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## Chapter 1: Policy framework for delegation of powers and functions

### DEFINITIONS

- (1) In this document, unless the context indicates otherwise, words and expressions denoting -
- (a) the singular shall include the plural and vice versa;
  - (b) the masculine gender shall include the feminine gender and vice versa; and
  - (c) a reference to a natural person shall include a legal person and vice versa.
- (2) In this document, unless the context otherwise indicates –
- (a) “**accounting officer**” means the Municipal Manager;
  - (b) “**administration**” means the Municipal Manager and the other employees of the municipality;
  - (c) “**after consultation**” means with due regard for the views of any person with whom a delegating authority is required to consult before he exercises a delegated or sub-delegated power;
  - (d) “**area of jurisdiction**” means the municipal outer boundaries, determined by the Municipal Demarcation Board in terms of section 21, read with section 5 of the Local Government: Municipal Demarcation Act, 1998 (Act 27 of 1998), for the Municipality and identified in the demarcation notices as “**DC20**”, and published in Provincial Gazette No 14 of 28 February 2000, Gazette 30 of 5 May 2000, Provincial Gazette No 60 of 2 June 2000 and Provincial Gazette No 89 of 14 July 2000 or as later amended;
  - (e) “**Chief Financial Officer**” means the person designated by the Municipal Manager as the Chief Financial Officer for the Municipality;
  - (f) “**Constitution**” means the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996);
  - (g) “**council**” means the municipal council of the Fezile Dabi District Municipality, its legal successors in title and its delegates;
  - (h) “**delegating authority**,” in relation to a delegation of a power by the council, means the council, and in relation to a sub-delegation of a power by a delegated body, means that delegated body;
  - (i) “**delegation**” means the authorisation of a delegated power by a delegating authority to act in his stead, and in relation to a power included an instruction to exercise the power, or perform a function and “delegate” has a corresponding meaning;
  - (j) “**delegated body**” in relation to the delegation of a power means the political structure, political office bearer or employee to whom a power has been delegated by the delegating authority in writing;
  - (k) “**housing**” means the right to have access to adequate housing as provided for in section 26 of the Constitution of the RSA, 1996, delivery of housing as provided for in the Housing Act (Act 107 of 1997), Part IV of the Act, more specifically requirements for municipalities to formulate housing strategies and targets and to incorporate these into the “*IDP - integrated development plans*”;

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- (l) **“housing sector plan”** means a planning document, which form part of the Fezile Dabi District Municipality’s IDP, intended to be a well – resourced guide and strategic planning document that will help the Division Housing and Property Administration, Municipality and Provincial Government, to achieve the objectives for delivery of housing;
  - (m) **“in consultation”** means with the concurrence of the person with whom a delegating authority must consult before exercising a delegated or sub-delegated power;
  - (n) **“MFMA”** means the local Government: Municipal Finance Management Act 2003 (Act No 56 of 2003);
  - (o) **“municipality”** means **“District Municipality of Fezile Dabi”** established in terms of section 12 of Act no 117 of 1998 and Provincial Notice no 185 of 2000, Part 5, published in the Free State Provincial Gazette no 113 dated 28 September 2000, as amended and implemented from 8 December 2000 or as amended;
  - (p) **“municipal assets”** mean the assets, immovable property, rights and obligations in so far as they were, immediately before 8 December 2000, and further provided for in sections 74 to 77 of the Local Government Ordinance, No.8 of 1962, section 16 of the Townships Ordinance, No. 9 of 1969 or other applicable legislation;
  - (q) **“open spaces”** mean any **undeveloped or unoccupied** street, -road, -thoroughfare, -sanitary passage, -square, -park, -erf or -open space shown on a general plan of a township or settlement, filed in the deeds registry or Surveyor-Generals office, and all land or farmland which is not utilized for farming activities (leased) or required or earmarked for municipal purposes, the control whereof is vested in the municipality;
  - (r) **“power”** includes a duty and a function;
  - (s) **“political office bearer,”** in relation to the municipality, means the Executive Mayor and the Speaker, elected by the council to such a post or position in accordance with the provisions of the Structures Act;
  - (t) **“political structure,”** in relation to the municipality, means the council or any committee or other collective structure of the municipality elected, designated or appointed in accordance with the provisions of the Structures Act;
  - (u) **“Structures Act”** means the Local Government : Municipal Structures Act, 1998 (Act No 117 of 1998);
  - (v) **“Systems Act”** means the Local Government : Municipal Systems Act, 2000 (Act No. 32 of 2000).

## 1. MUNICIPAL CODE

This document, any amendments thereof and annexure thereto form part of the Municipal Code of the Fezile Dabi District Municipality in terms of section 15 of the Structure Act.

## 2. POWERS OF FEZILE DABI DISTRICT MUNICIPALITY

- (1) Fezile Dabi District Municipality has all the powers assigned to it in terms of the Constitution as well as national and provincial legislation. The municipality has the right to do anything reasonably necessary for or incidental to the effective exercising of its powers.
- (2) The executive and legislative authority of the municipality vests in the council, and the council takes all the decisions of the municipality except -
  - (a) decisions on those matters that have been delegated;
  - (b) decisions on those matters that have by law been assigned to a political structure, political office bearer or employee of the municipality.
- (3) The council may exercise executive and legislative authority within the municipal area of Fezile Dabi District Municipality only, but may, by written agreement with another municipality, exercise executive authority in the area of that other municipality.
- (4) All the powers of the municipality that have not been reserved for the council, or that have not been delegated to a political structure, political office bearer or employee of the council, are delegated to the Executive Mayor.
- (5) The Council shall not exercise the powers reserved for it by law or in terms of this policy unless it has received a report and recommendations from the Executive Mayor.
- (6) The following powers are reserved for the Council in terms of legislation and shall not be delegated by Council:

### 6.1 Constitution of the Republic of South Africa 1996, section 160(2):

- (a) The passing of by-laws;
- (b) the approval of budgets;
- (c) the imposition of rates and other taxes, levies and duties (where applicable); and
- (d) the raising of loans.

**6.2 Systems Act, section 59(1):**

- (a) the power to set the tariffs;
- (b) the power to decide to enter into a service delivery agreement in terms of section 76(b) of the Act; and
- (c) the power to approve or amend the municipality's integrated development plan.

**6.3 Structure Act, section 34(1)**

- (a) deciding to dissolve the Council

**6.4 Remuneration of Public Office-Bearers Act 1998 (Act No 20 of 1998), section 7(3)**

- (a) determining the salary and allowances of councillors

**6.5 National Building Regulations and Building Standards Act 1973 (Act No 103 1977), section 5**

- (i) appointment of a Building Control Officer

**6.6 Local Government: Municipal Finance Management Act 2003 (Act No 56 of 2003), section 14(2)**

- (a) Deciding whether a capital asset is needed to provide the minimum level of basic municipal services;
- (b) Deciding that a capital asset that is not needed to provide the minimum level of basic municipal services may be disposed of; and
- (c) Considering the fair market value of the asset and the economic and community value to be received in exchange for the capital asset to be disposed of.

**3. OBJECTIVES OF DELEGATIONS**

(1) The objectives of this system of delegation are –

- (a) to maximize administrative and operational efficiency;
- (b) to provide for adequate checks and balances;
- (c) to delegate decision-making to the most effective level within the administration;
- (d) to involve employees in decision-making as far as practicable;
- (e) to promote a sense of collective responsibility for performance; and

- (f) to assign clear duties for the management and co-ordination of the municipality's administrative components, systems and mechanisms.

#### **4. PRINCIPLES, CONDITIONS AND LIMITATION OF DELEGATED POWERS**

- (1) A delegation or sub-delegation of a power to a delegated body –
  - (a) must not conflict with the Constitution, or any other law;
  - (b) must be in writing under signature of the delegating authority, provided that in the case of a delegation by the Council or the Executive Mayor it shall be sufficient for the resolution delegating the power to be certified by the Speaker (in the case of council resolutions) or the Executive Mayor in any other case;
  - (c) may at any time be withdrawn by the delegating authority in writing;
  - (d) may include the authority to sub-delegate a delegated power;
  - (e) does not divest the delegating authority of the responsibility concerning the exercise of the power;
  - (f) must be reviewed when a new Council is elected;
  - (g) is subject to the limitations, conditions and directions imposed by the delegating authority; and
  - (h) includes any power reasonably necessary for, or incidental to the delegated power
  
- (2) An employee who has been delegated a power by a delegating authority or sub-delegated a power by a delegated body may act thereon through any employee under his/her control.
  
- (3) The following conditions and limitations apply to any power that had been delegated by a delegating authority or sub-delegated by a delegated body –
  - (a) The delegated body must give effect to the policies of the municipality as approved from time to time by the Council.
  - (b) The delegated body may at any time decide not to exercise the delegated power, but to submit the matter to the delegating authority for decision. In such event the delegated body must submit his report and recommendations on the matter to the delegating authority for consideration.
  - (c) The delegating authority may at any time instruct the delegated body not to act on a delegated power in relation to a specific matter, but to submit the matter to it for decision and execution. In such an event the delegated body must submit its report and recommendations on the matter to the delegating authority.
  - (d) A delegated body may not incur expenditure in the exercising of a delegated power that may result in unauthorized, irregular or fruitless and wasteful expenditure.
  - (e) A delegated power must be exercised in a lawful manner.
  - (f) A decision taken by a delegated body in terms of his delegated powers must be in writing.
  - (g) A delegation contained in this document does not affect the exercise, performance or discharge of any power, function or duty assigned in terms of a service delivery agreement by a service provider.

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- (4) The conditions stated above do not necessarily include all the prescripts, conditions and limitations contained in the relevant legislation; nor do the conditions contained in this document exempt a delegated body from complying with such conditions. Every delegated body and delegating authority must still comply with any condition and prescripts that may be contained into legislation and that are not contained in this document.
  - (5) Except a report of the Speaker, the council shall not consider a report submitted or tabled by any person or body unless such report has attached to it the comment and recommendations of the Executive Mayor. Except a report of a member of the mayoral committee, the Executive Mayor shall not consider a report submitted or tabled by any person or body unless such report has attached to it the comment and recommendations of the Municipal Manager.

## **6. APPEAL AGAINST, AND REVIEW OF DECISIONS TAKEN IN TERMS OF DELEGATED POWERS**

- (1) A person, whose rights are affected by a decision taken by a delegated body, may appeal against that decision by giving written notice of and reasons for the appeal to the Municipal Manager within 21 days of the date of the notification of the decision.
- (2) The Municipal Manager must promptly submit any appeal that he may receive to the appropriate appeal authority mentioned in subsection (c) that must decide the appeal in the manner and within the time set out in the systems act.
- (3) The appeal authority must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.
- (4) When the appeal is against a decision taken by –
  - (a) a staff member other than the Municipal Manager, the Municipal Manager is the appeal authority;
  - (b) the Municipal Manager, the Executive Mayor is the appeal authority, or if the municipality does not have an Executive Mayor, the Council of the municipality is the appeal authority; or
  - (c) a political structure or political office bearer, or a councillor-
    - (i) the Council is the appeal authority where the Council comprises less than 15 councillors; or
    - (ii) a committee of councillors who were not involved in the decision and appointed by the Council for this purpose is the appeal authority where the council comprises more than 14 councillors.
- (5) An appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable period.

## **7. WITHDRAWAL, AMENDMENT OF DEEGATED POWERS AND REVIEW OF DELEGATION SYSTEM**

- (1) With due regard for the objectives of the system of delegation set out above, a delegating authority may at any time, in writing, withdraw or amend a delegated power or impose additional conditions and limitations on delegated powers.

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- (2) The withdrawal, amendment or lapse of a delegation or sub-delegation does not invalidate anything done as a consequence of a decision taken in terms that delegation or sub-delegation before such withdrawal, amendment or lapse.
  - (3) Whenever it becomes necessary to review the municipality's delegation of powers, the Municipal Manager must submit a report on the existing delegations with recommendations on any changes there to which she/he may consider necessary, to the council through the Executive Mayor.

## **8. POWERS RELATED TO DELEGATIONS OF POWERS CONFERRED IN TERMS OF MFMA.**

### **“Delegations of mayoral powers and duties”**

- (1) In terms of section 59 (1)(b) of the MFMA the Executive Mayor may delegate the powers conferred upon him to a member of the mayoral committee.
- (2) A delegation by the Executive Mayor-
  - (a) must be in writing;
  - (b) is subjected to any limitations or conditions that the Executive Mayor may impose; and
  - (c) does not divest the Executive Mayor of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.
- (3) The Executive Mayor may confirm, vary or revoke any decision taken in consequence of a power delegated by him, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

### **“System of delegations”**

- (1) In terms of section 79 of the MFMA the accounting officer must, for the proper application of the MFMA in the municipality's administration, develop an appropriate system of delegation that will both maximize administrative and operational efficiency and provide adequate checks and balances in the financial administration. The accounting officer may, in accordance with the system of delegation, delegate to a member of the municipality's top management and any other official of the municipality-
  - (a) any of the powers or duties assigned to an accounting officer in terms of the MFMA; and
  - (b) any powers or duties reasonably necessary to assist the accounting officer in complying with a duty which, requires the accounting officer to take reasonable or appropriate steps to ensure the achievement of the aims of a specific provision of the MFMA.
  - (c) The accounting officer -
    - (i) must regularly review delegations she issued and if necessary, must amend or withdraw any of those delegations; and

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- (ii) may not delegate to any political structure or political office-bearer of the municipality any of the powers or duties assigned to accounting officers in terms of MFMA.

**“Delegation of powers and duties by accounting officer”**

- (a) must be in writing;
- (b) is subjected to such limitations and conditions as the Municipal Manager may impose in a specific case;
- (c) may either be made to a specific individual or to the holder of a specific post in the municipality;
- (d) may, in the case of a delegation to a member of the municipality’s top management, authorize that member to sub-delegate the delegated power or duty to an official or the holder of a specific post in that member’s area of responsibility; and
- (e) does not divest the accounting officer of the responsibility concerning the exercise of the delegated power of the performance of the delegated duty

The accounting officer may confirm, vary or revoke any decision taken in consequence of a delegation of a power by him or a sub-delegation, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

**“Delegation of powers and duties by Chief Financial Officer”**

- (1) The Chief Financial Officer may, in terms of section 82 of the MFMA, delegate any of the following duties conferred upon him-
  - (a) to an official in the Budget and Treasury Office of the municipality;
  - (b) to the holder of a specific post in that Office;
  - (c) with the concurrence of the accounting officer to any official of the municipality; or
  - (d) with the concurrence of the accounting officer to any person contracted by the Municipality for the work of the Budget and Treasury Office, provided that a sub-delegation to such a person may only be made if the Chief Financial Officer is satisfied that effective systems and procedures are in the place to ensure control and accountability.
  
- (2) A delegation or sub-delegation by the Chief Financial Officer-
  - (a) must be in writing;
  - (b) is subject to such limitations or conditions as he/she may impose; and
  - (c) does not divest him/her of the responsibility concerning the delegated or sub-delegated duty.
  
- (3) The Chief Financial Officer may confirm, vary or revoke any decision taken on consequence of a delegation or sub-delegation by him/her but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

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**9. DUTY TO REPORT TO DELEGATING AUTHORITIES**

- (1) A political structure, political office bearer, councillor or staff member of a municipality 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 since the last report.

**10. GENERAL CONDITIONS APPLICABLE TO DELEGATIONS**

- (1) Whenever a decision is taken in terms of a delegated power the exercise of this power is subject to the following conditions:-
- (a) Compliance with all relevant legislation and council policies - In respect of council's policies it must be understood that any existing or future policies will determine the parameters of any delegation and the delegated body is bound to comply therewith. Non-compliance will cause any decision so taken to be *ultra vires*.
  - (b) Compliance with Council's IDP and Budget - In executing delegated powers no expenditure may be incurred unless the delegated body is satisfied that the council has budgeted for the expenditure and that the funds are still available on the relevant budget votes.
  - (c) The delegator may at any stage withdraw any delegated power.
  - (d) The delegator may determine whether a report is needed motivating the decision and whether the decision must be reduced to writing. If a report is required then it must indicate that all legal and financial requirements have been met.
  - (e) A delegation may set out special circumstances in which a delegated body is prohibited from exercising his/her delegated power, for example if the delegated body is recommending the rejection of the most financially beneficial offer.
  - (f) Any sub-delegation must be reduced to writing and recorded in the delegation register, which must be kept updated at all times by the Municipal Manager and the Directors.
  - (g) All decisions affecting the rights of others must be in writing and reasons must be recorded for such decisions.

**11. UPDATING AND MAINTENANCE OF SYSTEM AND DELEGATED POWERS**

The accounting officer is responsible for the maintenance and updating of this system and delegated powers and may delegate such powers and functions.