

MCLM
Draft
Petitions
Policy
Framework

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This draft framework has been developed to assist MCLM and OOTS with the Petition Process. It is the understanding that a petition is a request, representation, submission or complaint lodged by a member/s of the public to MCLM about an issue that the petitioner/s would like OOTS/the municipality to attend to. It is further envisaged to enable communities to actively participate in matters that concern them.

**DRAFT
PETITIONS
POLICY
FRAMEWORK**



Mogale City

Local Municipality

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INTRODUCTION

This draft policy framework is to provide for the right to submit a petition to Mogale City Local Municipality (MCLM); to provide for the general principles and procedures for the submission of a petition to MCLM; to provide for consideration of a petition by the Standing Committee of MCLM assigned to deal with petitions; to provide for incidental matters.

1 DEFINITIONS

“administrative support services” mean employees in the office of the Speaker assigned for purposes of the effective implementation and execution of this policy

“appeal” means an appeal contemplated in section 9

“Chairperson” means the chairperson of the committee

“Committee” means a Standing Committee assigned by the Speaker to be responsible for the consideration of Petitions as set out in this document, The Speaker, being the Chairperson, and consisting of councillors of MCLM as determined from time to time in accordance with the Standing Rules

“Constitution” means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)

“petition” means a complaint or request or a representation or submission addressed by a petitioner/s to the Committee in terms of the Policy

“petitioner” means a person who submits a petition in terms of this Policy

“Standing Rules” means the rules and orders made for the conduct of business of Council

2 RIGHT TO PETITION

Any person may submit a petition in terms of this Policy

3 GENERAL PRINCIPLES

- i. A petitioner may submit a petition in any of the official languages of the Republic of South Africa.
- ii. The Committee must
 - a) respect, protect and promote the rights of a petitioner provided for in this Policy

- b) take appropriate steps to promote and facilitate participation by the citizens of Mogale City and Gauteng in the process of government in the Municipality and Province, particularly persons disadvantaged by unfair discrimination of whatever nature; and
- c) enhance democracy by exercising maximum accountability and transparency in their consideration of petitions.
- iii. The Speaker must promote and facilitate a fair and equitable process of considering petitions submitted to MCLM in terms of this Policy

4 PETITION

- i. A petition may be
 - a) a single petition, which is an individual submission from a single petitioner, concerning a particular complaint or request
 - b) an association petition, which is an individual submission from an association or single petitioner mandated by an association to submit that petition, concerning a particular complaint or request;
 - c) a collective petition, which is a collection of signatures from a number of petitioners, concerning a particular complaint or request; or
 - d) a mass group petition, which is made up of individual or group submissions from a number of petitioners, concerning the same or substantially similar complaints or requests.
- ii. A petition may be submitted by a person acting -
 - a) in his or her own interest
 - b) in the interest of another person who is not in a position for whatever reason to submit a petition in his, her or its own name;
 - c) as a member of or in the interest of a group or class of persons; or
 - d) in the public interest
- iii. A petition may be subject to subsection (4) address any matter -
 - a) within the standing orders of the municipality;
- iv. The Committee must refuse to consider a petition -
 - a) falling outside the scope of matters contemplated in (iii)
 - b) concerning a matter pending in a court of law or other tribunal or forum contemplated in the Constitution;
 - c) in connection with the conviction and sentencing by a criminal court of law of a person to a period of imprisonment; or
 - d) falling outside the powers and functions of the municipality or its area of jurisdiction
- v. The Committee may refuse to consider a petition which -
 - a) is illegible

- b) does not state the correct name and contact details of the petitioner and, where applicable, the name of the association or group on whose behalf the petition has been submitted;
- c) has not been signed by the practitioner, except in the case of a petitioner who is unable to write and-
 - a. Who has made a mark on the petition as a symbol of his or her authority to submit the petition; and
 - b. That mark was made in the presence of two witnesses who are able to write and who by signing that petition certify that the mark is that of the petitioner;
- d) addresses a matter previously considered by the Committee except if that petition contains new information that may materially impact on the outcome of the consideration of the matter;
- e) contains defamatory statements or improper language;
- f) if applicable, address a matter that the petitioner has not yet brought to the attention of the relevant authority, or if the petitioner has brought it to the attention of the relevant authority, the relevant authority has not been afforded reasonable time to consider the matter

5 SUBMISSION OF A PETITION

- i. A petition/s must be submitted to the office of the Speaker
- ii. The administrative support service based in OOTS must open or receive all petitions and record details (such as date and time received, from whom and a short description of the content of the petition) thereof in a Petitions register/database
- iii. The administrative support service must render all reasonable assistance, excluding financial assistance, to any person who is unable to submit a petition meeting all the requirements imposed by this Policy so that that person may properly submit a petition.

6 FUNCTIONS OF THE PETITIONS COMMITTEE

- i. Receive every petition submitted in terms of this Policy;
- ii. Subject to 4(iii), (iv) and (v), consider every petition properly submitted in terms of this policy
- iii. Record the oral submission or evidence of a petitioner given in terms of section 7(i);
- iv. If a petition has been referred to a member of the Mayoral Committee or the Legislature in terms of section 7(v)-
 - a) direct the person or body to whom the petition was referred to consider that petition, make a decision or recommendation in respect of that petition or otherwise dispose of the request or complaint raised in that petition; and
 - b) require the person or body to whom that petition was referred to furnish the committee within four weeks of that referral in writing with a detailed report on the steps taken by that person or body to address the

complaint, request, recommendation or instruction by the Committee, as the case may be, and the reasons for those particular steps;

- v. If it refuses to consider a petition in terms of section 4(iii), (iv) and (v) or because it has not been submitted in accordance with this Policy, in writing inform the petitioner of that fact as well as the reasons for its decision;
- vi. On a quarterly basis report to the Municipality on the Petitions submitted to it during that period and all its activities in respect thereof, including:
 - a) the responsiveness, efficiency and timeousness with which petitions were dealt with; and
 - b) the efficacy of the petitions process and procedures; and

7 POWERS OF THE COMMITTEE

The Committee must -

- i. Invite a petitioner to -
 - a) supplement his or her petition with additional oral or written submissions;
 - b) call a witness to present oral or written evidence to the Committee;
- ii. Make a recommendation to an appropriate person or body with a view to settling the request or complaint contained in the petition to the satisfaction of the petitioner;
- iii. Make a recommendation to an appropriate person or body in respect of the general approach to be followed in future in settling a request or complaint;
- iv. If requested to do so by a petitioner, resolve a dispute or complaint, reverse an act/policy, rectify and omission, regarding matters other than those prescribed by legislation by means of mediation or negotiation;
- v. Refer the petition and recommendation, if any, to a member of the Mayoral Committee or Municipal Manager for consideration and decision in respect of the complaint or request contained in the petition
- vi. Make a recommendation to refer the petition to -
 - a) Council
 - b) another Committee of Council
 - c) the Mayor or Municipal Manager
 - d) a body supporting constitutional democracy established by Chapter 9 of the Constitution; or
 - e) the national Prosecuting Authority
- vii. Conclude its consideration of a petition if it resolves that no steps, or no further steps, as the case may be, can be taken to settle the matter to the satisfaction of the petitioner;

- viii. Take any appropriate steps that the Committee can lawfully take or make a complaint to the MEC for Local Government or The Public Protector if a member from the Mayoral Committee or Municipal Manager and office fails to comply with section 6 (iv) or that person or body's conduct or response is unsatisfactory;
- ix. If the complaint or request in the petition has since its submission been settled to the satisfaction of the petitioner, close the petition file;
- x. Delegate any of its functions and powers in terms of section 10

8 PROCEDURE FOR CONSIDERATION OF A PETITION

On receipt of a petition/s-

- i. The administrative support service must inform a petitioner timeously -
 - a) from time to time, of progress in respect of the consideration of a petition;
 - b) of any decision taken by the Committee in respect of a petition, and the reasons for that decision;
 - c) if the petitioner has been invited by the Committee to make an oral submission or call a witness;
 - d) of the date, time and venue when the petition is to be considered and that the petitioner may attend that sitting of the Committee
 - e) of any referral to any person or body contemplated in this policy
 - f) of other remedies available to the petitioner and ;
 - g) of the fact that the petitioner has access to the petition file at all reasonable times.
- ii. The administrative support service must take all prescribed steps to prepare the petition for consideration by the Committee-
 - a) acknowledge receipt of the petition- which must be acknowledged in writing, to the parties involved within two working days after receipt;
 - b) register every petition received in the petitions register/database be completed forthwith after receipt of a petition/s
 - c) simultaneously open a file for every petition with acknowledgement of receipt
 - d) file the petition/s at the archive section in the Corporate Services Directorate, for comment after which, petitions must be diarised for follow-up [purposes
 - e) submit the petition/s to the respective Directorate for their comments. Directorates must comment within the shortest reasonable time possible, which time period will be determined by the nature of the petition.
- iii. The following steps need to be completed before comments are requested from Directorates
 - a) identification of directorates involved in the matter/s raised
 - b) refer petitions outside the scope of jurisdiction of the Council to the relevant institution and inform the petitioner/s accordingly

- c) contact the petitioner/s or their representative if there are any unclear matters or lack of information
- d) determine the timeframe within which comments are expected and follow up with reminders or telephone calls if no response is received
- iv. Directorates should be cognisant of-
 - a) before commenting on any petition, the relevant Directorate/s should, where necessary, undertake in loco inspections and interact with the petitioner/s or representative/s to obtain relevant information that will assist in answering the petition
 - b) the concerned councillor/s who handed in the petition, be involved in the preliminary investigation and in loco inspections by Directorates
 - c) comments should include proposed solutions, costs involved and vote numbers where applicable and proposals for an in loco inspection by the Committee if it is deemed necessary to assist with making an informed decision
- v. After receiving comments from various directorates/subdivisions, a report must be compiled and presented to the administrative support service, who will table this at a meeting of the Petitions Committee for Consideration. On receipt of comments from Directorates-
 - a) compare matters raised in the petition with report to determine if all aspects are addressed
 - b) interact with directorates on any ambiguities or lack of information
 - c) all reports must include full details of all investigations and proposed solutions, including the dates and times of inspections. The report should also include the dates of Directorates comments;
 - 1. All reports must include the comments of the Chief Financial officer
 - 2. Recommendations must be properly formulated and must contain at least the following information:
 - a. The Executive Manager responsible for the execution of the resolution
 - b. The timeframe , if applicable within which the resolution must be executed
 - c. A clear indication of what must be executed
 - d. Petitioners/representatives must be informed in writing of the date of the meeting, where their petitions will be discussed, to enable them to attend such meeting if they so wish
 - e. Receive from the administrative support service, the reports and final resolutions in those cases where the Petitions Committee has finalised the matters in accordance with powers delegated to it; and
 - 1) In writing, notify the petitioner/ representative /Councillor who submitted the petition on the outcome of the petition; and
 - 2) Submit to the Mayoral Committee and thereafter to Council, the final resolutions of the Petitions Committee
 - f. Receive from the administrative support services the reports and recommendations in those cases where the Petitions Committee could not finalise the matters in accordance with the powers delegated to it, for consideration to the Mayoral Committee;

- g. In the case where the Mayoral Committee has finally resolved on the petitions in accordance with the powers delegated to the Executive Mayor,
 - 1) In writing notify the petitioner/representative/councillor who submitted the petition on the outcome of the petition; and
 - 2) Submit to Council the final resolutions of the Mayoral Committee
- vi. A full list of outstanding petitions and a report must be submitted quarterly by the office of the Speaker to Council, it must also be made available to the Petitions Committee for decision or possible corrective measures
- vii. If a Petitioner/representative withdraws a petition, the Petition Committee may if it deems the matter to be of public importance, continue to act on the complaint or request after the withdrawal of the petition

9 RIGHT OF APPEAL

- i. A petitioner may appeal to the Speaker against-
 - a) a refusal by the Committee to consider a petition
 - b) where applicable, a determination by the Chairperson to consider the petition submitted by that petitioner behind closed doors; or
 - c) any recommendation, referral to another person or body or other decision of the Committee after consideration of the petition submitted by him/her
- ii. An appeal must be submitted and processed as prescribed
- iii. The Speaker must consider the Appeal as prescribed and may thereafter-
 - a) dismiss the appeal
 - b) table the appeal document and refer it to the committee for reconsideration; or
 - c) refer the appeal and the petition file with a recommendation to
 - a. Council
 - b. A committee of Council
 - c. The Executive mayor and Mayoral Committee
 - d. An institution supporting constitutional democracy contemplated in Chapter 9 of the Constitution; or
 - e. The National Prosecuting Authority; or
 - f. Make any other determination, which he or she is competent in law to make in respect of the petition
- iv. The speaker must within a reasonable time after the consideration of an appeal in writing report to Council on that appeal

10 DELEGATION

- i. The Committee may delegate any of its duties, functions and powers in respect of a particular petition to a member of the Committee
- ii. A member contemplated in subsection (1) shall be appointed by the Chairperson
- iii. The Chairperson must provide that member with a written and signed authorisation to consider a particular petition
- iv. The Chairperson may at any time before the member has commenced his/her consideration of a particular petition withdraw his/her authorisation
- v. The member must after he/she has concluded his/her consideration of a petition report the outcome of his /her consideration of that petition to the Committee
- vi. Nothing in this section prevents the Committee from exercising any power or performing any duty delegated in terms of this section
- vii. A member appointed in terms of this section has all powers by implication necessary to enable him/her to fulfil his/her function

11 SITTING OF THE COMMITTEE

- i. The Committee may for the purposes of hearing evidence and considering a petition sit at a date and time and at a place within the jurisdiction of the municipality determined by the Chairperson
- ii. The chairperson must give public notice of a sitting in accordance with the Standing rules
- iii. The chairperson must instruct the administrative support service to timeously-
 - a) ensure that subpoenas have been properly issued and served as prescribed;
 - b) inform the petitioner in writing of any matter that the petitioner is entitled to be informed of in terms of this policy, any other law or the Standing Rules;
 - c) if necessary, ensure that the contents of a petition file are translated into a working language of the Committee
 - d) perform any additional duty, which will enable the Committee to properly consider a petition and exercise its functions in terms of this Policy
- iv. Evidence presented before the Committee must be heard in public unless it is -
 - a) in the interests of justice; or
 - b) in the interests of the safety of the petitioner or a witness that, the evidence must be heard behind closed doors

- v. The administrative support service must provide the Chairperson with a list of submitted petition, which have been finalised by the Committee for tabling at each meeting of the Committee

12 ACCOUNTABILITY OF THE COMMITTEE

- i. The committee must report to Council as contemplated in section 6 (i) (f) and (g)
- ii. A debate on an issue raised in a report of the Committee to Council must take place if more than five members of Council so demand
- iii. Council may refer any matter contained in a report submitted to council by the Committee back to the Committee for reconsideration
- iv. A member of council has access to a petition file at any reasonable time
- v. A member of council may whilst the Committee is considering a petition only put a question in respect of that petition relating to the process of considering the petition and not in respect of the merits thereof

13 WITNESSES AND MATERIAL EVIDENCE

- i. For the purpose of ascertaining a matter relating to the subject of its investigation, the committee may-
 - a) summon a person to attend a sitting of the Committee, as witness, in order to give evidence, produce any material evidence if the Committee requires it; or
 - b) Subpoena a person to attend a sitting of the Committee, as witness in order to give evidence or produce material evidence before the Committee at a time and place specified in the subpoena
- ii. A subpoena contemplated in subsection (ii) must-
 - a) be signed and issued by the Chairperson;
 - b) state the matter in respect of which it is issued;
 - c) stipulate the date , time and venue when the person/representative of a body must appear before the Committee;
 - d) draw the attention of the person to whom the subpoena is addressed to the provisions of subsection (iv); and
 - e) be timeously served on the person to whom the subpoena is addresses by registered mail, personal delivery or by any other prescribed method
- iii. A person appearing before the Committee to give oral evidence must before giving that evidence take an oath or make an affirmation, administered by the Chairperson or any other person authorised by him/her to do so, to only speak the truth
- iv. A person appearing before the Committee to give oral evidence may be assisted by a representative of their choice

14 RETENTION OF MATERIAL EVIDENCE

- i. The Committee must make a copy or reproduction in any format of materials of evidence submitted to it
- ii. The committee must retain such copy or reproduction for an indefinite period after conclusion of the consideration of a petition
- iii. The administrative support service must include the copy or reproduction contemplated in subsection (1) in the particular petition file

15 OFFENCES

- i. A person properly subpoenaed in terms of section (13) who without sufficient cause-
 - a) fails to appear before the Committee at the date and venue stipulated in the subpoena;
 - b) fails to remain in attendance at the sitting of the Committee until the Chairperson excuses him/her from further attendance;
 - c) refuses or fails to take an oath or make an affirmation contemplated in section 13 (iii) when called upon by the Chairperson to do so;
 - d) refuses or fails to produce material evidence in his/her possession or under his/her control which he/she has been instructed to produce is guilty of an offence
- ii. A person properly subpoenaed in terms of section 13 who after having taken an oath or made an affirmation-
 - a) fails to answer fully or truthfully any question lawfully put to him/her; or
 - b) otherwise knowingly gives false evidence is guilty of an offence
- iii. A person-
 - a) who threatens, obstructs or unduly influences a person properly subpoenaed in terms of section 13 to-
 - 1) Refuse or fail to give oral evidence before the Committee
 - 2) Knowingly gives false evidence before the Committee; or
 - 3) Refuse or fail to produce any material evidence in his/her possession or under his/her control which he or she has been instructed to produce;
 - b) properly subpoena in terms of section 13 who produces material evidence before the committee, which he/she knows is false, fabricated, falsified or unlawfully or falsely altered;

- c) who destroys, conceals, falsifies, fabricates or unlawfully or falsely alters any material evidence which he/she knows or may be reasonably expected to know may be relevant to a petition being considered or to be considered by a Committee; or
- d) who knowingly furnishes the Committee with information or makes a statement before it which is false or misleading is guilty of an offence
- iv. Any person who wilfully obstructs or unduly influences the Committee, any member of the Committee or any member of the administrative support service from doing or not doing anything authorised in terms of this Policy is guilty of an offence

16 PENALTIES

A person convicted of an offence under section 15 is liable to a fine or to imprisonment or to both

17 REGULATIONS

- i. The Speaker must make regulations in respect of-
 - a) the process and procedures for the submission of a petition;
 - b) the registration of a petition and opening of a petition file by the administrative support service;
 - c) the preliminary investigation of a petition by the administrative support service
 - d) the process and procedures for the submission of an appeal by a petitioner
 - e) the process and procedures for the handling of a petition when Council is not in session; and
 - f) the procedure to deal with conflicts of interest
- ii. The Speaker may make regulations in respect of-
 - a) the rights of a petitioner contemplated in this Policy
 - b) any duty or function not provided for in subsection (1), which the Committee or administrative support service is required to perform
 - c) any time frames to be adhered to during any process or for any procedure contemplated in this Policy
 - d) the archiving or disposal of a petition file that has been closed;
 - e) the procedures and process for the issuing and serving of subpoenas for purposes of this Policy
 - f) any measures to promote and facilitate participation of the people of Mogale City; or
 - g) in general any matter not provided for in this section that may be necessary to prescribe in order to achieve or promote the objective of this Policy