



Terms of Reference

Municipal Public Accounts Committee (MPAC)

1. Introduction

- 1.1 Vast powers have been conferred on council in terms of section 160(1)(a) of the Constitution, as follows:

“A Municipal Council makes decisions concerning the exercise of all the powers and the performance of all the functions of the municipality.”

- 1.2 Oversight is a crucial role of council in monitoring and evaluating the actions of the executive and administration in the discharge of the vast powers they possess. It also includes avoidance of abuse of power and guarding against under performance.
- 1.3 It is also possible for council to delegate the oversight role or part thereof to committees of council. In terms of section 79A(1) of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), (as amended) (hereinafter referred to as “the Structures Act”), *“a municipal council must establish a committee called the municipal public accounts committee”*.
- 1.4 Council is required in terms of section 53(1) of the Local Government: Municipal Systems Act, 32 of 2000 (hereinafter referred to as “the Systems Act”), to define a specific role and area of responsibility for each political structure.
- 1.5 Furthermore, in terms of section 32(2) of the Local Government: Municipal Finance Management Act, 56 of 2003) (hereinafter referred to as “the MFMA”) and regulation 74 of the Municipal Budget and Reporting Regulations, a municipality must recover unauthorised, irregular or fruitless and wasteful expenditure unless the expenditure is, after investigation by council committee, certified by the council as irrecoverable and written off by the council.
- 1.6 MPAC activities should enhance increased council and public awareness of the financial and performance challenges of the City and its entities.
- 1.7 The Terms of Reference set out the working arrangements and list vital information about the MPAC, such as detailing *inter alia* of its role, powers and duties, chair and membership and administrative support etc.
- 1.8 The purpose of the Terms of Reference is to guide the MPAC to promote good governance, transparency and public accountability.

2. Role

- 2.1 MPAC must evaluate, direct and supervise investigations into any matters within the scope of its roles and responsibilities through a resolution of council.
- 2.2 The oversight role of MPAC is to review the City of Cape Town’s (“the City”) Integrated Annual

Report by no later than two months from the date on which the annual report was tabled in the council, with specific focus on the financial aspects as contained in the Report of the Auditor-General South Africa (hereinafter referred to as the “AGSA”) on the Annual Financial Statements of the City, and also, when instructed by council, to advise council on the recoverability of any unauthorised, irregular or fruitless and wasteful expenditure.

- 2.3 The MPAC, as per legislation will, as part of its oversight role, receive access to all relevant information, persons and process to fulfill their mandate

3. Establishment and Term

- 3.1 MPAC is established in terms of section 79A(1) of the Structures Act and shall remain until dissolved by resolution of Council.

4. Membership

- 4.1 MPAC is a committee of council established by council in terms of section 79A of the Structures Act (as amended). Council determines its composition.

- 4.2 Composition:

4.2.1 The council shall appoint MPAC members up to a maximum of 13.

4.2.2 When a vacancy arises in MPAC, Council will appoint a replacement member.

4.2.3 MPAC members should represent a wide range of experience and expertise available in council, especially with a financial background; and should represent the various political affiliations.

4.2.4 The executive mayor, executive deputy mayor, any member of the mayoral committee, speaker, whip (chief whip) and municipal officials are precluded by section 79A of the Structures Act, from being members of the municipal public accounts committee.

4.2.5 MPAC members should preferably not serve on other committees of council to minimise possible conflict of interest.

- 4.3 The removal of a MPAC member shall be at the discretion of the council.

- 4.4 Membership of MPAC shall be published in the City's Integrated Annual Report.

- 4.5 MPAC members shall have the highest regard for the Code of Conduct for Councillors set out in Schedule 7 of the Structures Act and shall at all times be committed to the following values:

- 4.5.1 Openness and transparency
- 4.5.2 Honesty and integrity
- 4.5.3 Tolerance and respect
- 4.5.4 Equality and fairness
- 4.5.5 Appreciation of cultural differences
- 4.5.6 Sustainability
- 4.5.7 Consensus building

- 4.6 A member must, at the commencement of any meeting of MPAC, declare (in writing, part of attendance register) any conflict or potential conflict of interest in any matter which is to be discussed, and recuse himself or herself from the meeting during the discussion of such matter.

5. Responsibilities

Chairperson:

The Chairperson of MPAC is appointed by Council in terms of section 79(2)(c) of the Structures Act. The MPAC chairperson is appointed from the opposition. Council may appoint a Deputy Chairperson.

Responsibilities:

- 5.1 The Chairperson will meet regularly with the Speaker for matters related to council governance committee structures.
- 5.2 The Chairperson must develop an Annual Oversight Work Plan for each year, based on MPAC's assigned functions and responsibilities, ensuring that such plan is aligned to all relevant strategies and governance priorities as well as to ensure that all relevant matters are covered by the agendas of the meetings planned for the year.
- 5.3 The Chairperson must in accordance with the Annual Oversight Work Plan, assign roles and responsibilities to members based on the individual member's expertise and interests - to be linked to the member's personal development plans and MPAC's strategic objectives.
- 5.4 The Chairperson must annually assess individual member performance, based on their responsibilities in terms of these Terms of Reference.
- 5.5 The Chairperson must address collective Committee performance outcomes, as referred to in section 9 of this terms of reference – through self- and stakeholder assessments, and facilitate appropriate remedial action (action plans) to enhance the Committees performance.
- 5.6 The Chairperson must exercise overall responsibility for the Annual Oversight Work Plan adopted by MPAC.
- 5.7 The Chairperson must demonstrate an objective and evidence based approach to MPAC's roles and responsibilities.
- 5.8 The Chairperson should participate in setting and agreeing to the agenda for meetings of MPAC, which contain clear objectives and outcomes for such meetings.

Deliverables:

- Annual Work Plan
- Agendas in accordance with council's approved calendar of meetings
- Performance appraisals of committee members, example individual personal development plans
- Remedial action plans to enhance MPAC's performance
- Signed minutes of meetings of the MPAC
- Quarterly overview report on MPAC activities
- Assignments in terms of the Annual Oversight Work Plan adopted and assigned by MPAC
- Task Team activities and meeting records – agendas, minutes and reports

Members:

Responsibilities:

- 5.9 Members must be fully prepared for MPAC meetings and are expected to attend each meeting in

accordance with the Code of Conduct and Rules of Order governing the meetings of council and its committees.

- 5.10 Members must exercise all actions required to fulfill the personal work assignments in terms of the oversight annual work plan adopted by MPAC.

Deliverables:

- Quarterly overview report on MPAC activities.
- Assignments in terms of the Annual Oversight Work Plan adopted by and assigned by the Chairperson of MPAC, including Task Team activities.

MPAC

General roles:

Within its Terms of Reference and the council's oversight report envisaged in section 129 of the MFMA, MPAC's due process entails:

- 5.11 Performing the following functions listed in section 79A of the Structures Act, as amended:
- (a) review the Auditor-General's reports and comments of the management committee and the audit committee and make recommendations to the municipal council;
 - (b) review internal audit reports together with comments from the management committee and the audit committee and make recommendations to the municipal council;
 - (c) initiate and develop the oversight report on annual reports contemplated in section 129 of the Local Government: Municipal Finance Management Act;
 - (d) attend to and make recommendations to the municipal council on any matter referred to it by the municipal council, ~~executive committee~~, a committee of the council, a member of this committee, a councillor¹ and the municipal manager; and
 - (e) on its own initiative², subject to the direction of the municipal council, investigate and report to the municipal council on any matter affecting the municipality.
- 5.12 considering and adopting the Chairperson's annual oversight work plan;
- 5.13 considering and making recommendations on the report to council regarding specific reports of the AGSA and queries, comments and responses in respect thereof;
- 5.14 recommending any proposals in respect of the oversight process for improving efficiency, effectiveness and economy in the financial sphere of the City; and
- 5.15 investigating the recoverability of any unauthorised, irregular or fruitless and wasteful expenditure in terms of section 32(2) of the MFMA, including relevant Regulation as instructed by council, and as guided by any adopted relevant Leading Practice. The purpose being to recommend to council whether such expenditure -
- 5.15.1 resulted in the City receiving "value-for-money" (i.e. determine if the resources were procured economically and equitably and that they were used efficiently and effectively);
 - 5.15.2 is recoverable or not weighed up against financial implications;
 - 5.15.3 has been referred, if applicable, to the:
 - Financial Misconduct Board, in relation to the Financial Misconduct Regulations;
 - Administration in terms of disciplinary processes; and
 - SAPS in terms of criminal reporting.

¹ The referral mechanism will be outlined in the Standard Operating Procedure (SOP)

² The investigative authority will be outlined in the SOP

- 5.16 ensuring that corrective action has been taken in respect of the comments and resolutions of MPAC during the oversight reporting process;
- 5.17 promoting good governance, transparency and accountability on the use of municipal resources.

Task Teams

- 5.18 MPAC may consider that, in order to better facilitate cross-cutting reviews, the discharge of its duties would be best served by the establishment of Task Teams to assist MPAC in its functions. MPAC may establish a Task Team to perform an in-depth investigation on the matters referred to it.
- 5.19 The purpose of Task Teams is to investigate matters assigned to it by MPAC and make recommendations back to MPAC.
- 5.20 Task Team meetings are constituted to collect, scrutinise and evaluate information and supporting documentation, as well as interview relevant officials before arriving at informed conclusions/findings and elevating the recommendations to the MPAC.
- 5.21 The Task Team should consist of not less than three and not more than 5 MPAC members who are appointed by MPAC. These Task Team members should elect a Chairperson at the first meeting of the Task Team.
- 5.21 The Chairperson of the Task Team must ensure that Task Team meetings are focused through asking probing questions and managing the order of questions within reasonable time limits.
- 5.22 The Executive Committee Services must ensure that Task Team questions are documented and submitted to the relevant line departments prior to the Task Team meetings and the relevant identified officials are invited, with reasonable notice, to the Task Team meeting.
- 5.23 Once the investigation is completed, the Task Team reports its findings and recommendations to the MPAC for consideration. Reporting is done on the formal or official reporting template of council and should include details relating to the background, corrective action taken and recommendations regarding the corrective action.
- 5.24 If the MPAC is satisfied with the investigation by the Task Team, the recommendations reported are adopted by the MPAC.

6. Authority, accountability and reporting

- 6.1 The authority, duties and functions of MPAC are derived from the following:
 - 6.1.1 Structures Act, as amended
 - 6.1.1.1 Section 79A;
 - 6.1.2 MFMA
 - 6.1.2.1 Chapter 4: Municipal Budgets, Section 32: Unauthorised, irregular or fruitless and wasteful expenditure; and
 - 6.1.2.2 Chapter 12: Financial Reporting and Auditing, Section 129: Oversight Reports on Integrated Annual Reports (of the City).
 - 6.1.3 Council's Rules of Order.
 - 6.1.4 Council System of Delegations, as amended from time to time.

- 6.2 The purpose of MPAC is to perform an oversight function on behalf of council in line with the leading practices applicable to MPAC and National Treasury Circulars and Guidelines, as adopted by council. MPAC shall report on its oversight function to the speaker who must table such reports in the next meeting of the municipal council as per section 79A(4) of the Structures Act,
- 6.3 MPAC has the authority to interview any relevant person and obtain all relevant documentation from any officials that may assist with the investigations.
- 6.4 The Chairperson must submit minutes of all meetings to council on a quarterly basis, for noting, in accordance with the requirements of section 59 of the Municipal Systems Act read together with the council System of Delegations.
- 6.5 The MPAC, via the Chairperson, must submit an Annual Report of the functional operations of MPAC for tabling by the Speaker in Council. The report should include:
 - 6.5.1 a summary of how MPAC executed its assigned functions and responsibilities against the annual work plan;
 - 6.5.2 a summary clarifying and justifying its decisions or actions;
 - 6.5.3 a summary of key cross-cutting (transversal) issues dealt with by MPAC;
 - 6.5.4 a summary of and explanation of how MPAC corrected any faults or errors found when exercising its oversight role and what steps were taken to prevent future recurrence;
 - 6.5.5 details of meetings held; and
 - 6.5.6 the number of meetings attended by each member.
- 6.6 MPAC should recommend the City's Integrated Annual Report for approval by council.
- 6.7 MPAC should consider any other reports that the City issues that relate to MPAC responsibilities, as referred by Council and City Manager.
- 6.8 MPAC investigation findings and recommendations are tabled by the Speaker in Council.
- 6.9 The names of individuals shall not be included in its reports, except in exceptional circumstances and only if unanimously agreed upon by MPAC. These reports would then be considered at in-committee meetings.
- 6.10 Quarterly reports of MPAC and other reports as may be required are to be tabled by the Speaker in Council.

7. Meeting procedures

- 7.1 MPAC meetings are governed by Rules of Order adopted by council, unless otherwise expressly stated herein.
- 7.2 Quorum
 - 7.2.1. The quorum for a meeting of MPAC is a majority of its members, which must include at least one member from an opposition party.
- 7.3 Frequency of meetings
 - 7.3.1. Members must attend all scheduled meetings of MPAC unless a prior apology, with reasons, has been submitted to the Chairperson or Executive Committee Services and the Chief Whip's Office.
 - 7.3.2. Task Team members must attend all relevant Task Team meetings unless a prior apology,

with reasons, has been submitted to the Task Team Chairperson or Executive Committee Services and the Chief Whip's Office.

7.4 MPAC Meetings: Agendas, Minutes and Logistics

7.4.1. Special meetings can be called should circumstances warrant same.

7.4.2. The relevant Executive Director (or delegated nominee) must attend as and when necessary, depending on the content and detail of the agenda.

7.4.3 MPAC is empowered to invite officials, with relevant experience, to attend its meetings as it deems fit. Where internal resources are not available, external assistance may be obtained through the assistance of the applicable internal department where the internal function resides.

7.4.4 The AGSA or his/her or her representative has a standing invitation to attend MPAC meetings at his/her discretion.

7.4.5 Office of the City Manager, Executive Committee Services, Legal Services, Combined Assurance and Governance, Internal Audit, Forensics Services, and Finance must attend all MPAC meetings.

7.4.6 The Office of the Speaker (or delegated nominee) may attend all MPAC meetings in terms of the Speaker's delegations.

7.4.7 Agendas must be distributed at least seven days prior to a meeting for preparation purposes.

7.4.8 Executive Committee Services provides secretarial, administrative and logistical support to MPAC.

7.4.9 Internal Audit provides MPAC with support of a ~~professional~~ and technical nature.

7.4.10 MPAC meetings, except special and confidential meetings, are open to the public.

7.5 General

7.5.1 MPAC will formalise operational processes, systems and procedures as necessary for the performance of its terms of reference, after consultation with the Office of the Speaker.

7.5.2 MPAC utilises a schedule of outstanding matters to monitor the various stages of MPAC's review process on each of the reports or topics under consideration. The items on the schedule of outstanding matters must be prioritised.

7.5.3 Members absenting themselves from meetings shall be dealt with in terms of the Rules of Order.

8. Relationship and Interaction

8.1 The Chairperson will meet as may be necessary with the Speaker to discuss issues of concern.

8.2 The MPAC Chairperson should liaise with the Audit and Performance Audit Committee and any other relevant combined assurance committees and role-players, if and when required.

- 8.3 MPAC must have access, through the Office of the City Manager, to:
- 8.3.1 all financial statements and the City's Integrated Annual Report of the City and its municipal entities as part of MPAC's oversight process;
 - 8.3.2 audit opinion, other reports and recommendations from the Audit Committee;
 - 8.3.3 reports in respect of transgressions in terms of the MFMA pertaining to section 32 of the MFMA, with appropriate recommendation, guidance and direction on recoverability or not;
 - 8.3.4 information in respect of transgressions in terms of the MFMA pertaining to the City and its municipal entities, i.e. failure to prepare and adopt the City's Integrated Annual Report as well as the submission and auditing of the annual financial statements;
 - 8.3.5 feedback on corrective action taken in respect of recommendations by MPAC;
 - 8.3.6 confirmation on whether a corrective action in the realm of the administration has been actioned (refer 5.15);
 - 8.3.7 any other audit report of the City or its entities that relate to an item that is currently serving on or has served before MPAC;
 - 8.3.8 any other final forensics report of the City or its municipal entities that relates to an item that is currently serving before MPAC
 - 8.3.9 performance information of the City and its municipal entities;
 - 8.3.10 all reports of the AGSA;
 - 8.3.11 in-year reports of the City and its municipal entities; and
 - 8.3.12 resolutions and reports of the Audit Committee, Portfolio Committees and Sub Councils (public comments) related to the annual and audit reports.
- 8.4 During the performance of its duties, should MPAC identify alleged financial misconduct, a recommendation will be forwarded, via the delegated authority, to council for referral to the Financial Misconduct Board.
- 8.5 MPAC may request annual feedback from the AGSA or his/her representative on the AG report, during the outset of the oversight process.
- 8.6 MPAC may liaise with relevant role players in the achievement of the annual Work Plan.
- 8.7 In the case of any irregular expenditure or fruitless and wasteful expenditure incurred by the City or its municipal entities, MPAC may call upon the accounting officer or his/her nominee of the City or the chairperson of the municipal entity's board of directors to appear before it to provide information or clarity.
- 8.8 MPAC may obtain relevant expertise, in consultation with the Speaker in relevant specific fields to assist and advise in MPAC deliberations.
- 8.9 MPAC should ensure that its oversight responsibilities do not duplicate that of the Financial Misconduct Board, the Audit and Performance Audit Committee, the relevant Portfolio Committees or other governance committees.

9. Performance Evaluation

- 9.1 MPAC must assess and evaluate its performance and achievements in line with its responsibilities in the Terms of Reference, on an annual basis through a process of self-evaluation and evaluation by stakeholders of the committee's activities.
- 9.2 The findings of the assessment in 9.1 above must be tabled by the Speaker in council.
- 9.3 Where the self-assessment highlights a need for improvement to the role, operational processes or membership of MPAC, the Chairperson should take action to ensure that such improvements, upon approval by council, are implemented.
- 9.5 The effectiveness and efficiency of MPAC will be monitored by council annually, via the Speaker.

10. Approval, Amendment, Modification or Variation

These Terms of Reference must be reviewed at a minimum annually or as warranted. Amendments to the Terms of Reference are subject to approval by council and will apply from date of approval. The approved Terms of Reference will be published on the City's website¹ to promote awareness to all stakeholders.