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MUNICIPAL ENTITIES (POLICY NUMBER 12619)

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MUNICIPAL ENTITIES POLICY

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Definitions and abbreviations

“**City**” means the City of Cape Town, a municipality established by the City of Cape Town Establishment Notice No. 479 of 22 September 2000, issued in terms of the Local Government: Municipal Structures Act, 1998, or any structure or employee of the City acting in terms of delegated authority;

“**Council**” means the Municipal Council of the City established by Provincial Notice 479 of 2000 issued in terms of section 12 of the Local Government: Municipal Structures Act, 1998, (Act 117 of 1998); and includes any committee or official carrying out any duty or function, or exercising any power in terms of this By-law;

“**Director**” means a director serving on the board of directors of a municipal entity; “**Mayco**” means the Mayoral Committee consisting of Executive Deputy Mayor and other municipal councillors as appointed in terms of section 60 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“**MFMA**” means the Local Government: Municipal Finance Management Act, 2003 (Act No.56 of 2003);

“**Municipal entity**” means –

- (a) A private company referred to in section 86B (1) (a);

“**Municipal representative**” means a councillor or official who has been designated as such in terms Section 93D of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) to –

- (a) represent the City’s as a non-participating observer at meetings of the board of directors of the municipal entity concerned; and
- (b) Attend shareholder meetings and to exercise the City’s rights and responsibilities as a shareholder, together with such other councillors or officials that Council may designate as representatives.

“Systems Act” means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).

Problem statement

1. As parent municipality the City is responsible for oversight and monitoring of its municipal entities. The Shareholding Management Department is responsible for co-ordinating this responsibility on behalf of the City.

Desired outcomes

2. This policy seeks to supplement existing legal imperatives to enable the City to perform its monitoring and oversight role over municipal entities. The policy further consolidates existing policies relating to municipal entities into one policy and clarifies lines of authority for municipal representatives and the Director: Shareholding Management.

Strategic intent

3. The Strategic focus area of this policy is to assist the City in one of the IDP mandates i.e. *“The well- run City”*. The objective is to ensure a transparent and corruption-free government which is essential for the success of all other programmes of the City.

Policy parameters

4. The City, as parent municipality to its municipal entities, is required to monitor and have oversight of the entities. As part of its oversight role, the City aims to adopt a framework for appointing directors to the boards of the municipal entities. This Municipal Entity policy sets out –
 - 4.1 The legal imperatives as required by the Systems Act and the MFMA.
 - 4.2 The authorisations needed to effectively monitor and conduct the necessary oversight of the municipal entities.

Role Players and Stakeholders

5. (1) **Municipal entity, including -**
 - (a) the boards of directors and administration;
 - (b) Chairpersons of the Boards of a Municipal Entities; and
 - (c) Accounting Officers of a Municipal Entities

- (2) **City -**
 - (a) Mayco Members who have oversight of municipal entities;
 - (b) Director: Shareholding Management of the City;

- (c) Shareholding Management Department of the City; and
- (d) Other Line Departments of the City.

Regulatory context

6. Parent municipalities and municipal entities are governed by Chapter 8A of the Systems Act and in terms of the MFMA, particularly Chapter 10. Full citation of relevant legislative provisions are highlighted and paraphrased from clauses 8 of this policy.

Policy directive details

7. This policy sets out the requirements and authorities for four distinct aspects in respect of the City's role in interacting with its municipal entities, that is –
- (a) Processes for the Appointment Process for Directors to a Board of a Municipal Entity
 - (b) Processes for the Designated Municipal Representatives of a Municipal entity
 - (c) Processes for the Performance Management and Budgeting of a Municipal Entity
 - (d) Processes for the Corporate Governance and Legislative Checklist of a Municipal entity.

Appointment Process for Directors to a Board of a Municipal Entity

- 8.1. Section 93E (2) of the Systems Act provides that *“the parent municipality of a municipal entity must, before nominating or appointing directors of the municipal entity, establish a process through which -*
- (a) Applications for nomination or appointment are widely solicited;*
 - (b) A list of all applicants and any prescribed particulars concerning applicants is compiled; and*
 - (c) The municipal council makes the appointment or nomination from such list.”*
- 8.2 In accordance with section 93E (2) of the Systems Act, the following process must be followed:
- a) The Nominations Committee of the municipal entity, in consultation with the Director: Shareholding Management shall identify the requirements needed on the board in terms of skills, demographics and diversity.
 - b) The Director: Shareholding Management must advertise for the recruitment of directors in accordance with the City's advertising requirements.
 - c) The Director: Shareholding Management must compile a list of all candidates who have applied and create a shortlist of candidates to be interviewed.

- d) The Director: Shareholding Management must convene an internal selection panel. The panel may include the Members of Mayco responsible for the Municipal Entity, the relevant Executive Director and the Director: Shareholding Management Department.
- e) The selection panel will interview candidates, agree on the suitable candidates to be nominated to be recommended to the Executive Mayor.
- f) If the advertising process does not produce suitably qualified candidates, the Director: Shareholding Management may approach suitable candidates directly (head hunting).
- g) The Director: Shareholding Management must ascertain whether successful candidates are fit and proper and whether they are not disqualified from being directors in terms of section 93F of the Systems Act, the Companies Act and King code on Corporate Governance before submitting the name of the suitable candidates to the Executive Mayor.
- h) Once the Executive Mayor has approved the recommendation for appointment on the boards of various municipal entities, such decision will be communicated and the list of newly appointed directors provided to boards of directors for formal appointments.
- i) The Shareholding Management Department shall maintain a database where all the details of the shortlisted candidates will be kept for a period of two years for the possible future appointment to the boards of municipal entities. The City has a discretion as to whether any names on the database will be used for future appointments.

Designated Municipal Representatives

9.1 Section 93D of the Systems Act provides that the Council of a parent municipality must designate a councillor or an official of the parent municipality, or both, as the representative or representatives of the parent municipality to represent the parent municipality as a non-participating observer at meetings of the board of directors of the municipal entities and to attend shareholder meetings and to exercise the parent municipality's rights and responsibilities as a shareholder.

9.2 The Municipal Representative/s must –

- (a) attend board meetings of municipal entities and represent the Council as a non-participating observer/s;
- (b) give feedback to the City on the discussions/and any decisions taken at board meetings when necessary.

- (c) not participate in any decision making by the board of directors;
 - (d) attend any shareholder meetings and exercise the rights and responsibilities of a parent municipality as a shareholder and in this respect vote as instructed/directed by the Executive Mayor;
 - (e) represent the City faithfully at shareholder meetings, without consideration of personal interest or gain;
 - (d) inform the Council in a report format of how voting rights were exercised at shareholder meetings;
 - (e) inform the Council in a report format of all relevant actions taken on its behalf at shareholder meetings;
 - (f) ensure that all issues of concern or queries raised by the municipal entity and affecting the City are attended to and resolved by the line departments within the City;
 - (a) bring to the attention of the City any non-compliance issues in respect of service delivery agreements or strategy alliance with the City, if such issues are raised at board meetings;
 - (b) ensure that the relevant mayoral committee members are kept up to date with any new developments taking place within the municipal entities;
 - (c) be accountable to the Executive Mayor
- 9.3 The municipal representative may, in terms of section 93D (3) (b)(ii) of the Systems Act, be reimbursed for any expenses, travel and parking, incurred in connection with his/her duties as a municipal representative but may not receive any additional compensation or salary for performing such duties.
- 9.4 Municipal Representatives may attend board committee meetings and Audit Committee meetings if invited by the municipal entity.

Performance Management and Budgeting

- 10.1 The Director: Shareholding Management must undertake an annual assessment of the performance of the municipal entity in respect of its approved business plan for the previous financial year based on agreed indicators.
- 10.2 The Director: Shareholding Management, after consultation with the councillor designated municipal representative, is authorised to approve the key financial and non-financial performance objectives and measurement criteria of each municipal entity and must ensure that these align with the IDP. Any amendment to key performance objectives requested by the board of a municipal entity during a financial year may be authorised by the Director: Shareholding Management, after consultation with the councillor designated municipal representative.

- 10.3 The Director: Shareholding Management is authorised to make recommendations and refer back any proposed budget amendments to each municipal entity as required by S 87(2) of the MFMA. Any revised budget and business plan submitted by a municipal entity must be assessed against the recommendations made by the Director: Shareholding Management before submission to full council.
- 10.4 The Director: Shareholding Management must ensure that each municipal entity completes a quarterly Performance Assessment, including the Mid-Year review, which will form part of the City's SDBIP reporting processes.
- 10.5 The Director: Shareholding Management must ensure that the municipal entities meet their in year reporting requirements as required by the MFMA and the Regulations on Budgeting and Reporting.

Corporate Governance and Legislative Checklist

11. The Director: Shareholding Management may compile a Corporate Governance and Legislative Checklist and at the Director: Shareholding Management's discretion may require a municipal entity to complete the checklist.

Delegation by Director: Shareholding Management

12. The Director: Shareholding Management may delegate any power or authorisation conferred on him or her in terms of this Policy to a manager reporting directly to him/her, including the powers and authorisations of a municipal representative.

Review and set-aside of Existing Policies

13. The following policies have been reviewed and set aside by the adoption of this policy:
- (a) Policy and Process for the Appointment of Director/Trustees of the Boards of Municipal Entities (C72/10/07 31 October 2007);
 - (b) Corporate Governance and Legislative Checklist (C72/10/07 31 October 2007);
 - (c) Appointment and Terms of Reference of Municipal Representatives in terms of the Local Government: Municipal Systems Act, 2000 (C72/10/07 31 October 2007);
 - (d) Reporting Framework for Monthly and Annual Reporting by the Municipal Entities of the City of Cape Town (C72/10/07 31 October 2007); and
 - (e) Business Planning Framework (C72/10/07 31 October 2007)

Implementation programme

14. This Policy will commence on 1 July 2013.

Monitoring, evaluation and review

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15. The Director: Shareholding Management is responsible for the monitoring and evaluation of municipal entities. This Policy is a mechanism to assist the Director.
16. The Policy will be reviewed annually by the Director: Shareholding Management.