

LEGAL COMPLIANCE REPORT 2009
FEZILE DABI DISTRICT MUNICIPALITY AND LOCAL MUNICIPALITIES

FEZILE DABI DISTRICT

Non-compliance with applicable legislation

Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (MFMA)

1. Particulars of the municipality's investments were not included in the annual budget upon tabling thereof as prescribed by section (17)(3)(f) of the MFMA.
2. The annual budget was not made public after tabling thereof in the council as prescribed by section 22(a) of the MFMA,
3. The council did not approve the annual budget at least thirty days before the start of the budget year as prescribed by section 24(1) of the MFMA.
4. The mayor did not submit reports on the implementation of the budget and financial state of affairs of the municipality to the council within thirty days of the end of each quarter as prescribed by section 52(d) of the MFMA.
5. The performance agreements of the municipal manager and senior managers were not made public within fourteen days after the approval of the municipality's service delivery and budget implementation plan as prescribed by section 53(3)(b) of the MFMA.
6. A formally documented and approved policy, as required by section 62(1)(c)(i) of the MFMA was not available.
7. Suppliers were not always paid within 30 days of receipt of the relevant invoice. As prescribed by section 65(2)(e) of MFMA,
8. The municipality did not prepare an annual report within nine months after the end of the 2006-07 financial year as prescribed by section 121(1) of the MFMA.
9. The mid-year budget and performance assessment report for the 2007-08 financial year did not include an evaluation of the municipality's service delivery performance, and the service delivery targets and performance indicators set in the service delivery and budget implementation plan, as required by section 72(1)(a)(ii) of the MFMA.
10. The accounting officer did not submit a draft service delivery and budget implementation plan and performance agreements of senior management to the mayor within 14 days after the approval of the annual budget. The service delivery and budget implementation plan of the municipality was adopted in October 2007. As prescribed in section 69(3)(a) and (b) of the MFMA.
11. The annual performance agreements of the municipal manager and senior managers were not linked to the measurable performance objectives approved with the budget and service delivery and budget implementation plan as prescribed by section 53(c)(iii)(bb) of the MFMA

Municipal Systems Act, 2000 (Act No. 32 of 2000) (MSA)

1. Certain members of the council did not declare their business interests, as required by section 5 of Schedule 1: *Code of conduct for councillors* prescribed by the MSA.

2. The performance agreements of the municipal manager and senior managers were not concluded within one month after the beginning of the financial year as prescribed by section 57(2)(a) of the MSA.
3. Contrary to section 7(2)(c) of the MSA, the role of the community in the performance management system is not defined.
4. The frequency of reporting by senior managers was not indicated in the performance management system, as prescribed by section 7(2)(e) of the MSA.
5. The municipality council did not, within the prescribed period after the start of its elected term, adopt a single, inclusive and strategic plan for the development of the municipality, as required by section 25 of the MSA.
6. The IDP of the municipality did not include the key performance indicators and performance targets determined in terms of its performance management system as required by section 26(i) of the MSA. Furthermore, the IDP did not include any general key performance indicators applicable to the municipality, as prescribed in terms of section 43(1) of the MSA.
7. Contrary to section 43 of the MSA and regulations 9 and 10 of the Local Government Municipal Planning and Performance Management Regulations, 2001, the municipality did not set key performance indicators, performance targets, input and output targets for each of the development priorities and objectives contained in the IDP
8. The performance report of the municipality did not include key performance indicators, a comparison of the actual performance with the previous year or details of measures taken to improve performance as prescribed in section 46(1) of the MSA.

MOQHAKA

Non-compliance with applicable legislation

Municipal Finance Management Act, 2003

1. Section 125(2)(e) of the MFMA states that the notes to the annual financial statements of a municipality or municipal entity must disclose particulars of non-compliance with this act. Several instances of non-compliance with the MFMA were noted, none of which were disclosed in the notes to the financial statements.
2. Revenue was not reconciled on a weekly basis as required by section 64 of the MFMA.
3. Creditor statements to the value of R335 061 in the current year and R5 029 110 in the previous year were not paid within 30 days as required by section 65(2)(e) of the MFMA.
3. There was a lack of controls existed over the safeguarding and tracking of important tender documents such as original, signed tender agreements in the previous year. Compliance with the provisions of section 116 of the MFMA could therefore not be confirmed.
5. The municipality did not table the annual report within seven months as required by section 127(2) of the MFMA. In addition, no written explanation setting out the reasons for the delay was submitted to council as required by section 127(3) of the MFMA

6. The annual performance report of the municipality prepared in terms of section 46 of the MSA, as required by section 121(3)(c) of the MFMA was not submitted for audit purposes.

Municipal Systems Act, 2000 (Act No. 32 of 2000) (MSA)

1. The municipality did not set appropriate key performance indicators as a yardstick for measuring performance, including outcomes and impact, with regard to the municipality's development priorities and objectives set out in its integrated development plan as required by section 41 (1)(a) of the MSA
2. The annual budget for the financial year ended 30 June 2008 was not based on the development priorities and objectives referred to in section 26(c) of the MSA and measurable performance targets were not set by the municipality as required by regulation 6 of the Municipal Planning and Performance Management Regulations, 2001.
3. Evidence that the audit committee reviewed the performance management system and made recommendations in this regard to council in terms of regulation 14 of the Municipal Planning and Performance Management Regulations could not be obtained.

NGWATHE

Non-compliance with applicable legislation

Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (MFMA)

1. All money owing by the municipality be paid within 30 days of receiving the relevant invoice or statement. Contrary to this requirement, a number of incidents were identified where outstanding accounts were not paid within the prescribed time frame. Section 65(2)(e) of the MFMA.
2. The bank overdraft was not approved as required by section 45(2) and (3) of the MFMA. Furthermore, although the bank overdraft (short-term debt) was not repaid within the financial year as required by section 45(4) of the MFMA, the National Treasury was not notified of the net overdrawn position as required by section 70(2) of the Act.
3. The accounting officer must promptly inform the mayor, the MEC for local government in the province and the Auditor-General, in writing of any unauthorised, irregular or fruitless and wasteful expenditure incurred by the municipality. Contrary to the said prescript, the required reports were not issued by the municipality during the year under review, while instances of irregular and fruitless and wasteful expenditure were identified and disclosed in the financial statements. Section 32(4) of the MFMA.
4. The annual budget compiled by the municipality did not comply with the requirements as prescribed in section 17 of the MFMA.
5. The following reports were not submitted in the time frame as required by the MFMA:
 - Quarterly reports were not submitted within the time frame as required by section 52(d) of the Act.
 - The draft service delivery, budget implementation and annual performance agreements were not submitted within the time frame as required by section 69(3) of the Act.
6. No evidence could be obtained that the mayor promptly responded to and initiated any

corrective steps to deal with the cash flow problems or that the mayor alerted council and the MEC responsible for local government to ensure that the requirements of section 54(2) of the MFMA were adhered to.

7. In terms of section 131 of the MFMA, a municipality must address any issues raised by the Auditor-General in an audit report. The mayor of a municipality must ensure compliance by the municipality. Matters noted in my audit report for the year ended 30 June 2007, dated 27 May 2008, had not yet been resolved by management. As a result, the mayor and management of the Ngwathe Local Municipality did not fulfil their responsibility in terms of section 131 of the MFMA.
8. The municipality must investigate all unauthorised, irregular and fruitless and wasteful expenditure and to recover such expenditure incurred from the persons responsible. Contrary to this requirement, the management of the Ngwathe Local Municipality did not investigate identified instances of unauthorised, irregular and fruitless and wasteful expenditure. Section 32(2) of the MFMA.
9. Not all alleged theft and fraud were reported by the municipality to the South African Police Service as required by section 32(6) of the MFMA.

Municipal Systems Act, 2000 (Act No. 32 of 2000) (MSA)

1. Appropriate systems must be developed to monitor, measure and evaluate the performance of staff. Although the performance of management is monitored, the performance of other employees is not monitored and evaluated. Section 67(d) of the MSA
2. Plans policies strategies and programs should be established, approved and implemented by the municipality to govern the different processes and activities of the municipality. Notwithstanding, it was noted that the municipality has not established or implemented formally documented and approved policy frameworks for the financial transactions and events related to several important business processes. According to section 11(3)(a) of the MSA,
 3. The integrated development plan of the Ngwathe Local Municipality did not include key performance indicators and performance targets determined in terms of its performance management system, as required by section 26(i) of the MSA.
4. Although the required performance indicators and targets formed part of the strategic plan, it did not form part of the IDP and this was never presented to the local community for their inputs.
5. The IDP did not contain a financial plan or budget projection for the next 3 years as required by section 26(h) of the MSA.
6. The key performance indicators set by the municipality did not include any general key performance indicators applicable to the municipality, as prescribed in terms of section 43(1) of the MSA and regulation 10 of the Municipal Planning and Performance Management Regulations, 2001 (GNR. 796)
7. The municipality did not develop and implement mechanisms, systems and processes for auditing the results of performance measurement as part of its internal audit processes, as required in terms of section 45 of the MSA

METSIMAHOLO

Non-compliance with applicable legislation

Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (MFMA)

1. The municipality did not settle creditors within 30 days of receipt of invoice in respect of expenditure transactions with a value of R16 800 748 as required by section 65(2)(e) of the MFMA.
2. Certain reporting obligations, including those in sections 52(d) 53 54(1)(f) 70(1) 73 Were not submitted to council, provincial treasury, the National Treasury and the Auditor-General.
3. The municipality did not implement an appropriate budget system to ensure compliance with sections 17, 18, 23, 28 and 69 of the MFMA.
4. The municipality had not fulfilled the functions in terms of section 56 to ensure that the Metsimaholo Local Municipality Trust had complied with sections 84 to 109 of the MFMA.
5. A supply chain management policy had not been fully implemented, as required by section 111 of the MFMA.
6. Contrary to the requirements of section 115(1)(b) of the MFMA, the municipality did not implement an approved fraud prevention plan.

Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) (MSA)

1. The municipality did not give notice to the public in terms of section 19 of the MSA of all ordinary and special meetings of the council.
2. The municipality did not place all the information as set out in section 21B of the MSA including annual budgets, all budget-related policies, all performance agreements and all service delivery agreements, on a website.
3. The organisational chart of the municipality had not been kept up to date in terms of sections 55 and 66 of the MSA.
4. No sufficient appropriate audit evidence was provided that performance agreements between the municipality and its senior managers had been agreed in terms of section 57 of the MSA.
5. The audit committee did not review the municipality's performance management system, did not make recommendations in this regard to council, and did not at least twice during the financial year submit an audit report to council regarding the performance management system, in terms of section 14(2), (3) and (4) of the Municipal Planning and Performance Management Regulations, 2001.
6. The municipality did not develop and implement mechanisms, systems and processes for auditing the results of performance measurements as part of its internal auditing process, as required in terms of section 45 of the MSA.
7. No documented policies and procedures were developed to guide, direct and manage the processes to be followed by officials in order to achieve the set objectives.

MAFUBE

Municipal Finance Management Act

1. In terms of section 65(2)(e) of the MFMA, the accounting officer of a municipality must ensure that all money owing by the municipality is paid within 30 days of receiving the relevant invoice or statement, unless prescribed otherwise for certain categories of expenditure. In respect of several payments with a total value of R304 519 (2007-R4 883 199), it was impossible to obtain sufficient evidence that the payment was made within the prescribed period.
2. Section 71 of the MFMA states that the accounting officer of a municipality must by no later than 10 working days after the end of each month submit to the mayor of the municipality and the relevant provincial treasury a statement on the state of the municipality's budget. No supporting documentation could be submitted to indicate that statements were submitted to the provincial treasury.
3. Section 64(3) of the MFMA states that the accounting officer of a municipality must immediately inform the National Treasury of any payments due by an organ of state to the municipality in respect of municipal tax or for municipal services, if such payments are regularly in arrears for periods of more than 30 days. Contrary to the above no proof could be submitted by management that the National Treasury was informed of long-outstanding debt, although government balances amounting to R1 091 978 were outstanding for more than 30 days.
4. Section 72(1) of the MFMA states that the accounting officer of a municipality must by 25 January of each year assess the performance of the municipality during the first half of the financial year and submit a report on such assessment to the mayor of the municipality, the National Treasury and the relevant provincial treasury. No proof could be submitted that such an assessment was performed.
5. Section 74(2) of the MFMA states that if the accounting officer of a municipality is unable to comply with any of the responsibilities in terms of the MFMA, he/she must promptly report the inability, together with reasons, to the mayor and the provincial treasury. Several instances were noted where the required reports were not submitted to the provincial treasury. However, no proof could be submitted that this matter was reported to the provincial treasury, explaining the reason why the reports were not submitted.
6. In terms of section 121 of the MFMA, the municipality has to prepare an annual report for each financial year. No annual reports were compiled and submitted for the 2005-06, 2006-07 and 2007-08 financial years.
7. Section 122(1)(a) of the MFMA requires every municipality to prepare financial statements that fairly present the state of affairs of the municipality or entity, its performance against its budget, its management of revenue, expenditure, assets and liabilities, its business activities, its financial results and its financial position as at the end of the financial year. However, the financial statements submitted to the Auditor-General on 9 February 2009 for the 2007-08 financial year contained a number of material errors as set out in this report.
8. A report by the accounting officer could not be submitted on mid-year budget and performance assessments as required by section 72 of the MFMA.

Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) (MSA)

1. Declaration forms signed by the councillors to disclose any direct or indirect personal or private business interest which that councillor, or any spouse, partner or business associate of that councillor, may have in any matter while serving before the council was not submitted for six councillors, as required by items 7(1) and 5(1)(a) of the code of conduct for councillors set out in schedule 1 of the MSA.
2. Contrary to section 57(1) and (2) of the MSA, there were no written and signed annual performance agreements in place for the municipal manager and the managers directly accountable to him for the 2007-08 financial year
3. The municipality did not develop and implement a performance management system as required in terms of sections 38 to 42 of the MSA.
4. The municipality did not appoint and budget for a performance audit committee, neither was another audit committee utilized as the performance audit committee as required by Regulation 14(2)(a) of the Municipal Planning and Performance Management Regulations.
5. The municipality did not develop and implement mechanisms, systems and processes for auditing the results of performance measurement as part of its internal auditing processes as required ,n terms of section 45 of the MSA and section 165(2)(b)(v) of the MFMA.

A handwritten signature in black ink, consisting of a large, loopy initial 'C' followed by a smaller 'L' and a stylized 'H'.

CL Hohne

8 December 2009