sikhhalazo yaye akazilandelanga ezo nkqubo uNozikhhalazo weSixeko unokuthi:

- (a) angavumi ukusombulula eso sikhhalazo;
  - (b) amazise umfaki-sikhhalazo ngezo nkqubo zikhoyo anokuzilandela ukusombulula eso sikhhalazo.
- (5) Noxa kukho imiqathango yecandelwana (4) lalo mthetho kamasipala, ukuba uNozikhalazo weSixeko uthe ngenxa yezizathu ezivakalayo wabona ukuba ukwala ukuphanda isikhhalazo kuya kuthi ngenxa yentlupheko okanye ukungabi nazixhobo komfaki-sikhhalazo, kudale ukuba kungaphunyezwa ubulungisa, uNozikhalazo weSixeko angasiphanda isikhhalazo noxa kukho iinkqubo ezingalandelwanga.
- (6) Ukulungiselela uphando oluchazwe kulo mthetho kamasipala, uNozikhalazo weSixeko uza kuba negunya:
- (a) lokufuna ukuphendla nayiphi na incwadi, ingxelo, ifayili okanye nawaphi na amaxwebhu kunye nepropati yeBhunga;
  - (b) lokubhalela anyanzelise nawuphi umsebenzi ukuba aye kuvela kuye ngokuthi, azise incwadi, ingxelo, ifayili, into okanye uxwebhu olubhaliweyo okanye olukwikhompyutha;
  - (c) lokungena kuso nasiphi isakhiwo esiphantsi kweBhunga ze ajonge nayiphi na incwadi, ingxelo, ifayili okanye nawaphi na amaxwebhu kunye nepropati ngeli lixa ekweswo sakhiwo;
  - (d) lokuthathela kulawulo lwakhe nayiphi na into ekubhekiswe kuyo kumhlathi (b);
  - (e) lokunyanzelisa ukuba umsebenzi okanye igosa limnike iinkcukacha azifunayo ngexesha alibekileyo;

- (f) lokunyanzelisa ukuba umsebenzi aye kuvela kwiiofisi zikaNozikhalazo weSixeko ukuze anikeze ngolwazi oluchaphazela uphando;
- (g) lokukhupha nakweyiphi na intlanganiso nawuphi na umntu ongadingekiyo kuloo ntlanganiso;
- (h) ukuba amaqela achaphazelekayo ayavuma, amisele inkqubo yothetha-thethwano nolamlo okanye ezinye iinkqubo zokubonisana eenjongo zazo ikukusombulula eso sikhhalazo;
- (i) lokundulula amanyathelo okulungisa imeko kuMlawuli weCandelo ochaphazelekayo, ukuba ngaba uNozikhalazo ukubona oko kufanelekile, emva kokugqiba uphando lwakhe okanye emva kolamlo okanye emva kwezinye iinkqubo zokubonisana.

## **IMIBA EKUNGAVUMELEKANGA UKUBA IPHANDWE NGUNOZIKHALAZO**

7. IOfisi kaNozikhalazo weSixeko ayiyiphandi le miba ilandelayo:

- (1) naziphi izigqibo zomthetho okanye zesigqeba solawulo ezenziwe liBhunga, okanye zikomiti zamasebe zalo okanye ezenziwe ngamabhungana;
- (2) nawuphi na umba ochaphazela ukuPhandwa kweNto eYenzekileyo ngaboMthetho neNdlela yokuZiphatha okanye ulwaphulo-mthetho lweziko, zinto ezo ezikhankanywe kuMgaqonkqubo wokuNqanda ubuQhophololo kwiSixeko;
- (3) nawuphi na umba okanye imbambano ekufuneka isonjululwe ngumthetho wezabasebenzi;
- (4) nasiphi isityholo sokusetyenziswa gwenxa kwemali;



- (5) nayiphi imiba apho umfaki-sikhalazo engachazanga loo mba kwisebe elichaphazelekayo kuqala, kodwa oko kuya kuxhomekeka nakwicandelo 6(5) lalo mthetho kamasipala;
- (6) isityholo sokuziphatha kakubi kukaceba;
- (7) nasiphi isikhalazo esinjongo yaso ikukucaphukisa nje okanye esingenasihlahla;
- (8) nawuphi na umba ohlangene neethenda;
- (9) izibheno zezolawulo.

### **UKUNGENISWA KWEZIKHALAZO**

8. (1) Zonke izikhalazo ezifakwa kwiOfisi kaNozikhalazo weSixeko kufuneka zingeniswe zibhaliwe.
- (2) Apho umfaki-sikhalazo engakwazi ukungenisa isikhalazo esibhaliweyo, uya kuthi ancediswe ngumsebenzi ogunyaziswe ukuba enze oko okwiOfisi kaNozikhalazo weSixeko.
- (3) Isikhalazo ngasinye kufuneka sichaze:
  - (a) wonke umba okhalazelwayo;
  - (b) isebe elichaphazelekayo, ukuba liyaziwa ngumfaki-sikhalazo;
  - (c) izizathu zokufaka isikhalazo esikhalazela iSixeko saseKapa;

- (d) zonke iinkcukacha ezijikeleze esi sikhhalazo ezaziwayo ngumfaki-sikhhalazo;
  - (e) indlela umfaki-sikhhalazo afuna sisonjululwe ngayo;
- (4) IOfisi kaNozikhalazo weSixeko iya kuphanda kuphela izikhhalazo ezithobela imiqathango echazwe kulo mthetho kamasipala.

### **AMATYALA NEZIGWEBO**

9. (1) Akakho umntu onokuthi:

- (a) athuke okanye aphanthe kakubi igosa eliphandayo okanye uNozikhalazo;
- (b) aziphathhe ngendlela enokuchaphazela kakubi, enokuthintela, enokuphazamisa okanye enokubhukuqa uphando.
- (c) enze nantoni eza kuchaphazela, enokuthintela nophando enokubonakala njengokudelela inkundla ukuba ngaba loo mba ubusiwe kwinkundla yomthetho.

(2) Nawuphi umntu owaphule icandelo 9(1) lalo Mthetho kaMasipala uya kuba netyala yaye emva kokugwetywa uya kuthi ahlawuliswe imali, okanye avalelwe entolongweni iinyanga ezingekho ngaphezulu kwezintathu (3) ethothoza.

### **ISIHLOKO ESIFUTSHANE NOMHLA OYA KUQALA NGAWO UKUSEBENZA**

10. Lo mthetho kamasipala uya kubizwa ngokuba nguMthetho kaMasipala weSixeko saseKapa: kaNozikhalazo weSixeko, wango-2015 yaye uya kuqala ukusebenza ngomhla oya kuthi upapashwe ngawo kwiGazethi yePhondo.