

THE MUNICIPAL SYSTEMS ACT

(A) INTRODUCTION

The Constitution of South Africa envisages a robust local government system, which can provide democratic and accountable government for local communities; ensure the provision of services to communities in a sustainable manner; promote social and economic development; promote a safe and healthy living environment; and encourage the involvement of communities and community organisations in the matters of local government.

The Municipal Systems Act is part of a series of legislation which aims to empower local government to fulfil its Constitutional objects. In 1998 the government issued a Local Government White Paper, which outlined a policy framework for local government. Later that year government passed the Municipal Demarcation Act, which enabled the re-demarcation of municipal boundaries; and the Municipal Structures Act, which defined the structures of local government. The Municipal Systems Act will complement these pieces of legislation, by regulating key municipal organisational, planning, participatory and service delivery systems. National government has also prepared the Municipal Financial Management Bill, which regulates municipal financial matters. Together, these pieces of legislation provide a framework for a democratic, accountable and developmental local government system, as envisaged by the Constitution.

This booklet provides a summary of the Municipal Systems Act. It is divided into eleven sections:

- a. Introduction
- b. The legal nature of municipalities
- c. Municipal powers, functions and duties
- d. Community participation
- e. Integrated development planning
- f. Performance management
- g. Local public administration and human resources
- h. Municipal services
- i. Credit control and debt collection
- j. Provincial and national monitoring and standard setting
- k. National regulations and guidelines

(B) THE LEGAL NATURE OF MUNICIPALITIES

The Municipal Systems Act defines the legal nature of municipalities as part of a system of co-operative government. It also clarifies the rights and duties of the municipal council, local communities, and the municipal administration. Clarifying the rights and obligations of different parties is an important step towards strengthening the democratic contract at the local level.

THE MUNICIPALITY AS AN ORGAN OF STATE

Definition of municipality

The Municipal Structures Act defines a municipality as the structures, political office bearers and administration of the municipality; a geographic area; and the community of the municipality. In other words, a municipality consists of a municipal institution (political and administrative structures), and the people who live in the local area. The term can also be used to refer to a local area which falls within a municipal boundary.

The municipal institution is an organ of state, and has a separate legal personality. The local community cannot be held liable for the actions of the municipal institution.

Co-operative government

The municipal institution is an organ of state, which exercises legislative and executive powers. Municipal powers are exercised in a system of co-operative government which allows the three spheres of government to work together effectively. To enable co-operative government, municipalities are consulted on a range of national and provincial issues. However, it is not always practical to consult hundreds of municipalities on an individual basis. Municipalities are

therefore represented in national processes through organised local government.

Municipalities should participate in organised local government structures so that their views are represented in national processes. Participation in organised local government also allows municipalities to draw on each other's experiences and develop common approaches and find solutions to common problems.

RIGHTS AND DUTIES OF MUNICIPAL COUNCILS

The council of a municipality has the right to govern, on its own initiative, the local government affairs of the local community; and to exercise the municipality's executive and legislative authority without interference. Municipal councils must respect the rights of citizens in the way in which they exercise their powers.

A municipal council may finance the affairs of the municipality by charging fees for services, imposing surcharges on fees or property rates, and (when allowed by national legislation) imposing surcharges on other taxes, levies and duties.

Municipal councils have duties as well as rights. These include the duties to:

- exercise their powers and use their resources in the best interests of the local community;
- provide, without favour or prejudice, democratic and accountable government
- encourage the participation of the local community;
- ensure that municipal services are provided to the local community in an equitable, and financially and environmentally sustainable manner;
- promote development in the municipality;
- promote gender equity;
- promote a safe and healthy environment in the municipality; and
- contribute to the progressive realisation of the fundamental rights contained in the Constitution.

The Municipal Systems Act obliges municipal councils to consult the local community about municipal services. Communities should have a say in the way in which services are delivered (for example, by the municipal administration or through a service agreement); the level of services (for example, VIP latrines or waterborne sanitation); the quality of services (for example, how quickly the municipality processes planning applications); and the range of services which are provided (for example, whether the municipal council should provide recycling facilities).

Municipalities must fulfil these duties as far as possible, taking account of the budget and capacity they have available. For example, a municipality with a small budget may not be able to spend a lot of money on media campaigns to promote environmental issues. However, that municipality could still fulfil their duty by ensuring that the way they deliver services is environmentally friendly.

RIGHTS AND DUTIES OF MEMBERS OF THE LOCAL COMMUNITY

Just like municipal councils have rights and duties, members of municipal communities also have rights and duties.

Members of the local community have the right to participate in the decision-making processes of the municipality. They have the right to use and enjoy public facilities, and the right to access to municipal services. They also have the right to submit recommendations, complaints or representations to the municipality, and to expect prompt responses from the municipality.

Members of the local community have the right to be informed of decisions of the municipal council, and to expect the council to disclose information about its business and finances. They have the right to attend meetings of the municipal council and its committees, and to demand that the council acts in a transparent and impartial way.

Members of local communities also have duties. In some instances, their rights are directly linked to their duties. For

example, members of the local community have a duty to pay service fees, rates and taxes. Their right to access municipal services is linked to their duty to pay for those services. Similarly, members of the local community have a right to participate in municipal decision-making, linked to a duty to utilise the procedures and mechanisms established to enable participation.

Members of the local community have a duty to allow municipal officials reasonable access to their property for the performance of municipal functions, to comply with municipal by-laws, and to respect the municipal rights of other members of the local community.

DUTIES OF MUNICIPAL ADMINISTRATIONS

Municipal administrations have a number of duties towards local communities, including:

- being responsive to the needs of the local community;
- establishing clear channels of communication with the local community;
- informing the local community about the services which they are entitled to receive; and
- informing the local community how the municipality is managed, what it spends its money on, and who is in charge.

Municipal administrations also have the duties of facilitating a culture of public service and accountability amongst staff, and taking measures to prevent corruption. The organisation of municipal administrations is discussed later in this booklet.

(C) MUNICIPAL POWERS, FUNCTIONS AND DUTIES

The Municipal Systems Act clarifies several issues relating to municipal powers, functions and duties. A municipality has all the functions and powers assigned to it in terms of the Constitution. It has the right to do anything reasonably necessary for, or incidental to, the effective performance of its functions and the exercise of its powers.

ASSIGNING POWERS TO LOCAL GOVERNMENT

Assigning powers to local government generally

National and provincial government sometimes assign additional functions powers to local government, when those powers are best exercised at a local level. The Municipal Systems Act regulates the process of assigning powers and functions to local government. This is important to ensure that municipalities receive adequate funding to fulfil assigned powers and functions. It also helps to ensure that the three spheres of government work in a co-ordinated way.

When a member of the national cabinet (a Minister) or a Deputy-Minister; or a member of a provincial cabinet (a MEC), wants to assign a power or function to local government, he or she must first:

- consult organised local government at a national or provincial level;
- consult the Minister or MEC responsible for finance;
- consult the Minister or MEC responsible for local government; and
- consider the assessment of the Financial and Fiscal Commission.

If, after these consultations, the Minister or MEC decides to assign the power of function, they must ensure that municipalities have adequate capacity and funding to fulfil the assigned function. The Minister or MEC must ask the Financial and Fiscal Commission to help them to assess how much funding should be given to municipalities to enable them to fulfil the assigned function.

A draft of the legislation which assigns a power or function to local government must be published for public comment before it is introduced in parliament or a provincial legislature. Organised local government, municipalities, and other

interested parties should be allowed to make representations on the draft legislation.

Assigning powers to specific municipalities

As well as assigning powers to local government generally (ie: to all municipalities), cabinet members and MECs may assign powers or functions to specific municipalities.

If a cabinet member wishes to assign a power to a specific municipality by way of legislation, he or she must consult with the Minister for local government before the draft legislation is introduced in parliament. If a cabinet member wishes to assign a power to a specific municipality by way of an agreement, in terms of Section 99 of the Constitution, he or she must consult the Minister for local government before the agreement is concluded.

Similar rules apply at the provincial level- the MEC for local government must be consulted before legislation is introduced in the relevant provincial legislature, and the MEC for local government must be consulted before an agreement to assign a power to a municipality is concluded.

If an assigned power or function does not already fall within local government's competence (in other words, if it is not listed in Part B of Schedules 4 and 5 of the Constitution), and there are financial implications involved in fulfilling the assigned power, Ministers and MECs must make sure that the municipality is equipped to exercise the assigned power or function. Ministers and MECs who initiate the assignment of powers to a municipality must ensure that the municipality has adequate funding and capacity to fulfil the assigned power or function.

MUNICIPALITIES' EXECUTIVE AND LEGISLATIVE AUTHORITY

The executive and legislative authority of a municipality is exercised by the council of the municipality, and the council takes all the decisions of the municipality. A council may delegate some of its powers to take decisions- this is discussed later in this booklet.

Municipalities exercise their executive and legislative authority in a number of ways, including by developing and adopting policies, plans, strategies and programmes; establishing and maintaining an administration; promoting and undertaking development; setting targets for delivery; providing municipal services or regulating the provision of municipal services; implementing national and provincial legislation and its own by-laws; preparing, approving and implementing its budgets; setting and collecting service charges and other fees; and so on.

A municipality exercises executive and legislative authority within its boundaries. However, municipalities may enter into written agreements which allow one municipality to exercise executive authority in another municipality's area of jurisdiction.

MUNICIPAL LEGISLATIVE PROCEDURES

Laws made by municipalities are called by-laws. Only a member or committee of a municipal council may introduce a draft by-law in the council. Before a by-law is passed, it must be published for public comment, and all members of the municipal council must have a reasonable amount of time to consider the by-law. To pass a by-law, the majority of council members must vote in favour of the by-law. Once a by-law has been passed by a municipal council, it must be promptly published in the Provincial Gazette. Municipalities should, where practical, also publish the by-law in local newspapers, or bring it to the attention of the local community in another way.

Standard draft by-laws

Many of the issues which municipalities deal with are common across local government nationally, or provincially. The Municipal Systems Bill therefore allows the national Minister or provincial MECs responsible for local government to make standard by-laws. A municipal council needs to adopt these by-laws before they apply in that municipality. Once a municipal council has adopted a standard by-law, it continues to apply in that municipality even if the standard by-law is repealed.

The Minister can make standard by-laws when requested to do so by organised local government, or after consulting the MECs for local government and organised local government.

The Minister must publish the proposed draft by-law in the *Gazette* for public comment, and consult any cabinet member

whose area of responsibility affects the by-law. Similarly, if a provincial MEC wishes to make a standard by-law, he or she must first publish it for public comment and consult with affected MECs.

MUNICIPAL CODE

A municipality must compile and maintain a compilation of all its by-laws. This is called the municipal code. Municipalities may keep the municipal code in bound or loose-leaf form, and when feasible also in an electronic format. The municipal code must be constantly updated, and must be kept at the municipality's head office.

Municipalities must make copies of the municipal code, or extracts from the municipal code, available on request at a reasonable cost.

(D) COMMUNITY PARTICIPATION

ENABLING COMMUNITY PARTICIPATION

The development of community participation

The Municipal Systems Act says that municipalities must develop a culture of municipal governance that complements formal representative government with a system of participatory governance.

Municipalities are the sphere of government closest to the people. They have powers and duties which directly affect the development of local areas and the daily lives of local residents. Formal systems of governance (such as elections) ensure that municipal councils are representative of the local community. However, the local community should not only participate in the governance of their local area once every five years when they vote for a new municipal council. Rather, local communities should be actively involved in shaping their living environments through participating in municipal processes.

Community participation deepens democracy by giving local citizens a direct say in a range of decisions and processes which affect them, for example, municipal planning and budgeting. Community participation also strengthens the relationship between municipal councils and community groups, and enhances the accountability of municipal councils to local citizens.

Municipalities must therefore encourage, and create conditions for, the local community to participate in the affairs of the municipality, including in:

- the preparation, implementation and review of the municipal integrated development plan;
- the establishment, implementation and review of the municipal performance management system;
- the monitoring and review of municipal performance, including outcomes and impact;
- the preparation of the municipal budget; and
- strategic decisions relating to the provision of municipal services.

Building capacity for community participation

Municipal processes such as planning, budgeting, and service delivery, can be complex and difficult to understand. Local residents and groups with access to skills and resources may be in a better position to participate in these complex processes than other, less resourced residents and groups. To 'level the playing field' and ensure that all residents and groups are able to participate effectively, municipalities must take steps to build the capacity of the local community to participate.

It is also important that municipal councillors and staff have the skills to facilitate community participation. Municipalities must therefore build the capacity of local councillors and staff, to ensure that they are able to foster meaningful community participation.

Funding community participation

Processes which enable community participation often cost money. For example, there are costs attached to printing information to disseminate to community groups, or holding public meetings. There is also a cost attached to building the capacity of the local community, councillors and staff. Municipalities must therefore allocate funds in their annual budget to facilitate and build capacity for community participation.

PARTICIPATION IN MUNICIPAL STRUCTURES

There are a number of ways in which community groups can participate in local governance, including through political structures. For example, the local community can participate through ward committees, as defined in the Municipal Structures Act. The Municipal Systems Act also allows municipalities to establish advisory committees to advise the council on any aspect of its business.

Communities can also participate in meetings of the council and council committees. The Municipal Systems Act obliges municipalities to provide notice to the public of the date, time and venue of council meetings. Municipalities must set aside space for the public in their meeting venues.

All meetings of a municipal council and its committees should be open to the public (including the media), with the following exceptions:

- Meetings of the executive committee or mayoral committee. These committees may close any or all of their meetings to the public;
- Municipalities may close meetings to the public when the nature of the business being discussed in the meeting makes it reasonable for the council to do so.

A council may not exclude the public from meetings of council, or meetings of council committees, when those meetings deal with:

- draft by-laws or a budget which has been tabled in the council; or
- the municipality's draft integrated development plan or any amendments to it which have been tabled in the council; or
- the municipality's draft performance management system or any amendments to it which have been tabled in the council; or
- decisions to enter into service delivery agreements.

PARTICIPATION IN MUNICIPAL PROCESSES

Municipalities must enable participation in municipal processes, such as integrated development planning, performance management, municipal budgeting, and strategic decision-making regarding the delivery of municipal services.

The Municipal Systems Act obliges municipalities to establish procedures for:

- receiving and responding to petitions and complaints lodged by members of the community;
- giving notice of public meetings, and allowing for public comment when appropriate;
- holding consultative sessions with locally recognised community organisations and, where appropriate, with traditional authorities; and
- reporting back to the local community.

Municipalities should strive to ensure that everyone in the community is able to participate. They must therefore take account of the special needs of people who cannot read and write; people with disabilities; women; and other disadvantaged groups. For example, municipalities could consider allowing people who cannot write to lodge verbal complaints and petitions. They could try to hold public meetings in venues with wheelchair access. They could schedule meetings at times which are convenient to women, who often find it difficult to attend meetings after work when they are

busy making dinner for the family.

COMMUNICATING INFORMATION ABOUT COMMUNITY PARTICIPATION

To encourage participation, municipalities should ensure that communities are aware of the different ways in which they can participate in municipal affairs. Municipalities should also ensure that members of the community know what their rights and duties are.

Municipalities must provide the community with information about municipal governance, management and development, so that the community is able to make informed inputs into participatory processes. When providing this information, municipalities must take account of the different languages which are used in the area, and the special needs of people who cannot read and write.

(E) INTEGRATED DEVELOPMENT PLANNING

KEY PLANNING REQUIREMENTS

Each municipal council must adopt a single, inclusive and strategic plan for the development of the municipality. This plan is called the integrated development plan. National regulations will prescribe a timeframe for the adoption of integrated development plans, for example, three months or six months after the council is elected.

A municipal integrated development plan must link, integrate and co-ordinate all the municipality's plans. It must also take into account any proposals on the table for the development of the local area. For example, a municipality may have one set of plans which aims to stimulate economic development through tourism. At the same time, there may be proposals to build a conference centre, a sports stadium and a craft market in the area. The municipality will need to link these plans, and decide whether they will concentrate on attracting business tourism, sports tourism, or leisure tourism. Factors such as the other facilities on offer in the town, the viability and potential benefits of each option, and the resources required to support different tourism promotion strategies would need to be considered.

An integrated development plan must align the resources and capacity of the municipality with the implementation of the plan. Integrated development plans form the policy framework and general basis on which annual municipal budgets must be based. For example, if a municipality decides to encourage leisure tourism, it may need to budget for improving the transport route from the airport to the town, or allocate more money to cleansing services near tourist attractions.

Municipalities are also required to participate in national and provincial development programmes, and must include these programmes in their planning processes. For example, municipalities must take land reform and restitution into account when drafting their integrated development plans.

Because local government is part of state, it must plan in ways which take the spirit of the Constitution into account. The Constitution envisages a developmental role for local government. This means municipalities must plan to achieve the Constitutional objects of local government; give priority to meeting the basic needs of local communities; promote social and economic development; and together with other organs of state, contribute to the progressive realisation of the fundamental rights contained in the Constitution.

Once a municipality has adopted an integrated development plan, it must, within 14 days, notify the public that an integrated development plan has been adopted. The municipality must make copies of the plan, or extracts from the plan, available for public inspection. It must also publicise a summary of the plan.

An adopted integrated development plan will remain in force until a new integrated development plan is adopted by the next elected council.

Core components of integrated development plans

An integrated development plan must reflect—

- the municipal council's vision for the long term development of the municipality with special emphasis on the municipality's most critical development and internal transformation needs;

- an assessment of the existing level of development in the municipality, which must include an identification of communities which do not have access to basic municipal services;
- the council's development priorities and objectives for its elected term, including its local economic development aims and its internal transformation needs;
- the council's development strategies which must be aligned with any national or provincial sectoral plans and planning requirements binding on the municipality in terms of legislation;
- a spatial development framework which must include the provision of basic guidelines for a land use management system for the municipality;
- the council's operational strategies;
- applicable disaster management plans;
- a financial plan, which must include a budget projection for at least the next three years; and
- key municipal performance indicators and performance targets.

Status of a municipal integrated development plan

An integrated development plan adopted by the council of a municipality-

- is the principle strategic planning instrument which guides and informs all planning and development, and all decisions with regard to planning, management and development, in the municipality;
- binds the municipality except to the extent of any inconsistency between a municipality's integrated development plan and national or provincial legislation, in which case such legislation prevails; and
- binds all persons to the extent that those parts of the integrated development plan that impose duties or affect the rights of persons have been passed as a by-law.

A spatial development framework contained in an integrated development plan prevails over a plan as defined in section 1 of the Physical Planning Act, 1991 (Act No. 125 of 1991).

There are currently a number of different pieces of national and provincial legislation which apply to municipal planning. The national Minister for local government must initiate steps to rationalise the different planning requirements which are placed on municipalities by national and provincial legislation. This will make it easier for municipalities to plan in an integrated manner.

DEVELOPING AN INTEGRATED DEVELOPMENT PLAN

Responsibility for the integrated development plan

Most municipalities will have either an executive mayor, or an executive committee, who will be responsible for managing the drafting of the integrated development plan. If a municipality has no executive committee or executive mayor, it must appoint a committee of councils to manage the drafting of the integrated development plan.

The executive or committee responsible for the integrated development plan must assign responsibilities for the integrated development plan to the municipal manager. When a draft of the integrated development plan has been produced, the executive or committee must submit the draft plan to the council. The council will consider the plan before adopting it.

A municipal council must annually review its integrated development plan. If circumstances in the municipality have changed, the council may amend its integrated development plan.

Process for drafting, adopting and reviewing integrated development plans

Each municipal council must adopt a process set out in writing to guide the planning, drafting, adoption and review of its integrated development plan within a prescribed period after the start of its elected term.

The process for drafting an integrated development plan must provide for the identification of all plans and planning requirements binding on the municipality in terms of national and provincial legislation. This is a useful 'check-list' for municipalities to have before beginning their own planning process. It will help to ensure that municipal planning covers the issues required by national and provincial government (for example, in terms of the Water Services Act municipalities are responsible for drafting water services plans). It will also contribute to inter-governmental co-ordination (for example, by ensuring that municipalities are aware of provincial development strategies, and are able to develop local strategies which complement those of the provincial government).

The process for drafting an integrated development plan must allow for the local community to be consulted on its development needs and priorities; and for the local community to participate in the drafting of the integrated development plan. It is also important that organs of state and other role players are identified and consulted on the drafting of the integrated development plan. For example, businesses in the local area may be able to make useful contributions to the planning process.

Once a municipality has adopted a process for drafting their integrated development plan, they must inform the community about the process. This will allow citizens and community groups to prepare inputs into the integrated development plan, and participate in the events and discussions in which they are most interested. The provincial MEC for local government may monitor the process followed by a municipality to develop their integrated development plan.

District Government Integrated Development Plans

It is important that district governments co-ordinate their integrated development plans with those of local municipalities in the district area. If there is no proper co-ordination between the district and local municipalities, their plans may contradict one another and end up wasting resources.

District and local municipalities must consult one another when deciding on a process for drafting their integrated development plans. District municipalities must also consult with local municipalities in their area before adopting a district-wide integrated development plan. Once adopted, the district-wide integrated development plan is binding on both the district and local municipalities.

A district government integrated development plans must identify the plans and planning requirements which are binding on the district municipality and local municipalities in the district area. It must also identify the issues which require alignment in the district and local municipality plans. For example, transport routes or local economic development strategies. Once the district municipality has identified the issues which need to be co-ordinated between the district and local municipalities, it must provide the required co-ordination to deal with these issues. The district integrated development plan must also determine procedures for consultation between the district municipality and the local municipalities during the process of drafting their respective integrated development plans. Ongoing communication between the district and local level will result in well co-ordinated plans, which may enhance the impact of public investment in the area.

PROVINCIAL MONITORING AND SUPPORT

Provincial government can play a strategic role in supporting municipal planning processes. Each municipality plans for their local area. When all these plans are 'put together', they cover the entire area of a province. Provincial governments are therefore able to assess municipal plans in the context of plans for the development of the whole province. From this strategic viewpoint, provincial government may notice some issues which need to be aligned between adjacent municipalities, or between municipalities and provincial or national government. The Municipal Systems Act empowers provincial MECs to facilitate the co-ordination and alignment of integrated development plans between municipalities, and between municipalities and national and provincial organs of state. The Act outlines a process which MECs can follow to enable alignment and co-ordination- this process is explained in the next section of this booklet.

There may be times when disputes over the content of integrated development plans arise. For example, one municipality may object to another municipality's plans to zone an industrial area close to their border, on the grounds that it would affect land values in a near-by residential area, or be too close to an environmentally sensitive area. Disputes between a municipality and groups in the local community may also arise. For example, a community group may argue that were not given enough time to comment on a certain issue which affects them. To ensure that these kind of disputes are solved, the provincial MEC is empowered to take appropriate steps to resolve disputes or differences in connection with the planning, drafting, adoption or review of an integrated development plan.

As well as playing an important role in alignment, co-ordination and the resolution of disputes, the provincial MEC can directly assist a municipality with the planning, drafting, adoption and review of its integrated development plan.

Process to enable alignment and co-ordination at the provincial level

The municipal manager of a municipality must submit a copy of the integrated development plan as adopted by the council of the municipality, to the provincial MEC for local government in the province within 10 days of the adoption of the plan. This copy of the plan must include any amendments which have been made to the plan, as well a copy of the process used to develop the plan. Municipalities in district areas must also include a copy of the district framework which shows how district and local municipalities consulted one another during the drafting of the plan.

If the provincial MEC notices that a municipal integrated development plan does not comply with the provisions of the Municipal Systems Act, or that it is not properly aligned to the development plans and strategies of other affected municipalities or organs of state, the MEC may request the municipality to revise its integrated development plan. The MEC must make this request within 30 days of receiving a copy of the integrated development plan (or an amendment to the plan).

A municipal council must consider the MEC's proposals, and within 30 days of receiving the MEC's request must either revise its integrated development plan, or, if it disagrees with the MEC's proposals, object to the MEC's request in writing.

If a municipality objects to a MEC's request to change their integrated development plan, the MEC may, within 21 days, refer the municipality's objection to an *ad hoc* committee. An *ad hoc* committee to decide on a municipal objection is appointed by the MEC, and consists of members representing local government, the provincial government and the national government.

The municipality which lodged the objection, as well as any other affected municipality, must agree to the choice of people to represent local government on the committee. The provincial and national government, particularly the part of the government responsible for functional area in which the objection falls, must also agree to the choice of people to represent provincial and national government on the committee. For example, if the objection was over a transport planning issue, the provincial and national departments for transport must agree on the choice of people to represent them.

The *ad hoc* committee will consider the objection in terms of a procedure which will be prescribed in national regulations. If at least two spheres of government on the committee agree on whether the objection is valid or not, the matter is decided. If the *ad hoc* committee rejects the municipality's objection, the municipality must, within 30 days of the date on which the committee has taken the decision, comply with the MEC's request.

(F) PERFORMANCE MANAGEMENT

GENERAL REQUIREMENTS FOR PERFORMANCE MANAGEMENT

Performance management is an iterative process of setting targets, monitoring performance against those targets, and taking steps to improve performance. It can help municipalities to work more effectively towards meeting development challenges, because it allows them to assess the impact of the various strategies they are pursuing. It can also enhance accountability, because it allows municipal councillors and staff, and local communities, to monitor whether they are receiving value for money spent on various services.

Every municipality must establish a performance management system. The performance management system must be

suitable to the municipality's circumstances. It must also be in line with the priorities, objectives, indicators and targets contained in the municipal integrated development plan.

So, for example, a municipality who has identified the extension of water services as a key priority, may want to design its performance management system to enable it to measure the increase in access to water services in the area. A municipality which has identified inner city renewal as a key priority may wish to measure indicators such as investment in the inner city, the state of housing stock in the inner city, crime levels in the inner city, and so on. Municipalities with more capacity will probably decide to measure their performance against more indicators than municipalities with less capacity.

Performance management is not only about monitoring and measuring. It is also about organisational culture- the attitudes and practices which inform how municipal staff work on a daily basis. Municipalities must promote a culture of performance management in their structures, political offices, and administration. In other words, municipalities must encourage working practices which are economical, effective, efficient and accountable.

Responsibility for developing a performance management system

If a municipality has an executive committee or executive mayor, they are responsible for the municipality's performance management system. If a municipality does not have an executive committee or executive mayor, it must appoint a committee of councillors to manage its performance management system.

The executive committee, executive mayor, or committee of councillors must:

- manage the development of the municipality's performance management system;
- assign responsibilities for the performance management system to the municipal manager; and
- submit the proposed performance management system to the municipal council for adoption.

CORE COMPONENTS OF A PERFORMANCE MANAGEMENT SYSTEM

The key steps in a municipal performance management system are setting performance targets and performance indicators, monitoring performance against these indicators, taking steps to improve performance, and reporting on performance.

Every municipality must set performance targets with regard to each of the development priorities and objectives in their integrated development plan, and set appropriate key performance indicators as a yardstick for measuring performance towards achieving those priorities and objectives. The performance indicators must allow for measurement of outcomes and impact.

For example, let's say that a municipality has noticed that health conditions are very poor in informal settlements in their area. The municipality identifies the development of a healthy living environment as a priority. They set themselves the objectives of improving the quality of water, sanitation and refuse removal services in informal settlements as a way of improving health conditions. For each of these services, they set performance targets, for example, to provide 100 new water connections in each informal settlement and ensure that refuse is collected on a weekly basis. These are output indicators, which measure the municipality's outputs (eg: 100 water connections). The municipality may also wish to measure their efficiency, or how much it cost them to install the new water connections.

It is important that the municipality also sets impact or outcome indicators. These indicators will help the municipality to work out if it adopted the right strategy towards addressing health problems in informal settlements. So, for example, the municipality may monitor infant mortality in informal settlements, as a measure of the impact of their strategy.

Once they have chosen key performance indicators and targets, municipalities must make their indicators and targets known, both internally and to the general public. The municipal council must decide how to disseminate this information.

Municipalities must monitor their performance against the indicators which they have set for each development priority and objective, and measure and review their performance at least once a year. Municipalities must take steps to improve performance with regard to those development priorities and objectives where performance targets are not met.

Municipalities must establish a regular process of reporting. The process of reporting must make information of performance available to the council and specific structures and political office bearers of the municipality; as well as to the public and appropriate organs of state. Reports on municipal performance should act as an "early warning" system for underperformance. In other words, performance reports should point to potential problems before they become crises.

Community involvement

Municipalities must involve the local community in the development, implementation and review of the municipality's performance management system. In particular, the community must be allowed to participate in the setting of appropriate key performance indicators and performance targets for the municipality.

Reviewing the performance management system

It is unusual for a municipality (or any organisation) to develop a performance management system which works well in their circumstances overnight. Rather, municipalities will need to learn as they go along. For example, municipalities may discover that their targets were not realistic, or that the indicators they used last year did not allow them to measure what they wanted to measure. Because establishing performance management systems is a learning process, the Municipal Systems Act requires that municipalities establish mechanisms to monitor and review their performance management system. This will allow for the system to be adjusted and strengthened over time.

GENERAL KEY PERFORMANCE INDICATORS

The national Minister for local government may set general key performance indicators that apply to all municipalities. Before setting these indicators, the Minister must consult with the MECs for local government, and with organised local government nationally.

In most cases a general key performance indicator will apply to all municipalities, and all municipalities must include that indicator in their performance management systems. There may be some cases where a general key performance indicator is not relevant to a municipality, for example, if the indicator deals with a service that a specific municipality does not deliver because that service is delivered at a district level. In these cases, the municipality does not need to incorporate the general key performance indicator into its performance management system.

REPORTING

Reports by municipalities

Each municipality must prepare an annual report for each financial year. The annual report must include a performance report reflecting:

- the municipality's performance during that financial year, including that of any service provider;
- the development and service delivery priorities and the performance targets set by the municipality for the following financial year; and
- measures that were or are to be taken to improve performance.

The Auditor General will audit every municipality's measurement of their performance every year, and include his report in the municipality's annual report. The annual report will also include the municipality's financial statements, and an audit report on these financial statements.

The municipality must formally adopt its annual report. Within 14 days of adopting the report, the municipality must make copies of the report accessible to the public and the media, free of charge or at a reasonable price.

The municipality must also submit a copy of the report to the MEC for local government, the Auditor-General, and any other institution which legislation obliges a municipality to copy the report to.

Reports by MEC

The MEC for local government must annually compile and submit to the provincial legislatures and the national Minister for local government a consolidated report on the performance of municipalities in the province. This report must identify municipalities which did not perform adequately, and propose remedial actions to be taken. The report must be published in the *Provincial Gazette*.

Reports by Minister

The Minister must annually compile and submit to Parliament and the MECs for local government a consolidated report of local government performance in terms of general key performance indicators. This report must be published in the *Gazette*.

(G) LOCAL PUBLIC ADMINISTRATION AND HUMAN RESOURCES

Principles for municipal administration

Local public administration is governed by the democratic values and principles embodied in the Constitution. A municipality must establish and organise its administration in a manner that enables it to-

- be responsive to the needs of the local community;
- facilitate a culture of public service amongst staff;
- be performance orientated and focussed on the objects and developmental duties of local government set out in the Constitution;
- ensure that its structures, political office bearers, managers and staff relate their roles and responsibilities to the priorities and objectives set out in the municipality's integrated development plan;
- establish clear relationships, and facilitate co-operation, co-ordination and communication, between –
 - political and administrative structures, and;
 - the municipality and the local community;
- be flexible in order to respond to changing priorities and circumstances;
- organise the functions of the administration into operationally effective and appropriate administrative units and mechanisms, and assign clear responsibilities for the management and co-ordination of these administrative units and mechanisms;
- provide an equitable, fair, open and non-discriminatory working environment;
- maximise efficiency of communication and decision making within the administration;
- delegate and devolve responsibility to the most effective level within the administration;
- involve staff in management decisions as far as is practicable; and
- hold the municipal manager accountable for the overall performance of the administration.

All municipalities must strive to establish their administrations in this way, as far as is possible within their administrative and financial capacity.

ROLES AND RESPONSIBILITIES

Roles and responsibilities of council structures and political office bearers

Municipal councils have a number of structures (such as an executive committee or committees of council) and political office bearers (such as the executive mayor.) Municipalities must define the specific role and area of responsibility of

each structure and political office bearer within the municipality. The definition of roles and responsibilities must be in writing, and can include a list of the powers delegated to a structure or political office bearer. When defining roles, the municipality must think about how structures and political office bearers will interact with one another, and how they will interact with the municipal manager, municipal staff members, and with the local community. If a municipality has ward councillors or subcommittees, it should also think about how these structures will interact with its administration.

Municipalities should try to develop clear lines of accountability for structures and political office bearers, and minimise unnecessary overlapping of responsibilities between different structures. Municipalities must also develop a process for dealing with disputes between structures and political office bearers.

The role and responsibilities of the municipal manager

The municipal manager is the head of the municipal administration. Subject to the policy directions of the municipal council, the municipal manager is responsible and accountable for the formation and development of an economical, effective, efficient and accountable administration. The municipal manager must make sure the administration is equipped to implement the municipality's integrated development plan, that it operates in accordance with the municipality's performance management system, and that it is responsive to the needs of the local community.

The municipal manager has special responsibilities to ensure that the municipality's integrated development plan is implemented and monitored, and that services are provided to local communities in a sustainable manner. The municipal manager must also facilitate the participation of the local community in municipal affairs.

As the head of the administration, the municipal manager is responsible for a number of staff functions, such as the appointment of staff below the level of managers directly accountable to the municipal manager, the management and training of staff, the maintenance of discipline of staff, and the promotion of sound labour relations.

The municipal manager must:

- approve a staff establishment for the municipality;
- provide a job description for each post on the staff establishment;
- align the remuneration and other conditions of service for each post on the staff establishment in accordance with any applicable labour legislation; and
- regularly evaluate the staff establishment and, if necessary, review the staff establishment and the remuneration and conditions of service.

These functions must be fulfilled in terms of a policy framework determined by the municipal council, and in accordance with the Employment Equity Act.

The municipal manager is a key interface between political structures and political office bearers, and the administration. He or she must manage communication between the municipality's administration and its political structures. The municipal manager must also provide advice to council structures and political office bearers of the municipality, and carry out their decisions.

The municipal manager is responsible for the administration and implementation of the municipality's by-laws, as well as for the implementation of national and provincial legislation applicable to the municipality.

The municipal manager is also the accounting officer for the municipality. This means that he or she is responsible and accountable for all income and expenditure of the municipality; all assets and the discharge of all liabilities of the municipality; and proper and diligent compliance with applicable municipal finance management legislation.

Employment contracts for municipal managers and managers directly accountable to municipal managers

Municipalities must appoint their municipal manager, and people directly accountable to the municipal manager, in terms of the Municipal Systems Act.

To increase administrative accountability, the Act requires that the municipal manager and the senior staff who report

directly to the municipal manager are appointed on written employment contracts, which include a performance agreement. This performance agreement should outline performance objectives and targets that must be met, and the time frames within which those performance objectives and targets must be met. It must allow for standards and procedures for evaluating performance, and spell out the consequences of substandard performance.

The Municipal Systems Act also aims to increase transparency, by specifying that every municipality must, on or before 31 October of each year, publish the salary scales and benefits applicable to posts of the municipal manager and every manager that is directly accountable to the municipal manager, in a local newspaper.

Any municipal manager who is appointed after the Municipal Systems Act takes effect, must be appointed on a fixed term of employment. The term of employment must end within the first two years after a new municipal council is elected. For example, if a municipal manager is appointed five months before a local government election, their term of employment cannot be longer than two years and five months. Fixed term employment contracts must include a provision which allows the contract to be renewed with the agreement of both the employer and employee, and a provision which allows the contract to be cancelled if the municipal manager does not comply with the terms of their contract.

Municipalities may choose whether they want to appoint the next level of management (staff who report directly to the municipal manager) on fixed term contracts or not.

DELEGATIONS

Developing a system of delegations

Municipal councils may delegate any of their powers, except for those municipal powers which the Constitution does not allow to be delegated, and the approval of the integrated development plan.

The following powers may be delegated to an executive committee or executive mayor, but not to any other structure:

- decisions to expropriate immovable property or rights in or to immovable property;
- 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; and
- decisions to make investments on behalf of the municipality.

A municipal council must develop a system of delegation that will maximise administrative and operational efficiency, and provide for adequate checks and balances. Delegations must be made in writing, and are subject to any limitations, conditions and directions the municipal council may impose. Municipal councils may allow for the sub-delegation of powers. For example, they may delegate responsibility for developing a local economic development strategy to a council committee, but allow the committee to delegate this responsibility to a task team.

Reviewing decisions

A municipal council remains responsible for all of its functions, even if some of those functions have been delegated. A council may review any decision taken by a structure, political office bearer, councillor or staff member to whom it has delegated authority. A municipal council may decide to review a decision because such a review process is in line with the municipality's procedures, rules and orders. Alternatively, if a quarter of the councillors in the council make a written request, the council must review a decision taken by a structure with delegated authority. The council must confirm, vary or revoke the decision. It may also request the executive committee or executive mayor to review the decision.

Appeals

If a person's rights have been affected by a decision of a structure operating with delegated powers, that person may appeal against the decision. An appeal must be written, and handed to the municipal manager within 21 days of the person being notified of the decision. The municipal manager will hand the appeal to an appeal authority. If the appeal is against a decision taken by a staff member, the appeal authority will be the municipal manager. If the appeal is against a decision taken by the municipal manager, the appeal authority will be the municipality's political executive (ie: its executive mayor, executive committee, or council). If the appeal is against a decision taken by a councillor, the appeal authority will be the municipal council, or a group of councillors who were not part of taking the decision. The appeal

authority must revoke, vary or confirm the decision. However, even if the appeal authority revokes the decision, it does not detract from any rights which have accrued as a result of the decision.

HUMAN RESOURCES

Human resource management

A municipality must adopt appropriate procedures providing for fair, efficient, effective and transparent personnel administration, including -

- the recruitment, selection and appointment of persons as staff members;
- service conditions of staff;
- the supervision and management of staff;
- the monitoring, measuring and evaluating of performance of staff;
- the promotion and demotion of staff;
- the transfer of staff;
- grievance and disciplinary procedures;
- the investigation of allegations of misconduct and complaints against staff;
- the dismissal and retrenchment of staff.

These staff procedures must be consistent with applicable labour legislation. The municipal manager must ensure that every staff member and every relevant trade union has easy access to a copy of these staff procedures. Provision must be made to ensure that staff members who cannot read understand the municipality's staff procedures.

Capacity building

A municipality must develop its human resource capacity to a level that enables it to perform its functions and exercise its powers in an economical, effective, efficient and accountable way. Municipalities must comply with legislation which applies to human resource development, such as the Skills Development Act and the Skills Development Levies Act.

Municipalities may fund their human resource development programmes through a training levy (in terms of the Skills Development Levies Act), or by making provision for training in their own budgets, or by applying for funding to the Sector Education and Training Authority for local government.

Labour relations

Municipalities must comply with any collective agreements concluded by organised local government, provided that these agreements fall within the mandate of organised local government to act on behalf of local government in the relevant bargaining council.

Code of Conduct for municipal staff members

The Municipal Systems Act includes a Code of Conduct, which applies to every staff member of a municipality. The municipal manager must provide every staff member with a copy of the Code of Conduct, and any amendments to it. He or she must ensure that the purpose, contents and consequences of the Code of Conduct are explained to staff members who cannot read.

(H) MUNICIPAL SERVICES

Each municipality must ensure that all members of the local community are provided with basic municipal services. Basic municipal services are services which are necessary to ensure an acceptable and reasonable quality of life. The

non-provision of these services results in a risk to public health, or the safety of the environment.

Services must be provided in a manner that is equitable and accessible, as well as financially and environmentally sustainable. Municipalities should monitor and review the provision of municipal services, with the goal of ongoing improvement in levels and quality of service.

CHOOSING A SERVICE DELIVERY MECHANISM

Mechanisms for provision of services

Municipalities have a number of options for the provision of municipal services in their areas. A municipality may provide a service internally (for example, through a municipal department or business unit), or through a service delivery agreement with a third party.

A service delivery agreement may be entered into between a municipality and

- another municipality;
- an organ of state, which may include a water committee, a traditional authority, or any service provider recognised in terms of national legislation;
- a municipal entity;
- a community based organisation or non-governmental organisation; or
- any other person legally competent to operate a business activity.

Reviewing and deciding on mechanisms to provide municipal services

Municipalities should periodically review, assess and adjust the mechanisms in place for service provision, in order to adapt to changing circumstances, and to meet the continually evolving needs of the local community.

Service delivery mechanisms should be reviewed when a new service is to be provided, or an existing service upgraded or extended. Municipalities must also review their service delivery mechanisms when preparing or reviewing their integrated development plan, or when a performance review points to the need to review mechanisms for delivering a particular service. If a municipality is requested to review any of its service delivery mechanisms by the provincial MEC, or by part of the local community, it must do so.

When a municipality is deciding which service delivery mechanisms are best suited to its circumstances, it must take various factors into consideration. Firstly, the municipality must assess whether it has the financial and human resources to provide a service itself, and whether it has the capacity to improve and extend that service in the future. The direct and indirect costs and benefits associated with the provision of a service by a municipality need to be carefully considered. Municipalities should also consider whether they would be able to deliver the service more effectively if they restructured their internal service delivery mechanisms, for example, by establishing a business unit.

If a municipality has considered all the above variables and decides to explore the possibility of service provision through a service delivery agreement, it must meet a number of requirements before taking a decision. Firstly, the local community must be given notice of the municipality's intention to consider a service delivery agreement. Secondly, the various costs and benefits of entering into a service delivery agreement must be carefully considered. Municipalities must consider the impact of entering into a service delivery agreement on the environment, the community, and employment and development patterns in the area. The views of the local community and organised labour should be considered. The capacity and potential future capacity of any prospective service provider should be thoroughly assessed to ensure that the service provider has the necessary skills, expertise and resources for the provision of the service.

After weighing up the costs and benefits of different mechanisms for delivering a service, a municipality must select the option that will achieve the best outcome. It is important to choose the mechanism that makes the most effective use of available resources to provide the highest standard of service possible. Factors such as the equitability, accessibility, and financial and environmental sustainability of the proposed service delivery method must be carefully considered.

Before finally taking a decision, municipalities need to ensure that the decision complies with national legislation relating

to the appointment of a third party service provider, and any other requirements that may be prescribed by regulation.

PROVISION OF SERVICES THROUGH INTERNAL MUNICIPAL MECHANISMS

If a municipality decides to provide a service through its own administration, it must allocate adequate human and financial resources for the proper provision of the service. The municipality must transform the provision of the service in accordance with the requirements of the Municipal Systems Act. In other words, the municipality must ensure that the service is provided in an efficient, effective and sustainable manner, that the service is equitable and accessible, and that the best possible use is made of available resources.

PROVISION OF SERVICES THROUGH SERVICE DELIVERY AGREEMENTS

A municipality may decide that the best method to provide a service is by way of a service delivery agreement. If a municipality decides to provide a service through such an agreement with another municipality, a municipal entity, or a national or provincial organ of state, it may negotiate and enter into the agreement.

If a municipality decides to enter into a service delivery agreement with any other institution or person, it must follow a competitive bidding procedure.

Responsibilities of municipalities when providing services through service delivery agreements

If a municipality enters into a service delivery agreement with a third party, the municipality remains responsible for ensuring that the service is delivered. The municipality must regulate the provision of the service, and control the setting of tariffs by the service provider in line with its tariff policy. The municipality must monitor the provision of the service, and ensure uninterrupted delivery of the service to the local community.

If the service which is being provided through a service delivery agreement falls within one of the municipality's development priorities and objectives (as outlined in the municipality's integrated development plan), the municipality must ensure that the service is part of its normal performance management and integrated development planning processes.

While the municipality remains responsible for the provision of the service, a service delivery agreement may authorise the municipality to assign various responsibilities to the service provider. Responsibilities that may be assigned to the service provider include:

- the development and implementation of a detailed service delivery plan, within the framework of the municipality's integrated development plan;
- the operational planning, management and provision of the service;
- undertaking social and economic development that is directly related to the provision of the service;
- customer management;
- managing its own accounting, financial management, budgeting, investment and borrowing activities within a framework of transparency, accountability, reporting and financial control determined by the municipality;
- the collection of service fees from users of services in accordance with the municipal council's tariff policy, and in accordance with the credit control measures outlined in the Municipal Systems Act.

It is the municipality's responsibility to review and adjust tariffs. Where applicable, funds for the subsidisation of services to the poor must be passed on to the service provider. The system for transferring such funds must be transparent and subject to performance monitoring and audits.

The municipality must ensure that the service will continue to be provided in the event of the service provider becoming insolvent, being liquidated, or if the service provider for any reason becomes unable to perform in terms of the service delivery agreement. The municipality may ensure the continuity of service by taking over the management of the service provider, or by providing for judicial management of the service provider, or by other means.

When a municipality enters into a service agreement, staff may be transferred or seconded to the service provider, with

the agreement of the staff concerned. The municipality must take over the municipal service and assets when the agreement expires or is terminated.

A service delivery agreement may be amended by agreement between the parties, except where the agreement has followed a competitive bidding process. An amendment to an agreement made through a competitive bidding process can only be made after the local community has been given reasonable notice of the intention to amend the agreement. The local community must also be given sufficient opportunity to make representations to the municipality.

No councillor or staff member of a municipality may share in any profits or receive any benefits from a service provider providing a municipal service in terms of a service delivery agreement.

Municipal entities, including service utilities

Municipalities may wish to deliver some services through municipal entities. Municipal entities are usually responsible for a single municipal function, or for a set of related functions. They are corporate entities which operate under the 'ownership control' of one or more municipality. 'Ownership control' means that the municipality (or municipalities) which own the entity have control over its financial and operating policies. They can exercise this control in a number of ways, such as:

- appointing or removing at least the majority of directors (or members of the governing body);
- appointing or removing the entity's chief executive officer;
- casting the majority of votes at meetings of the board of directors (or governing body); or
- controlling at least the majority of votes at a general meeting (if the entity is a company, co-operative, or other body which has members).

If a municipality decides to provide a service through a service delivery agreement with a municipal entity, it may establish a company, co-operative, trust fund, or other corporate entity to provide the service. It may also acquire ownership control in any existing corporate entity that as its main business intends to provide that municipal service in terms of a service delivery agreement with the municipality.

Municipalities may also establish a service utility to provide a specific municipal service. A service utility is a specific type of municipal entity. It is separate juristic person, which is established by a municipal by-law. The municipality that established the utility must exercise ownership control of it. To establish a service utility, a municipality must pass a by-law which regulates the functioning and control of the utility.

Competitive bidding

If a municipality decides to provide a service through a service delivery agreement with any service provider other than another municipality, a national or provincial organ of state, or a municipal entity, then the municipality must select the service provider through a fair and competitive process. The process of selection must be equitable, transparent and cost-effective. All prospective bidders must have equal and simultaneous access to relevant information. The municipality must minimise the risk of fraud and corruption.

A municipality may show preference for categories of service providers in order to advance the interest of persons disadvantaged by unfair discrimination, as long as the quality, cost, coverage and developmental impact of the service is not compromised by such preference. Any preference exercised must be within the provisions of the Preferential Procurement Policy Act (Act 5 of 2000).

When choosing a service provider, municipalities must assess the potential service provider's capacity to provide the service, and take into account future capacity requirements. Municipalities must also take into account the direct and indirect costs and benefits associated with the provision of the service by the service provider.

Negotiation and agreement with prospective service provider

Once the municipality has selected a prospective service provider, it must negotiate the final terms and conditions of the service delivery agreement with the preferred service provider. If these negotiations are successful, the municipality must

enter into a service delivery agreement with the service provider. The agreement must be based on the terms and conditions specified in the bidding documents, and modified or supplemented in the negotiations. Changes to the original bidding documents, which arise from the negotiations between the prospective service provider and municipality, may not materially affect the bid in a way that compromises the bidding process. In other words, the prospective service provider should have fairly won the bidding process on the strength of their original bid, regardless of any subsequent negotiated changes.

If the municipality fails to reach an agreement with the preferred service provider within a reasonable time, the municipality may negotiate with their second choice of service provider.

When a municipality enters into a service delivery agreement, it must give notice to the community of the particulars of the agreement. This must be done by making copies of the agreement available for public inspection at its offices, and by publishing the particulars of the service that will be provided, along with the name of the service provider, in a locally circulated newspaper.

SERVICE DISTRICTS

Internal municipal service districts

If it will facilitate the provision of a service in an area, a municipality may establish an internal municipal service district for part of its area of jurisdiction. If a municipality decides to establish a service district, it must first consult the local community on the proposed borders of the district, the nature of the service which will be provided, the way in which the service will be financed, and the proposed mechanism for delivering the service. The majority of members of the local community within the service district, who contribute to the service (eg: by paying service charges), must agree to the establishment of the service district.

When a municipality establishes an internal municipal service district, it must determine the borders of the district, and the method by which the service in the district will be delivered. In order to finance the service in that district, the municipality may impose a special surcharge on the tariff, or increase the tariff for the service to that district. Separate accounting systems and records must be kept for each service district.

The municipality may establish a committee of representatives from the community to consult and advise the municipality on matters relating to the service in that district.

Policy framework for internal municipal service districts

Municipalities which wish to establish internal municipal service districts must adopt a policy framework to guide the establishment, regulation and management of their service districts. When developing this policy framework, municipalities should think about how the establishment of internal service districts will promote social, economic and spatial integration, and local economic development in the municipality. The policy framework must ensure that the needs of parts of the municipality are balanced with the needs of the municipality as a whole. It is important that internal service districts do not entrench or contribute to creating disparities in service provision across the municipal area.

Multi-jurisdictional municipal service districts

If it will facilitate the provision of a municipal service, two or more municipalities may decide to establish designated parts of their municipal areas as a multi-jurisdictional municipal service district. The national Minister for local government may also request municipalities to establish a multi-jurisdictional service district, where the Minister thinks this will be in the national interest.

If two or more municipalities enter into an agreement to establish a multi-jurisdictional municipal service district, the agreement must describe the rights, obligations and responsibilities of each participating municipality in detail.

The agreement must determine the boundaries of the district, identify the service to be provided, and determine the mechanism by which the service will be provided. The agreement must also specify budgetary, funding and scheduling arrangements for implementation of the agreement.

Municipalities must establish a governing body for the multi-jurisdictional service district. The governing body is a juristic person, and must consist of between three and fifteen representatives. The agreement between municipalities which establishes the multi-jurisdictional service district must include the details of the governing body, such as:

- the appointment of representatives of the participating municipalities to the governing body;
- the number of representatives appointed from each municipality (including their terms and conditions of appointment);
- the appointment of a chairperson;
- the operating procedures of the governing body;
- the delegations of powers and duties from participating municipalities to the governing body; and
- any other matters relating to the functioning of the governing body.

The agreement must also provide for the appointment of staff by the governing body, the transfer of staff to the governing body, and for the acquisition of infrastructure, goods and services.

The agreement must include details of the conditions of withdrawal of a municipality from the service district. Termination of the agreement must also be covered, including issues such as the conditions and consequences of termination, the method and schedule for winding-up of operations, the distribution of proceeds, and the allocation between participating municipalities of any liabilities. If there is only one remaining participating municipality in a multi-jurisdictional service district, the district will automatically terminate. A multi-jurisdictional service district can also be terminated by written agreement among all participating municipalities, or in terms of any conditions specified in the agreement.

Powers and duties of service utilities of multi-jurisdictional municipal service districts

Participating municipalities must delegate powers to the governing body of a multi-jurisdictional service district. The governing body must, in terms of the delegation, perform all the duties a municipality would normally perform when providing that service. In effect, the powers and duties of the municipality with respect to the delivery of that service are delegated to the governing body, subject to any limitations, qualifications and directives set out in the agreement.

A governing body, subject to any limitations set out in the agreement, has the following additional powers:

- to determine its own staff establishment and appoint persons to posts on its staff establishment;
- to obtain the services of any person or entity to perform any specific act or function;
- to open a bank account;
- to acquire or dispose of any right in or to property;
- to insure itself against any loss, damage, risk or liability;
- to perform legal acts, or institute or defend any legal action in its own name; and
- to do anything that is incidental to the exercise of any of its powers or duties.

Control of service utilities of multi-jurisdictional municipal service districts

The governing body of a multi-jurisdictional service district is accountable to the participating municipalities. Any legislation applicable to the financial management of municipalities is also applicable to the governing body.

Participating municipalities may require the governing body to submit regular written reports and information regarding the governing body's activities and performance. Participating municipalities may also appoint a nominee to inspect the records and operations of the governing body, and its contractors.

(I) CREDIT CONTROL AND DEBT COLLECTION

Customer care and management

The collection of rates, service charges and other taxes is an important part of a municipality's duties. It is vital to

establish a system that creates a positive and reciprocal relationship between customers and the municipality or service provider.

Municipalities should establish channels for customers to make complaints, and give feedback on the quality of service and performance of the municipality or service provider. Customer complaints should be dealt with promptly, with corrective action taken where necessary. The municipality's response times and their efficiency when dealing with complaints should be monitored.

The municipality should inform users of services of the costs involved in service provision, and how money raised from payment of service fees is spent.

Where the consumption of services has to be measured, municipalities must strive to provide accurate and verifiable metering systems. Municipalities must also provide regular and accurate accounts to customers, and accessible methods for customers to query or verify accounts or meter readings. Each municipality should provide accessible pay points and other mechanisms for settling accounts.

Debt collection responsibility of municipalities

Municipalities must adopt a credit control and debt collection policy consistent with its rates and tariff policy, and with the Municipal Systems Act and other applicable legislation. A municipality must collect all money that is due and payable to it.

Credit control and debt collection policy

A municipality's credit control and debt collection policy must detail credit control and debt collection procedures and mechanisms. It may differentiate between different categories of user, ratepayer or debtor, as long as the differentiation does not amount to unfair discrimination. The policy must provide for indigent debtors in a manner consistent with the municipality's tariff policy and any national indigent policy.

The policy must also set realistic targets in terms of estimates of income, with provisions for bad debts. Municipalities should use generally acceptable accounting practices and collection ratios. This will help municipalities to accurately estimate the amount of income they will receive from service charges.

The rate of interest charged on arrears, extensions of time for payment of accounts and other matters relating to late payments should be covered by the policy. The policy must also detail the termination or restriction of services when payments are in arrears. Matters related to theft, damages and unauthorised consumption of services should also be covered.

A municipal council must adopt by-laws to give effect to the municipality's credit control and debt collection policy, its implementation, and enforcement.

Supervisory authority

Each municipality should appoint a supervisory authority to oversee its credit control and debt collection functions. If a municipality has an executive committee or executive mayor, they must act as the supervisory authority. If a municipality does not have an executive mayor or executive committee, the municipal council may act as the supervisory authority, or appoint a committee of councillors to act as the supervisory authority.

The municipality's supervisory authority must monitor the implementation and enforcement of the municipality's credit control and debt collection policy. The supervisory authority will evaluate, review and adapt the policy to improve its efficiency when necessary.

Implementing authority

The municipal manager or service provider is responsible for the implementation and enforcement of the municipality's credit control and debt collection policy. The implementing authority must establish effective procedures and processes to collect money due to the municipality.

Both the supervisory authority and implementing authority should provide reports to the municipal council when required.

Municipality's right of access to premises

Authorised representatives of a municipality may need access to premises to read, inspect or install meters or service connections. The people living on the premises must give these representatives access to the premises at all reasonable hours.

Accounts

A municipality may consolidate any separate accounts of a person who owes the council money for different services. A municipality may credit a payment from a person towards any accounts which that person has with the municipality. A municipality may also implement any of the debt collection and credit control measures provided for in the Municipal Systems Act in relation to any arrears on accounts.

Agreements with employers

A municipality may enter into an agreement with an employer of a person to deduct amounts owed to the municipality, or regular monthly amounts, as long as the person consents to it. A municipality may provide special incentives for employers to enter into such agreements, or for employees to consent to such agreements.

(J) PROVINCIAL AND NATIONAL MONITORING AND STANDARD SETTING

National and provincial government have a constitutional obligation to monitor and support local government.

NATIONAL AND PROVINCIAL MONITORING OF MUNICIPALITIES

Monitoring

To enable national monitoring, the Minister for local government may, by notice in the *Gazette*, require municipalities to submit specific information concerning their affairs to an organ of state. The requirement may be for information to be submitted within a specified period, or at regular intervals.

The provincial MEC for local government may also require municipalities to submit specific information concerning their affairs. Provincial MECs must establish systems to monitor municipalities and to assess the support needs of municipalities in the province. These systems should allow for the monitoring of the performance and capacity of municipalities in managing their own affairs, exercising their powers, and performing their functions. The MEC should also monitor the development of local government capacity in the province.

When exercising their monitoring powers and duties, provincial MECs must rely as far as possible on the annual and other reports of municipalities. Where additional information is required, MECs may request municipalities to provide additional information. MECs should take account of the administrative burden and costs incurred by municipalities in providing additional information, as well as any performance monitoring systems which exist in the municipality which could potentially provide the necessary information.

Non-performance and maladministration

There may be times when a provincial MEC believes that a municipality in the province is not fulfilling a statutory obligation, or that some serious malpractice has occurred in the municipality. On these occasions, the MEC must give a written notice to the municipality, requesting the municipal council or municipal manager to provide required information. Alternatively, if the MEC thinks it is necessary, he or she may initiate an investigation into the matter. If there is no provincial legislation to guide this kind of investigation, the provisions of the Commissions Act will guide the investigation.

An MEC who issues a notice requesting additional information from a municipality, or instigates an investigation in a municipality, must submit a written statement to the National Council of Provinces motivating their actions.

NATIONAL STANDARD SETTING

The Minister for local government may establish national standards and minimum standards for any municipal service or function assigned to municipalities. National standards and minimum standards may distinguish between different categories, types and kinds of municipalities. Before implementing any such standards, the Minister must consult the

Minister of Finance, organised local government, the MECs for local government, and any Cabinet member responsible for regulating that service.

Other national cabinet members may also exercise the power to set minimum and national standards for the service for which they are responsible. Cabinet members must consult with the Minister for local government before setting any such national standards.

Draft national standards must be published for public comment in the *Gazette* before their enactment.

(K) NATIONAL REGULATIONS AND GUIDELINES

LEGAL AND MISCELLANEOUS MATTERS

The Municipal Systems Act regulates and provides clarity on several legal issues relevant to local government. For example, it deals with the use of certain certificates and the *Provincial Gazette* as evidence in courts; the authority of municipal staff members to institute legal proceedings; fines and bails; the serving of notices; public servitudes; offences and penalties; and restraints on the transfer of property.

NATIONAL REGULATIONS AND GUIDELINES

The Municipal Systems Act also gives the national Minister for local government the power to issue guidelines and make regulations on a range of issues mentioned in the Municipal Systems Act. These include:

- **Community participation:** The Minister may regulate any matter that may facilitate community participation in the affairs of a municipality, including setting minimum standards for funding community participation.
- **Integrated development planning:** The Minister may provide incentives to ensure that municipalities adopt their integrated development plans within the applicable prescribed period, and comply with the provisions of this Act concerning the planning, drafting, adoption and review of those plans. National guidelines may also address issues such as the detail of integrated development plans; the details of the planning process; a process for amending integrated development plans; the details of the process for dealing with objections through an ad hoc committee; and any other matter which will facilitate the drafting of integrated development plans .
- **Performance management systems:** The Minister may regulate the way in which municipalities set and review key performance indicators for their development objectives; as well as the auditing and assessment of performance measurements. The Minister may also identify general key performance indicators that can be applied across municipalities; set a framework for municipal performance targets; and set a format for annual reports. The Minister can also regulate the way in which municipalities assess their performance, the improvement of performance, and any other matter that may facilitate the implementation of effective and efficient municipal performance management systems.
- **Municipal public administration:** The Minister may regulate appeals against decisions taken in terms of delegated powers; setting uniform standards for municipal staff establishments and staff procedures; the establishment of job evaluation systems; the regulation of remuneration and other conditions of service of staff members of municipalities; the measuring and evaluation of staff performance; the development of remuneration grading and incentive frameworks for staff members of municipalities; corrective steps in the case of substandard performance by staff members of municipalities; and capacity building and training for municipal employees.
- **Service delivery:** The Minister may regulate tariff policy, including provision for subsidisation of tariffs for poor households. The Minister may also introduce incentives and penalties to encourage environmental objectives and the economical use of resources. Regulations or guidelines may also be issued with respect to the criteria for the selection or qualification of potential service providers, and the co-ordination of sectoral requirements. The Minister may make regulations or issue guidelines applicable to tariff policy, tariff subsidisation and incentives or penalties only after consultation with the Minister of Finance.
- **Credit control and debt collection:** The Minister may make regulations to facilitate effective and efficient systems of credit control and debt collection by municipalities. These regulations may include issues which the municipal manager must report on; the identification of those services where it is possible to determine how much of the service is used by a single person or household; the rendering of accounts; actions taken to secure

payment of accounts in arrears; measures to combat unauthorised consumption of services; service connections and disconnections, appeals against the accuracy of accounts for services, and any other matters relating to effective debt collection and credit control.

A phased approach to implementing the Municipal Systems Act

When issuing guidelines or regulations, the Minister must take the capacity of municipalities to implement the guidelines into account. The Minister may distinguish between different kinds of municipality, according to their capacity.

The Minister may also take a phased approach to the implementation of the Municipal Systems Act. The Minister may decide that different provisions of the Act will take effect on different dates. The Act may also be applied to different kinds of municipalities from different dates. This phased approach will allow the Minister to be sensitive to the capacity of different kinds of municipalities, and phase in the application of the Act in a way which does not place an unmanageable administrative or financial burden on any municipality.