

ITEM A-CORP (41-2014) CM 26/03/2015	COMMITTEE REPORT ON THE PROPOSED ESTABLISHMENT OF THE OFFICE OF THE OMBUDSMAN WITHIN EKURHULENI METROPOLITAN MUNICIPALITY
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RESOLVED

1. **That** the report on the establishment of the Office of the Ombudsman within the Ekurhuleni Metropolitan Municipality **BE NOTED**
2. **That** the recommendations mentioned hereunder, emanating from the report of the Executive attached as APPENDIX "A" and the annexures thereof, BE ADOPTED:
 - 2.1 *That the report on the establishment of the Office of the Ombudsman within the Ekurhuleni Metropolitan Municipality* **BE NOTED.**
 - 2.2 *That the Ombudsman report setting out the processes and the timeframes for the establishment of the Office of the Ombudsman within the Ekurhuleni Metropolitan Municipality* **BE APPROVED.**

CORPORATE LEGAL SERVICES: THE ESTABLISHMENT OF THE OFFICE OF THE OMBUDSMAN WITHIN EKURHULENI METROPOLITAN MUNICIPALITY

PURPOSE

To provide for a comprehensive policy that regulates the establishment, powers and functions of the City of Ekurhuleni Metropolitan Municipality Ombudsman.

SCOPE OF APPLICATION

This Policy shall apply to all departments within City of Ekurhuleni Metropolitan Municipality.

PREAMBLE

The Office of the Ombudsman is established within Ekurhuleni Metropolitan Municipality to provide an effective and efficient complaints-handling and dispute resolution mechanism to the residents of Ekurhuleni Metropolitan Municipality by investigating and reporting on complaints, providing alternate dispute resolution services and facilitating satisfactory outcomes through making recommendations and imposing measures to address the report outcomes.

In addition the Ombudsman shall investigate labour disputes as well as contractual disputes with service providers in order to facilitate expedient dispute resolution.

The Ombudsman shall derive his/ her powers from a by-law as well as from the Constitution of South Africa Act, 1996 and Council resolutions, objectives and strategic goals and all such powers shall be exercised in furtherance of Ekurhuleni Metropolitan Municipality's Constitutional and other legislative imperatives.

The Ombudsman shall also develop awareness campaigns for the rights and responsibilities of residents in order to ensure social cohesion and maturity.

It is established to facilitate a complaints platform within Ekurhuleni Metropolitan Municipality and accord the mechanism to the residents for fast and effective complaints and dispute resolution, to support existing infrastructure such as the Customer Care Areas and the Customer Care Area Managers and meet the service delivery obligations of Ekurhuleni Metropolitan Municipality as well as advancing the principles of equality, fairness, social development and upliftment and human dignity. The Ombudsman will also be vested with the authority to investigate and attempt to resolve labour disputes as well as contractual disputes arising with service providers by providing an alternative dispute mechanism.

1. OBJECTIVES

- to enact legislation establishing the Office of the Ombudsman;
- to give effect to the Municipality's Integrated Development Plan;
- to provide a mechanism to residents for fast and effective complaint and dispute resolution;
- to provide an alternative dispute resolution mechanism to staff and service providers;
- to support existing complaints infrastructure such as the Customer Care Areas and the Customer Care Area Managers;
- to enhance service delivery and social development imperatives placed on the Municipality by the provisions of the Constitution of the Republic of South Africa Act, 1996 together with other National and Provincial legislation.

2. LEGAL FRAMEWORK

OMBUDSMAN POLICY

- 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.

3. DEFINITION OF TERMS

- **“administration”** means the administration of the municipality as contemplated in section 51 of the Municipal Systems Act 32 of 2000;
- **“Alternate Forum”** means any institution listed in Chapter 9 of the Constitution of the Republic of South Africa, Act 1996.
- **“City Manager”** means the municipal manager appointed in terms of section 57 of the Municipal Systems Act 32 of 2000 and section 82 of the Municipal Structures Act 117 of 1998;
- **“Ombudsman”** means a person appointed as the Ombudsman in terms of Ekurhuleni Metropolitan Municipality Ombudsman By-Law;
- **“Complainant”** means any resident of Ekurhuleni Metropolitan Municipality 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.
- **“Council”** means the Municipal Council of the Ekurhuleni Metropolitan Municipality as contemplated in section 18 of the Municipal Structures Act 117 of 1998;
- **“Councilor”** means a member of the Municipal Council of City of Ekurhuleni Metropolitan Municipality;
- **“Customer Care Area Manager”** means a person responsible for managing complaints of unresolved customer service delivery issues by residents and clients of EMM, to ensure quality customer delivery services;
- **“Customer Care Area”** means a walk-in facility where communities have access to government information and all municipal services rendered by Ekurhuleni Metropolitan Municipality;
- **“employee”** means any staff member of the Ekurhuleni Metropolitan Municipality or any of its municipal owned entities;
- **“EMM”** means City of Ekurhuleni Metropolitan Municipality;
- **“Speaker of Council ”** means the a person elected in terms of section 36 of the Municipal Structures Act 117 of 1998;
- **“municipality”** means the Ekurhuleni Metropolitan Municipality established in terms of Section 12 of the Municipal Structures Act 117 of 1998;

4. CONTENTS

4.1. Purpose of the Ombudsman:

The establishment of the Office of the Ombudsman within Ekurhuleni Metropolitan Municipality is aimed at enhancing the service delivery obligations of the Municipality and furthermore meeting the IDP imperatives.

4.2. Role of Ombudsman:

It is envisaged that the appointed person would be an independent, impartial public official who would be vested with the responsibility and the obligation to receive complaints pertaining to service delivery within EMM and to investigate same. The Ombudsman shall investigate the complaint from residents without undue delay and shall deliver a report containing any recommendations made within the time limits prescribed in the Ombudsman By-Law. The Ombudsman shall however only register and proceed with the investigation of a complaint which had already been referred to the Customer Care Area Manager and Customer Care Area having geographical jurisdiction and where such complaint remains unresolved for a period of thirty (30) days since being lodged.

The Ombudsman will also be vested with the authority to deal with labour disputes and disputes of a contractual nature arising with service providers.

4.3 Independence of the Ombudsman

It is imperative in the establishment of an office of this nature that “independence” of such official is recognized and given full effect. The Ombudsman shall exercise all functions without fear, favour or prejudice and shall report directly to Council through the office of the Speaker, 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. No person shall therefore be permitted to interfere in the duties or functions of the Ombudsman in any manner whatsoever.

4.4. Nature of Complaints:

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 thirty (30) days since being lodged and which is related to:

4.4.1. Lack of/or poor service delivery within EMM;

4.4.2. Improper and/or unfair conduct;

Provided that should the complaint relate to the Customer Care Area and the Customer Care Area Manager, then such complaint may be lodged directly with the Municipal Ombudsman in the prescribed form, Form 1 of Schedule to Ombudsman By-Law.

4.4.3. Labour – related disputes;

4.4.4. Contractual disputes arising with service providers.

4.5. Matters beyond jurisdiction:

The Ombudsman shall not have jurisdiction to investigate any complaint related to the following:

4.5.1. Any act of corruption or corrupt activity as provided for in the Prevention and Combatting of Corrupt Activities Act or any other national or provincial legislation;

4.5.2. Any Political decisions;

4.5.3. Any decision pertaining to any matter in respect of the Constitution Act, 1996;

4.5.4. Any decision of National, Provincial or Local Government;

4.5.5. Any judicial decision;

4.5.6. Any decision made by another Municipality;

4.5.7. Any dispute between private persons;

4.5.8. The conduct of Councillors within EMM;

4.5.9. Complaints that are deemed frivolous, and/ or vexatious;

4.5.10. Labour – related matters which have already been referred to the CCMA or a Labour court;

4.5.11. Contractual disputes with service providers which has already been referred to court.

4.5.12. Complaints about gross financial irregularities and fraud/corruption. (Note* -This is the role of the EMM's Internal Audit Department)

5.6. Powers of Ombudsman:

The Ombudsman shall be vested with the powers to:

- 5.6.1. Receive complaints from residents and investigate after being satisfied that such complaint was first lodged with the Customer Care Area and Customer Care Area Manager, having geographical jurisdiction, and such complaint remained unresolved for a period of thirty (30) days since being lodged.
- 5.6.2. Investigate labour-related and Contractual disputes;
- 5.6.3. Interview and/ or interrogate any staff member of EMM in matters pertaining to the complaint;
- 5.6.4. Order, by notice in writing, from the relevant department or staff member employed by EMM, 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;
- 5.6.5. Enter into any department or office within EMM and from which department or office information was requested, for the purpose of conducting such investigation;
- 5.6.6. Produce a written report in respect of the investigation so conducted;
- 5.6.7. Make recommendations pertaining to the satisfactory resolution of the complaint;
- 5.6.8. Record any settlement agreements entered into between the parties and inform the relevant department or staff member of such settlement agreement;
- 5.6.9. Refer any complaint received to an alternate forum, such as the Human Rights Commission.

5.7. Matters pertinent to the Office of the Ombudsman:

The matters pertinent to the Office of the Ombudsman are as follows:

5.7.1. Legislation:

The Office of the Ombudsman shall be created by way of the Local Government legislative process in the passing of a By-Law and also be bound by the provisions of all other National and Provincial legislation.

5.7.2 Reporting Functions:

The Ombudsman shall report directly to the Office of the Speaker of Council, EMM and be accountable to the Office of the City Manager. The Office of the Speaker of Council shall also observe control of all administrative matters pertaining to the creation and maintenance of the Office of the Ombudsman.

5.7.3 Conditions of Office:

- 5.7.3.1 The Ombudsman shall exercise his/ her mandate by giving full effect to the letter and the spirit of the Constitution of the Republic of South Africa, 1996;
- 5.7.3.2 The Ombudsman shall exercise his/her functions within the prescripts of all National, Provincial and Local legislation applicable to EMM;
- 5.7.3.3 The Ombudsman shall exercise his/ her functions without fear, favour and/ or prejudice;
- 5.7.3.4 The Ombudsman shall proceed with any investigation without undue delay and strive to provide an interim report within thirty (30) calendar days and provide a final report within ninety (90) calendar days.
- 5.7.3.5 The Ombudsman shall sign a Performance Agreement with EMM;

- 5.7.3.6 The Ombudsman shall not participate in any form of active politics.
- 5.7.3.7 The Ombudsman shall abide by and comply with all financial and regulatory prescripts as determined by EMM including the production of and implementation of all prerogatives in terms of EMM's IDP and SDBIP obligations.

5.7.4 Qualifications:

The person appointed as Ombudsman shall:

- 5.7.4.1 be a South African Citizen;
- 5.7.4.2 have a first degree plus at least ten (10) years' experience in a field of law, finance or public administration.

5.7.5 Term of Office:

The Ombudsman shall occupy office for a non-renewable term of five years from date of appointment.

5.7.6 Remuneration and Service Conditions:

The Remuneration and service conditions shall be determined by Council in consultation with EMM Department of Finance and Human Resources. The Ombudsman shall conclude a written contract of employment with Ekurhuleni Metropolitan Municipality within thirty (30) days of his/ her appointment. The Ombudsman shall be a person employed at a senior level falling below the position of Divisional Head within the EMM employment hierarchy.

5.7.7 Reporting:

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

5.7.8 Disqualification/ Removal from Office:

The Ombudsman shall be disqualified or removed from Office in the following circumstances:

- 5.7.8.1 On the basis of continued ill health;
- 5.7.8.2 Participation in active politics;
- 5.7.8.3 Involvement in any criminal offence;
- 5.7.8.4 Adverse listing on the Credit Bureau;
- 5.7.8.5 Not acting impartially and without prejudice in any matter investigated by him/ her.
- 5.7.8.6 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.

5.7.8 Additional Functions of Ombudsman:

The following are additional functions of the Ombudsman:

- 5.7.8.1 Training of Staff of EMM;

- 5.7.8.2 Participate in Awareness Campaigns pertaining to the Office of the Ombudsman;
- 5.7.8.3 Participate in the process of drafting of By-Laws.

5.8. Role of Customer Care Area Managers and Customer Care Areas:

By the creation of the Office of the Ombudsman, it is envisaged that there would also be support and co-operation between the Customer Care Managers and the Ombudsman. Specific provision is made for the residents/ complainants to continue to channel all complaints/ queries to the Customer Care Areas as a centre of first instance.

5.9. Forms pertaining to Complaint:

The following forms are pertinent to the Office of the Ombudsman:

- 5.9.1 Form 1 – Complaint Form
- 5.9.2 Form 2 - Notice to Parties to appear before Ombudsman.

Surname:																															
Full names																															
ID. No./Date of birth:																													/	/	
Head of Department																															
Registration number of Employee																															
Residential address:																															
	Code ()																														
Residential telephone number:																															
Cellular telephone number:																															
Work address:																															
	Code ()																														
Work telephone number:																															
Fax number:																															
Physical address (where documents can be served):																															
	Code ()																														
Preferred method in which the form is to be served:	Registered post	E-mail	Fax	Sheriff	Clerk																										
	Correspondence contact details (In terms of above)																														
	E-mail address:																														
	Name and Address of EMM Department:																														
		Code ()																													

PART C: PARTICULARS OF COMPLAINT AND RELIEF SOUGHT

<p>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 EMM.</i></p>	
<p>How has it affected you?</p>	
<p>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):</p>	
<p>Relief sought: <i>(Please indicate what assistance you require in order for the Ombudsman to consider same.</i></p>	

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 first names and
surname.....

(Block letters)

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

Business
address.....

.....Code.....

(Street address must be stated)

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

(ii) to remain present until excused by the Ombudsman; and

TO THE PERSONS WHO ARE HEREBY GIVEN NOTICE OF THE ABOVE PROCEEDINGS

- (i) You must ensure that all your witnesses are present at the proceedings of the inquiry.
- (ii) 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.
- (iii) 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 .

MANNER OF SERVICE OF NOTICE TO APPEAR

I,, certify that I have -

- * delivered a copy of the notice to personally;

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 atthis.....day
 of.....20.....

.....
 EMM Administration Officer/Other
 *Delete whichever is not applicable

6 ORGANISATIONAL AND HUMAN RESOURCE IMPLICATIONS:

In addition to the appointment of the Ombudsman, additional staff to support the functions of the Office of the Ombudsman shall be required. These positions may be staffed after input has been received from the Human Resource Department in line with the EMM Policy on Staffing. This may certainly include secondment of staff from any Department within EMM.

EMM Department of Human Resources shall be involved in all matters incidental to the appointment of the additional staff.

EMM Department of Finance shall also be involved in all matters incidental to the establishment, funding for additional staff and costing of training requirements for additional staff.

Office space is also required for the staff listed above and in this respect the Real Estate Department shall be consulted in order to ascertain the most cost effective manner of implementation and in this regard individual items shall be presented to Council for approval.

7 FINANCIAL IMPLICATIONS:

The establishment of the Office of the Ombudsman has been listed as one of EMM Flagships. It is imperative that funds be allocated and the budget be approved for the establishment and sustainability of the office. The Ombudsman shall be at a senior level but at one below that of Divisional Head. In respect of any other financial implications such as accommodation, support staff, IT Systems, other Departments that are being engaged with are Real Estate, Finance, ICT and Human Resources.

8 LEGAL IMPLICATIONS:

There are both civil and criminal implications on EMM if the conduct of the Ombudsman who it is envisaged will be a highly-placed official within EMM is not monitored. The manner in which he/she conducts the investigation must also be in strict consideration of the privacy, dignity and other values enshrined in the Constitution. This document emanates from the Corporate Legal Department and has been circulated to all divisions for comment, and which comment has been incorporated into this document. The provisions of legislation and policies within the public service have been considered and complied with, more especially the provisions of the Constitution of the Republic of South Africa Act 108 of 1996 and the Municipal Systems Act 32 of 2000 which have an emphasis on service delivery and community involvement in Municipal matters have formed the cornerstone of the establishment of the EMM Ombudsman office.

Section 152 (1) (a) to (e) of the Constitution all emphasise the rendering of services to the community and the involvement of the community in all matters therefore being community-focussed.

The introduction to the Municipal Systems Act also provides in respect of service delivery to the community as follows: “ exercise the municipality’s executive and legislative authority and use the resources of the municipality in the best interests of the local community; provide, without favour or prejudice, democratic and accountable government; encourage the involvement of the local community; strive to ensure that municipal services are provided to the local community in a financially and environmentally sustainable manner; consult the local community about—

- (i) the level, quality, range and impact of municipal services provided by the municipality, either directly or through another service provider; and
- (ii) the available options for service delivery;
- (iii) give members of the local community equitable access to the municipal services to which they are entitled and promote and undertake development in the municipality;

Chapter 4 of the Municipal Systems Act is also entirely dedicated to community participation in municipal matters and the interaction between the office of the Ombudsman and the Community of Ekurhuleni Metropolitan Municipality shall enhance all the legislative provisions referred to and lead to us being a responsive and accessible local government structure..

9 COMMUNICATION IMPLICATION:

The establishment of the Office of the Ombudsman will have to be preceded by information sessions within the establishment of EMM as well all residents in order to meet the public participation criteria. In this respect the services of specialized consultants may be needed.

10 OTHER DEPARTMENTS/ BODIES CONSULTED:

At this stage and because of the specialized nature of the office, the preliminary matters have been dealt with by Corporate Legal. However as depicted in the document, other Departments such as IT, H.R, Finance and Real Estate shall also play and an integral role in the establishment of this Office.

11 MONITORING AND ENFORCEMENT:

The Office of the Ombudsman shall often be handling sensitive matters and where complainants often see the Ombudsman as a “last resort”. Utmost care has to be employed in dealing with complainants to maintain their dignity. Constant monitoring of the performance of the Ombudsman and enforcement of the Constitutional principles contained in this document are of utmost importance.

12 PRECEDING POLICIES RESCINDED:

Please note that the Office of the Ombudsman is to be newly established hence there are no preceding policies that needed to be rescinded or varied in any manner whatsoever.

RECOMMENDATION

1. **That** the report on the establishment of the Office of the Ombudsman within the Ekurhuleni Metropolitan Municipality **BE NOTED**.
2. **That** the Ombudsman report setting out the processes and timeframes for the establishment of the Office of the Ombudsman within the Ekurhuleni Metropolitan Municipality **BE APPROVED**.

DEPARTMENT: CORPORATE LEGAL DIVISION: MUNICIPAL COURTS, BY-LAW ENFORCEMENT AND COMPLIANCE						
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