



CITY OF EKURHULENI METROPOLITAN MUNICIPALITY

OMBUDSMAN BY-LAW

(REVIEWED/ AMENDED JULY 2018)

[MUNICIPALITY RESOLUTION: A – CORP (31-2015) DATED 28-January-2016]

[Date of Commencement: 30-March-2016]

As amended by

[MUNICIPALITY RESOLUTION: A – RC (11-2018) DATED 27-September-2018]

[Date of Commencement: 31-October-2018]

To repeal the Ekurhuleni Metropolitan Municipality Ombudsman Bylaw No. _____ in its entirety and replace with this By-law providing for the establishment of the Office of the Municipal Ombudsman within the City of Ekurhuleni and to provide for all matters incidental to such office, including the power to investigate any complaint lodged and related to lack of/or poor service delivery; improper and/or unfair conduct by an official which results in prejudice to the complainant/s; work-related disputes involving staff that are not subject to the CCMA, bargaining council and labour court processes; disputes with service providers which have not been referred to alternate dispute resolution processes or the courts and failure to comply with any by-law, council resolution, policy or decision of any recognized structure of the municipality within the area of jurisdiction of the City of Ekurhuleni.

Preamble

WHEREAS the CoE has aligned itself to and is progressing towards the Ekurhuleni Growth and Development Strategy 2055 with an emphasis on growth by preparing for the growing population, generating more wealth and investment and expanding the Municipality and by developing to cope effectively with new risks and opportunities and transforming to a more inclusive society;

AND WHEREAS CoE is required to be and strives to be a responsive, effective, productive, accountable and efficient arm of government;

AND WHEREAS CoE seeks to ensure that its staff, customers, service providers and residents are acknowledged, recognized and appreciated, thus affording them an effective, efficient, accessible and centralized avenue of addressing complaints;

AND WHEREAS section 43(c) of the Constitution vests legislative authority in respect of the local sphere of government in municipal councils as provided for in section 156 of the Constitution;

AND WHEREAS section 156 subsections (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;

AND WHEREAS CoE has identified the need to establish an independent office of the Ombudsman with powers vested upon him/her in terms of this by-law with a view to effectively, efficiently and speedily resolving matters referred to him or her;

AND WHEREAS there is a need for the establishment of a mechanism to provide for the effective, efficient and speedy resolution of disputes as provided for in this by-law;

BE IT THEREFORE ENACTED by the Council of the City of Ekurhuleni as follows: -

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1. Definitions

In this by-law, unless the context otherwise indicates-

“**administration**” means the administration of the municipality as contemplated in section 51 of the Municipal Systems Act, 2000 (Act No. 32 of 2000);

“**alternate forum**” means any appropriate Organ of State to which the Ombudsman may refer a complaint;

“**CCMA**” means the Commission for Conciliation, Mediation and Arbitration;

“**City Manager**” means the municipal manager appointed in terms of section 57 of the Municipal Systems Act, 2000 (Act No 32 of 2000) and section 82 of the Municipal Structures Act, 1998 (Act No. 117 of 1998);

“**Complainant**” means any resident of CoE who has lodged a complaint with the office of the Ombudsman as provided for in this by-law;

“**Constitution**” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

“**Council**” means the Municipal Council of the CoE as contemplated in section 18 of the Municipal Structures Act, 1998 (Act No. 117 of 1998);

“**Councilor**” means a member of the Municipal Council;

“**Customer Care Area**” means a walk-in facility where communities have access to government information and all municipal services rendered by CoE;

“**Customer Relations Manager**” means a person responsible for managing complaints of unresolved customer service delivery issues by residents and clients of CoE, to ensure quality customer delivery services;

“**CoE**” means City of Ekurhuleni Metropolitan Municipality;

“**employee**” means any staff member of the CoE or any of its municipal-owned entities;

“**fit and proper person**” includes a person having the requisite knowledge and technical skills, be honest and of the highest integrity, be objective and dignified, have a capacity for hard work and a sense of equity or fairness.

“**frivolous**” means a baseless complaint;

“**Municipality**” means the CoE established in terms of Section 12 of the Municipal Structures Act 117 of 1998;

“**Ombudsman**” means an independent, impartial public person with authority to receive, investigate and make findings based on the facts and the law who is appointed as the Ombudsman in terms of section 6;

“**Organ of State**” means any institution as provided for in section 239 of the Constitution of the Republic of South Africa, 1996;

“**service provider**” means any person in a business relationship with CoE;

“**Speaker of Council**” means a person elected in terms of section 36 of the Municipal Structures Act, 1998 (Act No. 117 of 1998);

“**prescribed forms**” means forms prescribed in terms of this by-law;

“**vexatious**” means a complaint without merit or an unwarranted complaint which solely seeks to irritate or aggravate an adversary/opponent.

2. Objects of By-law

The objects of this by-law are-

- (a) to establish the Office of the Municipal Ombudsman;
- (b) to prescribe the powers and responsibilities of the office of the Ombudsman;
- (c) to provide a mechanism to residents, staff, and service providers for fast and effective complaint and dispute resolution;
- (d) to support existing complaints infrastructure such as the Customer Care Areas and the Customer Relations Managers; and
- (e) to enhance service delivery and social development imperatives placed on the Municipality by the provisions of the Constitution, and National and Provincial legislation.

3. Establishment of Office

- (1) The office of the Ombudsman for CoE is hereby established.

(2) The office of the Ombudsman is accountable administratively to the Accounting Officer, but reports to the Speaker of Council.

(3) In exercising his or her authority, the Ombudsman must-

- (a) act without fear, favour or prejudice;
- (b) act honestly, independently and with the highest degree of objectivity;
- (c) act with fairness and equity whilst upholding all principles enshrined in the Constitution;
- (d) balance the rights of all persons, natural or juristic, appearing before the Ombudsman; and
- (e) prepare a written report, make recommendations and implement measures to address the findings.

4. Application

This by-law is applicable to all departments and entities of CoE and residents or ratepayers of CoE.

5. Qualifications for appointment

The Ombudsman must-

- (a) be a South African citizen;
- (b) be a fit and proper person to hold such office; and
- (c) possess a relevant degree plus at least ten (10) years' experience in a field of law or finance or public administration.

6. Appointment of Ombudsman

(1) The Speaker of Council must recommend to Council to appoint a suitably qualified and experienced person as Ombudsman and include the terms and conditions of service and remuneration of such person in the recommendation.

(2) The Speaker of Council must, before the appointment of the Ombudsman in terms of subsection 1, by notice in two or more nationally circulating newspapers in the Republic, invite applications from suitably qualified persons.

(3) The Ombudsman must-

(a) be appointed to serve for a renewable term of five (5) years provided that he or she may not serve for more than two consecutive terms;

(b) be assisted by persons employed, designated and/ or seconded by CoE with the concurrence of the Ombudsman; and

(c) not hold any political office, at any level, in a political party.

(4) The Ombudsman must devote himself or herself exclusively to the duties of the Ombudsman's office and must not hold any other office in CoE or any of its entities nor engage in any other form of employment during his/ her term as Ombudsman.

(5) The Ombudsman may at any time resign by submitting a written notice to the Speaker of Council at least ninety (90) days prior to the intended date of vacation of office, unless the Speaker of Council, on good cause shown, allows for a shorter period.

(6) The Speaker of Council may terminate the employment of the Ombudsman on the account of serious misconduct, incapacity or incompetence, after affording him or her reasonable opportunity to be heard and such termination must be subject to applicable legislation.

(7) The Speaker of Council must, during a vacancy or when the Ombudsman is unable to fulfill any of his or her functions, appoint, from amongst the employees of CoE, a person who meets the requirements set out in section 5, on a temporary basis, in accordance with subsection (1) to act in the position until a permanent person is appointed or until the Ombudsman is able to continue functioning fully.

7. Staff of Office of the Ombudsman

(1) The Ombudsman must, subject to his or her directions and control, in the performance of his or her functions under this by-law, be assisted by suitably qualified and experienced persons, appointed by the CoE for the purpose of assisting the Ombudsman in the performance of all financial, administrative and clerical functions pertaining to the office of the Ombudsman.

(2) The persons appointed to assist the Ombudsman must receive such remuneration, allowances and other employment benefits and shall be appointed on such terms and conditions and for such periods, as the Municipality may determine.

(3) The normal CoE recruitment policies and procedures must be followed in the appointment of the officials referred to in subsection (1) above and the prevailing terms and conditions apply.

(4) A member of the office of the Ombudsman must-

(a) serve impartially and independently and perform his or her functions in good faith and without fear, favour, bias or prejudice;

(b) serve in a full-time capacity to the exclusion of any other duty or obligation arising out of any other employment or occupation or the holding of any other office, except for persons seconded to the office of the Ombudsman;

(c) not have any pecuniary interest or any other interest which might preclude him or her from performing his or her functions in a fair, unbiased and proper manner;

(d) not hold political office, at any level, in a political party;

(e) disclose any interest in a matter under investigation and not conduct any investigation or render any assistance with regard to an investigation while having an interest in the matter being investigated; and

(f) not be liable in respect of anything reflected in any report, finding, point of view or recommendation made or expressed in good faith in the performance of his or her functions.

8. Finances and Accountability

The provisions of the Municipal Finance Management Act, 2003 (Act 53 of 2003) that are applicable to the other officials of the CoE, other than the Accounting Officer and the Chief Financial Officer, shall equally be applicable to the Ombudsman.

9. Customer Relations Managers and Customer Care Areas

(1) The Ombudsman may refuse to investigate any matter reported to him or her-

(a) if the complainant has not taken all reasonable steps to lodge his or her complaint with the Customer Relations Manager or the Customer Care Area from which the complaint arose except where the complaint concerns the Customer Relations Manager or Customer Care Area; or

(b) after having reported such a complaint as contemplated in subsection (1) above, a period of at least thirty (30) days has elapsed without a response or progress report, or that he or she is not satisfied with the decision of the Customer Relations Manager.

(2) The Customer Relations Manager must comply timeously and completely with all lawful requests made by the Ombudsman in the exercise of his or her duties.

10. Jurisdiction

(1) The Ombudsman must be competent to investigate any complaint lodged which is related to-

(a) lack of/or poor service delivery within CoE;

(b) improper and/or unfair conduct which results in prejudice to the complainant/s;

(c) failure to comply with any by-law, Council resolution, policy or decision of any recognized and authorized structure of the municipality which impacts on service delivery;

(d) a work-related dispute with or between CoE staff and which is not subject to the CCMA process, bargaining council and the labour courts; and

(e) a dispute with any service provider which is not subject to the alternative dispute resolution mechanisms provided for in the contract or which has not been referred to a court of law.

11. Matters beyond Jurisdiction

(1) The Ombudsman has no jurisdiction to investigate any complaint related to the following-

(a) any act of corruption or corrupt activity as provided for in the Prevention and Combatting of Corrupt Activities Act 12 of 2004 or any other national or provincial legislation;

(b) any decision pertaining to any matter in respect of the Constitution;

(c) any decision by National or Provincial Government;

(d) any judicial decision;

(e) any decision made by another Municipality;

(f) any dispute between private persons;

(g) the conduct of Councillors within CoE;

(h) complaints that are frivolous, and/ or vexatious;

(i) labour-related matters involving CoE which have been referred to the CCMA, bargaining council or to the labour courts;

(j) disputes between CoE staff and which are of a private nature and not related to the workplace;

(k) complaints about gross financial irregularities, fraud or corruption; and

(l) legislative and executive decisions made by City of Ekurhuleni Council,

(2) The Ombudsman must report any matter brought to his/her attention and that is mentioned in subsection (1), to the appropriate authority or office.

12. Process of Investigation by Ombudsman

(1) Subject to the provisions of section 9, the Ombudsman must investigate and report on matters provided for in section 10 (1) (a) to (e) after receiving a complaint either on oath or upon affirmation and which complaint had already been referred to the relevant Customer Care Area.

(2) Upon receipt of such complaint and without undue delay, the Ombudsman must commence with the investigation in the manner and form that he/ she deems just.

(3) In conducting the investigation, the Ombudsman may-

(a) request evidentiary material to be supplied from any department within CoE;

(b) request a schedule and copies of any documents (in the form prescribed herein) related to the investigation, from any department within CoE;

(c) request any employee of CoE to attend (in the manner prescribed) to provide evidence or for purposes of interrogation in respect of the investigation. In such instance, the Ombudsman may administer the prescribed oath or receive evidence upon affirmation; and;

(d) enter upon any premises in any department within CoE and then and there inspect any book, record and remove such book, record.

(4) The Ombudsman may, on receipt of a written or verbal complaint relating to municipal service delivery by the CoE and/or any of the Ekurhuleni Municipal Entities consider, investigate and dispose of the complaint in a fair, effective, efficient, economical and expeditious manner.

(5) A complaint referred to in subsection (1) may involve an act or omission by any person in the employ of the CoE or any of its Municipal Entities.

(6) In conducting an investigation, the Ombudsman may, subject to the provisions of subsection (8)-

(a) be assisted by any person appointed or seconded to assist in the Office of the Ombudsman;

(b) obtain an affidavit or a declaration from any person;

(c) direct any person to appear before him or her;

(d) direct any person to give evidence or produce any document in his or her possession or under his or her control which has a bearing on the matter under consideration or being investigated;

(e) interrogate such person;

(f) request an explanation from any person whom he or she reasonably suspects of having information which has a bearing on a matter under consideration or which is being or to be investigated; and

(g) require any person appearing as a witness to give evidence under oath or after having made an affirmation.

(7) A direction contemplated in subsection (6)(c) and (d) may be by way of a subpoena containing particulars of the matter in connection with which the person subpoenaed is required to

appear before the Ombudsman and served on the person subpoenaed either by a registered letter sent through the post or by delivery by a person authorized thereto by the Ombudsman.

(8) If it appears to the Ombudsman that any person is being implicated in the matter being investigated, the Ombudsman must afford such person an opportunity to be heard in connection therewith by way of the giving of evidence, and such person is entitled, through the Ombudsman, to question other witnesses, as determined by the Ombudsman, who have appeared before the Ombudsman in terms of this section.

(9) The Ombudsman may, when considering or investigating a complaint in terms of this section, require the assistance of or refer the complaint to a department/s within CoE or an authority established in terms of legislation or any other appropriate and suitable body or entity to investigate similar complaints.

(10) The Ombudsman must sign and enter into a Service Level Agreement with all CoE Heads of Departments on, but not limited to, turn-around time, responsibility for and quality of response, submission of relevant documents and other matter that the Ombudsman may find necessary to regulate.

(11) No self-incriminating answer given or statement made by any person to the Ombudsman exercising powers in terms of this by-law, is admissible as evidence against that person in criminal proceedings against that person instituted in any court, except in criminal proceedings for perjury or in which that person is tried for an offence contemplated in this by-law, and then only to the extent that the answer or statement is relevant to prove the offence charged.

(12) (a) After each investigation, the Ombudsman must discuss the report and recommendations on appropriate action with the Speaker of Council and thereafter submit same to the City Manager for action.

(12) (b) In making a finding, the Ombudsman may find-

- (i) the complaint to be justified;
- (ii) that there is insufficient evidence to support the complaint;
- (iii) the complaint to be without merit;
- (iv) the complaint to be vexatious or frivolous; or
- (v) the complaint to be outside his or her jurisdiction as defined in this by-law.

(c) Where the Ombudsman finds a complaint-

- (i) to be justified, he or she must act in accordance with subsection (12) (a);
- (ii) to be without sufficient evidence or merit or where the complaint is frivolous or vexatious, he or she must inform the complainant and the employee concerned accordingly;

(iii) to be outside his or her jurisdiction as defined by this by-law, he or she must either inform all the parties and terminate any further proceedings or refer the matter to an alternate forum as prescribed in section 17.

(13) Where the City Manager or Head of Department fails to act in accordance with the findings and recommendations of the Ombudsman, the Ombudsman may request the intervention of the Speaker of Council.

(14) The Ombudsman must, after the conclusion of an investigation, inform the complainant and the respondent, as the case may be, of his or her findings and recommendations.

13. Standing

(1) The Ombudsman may receive and investigate complaints lodged by the following person/s-

(a) any natural person acting in his or her own interest and who resides or owns immovable property within CoE;

(b) any juristic person, the principal place of business of which falls within CoE;

(c) any person, natural or juristic, acting on behalf of another who resides or owns immovable property within CoE and who cannot act in his or her own name;

(d) any person acting as a member of, or in the interest of, a group or class of persons who reside or own immovable property within CoE;

(e) any person acting in the public interest; and

(f) an association acting in the interest of its members.

14. Independence, impartiality and accountability of Ombudsman

(1) The expenditure connected with the appointment and functions of the Ombudsman is paid out of funds appropriated by Council for that purpose, as part of the budget of the Office of the Ombudsman.

(2) When dealing with any complaint in terms of this by-law, the Ombudsman, including any person rendering assistance and support to the Ombudsman-

(a) is independent and impartial;

(b) must perform his or her functions in good faith and without fear, favour, bias or prejudice; and

(c) is immune from liability for acts performed in good faith under this by-law;

(3) The Speaker of Council, Executive Mayor, CoE and its Entities must afford the Ombudsman such assistance and support as may be reasonably necessary for the Ombudsman to perform his or her functions effectively and efficiently.

(4) The Ombudsman must, within one month after the end of the financial year, prepare a report on the affairs and functions of the Ombudsman during the financial year in question, and submit such report to the Speaker of Council for tabling to the Council.

15. Responsibility of CoE Heads of Departments

Heads of Departments within CoE must ensure that responses relating to their departments are provided to the Ombudsman in the manner and form required, and within the time stipulated in the request.

16. Alternative Dispute Resolution

The Ombudsman must apply any alternative dispute resolution measures available to him/ her including mediation, conciliation and restoration in the conduct of and the suggestion of remedial action pursuant to an investigation.

17. Alternate Forum

The Ombudsman may of his own accord or on the request of the complainant refer any investigation to another Organ of State for further investigation and finalization.

18. Additional Functions

The Ombudsman must at all times act in promotion of his/ her office and must do all things necessary to raise awareness, maintain the integrity of and set high ethical standards for the office.

19. Misconduct

Any official or employee of CoE or its entities who fails to comply with any lawful instruction or request for information by the Ombudsman acting in terms of the provisions of this by-law shall be guilty of misconduct and may be charged as such, in accordance with the Municipality's disciplinary procedure and code or regulations for senior managers, whichever may be applicable.

20. Delegation

(1) The Ombudsman may as and when necessary delegate any power or function conferred on him or her in terms of this by-law to any person employed in the Office of the Ombudsman.

(2) In acting in terms of subsection (1), the Ombudsman must impose such conditions or limitations or give such direction as he or she considers necessary.

(3) The Ombudsman may, in writing, at any time withdraw any delegation given in terms of subsection (1).

21. Short Title and Commencement

This by-law is called the City of Ekurhuleni Metropolitan Municipality Ombudsman Amended By-Law and commences on the date of publication in the Provincial Gazette.

22. Schedule

The forms contained in this schedule must be used in all matters lodged with the Office of the Ombudsman.

FORM 1:

COMPLAINT INITIATING FORM TO CITY OF EKURHULENI METROPOLITAN MUNICIPAL OMBUDSMAN

NOTE:

- 1. Affidavits of other persons or other documentary evidence in support of the matter must be attached.**
- 2. Your attention is drawn to the fact the Ombudsman may refer the matter to an Alternate Forum and the administration officer at the Office of the Ombudsman shall inform you accordingly.**

[If the space provided is inadequate, submit information as an Annexure to this form and sign each page.]

PART A: PARTICULARS OF COMPLAINANT																										
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Full names																										
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Preferred method in which the form is to be served:	Registered post	E-mail	Fax	Peace Officer	Other (Specify)													
Correspondence contact details (In terms of above)																		
Name and Address of COE Department:																		
	Code ()																	

PART C: PARTICULARS OF COMPLAINT AND RELIEF SOUGHT

Nature of complaint: <i>(Please give full details of the complaint, the date of the incident(s) and the particulars of possible witnesses. Also indicate the nature of the act or omission complained of and the name of person or responsible department within COE.</i>																		
How has it affected you?																		

Documents: Are there any documents to substantiate your complaint (e.g. pay slips, references, records of conversations) to substantiate your claim? (If so please attach):	
Relief sought: <i>(Please indicate what assistance you require in order for the Ombudsman to consider same.</i>	
PART D: PARTICULARS OF APPROACH TO CUSTOMER CARE CENTRE	
Area of Customer Care Centre and Person approached.	
The response of the Customer Care Centre mentioned above:	

SIGNED AT

ON THIS THE

DAY OF

20

COMPLAINANT/ DEPONENT

I certify that before administering the oath/affirmation, I asked the deponent the following questions and wrote down his/her answers in his/her presence:

(1) Do you know and understand the contents of the declaration?

Answer:.....

(2) Do you have any objection to taking the prescribed oath?

Answer:.....

(3) Do you consider the prescribed oath to be binding on your conscience?

Answer:.....

I certify that the deponent has acknowledged that he/she knows and understands the contents of this declaration. The deponent uttered the following words: "I swear that the contents of this declaration are true, so help me God."/ " I truly affirm that the contents of the declaration are true." The signature/mark of the deponent was affixed to the declaration in my presence.

COMMISSIONER OF OATHS

Full names

(Block letters)

Designation (rank).....Ex Officio Republic of South Africa

Business address.....

.....Code.....

(Street address must be stated)

Date:.....Place.....

Full Particulars of documents/ information required to be produced to the Ombudsman.	

TO THE PERSON/S WHOIS/ ARE HEREBY GIVEN NOTICE OF THE ABOVE PROCEEDINGS

- i. You are required to appear before the Ombudsman at a time and place as described above;
- ii. You must ensure that you and all your witnesses are present at the proceedings and remain in attendance until excused by the Ombudsman;
- iii. The attention of the respondent is also drawn to the fact that should he or she fail to appear before the Ombudsman as specified above, the Ombudsman may order that the proceedings continue in the respondent's absence.
- iv. The attention of the complainant is also drawn to the fact that should he or she fail to appear before the Ombudsman as specified above, the Ombudsman may dismiss the complaint.
- v. All parties must ensure that all documents/ information requested is produced to the Ombudsman during the proceedings or as directed by the Ombudsman.
- vi. Any failure to act as directed by the Ombudsman or in terms of this By-law may result in misconduct proceedings being instituted against you.

MANNER OF SERVICE OF NOTICE TO APPEAR

I,, certify that I have -

* delivered a copy of the notice to

..... personally on the day of
 (month) 20.. at (time) ; and that he/ she signed
 acknowledging receipt of the notice.

Signature & Full names

or

* offered a copy of the notice for delivery to

..... personally;

or

* sent by e-mail/ fax to

..... a person

(attach proof)

OTHER MANNER OF NOTIFICATION

Signed at this day of 20

.....
COE Administration Officer/Other

*Delete whichever is not applicable

For Office Use

File:	1/4/1/1/16
Original Council Resolution:	A-CORP (31-2015) dated 28 January 2016
Gauteng Provincial Gazette Number	105 dated 30 March 2016
Local Authority Notice Number	470
Amended by Council Resolution	A-RC (11-2018) dated 27 September 2018
Gauteng Provincial Gazette Number	313
Local Authority Notice Number	1794