

Johannesburg, South Africa

Ombudsman

Legislation as at 28 March 2014

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Ombudsman
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Johannesburg South Africa

Ombudsman By-law, 2014

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The Municipal Manager of the City of Johannesburg Metropolitan Municipality hereby, in terms of Section 13a of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000) publishes the Establishment of the Office of the Ombudsman By-Laws for the City of Johannesburg Metropolitan Municipality, as approved by its Council, as set out herein under.

WHEREAS the City of Johannesburg has adopted the Joburg 2040 GDS, an aspirational strategy that defines the type of society the City aspires to achieve, by 2040;

WHEREAS in terms of the Joburg 2040 GDS the City is required to be responsive, accountable, efficient and productive in the way it carries out its duties as developmental local government.

WHEREAS the City seeks to ensure that customers and citizens feel acknowledged, through the operationalization of a refined, shared and comprehensive customer care approach that puts people first.

WHEREAS section 43(c) of the Constitution vest legislative authority in respect of the local sphere of government in municipal councils as set out in section 156;

WHEREAS section 156(2) and (5) of the Constitution provides that a municipality may make and administer by-laws for the effective administration of matters which it has the right to administer, and to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions;

WHEREAS the City of Johannesburg has identified the need to establish an independent Office of the Ombudsman whose primary function is to be a designated neutral facilitator who provides confidential and impartial assistance in resolving grievances and disputes. The City Ombudsman shall investigate complaints, reports findings, and mediates fair settlements between individuals, group of individuals; and institutions or organisations

AND WHEREAS there is a need for the establishment of a mechanism whereby residents of the City of Johannesburg can formally lodge complaints against alleged acts of maladministration, the following by-law is therefore established.

1. Definitions

In this By-law, unless the context otherwise indicates-

"**Administration**" means the administration of the municipality as contemplated in section 51 of the Municipal Systems Act;

"**City Manager**" means the municipal manager appointed in terms of section 57 of the Municipal Systems Act and section 82 of the Municipal Structures Act;

"**Ombudsman**" means a person appointed as the Ombudsman in terms of section 5;

"**Complainant**" means any person who has lodged a complaint with the Office of the Ombudsman as provided for in this by-law;

"**Constitution**" means the Constitution of the Republic of South Africa;

"**Council**" means the Council of the City of Johannesburg municipality as contemplated in section 18 of the Municipal Structures Act;

"**Councillor**" means a member of the Council;

"**Employee**" means any staff member of the City of Johannesburg municipality or any of its municipal owned entities;

"**Executive Mayor**" means the a person elected in terms of section 55 of the Municipal Structures Act;

"**Mayoral Committee**" means the Mayoral Committee established in terms of section 60 of the Municipal Structures Act;

"**Maladministration**" means an act or omission committed by the administration or by an employee of the administration and which has the impact of infringing upon a person or institutions' right to fair administrative action or that results in manifestly inequitable, unfair, irregular or unprocedural treatment;

"**Municipality**" means the City of Johannesburg municipality established in terms of Section 12 of the Municipal Structures Act;

"**Prescribe**" means prescribe by regulation in terms of this by-law;

"**Speaker**" means a person elected in terms of section 36(2) of the Municipal Structures Act;

2. The office of the ombudsman

- (1) The Office of the Ombudsman for the City of Johannesburg Municipality is hereby established.
- (2) The Office of the Ombudsman is an institution of the municipality accountable to Council and subject to the provisions of this by-law;
- (3) The Office of the Ombudsman must at all times be impartial and exercise its powers, duties and functions without fear, favour or prejudice.
- (4) The Council, its political structures and administration must assist the Office of the Ombudsman to ensure its independence, credibility, influence, impartiality, dignity and effectiveness.
- (5) The Council, its political structures and administration must not interfere with the functioning of the Office of the Ombudsman.
- (6) The Office of the Ombudsman is accountable to Council through quarterly reports on the activities of and progress made in the Office of the Ombudsman.

3. The structure

Office of the Ombudsman shall consist of the Ombudsman and such other persons who may be necessary for the effective exercise of the powers and functions and duties provided for in this by-law.

4. Objectives

The objectives of the Office of the Ombudsman are to:

- (a) ensure that all complaints relating to alleged acts of maladministration where members of the public are alleged to have suffered an injustice as a result of such maladministration by the administration or any of its employees, and where such acts allegedly infringe upon the Constitutional rights of an individual, are investigated and dealt with in a proper manner; and
- (b) ensure that the complaints relating to the actions of the administration including its employees, where such alleged acts allegedly result in a contravention upon the rights of the public to efficient and courteous service, dignity, honesty and integrity in the public administration of the municipality, are investigated properly and dealt with; and

- (c) ensure the adherence to the principles of procedural fairness and administrative justice; and
- (d) assist in preserving and promoting compliance with all resolutions, policies and by-laws which govern the municipality and which detail the direct or indirect services as rendered to members of the public and therefore ensuring that the rights of the public are protected; and
- (e) provide for the reporting on the possibility of amending the processes or policies of the municipality, including those of the Office; and
- (f) develop awareness of human rights among the residents of the City of Johannesburg;
- (g) make recommendations to the City Manager in order to enhance the promotion and implementation of human rights; and
- (h) undertake studies and report to the Executive Mayor and the City Manager on matters relating to human rights; and investigate complaints of violations of human rights by the administration of the municipality and to seek appropriate redress.

5. Appointment of the ombudsman of the city of johannesburg

- (1) The Ombudsman shall be appointed by the Municipal Council upon recommendation of the Executive Mayor.
- (2) The Ombudsman of the City of Johannesburg shall:
 - (a) be a South African citizen;
 - (b) reside in the jurisdiction of the City of Johannesburg Metropolitan Municipality; and
 - (c) be a fit and proper person to hold the particular office;
- (3) The Ombudsman of the City of Johannesburg shall
 - (a) be a retired Judge of the High Court or a retired Magistrate in the Magistrates Court; Or
 - (b) be admitted as an advocate or an attorney and has, for a cumulative period of at least 10 years after having been so admitted, practised as an advocate or an attorney; or
 - (c) is qualified to be admitted as an advocate or an attorney and has, for a cumulative period of at least 10 years after having so qualified, lectured in law at a university; or
 - (d) have specialised knowledge of or experience, for a cumulative period of at least 10 years, in the administration of justice, public administration or public finance; or
 - (e) have, for a cumulative period of at least 10 years, been a member of a Municipal Council; or
 - (f) have acquired any combination of experience mentioned in paragraphs (b) to (e), for a cumulative period of at least 10 years.
- (4) The Ombudsman of the City of Johannesburg shall administratively report to the Executive Mayor and shall functionally report to Council.
- (5) The Ombudsman of the City of Johannesburg shall be appointed on a non-renewable fixed term basis for a period not exceeding five (5) years.

6. Functions and powers of the ombudsman

The Ombudsman may, at his or her own instance, and must, on receipt of a complaint in terms of section 8, investigate any alleged act or omission or any attempt by an employee serving in the municipality or municipal entity which constitutes-

- (a) any contravention of item 2, 4(1)(a) or (b); 5, 6(1), 7, 8,9 or 12 of the Code of Conduct for Municipal Staff Members contained in Schedule 2 to the Municipal Systems Act;

- (b) any failure to comply with the provisions of section 5(1)(b), (c), (f) or (g) of the Municipal Systems Act;
- (c) any maladministration in the affairs of the municipality to the prejudice of a member of the public;
- (d) any abuse or unjustifiable exercise of power, whether such power is held under a delegation or in terms of any law;
- (e) any unfair, capricious or discourteous conduct;
- (f) any improper conduct in the affairs of the municipality which directly or indirectly prejudices a member of the public;
- (g) any other act or omission by an employee performing a public function which results in the unlawful or improper prejudice to a member of the public.

7. Matters not for investigation

- (1) The Ombudsman must not accept complaints about or investigate any of the following matters:
 - (a) any legislative or executive decision by the council or by any of its legislative or executive organs;
 - (b) any matter in respect of which legal or arbitration proceedings have commenced or are about to or are likely to commence and to which the Council is or likely to be a party;
 - (c) any matter relating to the laying of a charge against or the prosecution of an alleged offender;
 - (d) any matter or dispute which must be dealt with or settled within the field of labour law ;
 - (e) any investigation relating to the internal or external audit of the Council's financial affairs;
 - (f) any complaint which is vexatious or frivolous;
 - (g) where the complainant has not exhausted all internal remedies available unless the Ombudsman considers that the refusal to act would result in an injustice to the complainant; and
 - (h) any alleged irregular conduct of a councillor.
- (2) If in the course of the investigation of a complaint, which has been accepted by the Office of the Ombudsman, a discovery is made into that the matter falls within 7(a) to (h) above which merits a referral or investigation to another agency, forum or person, he or she shall make such referral taking into account section 12(1).

8. Submission of complaints

- (1) All complaints submitted to the Office of the Ombudsman must be in writing.
- (2) Telephonic submissions made to the Office will be captured in writing to enable the office to properly record the submission. The complaint will be dealt with in accordance with section 8(3) below.
- (3) A complainant must complete the form set out in Annexure A to this by-law and such form must be accompanied by an affidavit where the Ombudsman requests an affidavit.
- (4) Each complaint must specify-
 - (a) The nature of the complaint;
 - (b) The grounds on which the complainant believes that there has been an act, or omission or an attempt as contemplated in section 6;

- (c) Such facts or other relevant information as are known to the complainant;
 - (d) The redress sought, if any.
- (5) The Office of the Ombudsman must consider only those complaints which comply with the provisions of this section.
 - (6) Where a complainant is not able to lodge a complaint in writing, he or she must be assisted by the Office of the Ombudsman to submit a written complaint.
 - (7) Submissions to the Office of the Ombudsman may be made in any of the official languages of South Africa.
 - (8) The Ombudsman must within fourteen days (14) of receipt of a complaint acknowledge receipt of the complaint.
 - (9) The Ombudsman must take steps to inform the relevant parties of progress made with regard to the complaint until final resolution of the complaint.

9. Terms of reference

- (1) The Ombudsman may investigate any complaint submitted in accordance with section 8.
- (2) Upon receipt of a complaint, the Ombudsman must conduct a preliminary investigation for the purposes of determining the merits of the complaint.
- (3) Where the result of the preliminary investigation referred to in subsection 9(2) above determines that such complaint is frivolous, carries no merit or there is insufficient evidence, or for any other reason does not fall within the provisions of this by-law, the complainant will be notified of the determination by the Ombudsman.
- (4) Subject to subsection (5), where a complainant, in the opinion of the Ombudsman, has at their disposal legal remedies and has not exhausted those remedies, the Ombudsman may decline to investigate the complaint concerned.
- (5) Notwithstanding the provisions of subsection (4) where the Ombudsman on reasonable grounds believes that acting in terms of subsection (4) would, as a result of poverty or lack of capacity on behalf of the complainant, result in a failure of justice, the Ombudsman shall investigate a complaint falling within this category.
- (6) For the purpose of an investigation contemplated by this by-law, the Ombudsman-
 - (a) Shall have the power to demand in writing that any employee appear before him or her and to produce any record, book, file, object or document whether written or in electronic form;
 - (b) May administer an oath or affirmation to an employee who appears before him or her in terms of subsection 9(6)(a);
 - (c) May, after the employee has been informed of his or her right to remain silent and of his or her right to request the assistance of a fellow employee or union representative, question such employee before him or her in terms of subsection (6)(a);
 - (d) May exclude from the place of examination, any other person who in his or her opinion should not be present;
 - (e) Shall determine the form of any oath or affirmation to be administered in terms of this subsection and the procedure to be followed at any examination in terms of subsection 9(6)(c);
 - (f) Shall have the power to enter any premises owned, controlled or managed by the municipality and its municipal owned entities for the purposes of any investigation in terms of this by-law and while in such premises to examine any record, file, document, book, or vehicle as the Ombudsman may consider necessary;

- (g) Shall have the power to take charge of and remove anything referred to in subsection 9(6)(f) for the purposes of an investigation;
 - (h) Shall have the power to require by written order any employee to assist him or her in any investigation;
 - (i) Shall have the power to require by written order that an official or department provide relevant information within a stipulated timeframe;
 - (j) May request the City Manager, Executive Mayor or any other Councillor to assist him or her in the course of an investigation.
- (7) The Ombudsman shall further have the power to -
- (a) Investigate and report on the observance of human rights within the administration of the municipality;
 - (b) Take steps to secure appropriate redress where human rights have been violated;
 - (c) Carry out research on the promotion of human rights;
 - (d) Conduct education and awareness campaigns on human rights within the City of Johannesburg.
- (8) The Ombudsman may request the municipality and the municipal entities to provide information and/or progress taken or made towards the realization or implementation of rights in the Bill of Rights falling with the functions and purpose of the departments and/or municipal entities.

10. Resolution/settlement of complaints

- (1) The Ombudsman shall after completion of an investigation, compile in writing a document setting out his or her findings and recommendations and the reasons thereto.
- (2) In making a recommendation, the Ombudsman may find-
 - (a) The complaint to be justified;
 - (b) That there is insufficient evidence to support the complaint;
 - (c) The complaint to be without merit;
 - (d) The complaint to be vexatious or frivolous; or
 - (e) The complaint to be outside his or her jurisdiction as defined in this by-law.
- (3) Where the Ombudsman finds a complaint-
 - (a) To be justified, he or she shall act in accordance with section 11;
 - (b) To be without sufficient evidence or merit or where the complaint is frivolous and vexatious, he or she shall inform the complainant and the employee concerned accordingly;
 - (c) To be outside his or her jurisdiction as defined by this by-law, he or she shall act in accordance with section 12.

11. Complaints finalisation procedure

- (1) Where a complaint falls within the ambit of section 10(2)(a), the Ombudsman shall approach the City Manager or an employee of the Council designated by the City Manager for the purpose of settling the complaint in one or more of the means provided in subsection (2).

- (2) A complaint found to be justified in terms of section 10(2)(a) may be settled in one or more of the following ways-
 - (a) By negotiation between the Ombudsman and the administration to obtain the redress sought where such redress has been requested and is legally permissible;
 - (b) By conciliation or mediation facilitated by the Ombudsman between the complainant and the employee concerned where in, the opinion of the Ombudsman, conciliation or mediation will to the extent legally permissible, remove the cause for the complaint;
 - (c) By the employee concerned providing an apology to the complainant;
 - (d) By the recommendation of corrective action to be taken so as to remedy the maladministration if possible;
 - (e) By the recommendation that the matter be further investigated so that disciplinary or any action may be taken;
 - (f) By any other lawful means that will achieve a settlement of the complaint.
- (3) In the event that the Office of Ombudsman recommends corrective action the department or employee concerned must provide the Office of the Ombudsman with written confirmation within 14 days of receipt of such recommendation whether the recommendation will be implemented or not. In the event that a recommendation will not be implemented, comprehensive written reasons for such decision must be forwarded to the Office of the Ombudsman within the 14 days.
- (4) In the event of the recommended corrective action not being implemented, or where the office of the Ombudsman does not receive written reasons in accordance with section 11(3) above, the Office of the Ombudsman may refer the matter to the City Manager and relevant management structures for intervention.

12. Complaints for referral

- (1) Where a complaint falls within the ambit of section 10(2)(e), the Ombudsman shall act as follows:-
 - (a) In the case of the commission or suspected commission of a criminal offence, refer the matter to the South African Police Service(SAPS) or the National Prosecuting Authority;
 - (b) In the case of an improper or dishonest act in connection with the assets, property or moneys of the Council, refer the matter to the Group Head Audit;
 - (c) In the case of any contravention or breach or of failure to comply with any legislation on municipal financial management, refer the matter to the Group Head Audit;
 - (d) In the case of any alleged improper or dishonest act or any contravention or breach of the Code of Conduct in schedule 1 of the Municipal Systems Act, refer the matter to the Speaker of Council for further action;
 - (e) In the case of alleged contravention by a councillor of section 119(1) of the Municipal Systems Act, refer the complaint to the Speaker of Council;
 - (f) In the case of any contravention or breach of the Code of Conduct for Municipal Staff Members in Schedule 2 of the Municipal Systems Act or of section 119(2) of the Municipal Systems Act, refer the matter to the City Manager.
- (2) The ombudsman may act in respect of any one or more of the ways provided for in subsection (1).
- (3) Where the Ombudsman acts in terms of subsection 1(a),(b) or (c), he or she shall send a copy of his or her findings to the City Manager.
- (4) Copies of all the findings of the Ombudsman referred to in subsection (1) shall be contained in a quarterly report submitted to Council.

13. Organisational or internal investigations

- (1) In addition to the powers of the Ombudsman as stated in section 6, the Office of the Ombudsman shall have jurisdiction to provide an informal mediation or conciliation service in cases where there is an alleged infringement of an employee's rights to fair administrative procedures.
- (2) This process is a voluntary option, which will not replace existing frameworks, but which aims to supplement them and which can only be exercised with the agreement of both the employer and employee.
- (3) This process cannot be conducted simultaneously with any existing City of Johannesburg internal recourse which is available to the employee.
- (4) this process attempts to constructively resolve issues between the parties in an informal, non-threatening environment.
- (5) Issues/complaints received and accepted by the Ombudsman shall include but will not be limited to grievances as a result of the alleged unfair treatment of staff members and the alleged violation of their human rights through unfair processes, systems and policies.
- (6) The Office of the Ombudsman is limited to making recommendations on these matters and any such recommendation is not binding on either party.
- (7) Recommendations are to be forwarded to relevant departments who are to effectively address the problems brought to their attention.

14. General principles applicable to investigations

- (1) Subject to other applicable legislation, the Ombudsman or any other member employed in the Office of the Ombudsman shall not be required or summoned to testify in any judicial or administrative hearing in respect of concerns or complaints brought to the Office of the Ombudsman.
- (2) The municipality will not request the Office of the Ombudsman to share any records that might identify callers or visitors and will not request the Office of the Ombudsman to identify any residents who have contacted the office.
- (3) All interactions with the Office of the Ombudsman are confidential.
- (4) The municipality prohibits any retaliation against any of its residents, including those residents who make use of the services of the Office of the Ombudsman. Anyone contravening this section will be subject to disciplinary action.
- (5) All communications related to the Office of the Ombudsman is deemed privileged and such privilege may only be waived by agreement between the relevant parties concerned.

15. Reports

- (1) All reports relating to work in the Office of the Ombudsman are produced and distributed at its sole discretion.
- (2) The Office of the Ombudsman will, in its sole discretion, determine the appropriate content of all reports.
- (3) The Ombudsman shall on a quarterly basis report to the Executive Mayor and Council all recommendations, findings, trends and any issues arising out of completed and referred investigations. The Ombudsman shall submit a report setting out the number of complaints received the outcome of investigation of such complaints, settlements where applicable, provided that the right to privacy of complainants will be respected.

- (4) The municipality will use such reports as it deems fit to satisfy legal, regulatory or other compliance guidelines.

16. Public participation and public awareness

- (1) In order to ensure the engagement of the public, to promote the knowledge and awareness of the institution, roles and responsibilities of the office of the Ombudsman, and in order to assist in the promotion of a culture of human rights within the City of Johannesburg, the Office of the Ombudsman shall-
 - (a) Embark on sustained advocacy, public education and awareness campaigns within local communities;
 - (b) Conduct information clinics aimed at optimizing the Office of the Ombudsman,
 - (c) Conduct clinics whereby service conditions are monitored through the effective engagement with local communities on such issues;
 - (d) Where necessary, address the requirements of communities and civic bodies within communities for their effective engagement with the Office of the Ombudsman and for their effective engagement with Council.
- (2) The Ombudsman shall-
 - (a) Promote respect for human rights and a culture of human rights within the municipality and municipal owned entities;
 - (b) Promote the protection, development and attainment of human rights within the municipality and municipal entities;
 - (c) Monitor and assess the observance of human rights within the municipality and municipal entities.

17. General

The Ombudsman and staff employed in the Office of the Ombudsman shall-

- (a) perform their functions diligently, in good faith and without fear or favour;
- (b) not use their position for private gain or to improperly benefit another person;
- (c) not undertake any paid work outside of the Office of the Ombudsman except with the consent of the City Manager;
- (d) not act in any way that compromises the credibility or integrity of the office of the Ombudsman.

18. Cooperative action

The Office of the Ombudsman shall operate cooperatively with -

- (a) the City Manager;
- (b) the Executive Mayor (c) the Office of the Public Protector;
- (d) The South African Human Rights Commission;
- (e) the Commission on Gender Equality;
- (f) the Auditor-General;
- (g) Consumer Protection Commission;
- (h) any such structures or agencies as may be legislatively prescribed or necessary.

19. Delegation

- (1) The Ombudsman may as and when necessary delegate in writing any power or function conferred on him or her in terms of this by-law on any person employed in the Office of the Ombudsman.
- (2) In acting in terms of subsection (1), the Ombudsman shall impose such conditions or limitations or give such direction as he or she considers necessary.
- (3) The Ombudsman may, in writing, at any time withdraw any delegation given in terms of subsection (1).

20. Application to municipal entities

The provisions of this by-law shall apply to employees of any municipal entity established by Council in terms of section 82 of the Municipal Systems Act.

21. Accountability

The Office of the Ombudsman and the Ombudsman are accountable to Council in accordance with the provisions of this by-law.

22. Offence and penalties

Any person who fails to comply with any lawful instruction issued by the Office of the Ombudsman in terms of provisions of this by-law shall be guilty of an offence and on conviction be liable to a fine or imprisonment for a period not exceeding 12 months or to both such fine or imprisonment and/or face disciplinary proceedings.

23. Short title and date of commencement

This by-law shall be called the City of Johannesburg: Ombudsman By-Law and takes effect on 01 September 2014.

Schedules**Office of the ombudsman complaint form**

OFFICE OF THE OMBUDSMAN COMPLAINT FORM	CITY OF JOHANNESBURG
1. GENERAL INFORMATION	
DATE:	TITLE:
FIRST NAME:	SURNAME:
POSTAL ADDRESS:	
RESIDENTIAL ADDRESS:	

OFFICE OF THE OMBUDSMAN COMPLAINT FORM	CITY OF JOHANNESBURG
	CODE:
TELEPHONE NUMBER:	CELL NUMBER:
EMAIL ADDRESS:	
ACCOUNT NO:	ID NO:

2. DETAILS OF THE COMPLAINT

1. Name of department/municipal entity which you are complaining about:

2a. Have you lodged your complaint with the above department/municipal entity?

2b If yes what was the department/municipal entity's response to your complaint?

(attach copies of your correspondence with the department.

3. Name(s) of official(s) at the department/municipal entity that you spoke/wrote to about your complaint

4. Briefly state your complaint:

5. What can the Ombudsman do to assist you?

6. Is this your first interaction with the Office of the Ombudsman?

Signature:

PLEASE ATTACH COPIES OF ALL RELEVANT CORRESPONDENCE