

**NGQUSHWA LOCAL**  
**MUNICIPALITY**



**LITIGATION MANAGEMENT POLICY**  
**2022/2023**

**Summary**

|  |   |
|--|---|
| <b>Publication Date</b>  |   |
| <b>Review Date</b>   |   |
| <b>Related Legislation/Applicable Section of Legislation</b>           | <ul style="list-style-type: none"> <li>• The Constitution of the Republic of South Africa, 1996, Act No 108 of 1996;</li> <li>• Labour Relations Act, <a href="#">1995</a> (Act No.66 of 1995) as amended</li> <li>• Basic Conditions of Employment Act (Act 75 of 1997) as amended by Act 20 of 2013</li> <li>• Employment Equity Act (Act 55 1998) as amended by Act 47 of 2013</li> <li>• Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000)</li> <li>• Promotion of Access to the Information <a href="#">Act</a>, 2000(Act No 2 of 2000)</li> <li>• Promotion of Equity and Prevention of Unfair Discrimination Act (Act No 4 of 2000)</li> <li>• Intergovernmental Relations Framework Act, 2005</li> <li>• Institution of legal proceedings against certain organs of State, 2002 (<a href="#">Act</a> No. 40 of 2002)</li> <li>• Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998)</li> <li>• Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)</li> <li>• Local Government: Municipal Finance Management Act 2003 (Act No.56 of 2003)</li> </ul> |
| <b>Related Policies, Procedures, Guidelines, Standards, Frameworks</b> |   |
| <b>Replaces/ Repeals (whichever is relevant, if any)</b>               | None  |

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| <b>Policy Officer (Position)</b> |  |
| <b>Policy Officer (Phone)</b>    |  |
| <b>Policy Sponsor (Position)</b> | N/A                                    |
| <b>Department Responsible</b>    | <i>Office of the Municipal Manager</i> |
| <b>Unit responsible</b>          | <i>Legal Services</i>                  |
| <b>Applies to</b>                | <i>All employees and Councillors</i>   |
| <b>Key Words</b>                 | Litigation Management                  |
| <b>Status</b>                    | Draft Policy                           |
| <b>Council approval date</b>     |  |
| <b>Version</b>                   | <i>1</i>                               |

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**REVISION RECORD**

| Date | Version | Revision Description |
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## 1. TITLE

[This is the Litigation Management Policy of the Ngqushwa Local Municipality](#)

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### 1. INTRODUCTION AND BACKGROUND

The entrenchment of the rule of law as the founding value in the Constitution imposes an obligation on the organ of State to take action or make decision only when authorized by law do so. All decisions or actions of the organs of State are, in line with the doctrine of separation of powers and checks and balances susceptible to a judicial review.

Accountability and transparency are one of the values that are key to the functioning of local government. It is because of these values that one of the objects of local government is to provide democratic and accountable government for local communities.

Fundamental in these constitutional values is the demand for legal compliance by organs of State. Poor levels of or lack of compliance with legislative prescripts eventually manifests itself in litigation and consequently unnecessary expenditure in litigation costs and legal fees.

It is because of this background that the State is the biggest consumer of legal services in the Republic. Consumption of legal services includes participation in litigation whether for or against organs of State.

It is therefore imperative to ensure transition from reactive litigation management into proactive legal risk management by promoting legal compliance.

This policy is therefore intended to assist Ngqushwa Local Municipality to promote a culture of accountability, transparency and respect for the rule of law by so doing mitigating the calamitous effects of litigation in the municipality.

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### 2. PURPOSE

In recognition of the underlying National, Provincial and Local Policy Frameworks, the municipality has therefore developed its litigation policy with the main purpose being:

- To ensure that any litigation against the municipality is handled in an efficient manner taking into account all costs and value for money, which would include prompt instructions to the instructed legal

practitioners; early preparation for hearings; thorough consultations etc.

- To pursue alternative dispute resolution (ADR) as a mechanism to respond to litigation, minimise costs and further foster peaceful co-existence and amicable settlement between the warring parties.
- To ensure that judgments for and against the municipality are promptly and properly responded to, either by noting an appeal or giving guidance in compliance with the Court order.
- To ensure that procurement of legal practitioners by the municipality is done in accordance with [the SCM Policy of the Municipality](#), a system, which is fair, equitable, transparent, competitive and cost-effective.

### **3. APPLICATION AND SCOPE**

- This policy applies to all Officials and Councils of Ngqushwa municipality, in particular those involved in litigation management.

### **4 .LITIGATION MANAGEMENT POLICY PRINCIPLES**

In recognition of the abovementioned National, Provincial and Local Policy Frameworks, the municipality undertakes to promote the following principles:

#### **4.1 Respect for the rule of law**

The municipality acknowledges that as an organ of State, it must obey the law and that its functionaries cannot exercise power unless authorized by law. Any decision or conduct taken by an unauthorized functionary may be declared null and void and set aside through litigation.

#### **4.2 Accountability and Transparency**

The municipality as an organ of State must be accessible and that it must be able to respond to the people. The duty of accountability

requires an organ of State to be able to explain its actions and decisions when required to do so.

It is further acknowledged that failure to observe principles of accountability and transparency may result in litigation.

#### **4.3 Fairness**

The municipality commits to observe a fair procedure when dealing with individuals and members of the public in general as imposed by the Constitution and legislation.

It is acknowledged that decisions of local government are reviewable in Court and therefore observing a fair procedure is imperative and is a measure to mitigate incidents of litigation.

#### **4.4 Professionalism**

The staff that is entrusted to handle litigation is expected to maintain a high standard of professional ethics.

#### **4.5 Value for money**

In relation to litigation management, the principle of value for money relates to the local government's commitment to the principle of rule of law thus avoiding unnecessary litigation. It also refers to ensuring that legal practitioners that are instructed carry out the mandate in a competent and timely manner.

### **5. ROLE PLAYERS**

#### **5.1 Municipal Council**

In terms of the Constitution, the executive authority of a municipality is vested in its Municipal Council. A decision to institute legal action or defend it is vested in the Municipal Council, unless that authority is delegated in writing to a relevant official in terms of section 59 of the Local Government: Municipal Systems Act.



## **5.2 Accounting Officer**

The MFMA and its regulations prescribe specific powers to the Accounting Officer. Consequently, it is the responsibility of the accounting officer to ensure that the municipal litigation management is in accordance with this framework.

In appropriate circumstances, it may be desirable for a municipal council to delegate to the Accounting Officer a decision to initiate, defend or oppose litigation matters.

## **5.3 Municipal Legal Advisory Services**

The municipality must have its own in-house legal personnel. Management of litigation of the municipality is the responsibility of the Municipal Management duly assisted and advised by the municipal Legal Advisor. Professional staff of municipal legal advisory services must have necessary competencies, qualifications, expertise, must have practical knowledge of litigation process, and must be persons who qualify to practice as either Attorneys or Advocates.

It is imperative for the municipalities to adequately capacitate legal advisory services personnel to deal with complex matters as a people that are handling litigation. A regular review of human capacity is thus essential.

## **6. PROCUREMENT OF LEGAL SERVICES FROM EXTERNAL LEGAL PRACTITIONERS**

In terms of section 217(1) of the Constitution, when an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system, which is fair, equitable, transparent, competitive and cost-effective.

Procurement of legal services from external legal practitioners therefore must be done in accordance with a system, which is fair, equitable, transparent, competitive and cost-effective. A municipality may procure no services from a practitioner unless it is done in terms of the municipal supply chain management policy.

Municipalities must therefore develop a database of legal practitioners to ensure equitable distribution of work.

## **7. LITIGATION PROCESS**

- 7.1 Litigation is regulated by the rules of the relevant court and requires strict adherence to time limits in order to avoid adverse orders/judgments and punitive costs orders.
- 7.2 The court papers must upon receipt be referred to a municipal legal advisor to ensure adherence with the rules of the court and prescribed time frames. A municipal legal advisor must immediately initiate contact with the relevant directorate in order to receive necessary information, which will be used to formulate an advice to the accounting officer and / or municipal council on whether or not an application or action must be opposed or defended. In appropriate circumstances, a municipal legal advisor may hold a consultation with the relevant department.
- 7.3 Relevant departments of the municipality must adhere to time period as may be prescribed by a municipal legal advisor and must at all times avail themselves when information is requested. Upon receipt of requested information, the legal advisor must request instructions from the accounting officer or municipal council on whether or not the matter must be opposed or defended. The request of instruction must at least explain to the accounting officer the following:
- (a) The cause of action;
  - (b) The relief sought against the Municipality;
  - (c) Advice on the prospects of success if the matter is defended or opposed;
  - (d) Any possibilities to initiate alternative dispute resolution mechanism;
  - (e) Recommendations.
- 7.4 On receipt of instructions from the accounting officer or municipal council, the legal advisor will prepare formal instructions to legal practitioner as may be prescribed in the database. All legal processes, notices related to the matter will be handled by the legal practitioner once they have been instructed in writing.
- 7.5 A municipal legal advisor will regularly liaise with the municipal manager on the matter and provide necessary updates to the Municipality. It is also the responsibility of the municipal legal advisor to ensure that responsible officials are available for further consultations and provision of further information and documentation as may be required by the legal practitioner in brief. In appropriate circumstances, a municipal legal practitioner may, together with the

legal practitioner on brief as well as the representative of the relevant department, attend all court hearings and pre-hearing conference on the matter.

## **8. LITIGATION REGISTER**

- 8.1 Municipal Legal Advisors must develop and maintain a register of all litigation matters in which the municipality is involved.
- 8.2 The register will include the at least the following information:
- (a) The court where the matter was or is to be heard;
  - (b) The case number;
  - (c) The names of the parties;
  - (d) The type of litigation;
  - (e) The amount involved.

## **9. LITIGATION RISK ANALYSIS**

- 9.1 A Municipal Legal Advisor must conduct annually an analysis of risk factors pertaining to the department's litigation. The risk analysis must assist in the tracking of litigation trends and factors that contribute to the identified trends.
- 9.2 The analysis should also identify potential risks, and propose measures to mitigate these risks. To ensure the credibility and authenticity of the analysis, Risk Management Unit will take the lead in the compilation of the final risk analysis document.

## **10. IMPLEMENTATION OF COURT ORDERS / JUDGMENTS**

- 10.1 Compliance with court orders is highly regulated by legislation. Thus in terms of section 165(5) of the Constitution, an order or decision issued by a court binds all persons to whom and organ of state to which it applies.
- It is important to note that failure to comply with a court order may have serious implications because the judgment creditor may instruct the sheriff of the court to attach the municipal property.
- 10.2 A Municipal Legal Advisor must, upon receipt of a court judgment advise the Municipal Manager about its implications and facilitate compliance with it unless the municipality decides to appeal against it. The responsibility to comply with the Court Order rests with the Municipal Council or Accounting Officer if delegated.

10.5 A decision to appeal must be taken within the prescribed timeframes of the relevant court. Municipal Legal Advisors will be responsible for advising the municipalities about the deadlines that apply.

## **11. LITIGATION AGAINST OTHER ORGANS OF STATE**

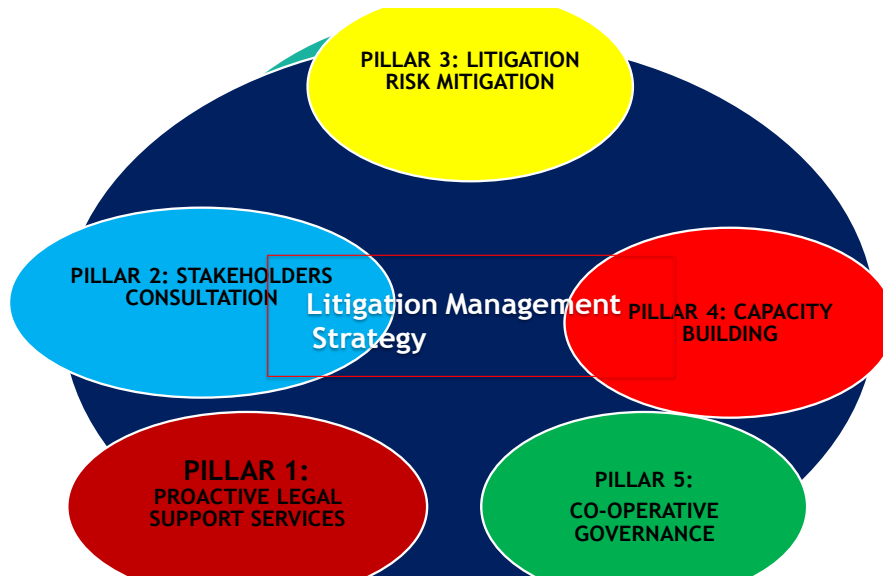
11.1 In terms of section 41(1) (h) (vi) of the Constitution all spheres of government and organs of state within each sphere must co-operate with one another in mutual trust and good faith by avoiding legal proceedings against one another. Section 40(1) of the Intergovernmental relations framework Act further states that all organs of states must make every reasonable effort to avoid intergovernmental disputes when exercising their statutory powers or performing their statutory functions and to settle intergovernmental disputes without resorting to judicial proceedings.

11.2 Municipalities consequently have a duty to avoid litigation against other organs of state and may not resort to judicial proceedings unless the IGR processes that are prescribed in the IGR Act have been exhausted.

It is worth to note that the provisions of IGR Act, do not apply to the settlement of specific Intergovernmental Disputes in respect of which other national legislation provides resolution mechanisms or procedures or to a dispute concerning an intervention in terms of section 100 or 139 of the Constitution.

11.3 A municipality may however resort to judicial proceedings without having to exhaust the provisions of the IGR Act, if the procedures contemplated by IGR Framework Act will be time consuming and that for purposes of a particular case, following the procedures will deny effective redress to the municipality. A further reason to allow departure from the dispute resolution mechanism prescribed by IGR Framework Act is when the lawfulness of an organ of state's conduct needs to be determined.

## 12. LITIGATION MANAGEMENT STRATEGY



## 13. MONITORING, EVALUATION AND REVIEW

- A report detailing the progress with the implementation of Litigation Management policy with specific reference to achievement of this policy has to be compiled every year by the person with the responsibility for implementation and monitoring. The policy must be made available to all consulting parties for perusal and comment and must be circulated to all staff members by means of circulars, notices and notice boards

## 14. ROLES AND RESPONSIBILITIES

| Role                                  | Authority |
|---------------------------------------|-----------|
| Review and <u>approve</u> the policy. | Council   |

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|  |   |
| <ul style="list-style-type: none"> <li>• Implement and enforce this policy</li> <li>• Establish and control the administration necessary to fulfil this policy, and report efficiently and regularly to the Committee in this regard.</li> </ul> | Municipal Manager                       |
| <ul style="list-style-type: none"> <li>• Ensure that there is compliance with <a href="#">this litigation management policy</a></li> </ul>   | <a href="#">Municipal</a> Legal Advisor |

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#### 15. DEFINITIONS AND ABBREVIATIONS

| Term                      | Meaning   |
|---------------------------|---|
| <b>Accounting Officer</b> | refers to the Municipal Manager of the municipality   |
| Act                       | The Local Government: Municipal Systems Act, 32 of 2000 as amended from time to time.   |
| <b>Council</b>            | The municipal Council of Ngqushwa Local Municipality or any duly authorised Committee or official of the said Council.  |
| <b>Municipality</b>       | Means the Municipality, established in terms of Section 12 of the Municipal Structures Act, 117 of 1998, and includes any political structure, political office bearer, councillor, duly authorized agent or any employee acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, councillor, agent or employee; |
| <b>ADR</b>                | Alternative Dispute Resolution  |

**16. SUPPORTING DOCUMENTS**

- Standard Operating Procedure (SOP)

**17. REFERENCES**

NONE

**18. APPENDIX**

ANNEXTURE 1

**19. ADOPTION AND APPROVAL OF THE POLICY BY COUNCIL**

This policy is approved by the Ngqushwa Local Municipality Council and shall be effective from the date of approval.

\_\_\_\_\_  
**MUNICIPAL MANAGER**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**MAYOR OBO COUNCIL**

\_\_\_\_\_  
**DATE**

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Effective from (Date): 01 July 2019

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ANNEXTURE 1



DIRECTORATE : CORPORATE SERVICES  
UNITY : LEGAL SERVICE AND ADMINISTRATION

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2. Introduction:..... **Error! Bookmark not defined.**

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3. Procedures..... **Error! Bookmark not defined.**

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**1. Purpose:**

The purpose of the procedure is to:

- Create understanding of the proper litigation control management processes
- Ensure that there is uniformity in the management of litigation within Ngqushwa Local Municipality

## **1. Introduction**

1.1 This is a flow chart extracted from the Standard operating procedures developed for the purposes of management of litigation. The objective of this chart is to guide secretaries, administrators and other officials on how to handle legal documents as they arrive in the Municipality. Strict adherence shall minimise the risk of attachments and removal of municipal assets by Sheriff as matters shall be dealt with as they are fresh.

1.2 Legal documents are mostly documents from lawyers (and also service providers communicating intention to hand over a matter to lawyers) either delivered by sheriff or lawyer (even service providers).

1.3 Legal documents are usually the following:

- Letters;
- Notices;
- Summons;
- Court Order or Judgment;
- Bills of Cost;
- Warrant or Writ of Execution;
- Request for Access to Information; and
- Any other document

1.4 All officials, except the secretary and/ or administrator in the Office of the Municipal Manager, must never accept legal documents delivered by hand by the Sheriff or any other person.

1.5 The law requires that all legal documents be received by officials working in the Office of the Municipal Manager (at this stage, that is Ms Nosipho Yaphi

(or any other person requested to assist her in her absence), the Accounting Officer (Municipal Manager or Acting Municipal Manager).

1.6 Documents delivered by hand cannot be accepted anywhere else other than in the Office of the Municipal Manager (this means that even the secretaries and the Municipal Manager cannot accept the documents at doorways and passages as acknowledgment of receipt through a date stamp, signature and time should be appended in the document at all times)

1.7 Where documents are received by either postage, email and/ or facsimile transmission official to immediately forward same with a Memorandum to both the Office of the Municipal Manager and Office of the Manager: Legal Services.

1.8 The standard operating procedures indicate the steps that must be taken and the allocated time period within which to perform such steps.

1.9 Following is the Flow Chart that is designed to be a guideline on how to handle legal documents:

| No | Procedure   | Time frame | Responsibility   | Required Document   |
|----|---|------------|--|---|
| 1. | Secretary (assisting person) receives all letters of demand, allocate a reference to it and register them accordingly.<br><br>Nonetheless, where a letter has been served and received by other directorates within the municipality, such person/official shall forward same to the office of the Municipal Manager within 24 hours. | 1 day      | Secretary or designated person to assist in the Office of the Municipal Manager. | <ul style="list-style-type: none"> <li>Register of Legal Documents received</li> <li>Scan document, create a folder to file document</li> </ul> |
|    | Legal Manager receives all letters of demand and register the accordingly.  | 1 day      | Manager: Legal Services  | Letters of demand Register  |

| No | Procedure   | Time frame | Responsibility                               | Required Document |
|----|---|------------|--|-------------------|
|    | Initiate investigation.   | 8 day      | Manager: Legal Services                      |                   |
|    | Prepare memo of advice to relevant Directorates and request instructions.               | 12 day     | Manager: Legal Services and Affect Officials |                   |
|    | Consult with the relevant Directorate.  | 21 day     | Manager: Legal Services and Affect Officials |                   |
|    | Prepare a memo for Municipal Manager with recommendations and request for instructions. | Day        | Manager: Legal Services                      |                   |

## 2. Summons (21 days)

(NB: The register of all litigation (summons) must be updated weekly and submitted to the Office of the Municipal Manager on a monthly basis).

- 2.1. The procedure regarding the receipt of documents, creation of registers and the eventual recording provided for above shall apply.
- 2.2. Office of the Municipal Manager delivers the documents to both Registry section and Legal Services Unit on the same day.
- 2.3. Initiate investigation into cause of action, consult and secure report from relevant directorate within 3 (three) days, and immediately prepare a memorandum for the Municipal manager with recommendations either to defend the matter or settle the matter.
- 2.4. Upon receiving writer or verbal instructions (but confirmed in writing) to either institute of defend a matter the Legal Services Unit must request for quotations from 3 (three) service providers from its Panel of Attorneys within 5 (five) days of receipt of the process.

2.5. Receive quotations from service providers, and thereafter facilitate the appointment of the service provider to deal with the matter.

2.6. Legal Services communicate complete instructions to external Attorneys (include basis of defence / report from directorate) (day 15).

2.7. Legal Services facilitate the consultation by the external attorneys with the relevant directorate in all the necessary stages of litigation.

2.8. Below is the chart that shows integral actions to be undertaken in dealing with summons:

| No | Process | Procedure   | Time frame | Responsibility                          | Required Document |
|----|---------|---|------------|---|-------------------|
| 2. | Summons | Municipal Manager receives legal process and records it accordingly.<br><br>However, legal process may be served and received by other directorates within the municipality, such person/official to whom services has been effected shall forward same within 24 hours to the office of the Municipal Manager. | 2 day      | Municipal Manager / and affect official | Legal Register    |
|    |         | Legal Manager receives legal process and records it accordingly.  | 2 day      | Legal Manager                           | Summons Register  |
|    |         | Initiate investigation into cause of action and secure consultation and report from the relevant directorate.   | 7 day      | Manager: Legal Services                 |                   |
|    |         | Recall file from district / directorate.  | 7 day      | Affect Official / End User              |                   |
|    |         | Legal services prepare memo to Accounting Officer and secure instructions.  | 10 day     | Affect Official / End User              |                   |
|    |         | Legal Services to communicate complete instructions to Panel of Attorneys and request information.  | 15 days    | Affect Official / End User              | 4 x Quotations    |
|    |         | Appointed Attorneys consult with the relevant directorate.  | day        | Affect Official / End User              |                   |

| No | Process | Procedure | Time frame | Responsibility | Required Document |
|----|---------|-----------|------------|----------------|-------------------|
|    |         |           |            |                |                   |