

PS & T5 of 2019

ENHANCING PUBLIC SAFETY SERVICE DELIVERY THROUGH THE APPOINTMENT OF EXISTING MUNICIPAL SECURITY PERSONNEL TO EFFECT THE DUAL FUNCTION OF MUNICIPAL LAW ENFORCEMENT & MUNICIPAL SECURITY SERVICES EDCS) (5/3/2/7)

PURPOSE

The purpose of this item is to highlight the section 80 committee on the Enhancing Public Safety Service delivery through dual function of Municipal Law Enforcement and Municipal Security Services.

INTRODUCTION AND BACKGROUND

Needs expressed through the local IDP speak to municipal support of SAPS in the containment of crime within the jurisdiction of Matjhabeng Local Municipality.

Matjhabeng Local Municipality would achieve a giant leap towards enhancing public safety service delivery through the appointment of Law Enforcement Officers to effect the dual function of municipal law enforcement & municipal security, *viz*:

DISCUSSION

Matjhabeng Local Municipality would achieve a giant leap towards enhancing public safety service delivery through the appointment of Law Enforcement Officers to effect the dual function of municipal law enforcement & municipal security, *viz*:

Municipal Law Enforcement Officers have powers of arrest within the jurisdiction of Matjhabeng Local Municipality;

- They can ensure by-law enforcement as compelled for a municipality to do through a variety of existing.

Legislation;

- their patrols in the city will be seen as visible policing or force multipliers;
- immediately available to deal with protests and marches;
- Application of access control to public premises would also be more effective through municipal law.

Enforcement officers rendering the dual function referred to;

- effective VIP security services could also be drawn from these officers;
- municipal law enforcement officers with the dual function of security are more affordable for the municipality;
- can be rapidly deployed in the protection of municipal assets and their extra powers will contribute to efficiency;
- Allows for traffic officers (who cost more) to be more focused on ensuring good traffic management.

The RSA Scenario

There is not a single person that can honestly say he/she is not affected by crime. Crime is costing South Africa dearly in more than one way, and the perception that South Africa is being undermined by a culture of violence has gained considerable momentum over the past few years. The media is flooded with horrific examples of violent criminal acts, as well as other crimes, and the cases we read about in the newspapers are only a small proportion of the actual crimes that are committed- most crimes do not even feature in the newspapers.

This state of affair is in sharp contrast to our constitutional right (not privilege) to live and work in a safe environment which is guaranteed by the Bill of Rights. Appointing law enforcement officials is part of local government's effort to create structures to promote a state of social order.

Crime has moved into our homes, and the fight against crime has become both personal and emotional. Care must be exercised not to let emotion, or a lack of judgement, be in the way of effective service rendering, and law enforcement officials must at all times ensure that they follow the prescribed procedures. Not complying with the correct procedures may result in civil action and claims, and may even result in an offender being acquitted on grounds of a technicality.

Establish appropriate and enforceable by laws

A SEEMINGLY SMALL MATTER IS THE QUESTION OF: MUST A COUNCIL ENFORCE ITS OWN BY-LAWS?

Where a by-law creates an offence can the council or the mayor or the municipal manager instruct the LEO's not to enforce the by-law?

The Constitution of the RSA (Section 156) gives a municipality executive authority and the right to administer certain matters, and also to make and administer by-laws on those matters. Where the Constitution gives rights it also gives obligations and Section 151(3) confers on a council the right to govern and means doing things such as enforcing the law. Furthermore, Section 237 of the Constitution says that all constitutional obligations must be performed diligently and without delay. The word diligent means careful and steady application to one's duties. Not enforcing the law is not diligent.

NB: once a by-law is established a municipality is obliged to enforce it.

Practitioners must not underestimate

- (i) a **Mandamus** court order, and
- (ii) the precedent of the Carmichele case, because,

In both cases the spheres of State can be called for due performance or held liable for non-performance.

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Appropriate authority of local government

Section 43(c) of the Constitution states that the legislative authority of the local sphere of government is vested in municipal councils and Section 151(2) of the Constitution goes on to say that the executive and legislative authority of a municipality is vested (*given and possessing*) in its municipal council.

In regard to by-laws, Section 156 of the Constitution is a key section, what it does is:

- *Give a municipality power to make and administer by-laws on the matters it may administer.*
- *The matters that may be administered are in Part B of Schedules 4 & 5 as well as other matters assigned to a Municipality by national or provincial legislation, which includes law enforcement.*
- *Give a municipality the right to exercise any power concerning a matter reasonably necessary for or incidental to the effective performance of its functions – the so-called ancillary powers. In practical terms this means that a by-law may create offences, limit the actions of persons or require permission to be obtained to do a certain act.*

Municipal by-law now has a constitutional status equal to a national or provincial act but with different powers.

- *When a municipal legislature (the council) performs a legislative act. E.g. passes a by-law, it does not perform an administrative act.*
- *Such a legislative act is no longer open to judicial review in terms of administrative law.*
- *The common law principle of ultra vires remains but is underpinned by a new principle of constitutional legality.*
- *Therefore the question of intra or ultra vires remains a constitutional question.*

These are important principles in relation to the enforcement of by-laws because a by-law can now only be struck down on constitutional grounds.

Restrictive hurdles

Law enforcement as you may know, is not easy and can sometimes be a nightmare. This is because of constitutional restraints, restraints which an increasing number of citizens perceive as being there to protect the criminal instead of law-abiding civil society.

What are the constitutional restraints? Consider the following: The right to dignity. The criminal can slap your face but you cannot slap his face in return, at least not while there are witnesses around?

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The right to privacy, which severely limits the right to search a person or his vehicle, unless there is a clear legal backing.

The right to freedom of expression but in respect of bad language that right is fortunately limited.

The right to assembly, demonstration and picket. This right is regulated by the Regulation of Gatherings Act of 1993 and is administered by the SAPS.

Freedom of trade, occupation and profession. In the case of hawkers this right has been regulated and limited but the Constitution does not allow for a particular trade to be banned although the Constitutional Court did support the criminalisation of prostitution.

Children's right which are dealt with in various laws.

The right of an arrestee to be brought before a court within 48-hrs.

Extensive law enforcement & certain policing powers

Section 334(1) (a) of the Criminal Procedure Act 51 of 1977 authorises the Minister of Justice to declare that categories of law enforcement officers have certain powers. In GN R209 dated 19 Feb. 2002 municipal LEO's are given powers to:

Enforce by-laws and also,

Certain policing powers in regard to:

Section 341 and Section 56 notices,

The execution of warrants of arrest, and

i.r.o certain national and provincial legislation, powers of arrest without warrants.

The power to arrest without warrant suspects or witnesses who refuse to give a name or address or if they give a name the LEO suspects that it is false.

No certificate - No powers

Vital importance of Section 334(2) (a) and (b) determines that no person who is a peace officer by virtue of a notice issued under sub-section (1) shall exercise any power conferred upon him under that sub-section unless he is at the time of exercising such power in possession of a certificate of appointment issued by his employer, which certificate shall be produced on demand. A power exercised contrary to the provision of paragraph. (a) Shall have no legal force or effect.

Imperatives for an effective and efficient by-law enforcement service for Matjhabeng local municipality EDCS)

Imperative 1 - enforceable bylaws

Appropriate and enforceable by laws must be in place around the clock.

Matjhabeng Local Municipality has a constitutional mandate to promote a safe and healthy environment for all its residents. (See section 152 of the Constitution, 1996). Although a whole range of National and Provincial legislation provides certain frameworks and measures within which to operate, it remains the responsibility of Matjhabeng Local Municipality to deal with the issues that are unique to the different communities and suburbs.

Proper execution of the functions allocated to a municipality in terms of Schedules 4B & 5B of the Constitution requires sound policies and frameworks to be put in place. There is no obligation on the municipality to adopt any by-laws, except those relating to revenue management, and under normal circumstances policies would suffice. The problem however, starts when legal effect has to be given to such policies. No matter how sound the policy may be, it will be worthless without a by-law to give effect thereto.

Imperative 2 - proper training

Personnel must be properly trained to understand and enforce the bylaws.

The law enforcement function of municipalities is now more important than ever. The actions of municipalities are governed by a very long list of National legislation and policies which in some cases require substantial knowledge of the law and especially the procedures and actions to enforce them.

Proper training is thus even more important. There are many court cases in which law enforcement agencies and municipalities are challenged in court for unlawful arrests and for failure to comply with the Promotion of Administrative Justice Act, 3 of 2000. Many hours of the LEO are spent in legal follow up & good training will achieve convictions which eventually diminishes criminality.

Adequacy of training is more than ever tested in court and the legal implications for municipalities providing sub - standard training can have huge financial implications through related civil liability. E.g. an illegal arrest or an injury in the course of duty.

Financial Implications

No increase in salaries anticipated. There would, however, be a new rank structure with appropriate insignia as advised by the Institute for Municipal Public Safety of Southern Africa (IMPS-SA) with nominal costs expected from existing vote.

Conclusion

Considering the many benefits to be gained as set out in this report, Matjhabeng Local Municipality would undoubtedly achieve a giant leap towards enhancing public safety service delivery through the appointment of Law Enforcement Officers to effect the dual function of municipal security & municipal By-law enforcement.

- This item serve before section 80 as it was recommended by IMPS-SA
- The dual function of the security officers need to be approved by the council as this is the route the entire security services around the country is following.
- This has also being signed into an Act by Minister of Justice.

See the attached communication on pages 1 to 6 of the annexures.

Recommended:

- (i) that security officers employed by this municipality render the dual function of both municipal security and by-law enforcement;*
- (ii) that the officers referred to in (i) be re-designated as municipal law enforcement officers; and*
- (iii) That new employees in said function be appointed as learner/Law Enforcement Officers.*

SUBMITTED FOR CONSIDERATION

PS &T 6of 2019

EMERGENCY AND UTILITY VEHICLES AT FIRE DEPARTMENT (EDCS) (7/2/1/1)

Purpose

To bring under the attention of the Section 80 Committee the need for the procurement of Emergency and Utility vehicles at the Fire Department.

Background

Most of the vehicles of the Fire Department are older than 20 years. This leads to that the vehicles are standing more often in the workshops and private service providers for repairs. After repairing these vehicles it will stand for more than 2 years at the service providers awaiting payment from Council before it gets released.

In 2013 the Council went out on tender to buy new Fire Engines. The tender was for 6 new fire engines which would have been received at a pace of 2 a year. After the Fire Department received the first two vehicles the tender company was liquidated and we did not receive any other fire engines.

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The Areal Device (Hydraulic Platform) that is used for fires in high rise buildings is also older than 20 years and is standing with a broken hydraulic pump. This vehicle is so old that we cannot get replacing parts.

The Fire Department is also in need of Utility vehicles to transport personnel between stations and will be used for personnel to conduct fire safety inspections. We are also in need for 4x4 bakkies that will be utilised to transport skid units especially for veld fires because a fire engine is not built for driving in the veld. We are being kept very busy with veld fires especially during winter.

In the townships there are limited Fire Hydrants and we requiring water tankers for the East and West regions to assist with fires in the townships.

Financial Implications

As per tender that will be obtained through Fleet Management for the procurement of the required vehicles:

Major Fire Engine for each station	- ± R 4m per vehicle (5 Vehicles)
Hydraulic Platform for Welkom	- ± R 5m (1 Vehicle)
Water tankers for East and West region	- ± R 4m per vehicle (2 Vehicles)
Haz Mat Unit for East and West region	- ± R 5m per vehicle (1 Vehicle)
Utility vehicles for each station (5 Stations)	- ± R 200 000 per vehicle (10 Vehicles)
4x4 bakkies for each station for veld fires	- ± R 400 000 per vehicle (5 Vehicles)

Legal Implications

Act 99 of 1987 (Fire Brigade Services Act, 1987) – Section 3

“Services of Local Authorities

(1) A local authority must establish and maintain a service in accordance with the prescribed requirements.

(2) The Administrator may, after consultation with the Board and the local authority concerned, direct a local authority-

(a) To maintain a service which it has established; or

(b) To establish and maintain a service, in accordance with the prescribed requirements.

Policy Position

None

Recommendation:

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It is recommended that the procurement of the fleet be speeded up as we currently struggle due to the fact that we only have 2 Fire Engines for the whole of Matjhabeng. If one Fire Engine goes in for repairs we are left with only one Fire Engine to serve the whole of Matjhabeng.

SUBMITTED FOR DISCUSSIONS:

PS&T 7 of 2019

REPORT ON THE STATUS OF THE CONTRACTS OF PRIVATE SECURITY WITHIN THE MUNICIPALITY (EDCS) (5/3/2/7)

PURPOSE

The purpose of this item is to highlight the Section 80 Committee on the status quo of Private Security Companies within the Municipality.

INTRODUCTION AND BACKGROUND

The Municipality has appointed five (5) Physical Security Service Providers in 2009 on a three years contract to provide physical security services to the Municipality. The contract expired in 2012 and the five companies operated on a month to month basis. Three companies remained namely Man in One, Scheme and MBV. The contract of Phakama was terminated in 2017 and Hi Sense was taken over by Man in One after the passed on of its business owner.

DISCUSSION

The Municipality terminated the current month to month contract of the three remaining companies giving notice of one month dated 20th February 2019 to 20th March 2019.

*****See attached as annexure on page 7**

The contract was however extended to end on 30th June 2019.

***** See attached as annexure on page 8**

An advert was placed in the City Press dated 12th May 2019 with a closing date of 12th June 2019.

A compulsory briefing was held on 17th June 2019 and in this briefing it was also announced that site visit meetings will take place on the 21st June 2019. A briefing session was held by the Public Safety & Transport Management before the site meeting and all points of clarity was attend to.

The tender closed on the 12th June 2019 and the Department attended the session of opening and registering the bid applications. The Department however was informed after enquiries as to the progress on the matter that it is still within the office of the Municipal Manager.

*****See attached as annexure on page 9**

PROBLEM STATEMENT

The Department is faced with serious challenges regarding the current situation. The Private Security Companies deserted and abandoned most critical premises of the Municipality due to non-payment and legal disputes that ensued between the different parties. Some immediate intervention had to be initiated in order to mitigate and minimize the serious extend of the up flared vandalism.

The Municipality appointed an interim company, namely Sheppard Alarms to assist on the most critical key points. The following critical points are manned by Sheppard Alarms:

Kutloanong Sewage Plant

Thabong Sewage Plant

Welkom Mechanical workshop4th str

Witpan Sewage Plant

Urania Substation

Virginia Workshop

Odendaalsrus Vehicle Workshop

St Helena Major Pump Station

Bronville South Pump Station

Bronville North Pump Station

The company deployed physical guarding as well as some electronic alarms and pepper spray units on the sites, however the guards were withdraw within the second month due to non-payment by the Municipality. The company currently continues on a monitoring basis on those sites.

The other sites still remain a huge challenge in terms of security as the tender processes are not yet finalised.

RECOMMENDATIONS

That the tender process be expedited in order to minimize further vandalism to the Municipal premises.

