



**CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD**

**ANNEXURE 18  
MUNICIPAL ENTITIES POLICY**

**May 2020**



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## 1. 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;

“**Companies Act**” means the Companies Act 2008 (Act No.71 of 2008)

“**Director**” means a director serving on the board of directors of a municipal entity;

“**Mayco**” means the Mayoral Committee 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 municipal entity referred to in section 86B (1) (a) of the Systems Act;

“**Municipal representative**” means a councillor or official who has been designated as such in terms Section 93D of the Systems Act 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.

“**Municipal Representative (councillor)**” means a councillor who has been designated as a municipal representative.

“**Municipal representative (official)**” means an official who has been designated as a municipal representative.



**“Audit and Performance Audit Committee”** means the Audit and Performance

Audit Committee of the City appointed in terms of Regulation 14(2) of the Municipal Planning and Performance Management Regulations made in terms of the Systems Act.

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

## 2. PROBLEM STATEMENT

As parent municipality the City is responsible for oversight and monitoring of its municipal entities.

## 3. STRATEGIC FOCUS AREAS

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.

## 4. ROLE PLAYERS AND STAKEHOLDERS

### 4.1 Municipal entity, including -

- (a) the boards of directors and administration;
- (b) Chairpersons of the Boards of Municipal Entities;
- (c) Accounting Officers of Municipal Entities; and
- (d) Members of the Audit and Risk Committees.

### 4.2 City -

- (a) Executive Mayor;
- (b) Mayco Members who have oversight of municipal entities;
- (c) Audit and Performance Audit Committee;
- (d) Municipal Representatives; and
- (e) Line Departments of the City.



## 5. REGULATORY CONTEXT

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 –

- (a) The legal imperatives as required by the Systems Act, MFMA and the Companies Act.
- (b) The authorisations needed to effectively monitor and conduct the necessary oversight of the municipal entities.
- (c) How the City's rights and responsibilities as a shareholder are exercised.

5.1 Parent municipalities and municipal entities are governed by Chapter 8A of the Systems Act and in terms of the MFMA, particularly Chapter 10. Where municipal entities are companies, the requirements of the Companies Act must also be considered and applied.

5.2 Section 56 of the MFMA provides for the oversight framework:

*“(1) The mayor of a municipality which has sole or shared control over a municipal entity, must guide the municipality in exercising its rights and powers over the municipal entity in a way—*

*(a) that would reasonably ensure that the municipal entity complies with this Act and at all times remains accountable to the municipality; and*

*(b) that would not impede the entity from performing its operational responsibilities.”*

5.3 Section 93D of the Systems Act requires that the *Council of the City must designate a councillor or an official of the City or both, as the representative or representatives of the City –*

*(a) to represent the City as a non-participating observer at meetings of the board of directors of the municipal entity concerned;*

*(b) to attend shareholder meetings; and*

*(c) to exercise the City's rights and responsibilities as shareholder.*

*“To designate a Councillor or an official as municipal representative in terms of section 93D of the Systems Act and to instruct the municipal representative how to exercise the City's rights and responsibilities as a shareholder”* has been delegated by Council in terms of the Systems of Delegation.



5.4 The monitoring and oversight exercised over the municipal entities by the City should always be governed by the following principle as found in municipal legislation set out below:

- (a) Systems Act - *“93A Duties of parent municipalities with respect to municipal entities.*

*The parent municipality of a municipal entity –*

- (b) *must allow the board of directors and chief executive officer of the municipal entity to fulfil their responsibilities”.*

- (b) MFMA - Exercise of rights and powers over municipal entities

*“56(2) In guiding the municipality in the exercise of its rights and powers over a municipal entity in accordance with subsection (1), the mayor may monitor the operational functions of the entity, but may not interfere in the performance of those functions.”*

5.5 Section 93E (2) of the Systems Act provides that *“the parent municipality of a municipal entity must, before nominating or appointing a director, 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.”*

## 6. PURPOSE

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.

## 7. POLICY DIRECTIVE DETAILS

### 7.1 Appointment Process for Directors nominated by the City to a Board of a Municipal Entity

In accordance with section 93E (2) of the Systems Act, the following process must be followed:



- a) The relevant Municipal Representatives, in consultation with the board of the municipal entity, shall identify the requirements needed on the board in terms of skills, demographics and diversity.
- b) The relevant Municipal Representative (official) must advertise for the recruitment of directors in accordance with the City's requirements, subject to the provisions of paragraph (h) below.
- c) The relevant Municipal Representative (official) must compile a list of all candidates who have applied.
- d) The delegated authority, who has the power and function to appoint, remove or recall a director of a municipal entity, must appoint a City selection panel which may include Members of Mayco, the relevant Executive Director and the relevant Municipal Representatives.
- e) The selection panel must create a shortlist of candidates to be interviewed.
- f) The selection panel will interview candidates, agree on the suitable candidates to be nominated for recommendation the delegated authority for appointment.
- g) If the advertising process does not produce suitably qualified candidates, the relevant Municipal Representative (official) may approach suitable candidates directly to be interviewed by the selection panel.
- h) The relevant Municipal Representative (official) shall maintain a database where all the details of all candidates will be kept for a period of two years for possible future appointments to the boards of the municipal entities. The City selection panel may utilise the database to create a shortlist of candidates to be interviewed and nominated to the delegated authority for appointment.
- i) The relevant Municipal Representative (official) 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 delegated authority for appointment.
- j) Once the delegated authority 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.



## 7.2 Designated Municipal Representatives

- a) The delegated authority is authorised to designate a councillor or an official, or both, as a municipal representative for a municipal entity.
- b) The delegated authority may instruct the municipal representatives on how to exercise the rights and responsibilities of the City as shareholder at shareholder meetings.
- c) The Municipal Representative/s must –
  - (i) attend board meetings of municipal entities and represent the Council as a non-participating observer/s;
  - (ii) give feedback to the City on the discussions/and any decisions taken at board meetings;
  - (iii) not participate in any decision making by the board of directors;
  - (iv) 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 delegated authority. The municipal representative (official) will submit a report to the delegated authority before the Annual General Meeting of the municipal entity to obtain a mandate in this regard;
  - (v) represent the City faithfully at shareholder meetings, without consideration of personal interest or gain;
  - (vi) inform the Council in a report format of how voting rights were exercised at shareholder meetings;
  - (vii) inform the Council in a report format of all relevant actions taken on its behalf at shareholder meetings;
  - (viii) 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;
  - (ix) 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;
  - (x) ensure that the relevant mayoral committee members are kept up to date with any new developments taking place within the municipal entities;
  - (xi) be accountable to the Executive Mayor.
- d) The municipal representative may, in terms of section 93D (3) (b)(ii) of the Systems Act, be reimbursed for any expenses in connection with his or her duties as a municipal representative, but may not receive any additional compensation or salary for such duties.
- e) Municipal Representatives may attend board committee if invited by the municipal entity.



### **7.3 Performance Management and Budgeting**

- a) The relevant Municipal Representative (official) 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.
- b) The Executive Mayor is authorised to approve the key financial and nonfinancial 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 Executive Mayor.
- c) The Chief Financial Officer or his nominee 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 Chief Financial Officer before submission to full council.
- d) The relevant Municipal Representative (official) 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.
- e) The Audit and Performance Audit Committee may request the attendance of the Chief Executive Officer of a Municipal Entity to attend any meetings of the Committee to answer any performance related questions.
- f) The relevant Municipal Representative (official) must ensure that the municipal entities meet their in year reporting requirements as required by the MFMA and the Regulations on Budgeting and Reporting.

### **7.4 Delegation by Municipal Representative (official)**

The relevant Municipal Representative (official) 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.



## 8. IMPLEMENTATION, EVALUATION AND REVIEW OF THE POLICY

This amended policy will replace its former version upon approval by Council and will be reviewed annually by the Chief Financial Officer in order to assess the following and provide recommendations to Council for proposed updates:

- a) Effectiveness of directives in achieving outcomes associated with monitoring and oversight of entities.
- b) Whether any other contextual changes require that the policy is updated (e.g. changes to National Legislation or structures of Council).