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PROVINCIAL NOTICE

[NO. 181 OF 2011]

NOTICE IN TERMS OF SECTION 14 OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000: PUBLICATION: STANDARD DELEGATION OF POWERS BY-LAW

I, M.G Qabathe, Member of the Executive Council responsible for Cooperative Governance, Traditional Affairs and Human Settlement in the Free State, after consulting the Minister of Cooperative Governance and Traditional Affairs and the South African Local Government Association Free State, do hereby in terms of section 14(2)(a)(i) of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000), make standard by-laws as set out in the Schedule.

SCHEDULE

DELEGATION OF POWERS BY-LAW

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

Definitions
1. 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),
'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 1998(Act No. 117 of 1998);
'Municipal Systems Act' means the Local Government : Municipal Systems Act 2000 (Act No. 32 of 2000);
'municipality' means the …… Local Municipality established in terms of Section 12 of the Municipal Structures Act, and includes any political structure, political office bearer, councillor, duly authorised agent thereof or any employee thereof acting in connection with these by-laws by virtue of a power vested in the municipality and delegated or subdelegated to such political structure, political office bearer, councillor, agent or employee;
'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 of the Republic of South Africa, 1996 , the power to set tariffs, the decision to enter into a service delivery agreement in terms of Section 76(b) of the Local Government: 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.

Development of system of delegation –

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

Delegation of powers

3. (1) 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.
   (2) A delegation of power in terms of this section must include an instruction to any political structure, political office bearer, councillor or staff member to perform any of the municipality's duties.

Withdrawal of delegated powers

4. A delegation in terms of section 3 may be withdrawn by the council at any time, provided that -
   (1) reasonable notification is given beforehand, unless the urgency of the matter prevents such notification; and
   (2) the administrative and operational efficiency of the municipality will not be prejudiced.

Requirements for delegation

5. A delegation of power in terms of section 3 must
   (1) not conflict with the Constitution of the Republic of South Africa,1996 the Municipal Structures Act or the Municipal Systems Act;
   (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.

Review of delegated power

6. (1) In accordance with the procedures contained in its rules and orders or at the request in writing of at least 25% (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.
   (2) 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.

Certain delegations restricted

7. (1) Where the municipality is a type that is entitled to have an executive committee or an executive mayor, the following powers may, within a policy framework determined by the council, only be delegated to such executive committee or executive mayor, as the case may be -
      (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.

Referral of matters to delegating authority for decision

8. A political structure, political office bearer, councillor or staff member to whom a power or authority is 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.

Delegations in terms of the MFMA

9. (1) The accounting officer must 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.

(2) No provision contained in this by-law must be construed as limiting or detracting from the powers and duties of the accounting officer and chief financial officer, respectively, with regard to delegations in terms of the MFMA.

Appeals

10. (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 appeal and reasons therefore 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 10(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 must be the appeal authority;

(b) the municipal manager, then the executive committee or executive mayor must be the appeal authority, or if the municipality does not have an executive committee or executive mayor, then the council must be the appeal authority; or

(c) a political structure, political office bearer or a councillor -

(i) then the municipal council shall be the appeal authority where the council comprises less 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 must 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.

Duty to report to delegating authorities

11. 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.

Withdrawal, amendment or lapsing of delegation or sub-delegation

12. 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.

Review of delegations

13. (1) Whenever it becomes necessary in terms of section 5(5) to review the municipality's delegations, the municipal manager must submit to the council -

(a) a report en the existing delegations issued in terms of section 3 by the council and other delegating authorities;

(b) recommendations on any changes to the existing delegations which the municipal manager may consider necessary.

(2) If the municipality has an executive committee or executive mayor, then the municipal manager must submit the report and any recommendations in terms of sub-section (1) to the council through the executive committee or executive mayor, as the case may be.

Delegation or sub-delegation to staff member

14. 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.

Register of delegations and sub-delegations

15. The municipal manager shall maintain a register detailing all resolutions adopted by the council concerning delegations made 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.

Decisions adopted under delegated power

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

Regulations

17. 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.

Repeal of by-laws

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

Short title

19. This by-law is called the Delegation of Powers By-law, 2011.