



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

**ANNEXURE 20
APPEALS POLICY**

2023/24 BUDGET (MAY 2023)

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ABBREVIATIONS AND DEFINITIONS

ABBREVIATIONS

Abbreviation	Term
Constitution	The Constitution of the Republic of South Africa, 1996
MFMA	Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003)
Systems Act	Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)
Structures Act	Local Government: Municipal Structures Act, 1998 (Act 117 of 1998)
SCM	The Supply Chain Management Department of the City
PAJA	Promotion of Administrative Justice Act, 2000 (Act 3 of 2000)
Policy	The City's Appeals Policy

DEFINITIONS

For the purpose of this Policy:

Term	Definition
Appeal Authority	In terms of section 62(4) of the Systems Act, the Appeal Authority means the City Manager.
Appellant	A person/entity who lodges an appeal in compliance with section 62 of the Systems Act.
City	A municipality established by the City of Cape Town Establishment Notice No. 479 of 22 September 2000, issued in terms of section 12 of the Structures Act, or any structure or employee of the City acting in terms of delegated authority.
City Manager	A person appointed in terms of section 54A of the Systems Act and 'Accounting Officer' shall have the same meaning.
decision	A decision taken by a political structure, political office bearer, councillor or staff member of the City, in terms of a power or duty which has been delegated or sub-delegated by a delegated authority.
employee	The employees of the City, including the City Manager.

General Tariff Policy	The General Tariff Policy as contained in the City's Tariff Policy, which is approved annually, as part of the Budget approval process of the City, and is applicable to all sundry tariffs, as provided for in the Schedule of Tariffs of the City.
System of Delegations	The City's System of Delegation as per section 59 of the Systems Act in terms of which a Municipal Council must develop a system of delegation that will maximise administrative and operational efficiency and provide adequate checks and balances and is approved and amended by the Municipal Council from time to time.
sundry tariff	A tariff set as a fixed rand amount charged for specific services and published in a tariff schedule, adjusted annually.
surcharge	Refers to a charge in excess of the administration fee, which may be charged in appropriate circumstances, as contemplated in the General Tariff Policy.
vexatious appeals	Refers to frivolous and improper tender appeals instituted without merit, to frustrate, harass or subdue other parties or to cause delay or annoyance or any combination of the above.

1. INTRODUCTION

- 1.1 The City is required, in terms of the section 62 of the Systems Act, to consider an appeal lodged by an aggrieved person (Appellant), against decisions taken by the City. Section 62 of the Systems Act provides the regulatory framework in respect of appeals lodged against decisions taken in terms of delegated or sub-delegated authority.

Section 62 (1) of the Systems Act states that:

'A person whose rights are affected by a decision taken by a political structure, political office bearer, councillor or staff member of a municipality in terms of a power or duty delegated or sub-delegated by a delegating authority to the political structure, political office bearer, councillor or staff member, may appeal against that decision by giving written notice of the appeal and reasons to the municipal manager within 21 days of the date of the notification of the decision'.

- 1.2 In order to recognise the City's legal and constitutional obligation to be transparent and provide efficient services to residents of Cape Town, a fixed upfront administration fee will be charged per appeal lodged in terms of the City's approved Tariff Policy, which may be adjusted annually in terms of the Tariff structure as approved by the Municipal Council.
- 1.3 In addition to the above-mentioned, a surcharge may also be charged for vexatious tender related appeals, which may be adjusted annually in terms of the Tariff structure as approved by the Municipal Council.

2. PROBLEM STATEMENT

- 2.1 The City receives a number of appeals on a monthly basis, and has to ensure that the appeals are considered timeously to prevent backlogs and to promote efficient project management to enable continued service delivery. Invariably these appeals contain large amounts of information that is of an intricate nature and requires detailed consideration. This places administrative constraints on the City's administrative infrastructure as well as on its resource capacity.

- 2.2 The City does not currently have a standard policy that guides the process for handling appeals. This Policy aims to provide such guidance and to ensure that the City upholds its commitment to build a capable and collaborative municipality.

3. PURPOSE

- 3.1 The purpose is to:

3.1.1 include specific provisions relating to the charging of an upfront administration fee for appeals lodged in terms of section 62 of Systems Act, as well as the charging of a surcharge for vexatious tender related appeals; and

3.1.2 set out the process to be followed by Appellants' whose rights have been affected by a decision taken in terms of delegated or sub-delegated authority.

4. DESIRED OUTCOMES

- 4.1 To recover the cost of administering the appeal process.
- 4.2 To establish a process to ensure that appeals are dealt with efficiently.
- 4.3 To improve the service provided on appeals by creating a coherent and structured process to follow.
- 4.4 To provide for the charging of an upfront administration fee payable by an Appellant when lodging an appeal in terms of section 62 of the Systems Act.
- 4.5 To provide for the charging of a surcharge payable by the Appellants', when submitting vexatious appeals in relation to tender appeals.
- 4.6 To define policy principles and provide guidance on the process to members of the public when submitting an appeal, and to City officials when administering appeals.

5. STRATEGIC ALIGNMENT

5.1 The following table indicates the strategic alignment.

Strategy/Policy	Focus Area
Integrated Development Plan (2022-2027)	• Objective 4: Well-managed and modernised infrastructure to support economic growth • Objective 16: A capable and collaborative city government
Sustainable Development Goals	• Goal 8: Decent Work and Economic Growth • Goal 9: Industry, Innovation and Infrastructure • Goal 11: Sustainable and Cities and Communities

6. REGULATORY CONTEXT

6.1 The following forms part of the governing legislation when lodging appeals:

- 6.1.1 Constitution;
- 6.1.2 MFMA;
- 6.1.3 The Systems Act;
- 6.1.4 The Structures Act;
- 6.1.5 PAJA;
- 6.1.6 The City's Tariff By-law;
- 6.1.7 The City's Tariff Policy;
- 6.1.8 SCM Policy; and
- 6.1.9 The City's Credit Control and Debt Collection Policy.

7. ROLEPLAYERS AND STAKEHOLDERS

7.1 **Legal Services Department:** Responsible for administering the appeals process.

- 7.2 **Revenue Department:** Responsible for the recovery of the upfront administration fee, as well as a surcharge for the submission of a vexatious appeal.
- 7.3 **All Directorates:** Responsible to provide information to the Appeal Authority, where an appeal emanates from the relevant Directorate.
- 7.4 **Appellants':** A person who lodges an appeal in terms of this Policy.

8. POLICY PARAMETERS

- 8.1 The provisions contained in this Policy only relate to appeals submitted in terms of section 62 of the Systems Act and do not detract from any other appropriate appeal procedure provided for in any other applicable law.
- 8.2 This Policy only relates to decisions taken under delegated authority, where the City Manager is the Appeal Authority.

9. POLICY DIRECTIVES

The following directives outline the principles and the actions regarding the appeals process within the City.

9.1 Policy Principles

- 9.1.1 If a person is aggrieved with a decision taken by the City, the following two elements must be satisfied:

- (a) the decision complained of must have affected a person's rights; and
- (b) the decision must have been taken in terms of delegated or sub-delegated authority.

- 9.1.2 The City will ensure that all appeals are handled in terms of the requirements contained in section 62(3) of the Systems Act which stipulates that, '[t]he

appeal authority must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision'.

9.1.3 For the purpose of this Appeals Policy, the City Manager is the Appeal Authority as set out in section 62(4)(a) of the Systems Act.

9.1.4 The payment of the upfront administration fee will be processed, —

- a) where an Appellant has a municipal account, the above-mentioned fee will be charged as a sundry tariff on the municipal account; or
- b) in the event where an Appellant does not have a municipal account, an invoice with a General Ledger ('GL') reference number will be generated and the Appellant is to make such payment at the nearest municipal offices or pay station and send the proof of payment to the Appeal Authority.

9.1.5 The fixed administration fee referred to in clause 9.1.4 must be paid upfront, however, the non-payment of the upfront administration fee will not result in the City not administering an appeal, where it was validly lodged in terms of section 62 of the Systems Act.

9.1.6 In the event where Appellants' refuse or are unable to pay the administration fee, the City may recover such fee, in terms of its Credit Control and Debt Collection By-law, 2006 (as amended) and Credit Control and Debt Collection Policy.

9.1.7 In the event where it has been established that an Appellants' appeal amounts to a vexatious appeal (in whole or part), the City may charge a surcharge within a reasonable period, but not later than twelve (12) months after finalisation of the appeal.

9.1.8 The applicable surcharge is reflected in the Tariff Schedule, which forms part of the Budget. This surcharge will be reviewed annually, as part of the City's budget preparation cycle.

9.1.9 Where a surcharge is charged for a vexatious appeal (i.e. for tender related appeals), such additional charge or cost will be processed in accordance with sub-paragraph 9.1.4 above.

9.2 Appeals Process

9.2.1 Any person whose rights are affected may provide written notice and reasons for the appeal to the relevant appeals authority, by lodging the appeal to:

The City Manager - Office of the City Manager, Legal Services Department, Legal Compliance Unit;

Via hand delivery at: 20th Floor, Tower Block, 12 Hertzog Boulevard, Cape Town, 8001;

Via post at: Private Bag X918, Cape Town, 8000; **or**

Via email at: MSA.Appeals@capetown.gov.za

9.2.2 When an appeal is received, the City Manager must; -

9.2.2.1 Acknowledge receipt of the appeal within a reasonable time.

9.2.2.2 In order to ascertain whether the appeal is validly lodged in terms of section 62(1) of the Systems Act, the following requirements must be met:

- a) the appeal must be lodged within twenty-one (21) days of notification of the decision to the affected party;
- b) ascertain if rights of the person or entity who lodged an appeal have been affected;
- c) ascertain if the decision-maker has the necessary power to make the decision; and

- d) ascertain if the affected person has provided grounds of appeal in writing.

9.2.2.3 Once it is established that the appeal was validly lodged, the Appeal Authority must commence with the appeal within six (6) weeks and decide the appeal within a reasonable period.

9.2.2.4 Thereafter, the Appeal Authority makes its decision in accordance with section 62(3) of the Systems Act, to either confirm, vary or revoke the decision.

9.2.2.5 The decision of the Appeal Authority is communicated to the Appellant and all relevant affected parties.

10. STATUTORY PRESCRIPTION OF APPEALS LODGED

10.1 Appeals lodged outside of the prescribed twenty-one (21) day period, will not be considered by the Appeal Authority.

10.2 The calculation of the above-mentioned days is based on calendar days, meaning that the first day will be excluded and the last day will be included, unless the last day happens to fall on a Saturday, Sunday or any Public Holiday, then the last day will be the next working day.

10.3 The System's Act does not provide for the condonation of appeals lodged outside of the twenty-one (21) day period. The Appeal Authority has neither the right nor discretion to condone or waive the requirement of compliance with the twenty-one (21) day notice period as prescribed in section 62 of the Systems Act.

11. REMEDIES

11.1 The decision taken by the Appeal Authority constitutes a final and binding outcome in terms of the law, as such, the Appeal Authority is *functus officio*.

- 11.2 Should Appellant's seek to take the matter further, the Appellant may approach the High Court of South Africa, Western Cape Division in Cape Town for a review of the decision taken by the Appeal Authority.
- 11.3 In terms of section 7(1) of PAJA, proceedings for judicial review must be instituted without unreasonable delay and not later than one hundred and eighty (180) days after the date of the Appeal Authority's decision.

12. REVIEW

- 12.1 The Appeals Policy will be reviewed as required by changes in the business or legislative environment.
- 12.2 Any amendments to this Policy must be submitted to the Municipal Council for approval.