

## LOCAL GOVERNMENT NOTICE

### MUNICIPALITY OF AMAHLATHI

#### BY-LAW RELATING TO THE DELEGATION OF POWERS

The Municipal Manager hereby publishes, in terms of section 13 of the Local Government: Municipal Systems Act, 2000 [Act No. 32 of 2000], read with Section 162 of the Constitution of the Republic of South Africa Act, 1996 [Act No. 108 of 1996], the By-law Relating to the Delegation of Powers.

#### **Purpose of By-law**

The purpose of this by-law is to promote the development of a system of delegation by a municipality, to maximise administrative and operational efficiency, and to provide for adequate checks and balances in relation thereto.

1. **Definitions** - In this by-law, words used in the masculine gender include the feminine, the singular includes the plural and vice versa, and, unless the context otherwise indicates -

**'accounting officer'**, in relation to the municipality, means the municipal official referred to in Section 60 of the Local Government: Municipal Finance Management Act, 2003 [Act No. 56 of 2003];

**'chief financial officer'**, in relation to the municipality, means the person designated in terms of Section 80(2)(a) of the Local Government: Municipal Finance Management Act, 2003 [Act No. 56 of 2003];

**'council'** means the municipal council of the municipality, and includes any committee or staff member thereof acting in terms of a delegated power;

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

**'day'** means a calendar day, including a Saturday, Sunday and any public holiday;

**'delegating authority'**, in relation to the delegation of a power or a duty by a municipal council, means the council, or, in relation to the sub-delegation of a power or a duty by another political structure, political office bearer, councillor or staff member, means that political structure, political office bearer, councillor or staff member;

**'delegation'** means the delegation of a power, as envisaged by Section 59 of the Local Government: Municipal Systems Act, 2000 [Act No. 32 of 2000], and includes the delegation of a duty, and **'delegate'** has a corresponding meaning;

**'MFMA'** means the Local Government: Municipal Finance Management Act, 2003 [Act No. 56 of 2003], as amended from time to time;

**'municipal manager'** means a person appointed in terms of Section 82 of the Local Government: Municipal Structures Act, 1998 [Act No. 117 of 1998];

**'Municipal Structures Act'** means the Local Government: Municipal Structures Act No.117 of 1998, as amended from time to time;

**'Municipal Systems Act'** means the Local Government: Municipal Systems Act No. 32 of 2000, as amended from time to time;

**'political office bearer'**, in relation to the municipality, means the speaker, executive mayor, mayor, deputy mayor or a member of the executive committee referred to in the Municipal Structures Act;

**'political structure'**, in relation to the municipality, means the council or any committee or other collective structure of the municipality that has been elected, designated or appointed in terms of a specific provision of the Municipal Structures Act;

**'reserved power'** includes a power mentioned in Section 160(2) of the Constitution, the power to set tariffs, and the decision to enter into a service delivery agreement in terms of Section 76(b) of the Municipal Systems Act, and to approve or amend the municipality's integrated development plan; and

**'staff'** or **'staff member'** means the employees of the municipality, including the municipal manager.

## 2. **Development of system of delegation**

The council shall develop a system of delegation that will maximise administrative and operational efficiency.

## 3. **Delegation of powers**

- (a) The council shall delegate appropriate powers, except reserved powers, to the appropriate political structure, political office bearer, councillor or staff member, so as to give effect to the objects of section 2.
- (b) A delegation of power, in terms of this section, shall include an instruction to any political structure, political office bearer, councillor or staff member to perform any of the municipality's duties.

#### 4. **Withdrawal of delegated powers**

A delegation in terms of section 3 may be withdrawn by the council at any time, provided that –

- (a) reasonable notification is given beforehand, unless the urgency of the matter prevents such notification; and
- (b) the administrative and operational efficiency of the municipality will not be prejudiced.

#### 5. **Requirements for delegation**

A delegation of power, in terms of section 3, shall -

- (1) not conflict with the Constitution or applicable local government legislation;
- (2) be recorded in writing, in a resolution adopted by the council;
- (3) be subject to any limitations, conditions and directions the council may impose;
- (4) not divest the council of the responsibility concerning the exercise of the power, or the performance of the duty; and
- (5) be reviewed when a new council is elected or, if it is a district council, elected and appointed.

#### 6. **Review of delegated power**

- (a) In accordance with the procedures contained in its standing rules, or at the request in writing of at least  $\frac{1}{4}$  (one quarter) of the councillors, the council must review any decision taken by a political structure, political office bearer, councillor or staff member in consequence of a delegation or instruction referred to in section 3, and either confirm, vary or revoke the decision, subject to any rights that may have accrued to a person as a result of such decision.
- (b) Where appropriate, the council may require its executive committee or 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 given in terms of section 3.

## **7. Certain delegations restricted**

- (1) The following powers may, within a policy framework determined by the council, only be delegated to either the executive mayor or executive committee -
  - (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 accounting officer may not delegate to any political structure or political office bearer, any of the powers or duties assigned to the accounting officer, in terms of the MFMA.

## **8. Referral of matters to delegating authority for decision**

A political structure, political office bearer, councillor or staff member to whom a delegating authority has delegated or sub-delegated a power may, or must, if instructed to do so by the relevant delegating authority, refer a matter to the relevant authority for decision.

## **9. Delegations in terms of the MFMA**

- (a) The accounting officer shall 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) No provision contained in this by-law shall be so construed as to limit or detract from the powers and duties of the accounting officer and chief financial officer, respectively, with regard to delegations, in terms of the MFMA.

## **10. Appeals**

- (1) A person whose rights are affected by a decision taken by a political structure, political office bearer, councillor or staff member, in terms of a power or duty delegated or sub-delegated by a delegating authority to such political structure, political office bearer, councillor or staff member, may appeal against that decision by giving written notice of the appeal, and reasons therefor, to the municipal manager, within 21 (twenty one) days of the date the appellant is notified of such 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 variation or revocation of a decision may detract from any rights that may have accrued to any person as a result of the decision.
- (4) If the appeal is against a decision taken by -
  - (a) a staff member other than the municipal manager, then the municipal manager shall be the appeal authority;
  - (b) the municipal manager, then the executive committee or executive mayor shall be the appeal authority; or
  - (c) a political structure, a political office bearer or a councillor –
    - (i) then the municipal council shall be the appeal authority where the council comprises fewer than 15 (fifteen) councillors; or
    - (ii) a committee of councillors who were not involved in the decision, and who are appointed by the municipal council for this purpose, shall be the appeal authority where the council comprises more than 14 (fourteen) councillors.
- (5) An appeal authority must commence with an appeal hearing within 6 (six) weeks of the appellant's submission of written notice of the appeal, and must decide the appeal within a period of 14 (fourteen) days calculated from the date of commencement of the appeal hearing.

#### **11. Duty to report to delegating authorities**

A political structure, political office bearer, councillor or staff member, 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.

#### **12. 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.

**13. Review of delegations**

- (1) Whenever it becomes necessary, in terms of section 5(5) of this by-law, to review the municipality's delegations, the municipal manager must submit to the council –
- (a) a report on the existing delegations, in terms of section 3, issued by the council and other delegating authorities;
  - (b) recommendations on any changes to the existing delegations, which changes the municipal manager may consider necessary.
- (2) The municipal manager must submit the report and any recommendations in terms of subsection (1) to the council, through the executive committee or executive mayor, as the case may be.

**14. Delegation or sub-delegation to staff member**

Any delegation or sub-delegation to a staff member of a power conferred on a municipal manager must be approved by the council, in accordance with the system of delegation referred to in section 2.

**15. Register of delegations and sub-delegations**

The municipal manager shall maintain a register, detailing all resolutions adopted by the council concerning delegations formed in terms of this by-law. Such details shall include the text of the council resolution, the date when such resolution was adopted, and the subject matter of such delegation.

**16. Decisions adopted under delegated power**

- (a) Any report containing a recommendation which, if adopted shall constitute a council resolution adopted under delegated power, shall contain a reference to the authority for such delegated power.
- (b) The authority for a decision adopted as a result of a delegated power shall be quoted in any applicable minute, or be endorsed on any document containing such decision.

**17. Regulations**

The municipality may make regulations not inconsistent with this by-law, prescribing –

- (a) any matter that may or must be prescribed in terms of this by-law; and
- (b) any matter that may facilitate the application of this by-law.

**18. Repeal of by-laws**

Any by-laws relating to the delegation of powers adopted by the municipality or any erstwhile municipal council now comprising an administrative unit of the municipality shall be repealed from the date of promulgation of this by-law.

**19. Short title**

This by-law is called the By-law Relating to the Delegation of Powers, 2004, and takes effect on a date determined by the municipality by proclamation in the Provincial Gazette.