



Date/Datum/Urnhi: 19/03/2019

REPORT TO ALL SUBCOUNCILS

Signature/Handtekening/Utyikityo: BMamba

LC22/69

1. ITEM NUMBER: T 24SUB 49/5/2019 iriat

2. SUBJECT

SUBDELEGATION OF SUBCOUNCIL DELEGATIONS TO THE SUBCOUNCIL
MANAGER

ONDERWERP

SUBDELEGASIE VAN SUBRAADDELEGASIES AAN DIE
SUBRAADSBESTUURDER

ISIHLOKO

UKUNIKEZELWA KWAMAGUNYA EBHUNGANA KUMPHATHI
WEBHUNGANA

3. PURPOSE

Following a Council resolution on 13 December 2018, this report is submitted to seek approval to subdelegate subcouncil delegations to overcome statutory time constraints where it would not be practical to call a meeting of the subcouncil and this might impact negatively on the subcouncil.

4. FOR DECISION BY

Subcouncil

In terms of section 17 of the Subcouncils by-law, 2003, the subcouncil may subdelegate any power conferred or duty or function imposed on it, to a member of the municipal staff.

5. EXECUTIVE SUMMARY

Council on 13 December 2018 adopted a new System of Delegations which includes delegations to subcouncils. These delegations came into effect on 1 January 2019 and with it all previous subdelegations are no longer valid.

It is therefore necessary to again consider the subdelegation of subcouncil delegations to subcouncil managers. This has been the practice in the past when new delegations are conferred upon subcouncils.

6. RECOMMENDATIONS

It is recommended that:

- (a) The subcouncil manager or acting subcouncil manager, in consultation with the chairperson and affected ward councillor, be authorised to exercise powers, functions and/or duties delegated to the subcouncil in terms of part 24 of Council's System of Delegations, as approved by Council on 13 December 2018;
- In the event of subcouncil delegation 4 (1) which authorises the subcouncil to comment on applications for liquor licences in terms of the Western Cape Liquor Act, 2008, as amended, and which due to time constraints cannot be submitted to one of the scheduled subcouncil meetings for consideration, the subcouncil manager or acting subcouncil manager, in consultation with the chairperson, and affected ward councillor as well as the relevant area director be authorised to deal with and finalise such matter;
 - In the event of subcouncil delegation 4 (2) which authorises the subcouncil to approve, refuse or amend applications for extension of trading days and hours on premises where liquor licences have been granted in terms of section 6(2) of the By-law: Control of Undertakings that Sell Liquor to the public, 2013, and which due to time constraints cannot be submitted to one of the scheduled subcouncil meetings for consideration, the subcouncil manager or acting subcouncil manager, in consultation with the chairperson and affected ward councillor, as well as the relevant area director be authorised to deal with and finalise such matter;
 - In the event of subcouncil delegation 7 (2) which authorises the subcouncil to grant permission for the use of public open spaces, public squares and similar places within the Subcouncil's area of jurisdiction, for any local events, and which due to time constraints cannot be submitted to one of the scheduled subcouncil meetings for consideration, the subcouncil manager or acting subcouncil manager, in consultation with the chairperson and affected ward councillor, as well as the relevant area director be authorised to deal with and finalise such matter;
 - In the event of subcouncil delegation 9 (3) which authorises the subcouncil to approve special events in or on local roads, subject to relevant legislation and policy, and which due to time constraints cannot be submitted to one of the scheduled subcouncil meetings for consideration, the subcouncil manager or acting subcouncil manager, in consultation with the chairperson and affected ward councillor, as well as the relevant area director be authorised to deal with and finalise such matter;

- (b) A report be submitted to the ensuing meeting of the subcouncil to report on the exercising of such delegation(s).
- (c) A quarterly report be submitted to Council in terms of delegations exercised during the report period.

AANBEVELINGS

Daar word aanbeveel dat:

- (a) Die subraadsbestuurder of waarnemende subraadsbestuurder, in oorleg met die voorsitter en betrokke wyksraadslid, gemagtig word om bevoegdhede, funksies en/of pligte uit te oefen wat aan die subraad gedelegeer is ingevolge deel 24 van die Raad se delegasiestelsel, soos op 13 Desember 2018 deur die Raad goedgekeur:
- In die geval van subraadsdelegasie 4(1) wat die subraad magtig om kommentaar te lewer oor dranklisensie-aansoeke ingevolge die Wes-Kaapse Drankwet, 2008, soos gewysig, en wat as gevolg van tydsbeperkings nie by een van die geskeduleerde subraadsvergaderings vir oorweging voorgelê kan word nie, die subraadsbestuurder of waarnemende subraadsbestuurder in oorleg met die voorsitter en betrokke wyksraadslid asook die betrokke gebiedsdirekteur gemagtig word om die aangeleentheid te hanteer en af te handel;
 - In die geval van subraadsdelegasie 4(2) wat die subraad magtig om aansoeke om verlenging van handelsdae en -ure goed te keur, af te keur of te wysig ten opsigte van persele waaraan dranklisensies toegestaan is ingevolge artikel 6(2) van die Verordening op die Beheer van Ondernemings wat Drank aan die Publiek verkoop, 2013, en wat as gevolg van tydsbeperkings nie by een van die geskeduleerde subraadsvergaderings vir oorweging voorgelê kan word nie, die subraadsbestuurder of waarnemende subraadsbestuurder in oorleg met die voorsitter en betrokke wyksraadslid asook die betrokke gebiedsdirekteur gemagtig word om die aangeleentheid te hanteer en af te handel;
 - In die geval van subraadsdelegasie 7(2) wat die subraad magtig om toestemming te verleen vir die gebruik van openbare oop ruimtes, openbare pleine en soortgelyke plekke in die subraad se regsgebied, vir enige plaaslike geleenthede, en wat as gevolg van tydsbeperkings nie by een van die geskeduleerde subraadsvergaderings vir oorweging voorgelê kan word nie, die subraadsbestuurder of waarnemende subraadsbestuurder in oorleg met die voorsitter en betrokke wyksraadslid asook die betrokke gebiedsdirekteur gemagtig word om die aangeleentheid te hanteer en af te handel;
 - In die geval van subdelegasie 9(3) wat die subraad magtig om spesiale geleenthede in of op plaaslike paaie goed te keur, en wat as gevolg van tydsbeperkings nie by een van die geskeduleerde subraadsvergaderings voorgelê kan word nie, die

subraadsbestuurder of waarnemende subraadsbestuurder in oorleg met die voorsitter en betrokke wyksraadslid asook die betrokke gebiedsdirekteur gemagtig word om die aangeleentheid te hanteer en af te handel;

- (b) 'n Verslag by die daaropvolgende subraadsvergadering voorgelê word oor die uitoefening van sodanige elke delegasie(s);
- (c) 'n Kwartaalverslag aan die Raad voorgelê word oor delegasies wat gedurende die verslagdoeningstydperk uitgeoefen is.

IZINDULULO:

Kundululwe ukuba:

- (a) Kundululwe ukuba umphathi webhungana okanye lowo ubambele umphathi webhungana, ebonisana nosihlalo kunye noceba wewadi echaphazelekayo, agunyaziswe ukuba asebenzise amagunya kwaye/okanye enze nemisebenzi egunyaziselwe ibhungana ngokungqinelana necandelo 24 leNkqubo yeBhunga yoGunyaziso, nje ngoko iphunyeziwe iBhunga ngowe-13 kweyoMnga 2018:
 - Xa kusenzeka ugunyaziso lwebhungana olungunombolo 4 (1) olunika igunya kwibhungana ukuba liveze izimvo kwizicelo zeempepha-mvume zokuthengisa utywala ngokoMthetho woTyawla weNtshona Koloni, wango-2008, nje ngokuba ulungisiwe, nezithi ngenxa yokunqongophala kwexesha zingakwazi ukungeniswa kwenye yeentlanganiselo zebhungana ezikwishedyuli ukuze zithathelwe ingqalelo, umphathi webhungana okanye lowo ubambele umphathi webhungana, ebonisana nosihlalo noceba wewadi echaphazelekayo kunye noMlawuli woMmandla ofanelekileyo, makagunyaziswe ukuba ajongane nemiba enjalo kwaye ayiqukumbele;
 - Xa kusenzeka ugunyaziso lwebhungana olungunombolo 4 (2) olunika igunya kwibhungana ukuba liphumeze, likhabe okanye lilungise izicelo zokwandiswa kweentsuku okanye iiyure zokurhweba kwiindawo apho iimpepha-mvume zokuthengisa utywala sele zinikezelwe ngokwecandelo 6(2) loMthetho kaMasipala ongoLawulo lweNdawo eziThengisela uluntu uTywala, wango-2013, nezithi ngenxa yokunqongophala kwexesha zingakwazi ukungeniswa kwenye yeentlanganiselo zebhungana ezikwishedyuli ukuze zithathelwe ingqalelo, umphathi webhungana okanye lowo ubambele umphathi webhungana, ebonisana nosihlalo noceba wewadi echaphazelekayo kunye noMlawuli woMmandla ofanelekileyo,, makagunyaziswe ukuba ajongane nemiba enjalo kwaye ayiqukumbele;
 - Xa kusenzeka ugunyaziso lwebhungana olungunombolo 7 (2) olunika igunya kwibhungana ukuba linikezele ngemvume yokuba kusetyenziswe amabala avuleleke eluntwini, iindawo zokudibanela zoluntu nezinye iindawo ezikumila kunjalo kummandla apho iBhungana lilawula khona, ukulungiselela imisitho yasekuhlaleni,

nethi ngenxa yokunqongophala kwexesha ingakwazi ukungeniswa kwenye yeentlanganiselo zebhungana ezikwishedyuli ukuze ithathelwe ingqalelo, umphathi webhungana okanye lowo ubambeke umphathi webhungana, ebonisana nosihlalo nocebha wewadi echaphazelekayo kunye noMlawuli woMmandla ofanelekileyo, makagunyaziswe ukuba ajongane nemiba enjalo kwaye ayiqukumbele;

- Xa kusenzeka ugunyaziso lwebhungana olungunombolo 9 (3) olunika igunya kwibhungana ukuba liphumeze imisitho eyodwa kwiindlela zommandla, ngokuxhomekeke kumthetho kunye nomgaqo-nkqubo ofanelekileyo, nethi ngenxa yokunqongophala kwexesha ingakwazi ukungeniswa kwenye yeentlanganiselo zebhungana ezikwishedyuli ukuze ithathelwe ingqalelo, umphathi webhungana okanye lowo ubambeke umphathi webhungana, ebonisana nosihlalo nocebha wewadi echaphazelekayo kunye noMlawuli woMmandla ofanelekileyo, makagunyaziswe ukuba ajongane nemiba enjalo kwaye ayiqukumbele;

(b) Makungeniswe ingxelo kwintlanganiselo yebhungana elandelayo eyakuthi inike inkcazelo ngokusetyenziswa kogunyaziso/izigunyaziso ezo;

(c) Makungeniswe ingxelo yarhoqo ngekota kwiBhunga malunga halo lonke ugunyaziso oluthe kwasetyenziswa ngexesha elo lengxelo.

7. DISCUSSION

Council on 13 December 2018 adopted a new System of Delegations which includes delegations to subcouncils. This new System of Delegations came into effect on 1 January 2019, a date determined by the City Manager.

With the newly adopted System of Delegations, it is necessary to again consider the subdelegation of subcouncil delegations to subcouncil managers.

With regard to subdelegating outside of recess periods, only delegated powers where time constraints are relevant, should be considered. In this regard the only delegation that comes to mind is delegation 4(1) which authorises the subcouncil to comment on applications for liquor licences in terms of the Western Cape Liquor Act, 2008, as amended. Due to the administrative and public participation process which precedes the subcouncil's comments on a liquor licence application, the 35-day period in which to submit comments to the Liquor Authority can in most instances not be met, and the matter is hence dealt with as a subdelegated power.

It should be noted that subdelegations can only be conferred upon an official hence the recommendation that the subcouncil manager, in consultation with the chairperson and relevant ward councillor, exercises the delegated authority under the circumstances mentioned. The recommendation follows the pattern followed over the past years, except for the subdelegation of delegation 4(1) regarding liquor licence applications, where the relevant Area Director is now included as one of the parties to be consulted by the subcouncil manager.

a. Constitutional and Policy Implications

All decisions will be made in terms of Council's policies.

b. Sustainability implications

Does the activity in this report have any sustainability implications for the City? No ☒ Yes ☐

c. Legal Implications

Reports on the nature and scope of decisions taken by the manager in terms of such delegated authority, must serve at the subsequent meeting of the subcouncil following the exercise of such delegation

d. Staff Implications

Does your report impact on staff resources or result in any additional staffing resources being required?

No ☒

Yes ☐

e. Other Services Consulted

Legal Compliance

ANNEXURES

Annexure A: Part 24 of System of Delegations indicating powers delegated to Subcouncils

FOR FURTHER DETAILS CONTACT:

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DIRECTORATE	Urban Management
FILE REF NO	

Bosman

ACTING EXECUTIVE DIRECTOR

Urban Management]

NAME: *Alesia Valda Bosman*

DATE: *15/03/19*

Comment:

☐ REPORT COMPLIANT WITH THE PROVISIONS OF COUNCIL'S DELEGATIONS, POLICIES, BY-LAWS AND ALL LEGISLATION RELATING TO THE MATTER UNDER CONSIDERATION.

☐ NON-COMPLIANT

Johannes

LEGAL COMPLIANCE

[Compulsory to Insert name]

NAME: *Johan-Mari Holt*

Tel: *021 900 2753*

DATE: *18/03/2019*

Comment: *Certified as legally compliant based on the contents of the report.*

Note: Executive Support to be consulted with subsequent to approval of the report.

- PART 24 -

SUB-COUNCILS

Acting in terms of section 59 of the Systems Act Council hereby delegates the following powers, functions and duties to Sub-council including the power to sub delegate any of their delegated powers, functions and duties to members of the municipal staff only in terms of section 17 the Cape Town Sub-council By-law 2003:

1. General

- (1) To assess the performance of service delivery generally within their area of jurisdiction (outcomes monitoring).
- (2) To recommend to the Executive Mayor together with the Mayoral Committee for submission to Council the needs of the Municipality as far as it relates to the functional area of the Sub-council, in terms of section 56 (2)(a) of the Structures Act.
- (3) To review and evaluate the needs of the municipality in order of priority, in terms section 56 (2)(b) of the Structures Act and recommend same to the Executive Mayor together with the Mayoral Committee for submission to Council.
- (4) To require:
 - (a) Councillors if so directed by the Speaker;
 - (b) Executive Directors if so directed by the City Manager, and/or
 - (c) official(s) designated by the relevant Executive Director

to appear at a time designated by the Sub-Council Chairperson, before the Sub-council to assist the Sub-council in the performance of its functions.

- (5) To request reports from the line functionaries on activities planned to be executed within the Sub-council area.
- (6) To recommend appropriate comments on National and Provincial draft legislation, regulations, policy frameworks etc. that affects the Subcouncil.

2. IDP, Budget and Business Planning

- (1) To monitor the implementation of Council's budget, service delivery business implementation plans, strategic objectives, policies and programmes within the sub-council jurisdictional area.
- (2) To comment and make recommendations to the Executive Mayor together with the Mayoral Committee for submission to Council in regard to the IDP and budget and thereafter annually in respect of the review of the approved IDP.
- (3) To make representation to the relevant line departments for the inclusion of the capital and operating budgetary requirements.
- (4) To approve Sub-council business plans for their functional resources.
- (5) To make recommendations in regard to the setting or revision of tariffs, levies, taxes and duties.

3. Business Licensing

- (1) To grant licences for health facilities or entertainment as provided for in terms of item 2 of schedule 1 to the Businesses Act 1991, and to exercise all powers conferred on the Municipality in terms of section 2(4) to 2(10) of the aforesaid Act.
- (2) To comment on and make recommendations regarding the demarcation and amendments thereto, of prohibited and restricted trading areas proclaimed in terms of the Businesses Act 1991.
- (3) To comment on applications in terms of the Western Cape Gambling and Racing Act 1996 (Act 4 of 1996)

4. Liquor Licences

- (1) To comment on applications for liquor licences in terms of the Western Cape Liquor Act, 2008, (Act 4 of 2008).
- (2) Approve, refuse or amend applications for extension of trading days and hours on premises where liquor licences have been granted in terms of section 6(2) of the By-law: Control of Undertakings that Sell Liquor to the public, 2013.
- (3) To exercise the powers conferred on the City in terms of Section 6(3) of the By-law: Control of Undertakings that Sell Liquor to the public, 2013.
- (4) To make recommendations to the Liquor Board for the cancellation of any liquor licence or the imposition of more/less restrictive conditions.

- (5) To report contraventions of the Western Cape Liquor Act to the responsible Officer of the South African Police.

5. Public Participation

- (1) To comment on by-laws and policies of Council within the timeframes advertised and submit comments and objections to the Executive Mayor together with the Mayoral Committee for submission to Council.
- (2) To establish and maintain a database of organisations within the area of the Sub-council as a vehicle for public participation and to facilitate the liaison between civic organisations, ratepayers associations and related, within Sub-council's areas of jurisdiction.
- (3) To ensure public participation in the development of policy, legislation, the IDP and budget, in consultation with the Public Participation Unit.
- (4) To undertake public participation on any matter initiated by the Sub-council, within their jurisdiction and in consultation with the Public Participation Unit.
- (5) To facilitate the liaison between the civic organisations, ratepayers associations and similar fora within the Sub-council area to ensure service delivery and enhance and uplift the community's environment.
- (6) To initiate and organise the celebration of important local, national and international celebrations and events e.g. Youth Day, Human Rights Day etc.

6. Policies, By-laws and applicable legislation

- (1) Monitoring the implementation of Council's policies and by-laws and applicable legislation affecting the Sub-council's area of jurisdiction and report thereon to the Speaker.

7. Public Facilities (i.e. Amenities, Sport Facilities, Parks and Recreation, Beaches and Amusement Facilities, Public Jetties, Piers and Harbours)

- (1) To oversee the maintenance and management of all public facilities within the Sub-council area and request the responsible line functionary to report thereon.
- (2) To grant permission for the use of public open spaces, public squares and similar places within the Sub-council's area of jurisdiction, for any local events.
- (3) To designate, in terms of Section 13 of the City of Cape Town: Animal By-law, 2010, public places or portion of public places with appropriate signage as free-running; off-limits or public places where a dog must be on a leash, including the power to vary such designation according to the time of day or the season during which it will apply.
- (4) To designate, in terms of Section 9(7) of the City of Cape Town: Graffiti By-law, 2010, certain Council-owned spaces to be used for murals, or any inscription, word, figure, letter, sign, symbol, sketch, picture, drawing, or design after consultation with the relevant communities, ward fora and Sub-councils.

- (5) To comment on the development, regulation, usage and maintenance of all public open spaces and parks subject to policies, by-laws and available budget.
- (6) To comment on all processes relating to the identification, development, planning and establishment of public open spaces and parks in the Sub-council's area of jurisdiction.

8. Outdoor Advertising

Outdoor Advertising and Signage By-Law, 2017

(Note: Delegations hereunder only become effective once this bylaw has been promulgated.)

- (1) To oversee the regulation of posters, placards, signs, bill-boards etc.
- (2) To grant or refuse any application for outdoor advertising signs made in terms of the Outdoor Advertising and Signage By-law, 2001, and impose conditions on an approval.

8A. Planning and Environment

In terms of the Cape Town Municipal Planning By-Law, 2015

- (1) To, if the City intends developing a district spatial development framework or a local spatial development framework, approve –
 - (a) a specified geographic area; and
 - (b) the commencement of the drafting of a district spatial development framework or a local spatial development framework as the case may be,in terms of section 13(1) and Part III section 14, 15, 16 and 17 of the City of Cape Town Zoning scheme Regulations.

- (2) To recommend to Council the adoption of a draft district spatial development framework, draft local spatial development framework or amendment thereof, in terms of section 14.
- (3) To recommend to Council the adoption of a new overlay zoning or amendment or removal of an existing overlay zoning, in terms of section 24(3).
- (4) To recommend to Council, in respect of each overlay zoning, except a subdivisional area overlay zoning, the approval of the publication in the Provincial Gazette of –
 - (a) the specified area or land units which have the overlay zoning;
 - (b) a reference to a map available on the City's website that depicts which specified area or land units have the overlay zoning; or
 - (c) a statement that no specified area or land unit has the overlay zoning, in terms of section 24(4).
- (5) To recommend to Council the designation of a specified area or land unit to have an overlay zoning, or to no longer have an overlay zoning, in terms of section 24(5).
- (6) To exempt an applicant from a procedural requirement or shorten a time period provided for in the By-Law, provided that the procedure must still comply with the provisions of applicable legislation dealing with advertising, in terms of section 69(3).

In terms of Land Use Planning Act

- (7) To make recommendations to the Executive Mayor regarding the following:
 - (a) Regarding a request authorisation from the Provincial Minister in terms of section 60(2) of the Western Cape Land Use Planning Act,

No 3 of 2014 to deviate from the provisions of that Act, in terms of section 68(6);

- (b) Regarding the decision to declare land to be an emergency housing site and suspend the zoning applicable to the land for a period of up to 90 days to allow the land to be used for emergency housing, in terms of section 68(7), after considering any timeous comments;
- (c) Regarding an extension of the declaration of land to be an emergency housing site for a further period of up to 90 days, in terms of section 68(9);
- (d) Regarding the declaration of an application for the establishment of housing to be an urgent housing application, in terms of section 69(1);
- (e) Regarding an exemption in writing of an application from compliance with the provisions of the By-Law to reduce the financial burden of
 - (i) the provision of housing with the assistance of a state subsidy; or
 - (ii) the incremental upgrading of an existing settlement in terms of section 140;

subject to section 60 of the Western Cape Land Use Planning Act, No 3 of 2014.

9. Transport

- (1) To decide within its area of jurisdiction where traffic calming measures are to be applied subject to the relevant legislation and policy after considering a report from the Transport Directorate.
- (2) To consider the temporary closure of any road where objections have been received to such closure.

- (3) To approve special events in or on local roads, subject to relevant legislation and policy.
- (4) To approve or refuse any application for the placement of security huts on City-owned land, provided that all technical requirements have been met after receiving a recommendation from the Executive Director: Transport.

10. Letting of Property and Property Matters

- (1) To comment to the competent authority on the granting of rights to use, manage or control City immovable assets such as land, property and buildings and to recommend conditions of approval where deemed necessary.
- (2) To recommend to the competent authority, the approval or refusal of any applications from non-governmental organisations or registered neighbourhood watches to waive or adjust the payment of a site rental fee received from any such organization.
- (3) To comment to the relevant authority on the reservation of property for municipal purposes, within the Sub-council's area of jurisdiction.

11. Ad-hoc Task-teams and Working Groups

- (1) To establish and determine the terms of reference of ad-hoc task-teams, and working groups and to appoint the members and chairpersons thereof.

12. Street Naming

- (1) To name streets after consultation with the public and developers where applicable and subject to Council's policies.

13. Council Recess

- (1) To grant Sub-council managers, in consultation with the Sub-council Chairperson and the affected ward Councillor, the authority to exercise all the powers of Sub-councils during periods of Council's recess, in cases of urgency.