

**KWAZULU-NATAL PROVINCE**  
**KWAZULU-NATAL PROVINSIE**  
**ISIFUNDAZWE SAKWAZULU-NATALI**

**Provincial Gazette • Provinsiale Koerant • Igazethi Yesifundazwe**

**GAZETTE EXTRAORDINARY—BUITENGEWONE KOERANT—IGAZETHI EYISIPESHELI**

*(Registered at the post office as a newspaper) • (As 'n nuusblad by die poskantoor geregistreer)*  
*(Irejistiwee njengephephandaba eposihhovisi)*

**Vol. 3**

**PIETERMARITZBURG,**

12 JUNE 2009  
12 JUNIE 2009  
12 kuNHLANGULANA 2009

**No. 290**

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**MUNICIPAL NOTICE**

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**No. 73****12 June 2009****RULES AND ORDERS OF MUNICIPAL COUNCILS AND COMMITTEES OF THE  
COUNCIL****PREAMBLE**

**WHEREAS** every municipal councillor must recognise that the prime function of local government is at all times to serve the best interests of all of the community, must be dedicated to the concepts of effective and democratic local government, must promote the dignity and worth of the services rendered by local government and maintain a constructive, creative and practical attitude toward local government and a deep sense of social responsibility as an elected representative, must be dedicated to the highest ideals of honour and integrity in all public and personal relationships in order that the community, municipal officials and employees may merit the respect and confidence of the elected representatives, must set and achieve community goals and uphold municipal policies, must refrain from interference in the administration of the municipality and from all other partisan political activities which would impair performance as an elected representative, must make it a duty to continually improve his professional ability and develop competencies required to perform the duties of an elected representative, must keep the community informed on municipal affairs, must encourage communication and foster friendly and courteous service to the community and seek to improve the quality and image of municipal councillors, must handle each challenge without discrimination and with principles of justice and fairness, must seek no favour and acknowledge that personal gain or profit secured by a councillor's position is dishonest, must adhere to the Code of Conduct for Councillors, comply with the standing rules and orders and by-laws of a municipal council and at all times respect the rule of law.

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## CHAPTER 1 DEFINITIONS

### Definitions

1. In these rules, any word or expression shall have the meaning assigned thereto in the relevant legislation, unless the context indicates otherwise–

**“by-law”** means legislation passed by the council of a municipality;

**“chairperson”** means a councillor elected in a permanent or acting capacity to control and conduct any meeting of a committee of council;

**“council”** means the council of the ..... Municipality;

**“Code of Conduct”** means the Code of Conduct for Councillors contained in Schedule 1 to the Systems Act;

**“contact details”** means a physical address, postal address, electronic mail address, telephone number, facsimile number and cellular-phone number;

**“calendar day”** means a twenty-four hour day as denoted on the calendar;

**“councillor”** means a member of a municipal council;

**“day”** means any ordinary day other than a Saturday, Sunday or Public Holiday, except where otherwise stated;

**“deputation”** means a person or group of persons who wish to appear personally before the council or a committee of the council in order to address the council or committee of the council;

**“executive committee”** means the council’s executive committee established in terms of section 43 of the Structures Act;

**“explanation”** means the clarification of some material part of a councillor's former speech which may have been misunderstood;

**“in-committee”** means any council or committee meeting at which the public and or officials of the municipality are excluded;

**“integrated development plan”** means a single, inclusive and strategic plan for the development of the municipality and applicable in terms of Chapter 5 of the Systems Act;

**“mayor”** means a councillor elected as the mayor of the municipality in terms of section 48 of the Structures Act;

**“meeting”** means a meeting of the council or any one of its committees;

**“municipal asset”** means any movable, immovable, corporeal, incorporeal, tangible and intangible property to which the municipality holds title;

**"municipal manager"** means the person appointed municipal manager in terms of section 82 of the Structures Act and includes any person acting in that capacity;

**"notice of motion"** means the instrument by which councillors may bring items on to the agenda of a council meeting in terms of rule 23;

**"Peace Officer"** means any person declared as a Peace Officer in terms of the Criminal Procedure Act No. 51 of 1977;

**"point of order"** means the pointing out of any deviation from or anything contrary to, the conduct and or any other irregularity in the proceedings of a meeting;

**"precincts"** means the council chamber and all places of meeting, the areas to which the public are allowed access and all other venues where the meetings of the council or a committee of the council are conducted;

**"public"** includes the media and means any person residing within the Republic of South Africa;

**"service delivery agreement"** means an agreement between a municipality and an institution or person mentioned in section 76(b) of the Systems Act in terms of which a municipal service is provided by that institution or person, either for its own account or on behalf of the municipality;

**"speaker"** means the chairperson of the council elected in terms of section 36 of the Structures Act and includes any acting speaker when he or she is elected to perform the functions of the speaker;

**"Structures Act"** means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

**"Systems Act"** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

“**table**” means to submit a report or any official document to the council or a committee of council for consideration at a meeting of the council or a committee of council of which notice has been given in terms of these rules and orders;

**Gender and Number** - In every rule, unless the contrary intention appears, words importing the masculine gender include females and words in the singular number include the plural, and words in the plural number include the singular.

## CHAPTER 2

### APPLICATION AND INTERPRETATION OF RULES AND ORDERS

#### 2. Application of these rules and orders

- (1) These rules and orders govern the proceedings of the council and committees of the council which bind and must be complied with by:-
  - (a) all councillors;
  - (b) any member of the public while present in the precincts;
  - (c) any deputation addressing the council or a committee of the council; and
  - (d) any municipal official of the municipality.

#### 3. Interpretation of these rules and orders

- (1) Any interpretation of these rules and orders must be made having due regard to the supremacy of the Constitution, national, provincial and municipal legislation, the rule of law and the rules of natural justice.
- (2) The ruling of the speaker or chairperson with regard to the interpretation of these rules and orders at a meeting of the council or committee of the council shall, subject to rules 3(5) and 3(6), be final and binding.
- (3) The interpretation and the ruling of the speaker or chairperson of any of these rules and orders must be recorded in the minutes of the council or committee meeting.
- (4) The municipal manager must keep a register of the rulings and legal opinions.
- (5) Any councillor may request the municipal manager, in writing within five days from a ruling made in terms of rule 3(2), to obtain clarity on the interpretation and ruling and to report to the council or committee of the council.

- (6) The council or committee of the council may after consideration of the report in terms of rule 3(5) confirm, amend or substitute the ruling of the speaker or chairperson, subject to any rights which any third party may have accrued as a result of the ruling and all decisions effecting the rights of others must be in writing and reasons must be recorded of such decisions.

### **CHAPTER 3**

#### **FREQUENCY, ADMISSION OF PUBLIC AND NOTICE OF MEETINGS**

#### **4. Council meetings**

- (1) The council must hold an ordinary meeting of the council not less than once in every three months.
- (2) The speaker must convene all meetings of the council in accordance with rule 4(1) and subject to rule 6.

#### **5. Admission of public**

- (1) All meetings of the council and those of its committees must be open to the public, and the council or committee of the council may not exclude the public from a meeting, other than when the council or committee, due to the nature of the business being transacted or when the disclosure of any matter may be prejudicial to the interests of the municipality, deems it reasonable and justifiable to do so having due regard to the principles of an open and democratic society.
- (2) The council or a committee of the council, may not for any reason whatsoever, exclude the public when considering, voting or noting any of the following matters :-
- (a) a draft by-law tabled in the council;
  - (b) a budget tabled in the council;
  - (c) the municipality's integrated development plan, or any amendment of the plan, or any amendment of the plan tabled in council;
  - (d) the municipality's performance management system, or any amendment of the system, tabled in council;
  - (e) the decision to enter into a service delivery agreement;
  - (f) any reports on an award in terms of supply chain management policy;
  - (g) the disposal or acquisition of municipal capital asset;
  - (h) any other matter prescribed by legislation.

- (3) The municipal manager must give notice to the public, in a manner determined by the council, of the time, date and venue of every ordinary meeting of the council or committee of the council and any special or urgent meeting of the council or committee of the council, except when time constraints make this impossible.

#### **6. Notice to attend an ordinary council meeting**

- (1) The speaker must convene meetings of the council, at least quarterly, through a duly signed "Notice of Council Meeting", stating the date, place and time of the meeting and accompanied by or containing the agenda of the proposed meeting.
- (2) Notice to attend a meeting in terms of rule 6(1) shall be given at least–
  - (a) five calendar days prior to an ordinary meeting; and
  - (b) two calendar days prior to a special meeting.

#### **7. Special meetings**

- (1) The speaker
  - (i) for the purpose of pertinent or urgent council business
  - (ii) or at the request of a majority of the councillors of the municipality, must call a special meeting of the council
- (2) A special meeting must be held in compliance with rule 6(2)(b) and in terms of rule 7(1)(ii) no later than four days from the date of receipt of a request.
- (3) A request for the calling of a special meeting, as contemplated in rule 7(1)(ii), shall–
  - (a) be signed by no less than 50% (fifty *per centum*) plus one of all councillors of the municipality; and
  - (b) be accompanied by–
    - (i) a duly signed notice of motion; and
    - (ii) a written statement by the councillor signing the notice of motion giving reasons as to why the intended business of the special meeting is urgent and cannot wait for an ordinary meeting of the council.
  - (c) Full compliance with rule 7(3)(a) and 7(3)(b) prescribes that the speaker may not exercise discretion but must call a meeting.

**8. Service of notices and agenda**

- (1) Notice to attend a meeting or any other official communication from the council, shall be delivered to—
  - (a) a physical address within the area of jurisdiction of the municipality; or
  - (b) an e-mail address; or
  - (c) by a short message service (SMS);provided that contact details shall be supplied by each councillor to the municipal manager in writing within two days of a councillors' election and, thereafter, whenever the councillor wishes to change either address and at which address the councillor shall accept service and or receipt of any notice to attend a meeting and any other official communication from the council.
- (2) All documentation relevant to any council or committee meeting must be given to all councillors at least five calendar days prior to an ordinary council or committee meeting and two calendar days prior to a special council or special committee meeting.
- (3) All councillors must inform the speaker of any change of his contact details within three days of such change.
- (4) Subject to rule 5(3), notice to attend a meeting must be displayed on the public notice boards of the municipality.

**9. Non-receipt of notice**

- (1) A councillor may request an investigation regarding the non-receipt of a notice to attend a meeting.
- (2) Non-receipt of a notice to attend a meeting shall not affect the validity of any meeting or proceedings of council or any of its committees.

**CHAPTER 4****QUORUM****10. Quorum**

- (1) A majority of the number of councillors determined in accordance with the municipality's establishment notice must be present at a meeting of the council before a vote may be taken on any matter provided that:
  - a) Vacancies in the office of councillor shall not invalidate the proceedings of the

council meeting;

b) Subject to a quorum, the failure of any councillor to vote shall not invalidate the proceedings of the council meeting.

(2) A majority of the number of councillors appointed to a committee of council must be present at a meeting of the committee before a vote may be taken on any matter provided that:

a) Vacancies in the office of councilor shall not invalidate the proceedings of the committee meeting;

b) Subject to a quorum, the failure of any councilor to vote shall not invalidate the proceedings of the committee meeting.

#### **11. Cancellation and adjournment in absence of quorum**

(1) No meeting shall take place, if no quorum is present fifteen minutes after the time at which a meeting was due to commence, unless it is unanimously agreed by the councillors present to allow further time not exceeding fifteen minutes for a quorum, where after if no quorum is present, the meeting must be cancelled.

(2) If during discussion on an item at any meeting of council or any of its committees the attention of the speaker or chairperson is called to the number of councillors present, he or she shall–

(a) count the councillors present;

(b) if it is found that there is no quorum, the speaker or chairperson must adjourn the meeting and allow an interval of fifteen minutes for a quorum to become present;

(c) if a quorum becomes present after the adjournment then the meeting must continue;

(d) if no quorum becomes present after the adjournment then the chairperson or speaker must forthwith adjourn the meeting.

(3) When a meeting is adjourned as a result of no quorum, the meeting shall be re-convened within seven days as a continuation meeting.

## CHAPTER 5 ATTENDANCE

### 12. Attendance

- (1) All councillors must punctually attend and remain in attendance at each meeting of the council and a committee of which that councillor is a member except when:-
  - a) leave of absence is granted in terms of rule 13; or
  - b) that councillor is required to withdraw in terms of rule 46(2).
  - c) with the permission of the speaker or chairperson.
- (2) Each councillor attending any meeting of the council or a committee of the council shall sign an attendance register provided for that purpose.
- (3) The attendance register shall be filed in the office of the municipal manager.
- (4) Any councillor who is entitled to leave of absence in terms of rule 13 and no longer requires such leave may attend the meeting from which leave of absence was granted and sign the attendance register.

### 13. Leave of absence

- (1) Leave of absence shall not be granted in such a manner that more than the number required for a quorum will at any one time be absent.
- (2) If a councillor—
  - (a) is unable to attend a meeting of which notice had been given; or
  - (b) is unable to remain in attendance at a meeting; or
  - (c) will arrive after the stipulated commencement time of a meeting,he or she shall, as soon as is reasonably possible and prior to that meeting, lodge with the municipal manager a written application for leave of absence from the whole or any part of the meeting concerned, which application must provide reasonable and bona fide reasons for the application and show good cause for the granting of the application.
- (3) The municipal manager must as soon as possible inform the speaker or chairperson of the meeting concerned of any application for leave of absence received.
- (4) The speaker or chairperson of the meeting concerned must as soon as possible consider an application for leave of absence and either grant or reject the application with reasons and immediately inform the municipal manager of his decision.
- (5) The municipal manager must as soon as is reasonably possible, inform a councillor

who has applied for leave of absence of the speaker or chairperson's decision.

- (6) A councillor shall be deemed absent without leave from the meeting concerned where an application for leave of absence has not been granted and he or she—
  - (a) failed to attend a meeting; or
  - (b) failed to remain in attendance at a meeting.
- (7) Where a councillor fails to remain in attendance at a meeting —
  - (a) without being granted permission to do so; or
  - (b) without obtaining permission from the speaker or chairperson to leave prior to the close of the meeting,  
the time of leaving must be recorded in the minutes of the meeting and that councillor shall be deemed to have been absent without leave at that meeting;
- (8) Where a councillor arrives late at a meeting, without obtaining permission to do so, the time of arrival and the reasons for the late attendance must be recorded in the minutes of the meeting and the councillor may attend the meeting and sign the attendance register in terms of rule 12(2).
- (9) Leave of absence for two or more consecutive council or committee meetings must be sanctioned by the council or the relevant committee.

#### **14. Non-attendance**

- (1) Subject to compliance with the procedure set out in rule 13, a councillor who is absent without good cause from a meeting, of which notice has been given, shall be liable to pay a fine equivalent to one week's remuneration, which fine may be deducted from remuneration due to the councillor concerned.
- (2) Where a councillor has been absent without obtaining leave from a meeting—
  - (a) the Rules Committee as contemplated in rule 43 or the speaker or chairperson as the case may be, shall invite the councillor to provide a formal explanation setting out the reasons for the councillor's absenteeism from the meeting;
  - (b) the speaker or chairperson shall consider the explanation and decide whether or not the councillor was absent with good cause, providing appropriate reasons for the decision;
  - (c) the councillor may appeal in writing to the speaker's or chairperson's decision within seven days of receipt of such decision.
  - (d) the council or committee, as the case may be, shall—
    - (i) allow the councillor an opportunity to make representations, oral or written;

and

(ii) consider the councillor's appeal, together with any comments from the speaker or chairperson of the meeting concerned;

(iii) make a finding as to whether the councillor was absent with or without good cause.

- (3) The municipal manager shall keep a record of all incidents in respect of which councillors have been found to be absent or deemed to be absent without leave and without good cause and shall submit a written report to the speaker whenever a councillor is absent from three or more consecutive meetings which that councillor was required to attend.
- (4) Where the speaker receives a report in terms of rule 14(3), the speaker must submit the report to council and direct that the matter be investigated in accordance with Item 14 of the Code of Conduct.

## **CHAPTER 6 ADJOURNMENT**

### **15. Adjourned meetings**

Subject to rule 11(3), a council or committee meeting may, by majority vote, be adjourned to another day or hour but no later than 14 days after the original meeting.

### **16. Continuation meeting**

- (1) When a meeting is adjourned, notice of the continuation meeting shall be served in terms of rule 8.
- (2) No business shall be transacted at a continuation meeting except such as is specified in the notice of the meeting, which was adjourned.

## **CHAPTER 7 PROCEEDINGS**

### **17. Speaker and chairpersons of meetings**

- (1) At every meeting of the council, the speaker, or if he or she is absent, an acting speaker, shall be the chairperson and shall perform the duties stipulated in terms of section 37 of the Structures Act and must ensure that each councillor when taking

office is given a copy of these rules and orders and the Code of Conduct.

- (2) The speaker and chairperson of council and committee meetings:-
  - (a) must maintain order during meetings;
  - (b) must ensure compliance in the council with the Code of Conduct for Councillors;
  - (c) must ensure that meetings are conducted in accordance with these standing rules and orders.
- (3) If the speaker or chairperson of the council or committee of the council is absent or not available to perform the functions of speaker or chairperson, or during a vacancy, the council or committee under the direction of the municipal manager or his/her nominee must elect another councillor to act as speaker or chairperson as the case may be.
- (4) No meeting of the council or a committee of the council may commence or continue unless a speaker or chairperson presides at a meeting.

#### **18. Minutes**

- (1) The proceedings of every council meeting must be electronically recorded and retained in accordance with the Archives and Record Service of South Africa Act, 43 of 1996.
- (2) Written minutes of the proceedings of each council and committee meeting must be accurately recorded and retained in accordance with the Archives and Record Service of South Africa Act, 43 of 1996.
- (3) The approved minutes of every meeting of a council or committee other than in-committee meetings must be available to the public.
- (4) Where the municipal manager is of the opinion that any resolution or proceeding of a council or committee meeting may be in contravention of any law or by-law, he or she must advise the council or committee accordingly and full details of such opinion must be recorded in the minutes.

#### **19. Order of business**

- (1) The order of business at every meeting of the council or its executive committee or committee of council is as follows:
  - (a) notice of meeting;
  - (b) applications for leave of absence;
  - (c) confirmation of minutes of previous meeting;

- (d) announcements by the chairperson;
  - (e) declarations of pecuniary or other interests;
  - (f) deputations;
  - (g) reports;
  - (h) notices of motion;
  - (i) questions of which notice has been given; and
  - (j) general matters of an urgent nature.
- (2) The speaker or chairperson may, in his discretion, at any stage bring forward any business that is on the agenda paper.

## **20. Confirmation of minutes of previous meeting**

- (1) The minutes of every meeting shall be confirmed at the next ordinary meeting of that council or committee and shall be signed by the speaker or chairperson.
- (2) No motion or discussion shall be allowed upon the minutes of a previous meeting, other than relating to the accuracy of those minutes.

## **21. Deputations**

- (1) A deputation wishing to address the council or a committee of council shall submit a memorandum to the municipal manager in which is set out the representations it wishes to make.
- (2) A request by a deputation to address the council or a committee of the council must be approved by the speaker or relevant chairperson.
- (3) The municipal manager shall submit the memorandum to the council or a committee of the council, which may receive the deputation.
- (4) Any matter requiring consideration arising from a deputation, shall not be further considered by the council or committee until the deputation has withdrawn provided that questions of clarity may be permitted.
- (5) A member of the public, other than a deputation, who wishes to speak at a council or committee meeting, shall obtain the permission of the speaker or chairperson to do so, prior to the commencement of the meeting.
- (6) When speaking at a council or committee meeting, a member of the public and a deputation must comply with any directions or orders given by the speaker or chairperson.
- (7) If a member of the public or a deputation conducts himself/herself in a disorderly and

unruly manner at any time, the speaker or chairperson must direct that that member remove himself or be removed by a Peace Officer from the precincts.

- (8) Any member of the public or deputation who fails or refuses to comply with the speaker's or chairperson's directions in terms of rule 21(6) and rule 21(7) shall be guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding one month or both such fine and such imprisonment.

## **22. Reports**

- (1) Any report submitted to the council or a committee of the council must, with the exception of a report accepted by the speaker or chairperson as a matter of urgency, be provided to councillors in terms of rule 8.
- (2) The speaker or chairperson must allow debate in accordance with chapter 10 on any report submitted to the council or a committee of the council, at the meeting at which that report is submitted and if the debate is incomplete or does not take place for any reason whatsoever, then the debate in respect of that report shall be held, at the next meeting.

## **23. Motions**

- (1) No subject shall be brought before council or a committee of council by a councillor except by way of notice of motion.
- (2) A notice of motion must –
  - (a) be in writing; and
  - (b) be signed by the councillor submitting it and by another councillor acting as seconder; and
  - (c) refer to one matter only.
- (3) A notice of motion shall be lodged with the municipal manager before 12h00 seven calendar days prior to the next meeting, failing which the notice will be considered at the next ensuing meeting.
- (4) The municipal manager must–
  - (a) date and number each notice of motion;
  - (b) enter each notice of motion lodged in a register, which shall be open to inspection by any councillor and the public; and must
  - (c) enter each notice of motion on the agenda in the order received.
- (5) The speaker or chairperson shall–

- (a) read out the number of every motion and the name of the mover and seconder;
  - (b) ascertain which motions are unopposed and these shall be passed without debate; and
  - (c) call the movers of the opposed motions in the order they appear on the agenda.
- (6) A councillor submitting a motion shall move such motion and shall have the right of reply.
  - (7) A motion shall lapse if the councillor and seconder who submitted it is not present at the meeting when such motion is being debated.
  - (8) A councillor shall be allowed not more than three notices of motion on the same agenda.
  - (9) The speaker or chairperson must not reject a motion received by him or her in terms of these rules.

#### **24. Questions**

- (1) A councillor may put a question requiring a written reply from any political or municipal office bearer of the municipality concerning any matter related to the effective performance of the municipality's functions and the exercise of its powers, provided that written notice of the question has been lodged with the speaker or chairperson and the municipal manager at least seven days prior to the council or committee meeting and the municipal manager must ensure that the councillor receives a written reply from that political or municipal office bearer, at the council or committee meeting.
- (2) If after a question has been replied to, a councillor is of the opinion that the reply is not clear and is ambiguous, he or she may, with the consent of the speaker or chairperson, request a follow-up question.

#### **25. Supply of information to a councillor**

- (1) No councillor shall approach or communicate with any officer of the municipal administration concerning the business of the municipality other than when exercising his rights or liberties as an ordinary member of the public.
- (2) A councillor may approach and communicate with the municipal manager or any head of department or any officer of the municipal administration specifically designated by the municipal manager or by the head of department concerned for this purpose, in order to obtain such information as he or her may reasonably require

for the proper performance of his duties as a councillor.

#### **26. General matters of an urgent nature**

- (1) General items of an urgent nature may be placed on an agenda by the municipal manager and any member of the council with the prior consent of the speaker or chairperson, which consent shall not be unreasonably withheld.
- (2) Prior to adoption, councillors must be afforded reasonable time to peruse and consider any report or official documents submitted to the council.

#### **27. Interpretation**

- (1) If a majority of councillors present so resolve, an interpreter may be used in meetings of the council and committees of the council.

#### **28. In-committee**

- (1) Subject to rule 5, the council or a committee of council may, at any time, resolve to proceed in-committee.
- (2) The public shall be excluded from any in-committee meetings.
- (3) The municipal manager or another official exempted from this rule by the speaker or chairperson, shall not be excluded from any in-committee meeting.
- (4) All proceedings in-committee must be recorded in terms of rule 18(1) and 18(2) and shall be confidential.
- (5) Unauthorised disclosure of any confidential matter must be dealt with in terms of the Code of Conduct.

### **CHAPTER 8**

#### **VOTING**

#### **29. Decisions by voting**

- (1) A quorum must be present in order for a vote to be taken.
- (2) All questions concerning the following matters must be determined by a decision taken by the council with a supporting vote of a majority of the number of councillors determined in accordance with the municipality's establishment notice:-
  - a) the passing of by-laws;
  - b) the approval of budgets;

- c) the imposition of rates and other taxes, levies and duties;
  - d) the raising of loans;
  - e) the rescission of a council resolution within 6 months of the taking thereof; and
  - f) any other matter prescribed by legislation.
- (3) All other questions before the council shall be decided by a majority of the votes cast by the councillors present.
- (4) If on any matter there is an equality of votes, the speaker or chairperson may exercise a casting vote in addition to a deliberative vote as a councillor, provided that a speaker or chairperson shall not exercise a casting vote during the election of any office bearer of council.

### **30. Method of voting**

- (1) Voting shall be by a show of hands unless the law prescribes otherwise, or the council or committee by resolution of a majority of the councillors present resolves to proceed with a secret written ballot.
- (2) During the taking of a vote no councillor may leave the council chamber or committee room.
- (3) The municipal manager or his nominee, shall count the votes cast and shall record the result of voting, but the speaker or chairperson shall announce the result.

### **31. Dissenting votes**

A councillor may request that his dissenting vote be recorded as evidence of how he or she voted on the motion.

## **CHAPTER 9**

### **REVOCATION OF COUNCIL AND COMMITTEE RESOLUTIONS**

### **32. Revocation of Council Resolutions**

- (1) Approval to revoke or alter a resolution of council may not be delegated to any person or committee.
- (2) Prior notice of an intention to move a motion for the revocation or alteration of a council resolution must be given.
- (3) Any revocation or alteration of a council resolution must be made in terms of rule 29(2)(e).

**33. Revocation of Committee Resolutions**

- (1) Approval to revoke or alter a resolution of a committee of the council may not be delegated to any person.
- (2) Prior notice of an intention to move a motion for the revocation or alteration of a resolution of a committee of the council must be given.
- (3) Any revocation or alteration of a resolution of a committee of the council must be approved by a majority of the number of the members of that committee.

**CHAPTER 10****DEBATE****34. Opportunity to speak**

- (1) A councillor may only speak when so directed by the speaker or chairperson.
- (2) A councillor may indicate a desire to speak by raising his hand and awaiting the direction of the speaker or chairperson, which direction must not be withheld
- (3) Councillors and officials shall stand when speaking and shall direct their address to the speaker or chairperson.

**35. Relevance**

Every speaker must restrict him or herself strictly to the matter under consideration.

**36. Length of speeches**

Other than the delivery of the mayoral report or the presentation of the estimates of income and expenditure, no speech shall exceed five minutes in length without the consent of the speaker or chairperson.

**37. Councillors to speak only once**

A councillor may not speak more than once on any motion or proposal unless permission to do so is granted by the speaker or chairperson provided that the mover of the motion may speak to the motion, shall have the right of reply and the reply shall be confined to answering previous speakers and shall not introduce any new matter into the debate.

**38. Precedence of the speaker or chairperson**

Whenever the speaker or chairperson rises during a debate, any councillor then speaking or offering to speak must seat himself and the councillor must be silent, so that the speaker or chairperson may be heard without interruption.

**39. Points of order**

- (1) Any councillor may raise a point of order at any time by standing to draw the attention of the speaker or chairperson.
- (2) The point of order takes precedence over everything else in the meeting and the speaker or chairperson must grant immediate hearing to the councillor raising the point of order and rule accordingly.
- (3) The ruling of the speaker or chairperson on a point of order shall be final and shall not be open to discussion.

**40. Explanation**

Any councillor may speak in explanation, provided that such explanation is confined to some material part of the discussion, which may have been misunderstood.

## **CHAPTER 11 CONDUCT**

**41. General conduct**

- (1) Councillors and officials must during any council or committee meeting—
  - (a) conduct the business in the highest decorum and integrity that the occasion deserves;
  - (b) must, at all times adhere to the principles contained in the code of conduct and these rules and orders;
  - (c) must at all times adhere to the rule of law and the by-laws of the municipality;
  - (d) must be dressed appropriately for the dignity of the meeting;
  - (e) must not use offensive or objectionable language; and
  - (f) must not use a cellular phone during, bring a firearm or any dangerous weapon into, a meeting of council or any of its committees.

**42. Misconduct**

- (1) The speaker may order a councillor to withdraw and apologise for any word, statement, opinion or gesture made by that councillor.
- (2) If a councillor or councillors behave improperly during a meeting of council or any of its committees, the speaker shall direct the councillor or councillors to conduct himself or themselves properly and, if speaking, to stop speaking and resume his seat or seats.
- (3) In the event of persistent disregard of the directions of the speaker, the speaker shall direct such councillor or councillors to retire from the meeting and remove himself or themselves from the place of meeting until the item under discussion has been finalized.
- (4) In the event that any misconduct by a councillor or councillors prejudices the proceedings of the council or committee the speaker or chairperson must adjourn the meeting and any such misconduct by a councillor or councillors must be dealt with in terms of these standing rules and orders and the Code of Conduct.
- (5) Any councillor who refuses to leave a meeting of the council or a committee of the council when directed to do so by the speaker or chairperson of a meeting in terms of any rule in these rules and orders, may be forcibly removed and shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment.

**CHAPTER 12  
COMMITTEES****43. Rules Committee**

- (1) The municipal council may by resolution of a majority of councillors establish a special committee to be known as the Rules Committee to investigate and make findings on any alleged breaches of the Code of Conduct, including sanctions for non-attendance at meetings and to make recommendations regarding any other matter concerning the Rules and Orders.
- (2) The Rules Committee shall consist of the speaker, the mayor and one representative of each political party represented on the council, such representative to be nominated from time to time by each political party.

**44. Own rules**

- (1) Every committee of the council shall determine its own procedures subject to any directions from council and these standing rules and orders.
- (2) Chapter 10 of these rules and orders may be relaxed by a chairperson of a committee to accommodate interactive and effective participation, provided that the chairperson may, at his/her discretion, apply the provisions of any rule contained in chapter 10.

**45. The chairperson**

- (1) The chairperson of a committee shall—
  - (a) preside at every meeting of the committee at which he or she is present; and
  - (b) be entitled to vote in the first instance and in the case of an equality of votes in addition to his deliberative vote, shall give a second or casting vote.
- (2) In his absence, the acting or deputy chairperson shall have the same powers and rights of voting as those possessed by the chairperson.

**CHAPTER 13  
PECUNIARY INTEREST**

**46. Declaration of pecuniary interest**

- (1) A councillor must disclose to the municipal council, or to any committee of which that councillor is a member, any direct or indirect personal or private business interest that that councillor, or any spouse, partner or business associate of that councillor may have in any matter before the council or committee.
- (2) The councillor making a declaration must withdraw from the proceedings of the council or committee unless the council or committee decides that the councillor's direct or indirect interest in that matter is trivial or irrelevant.
- (3) A councillor who, or whose spouse, partner, business associate or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the municipality, must disclose full particulars of the benefit of which the councillor is aware at the first meeting of the council at which it is possible for the councillor to make disclosure
- (4) The disclosure of interests in terms of rule 46(1) and benefit in terms of rule 46(3) does not apply to an interest or benefit which a councillor, or a spouse, partner,

business associate or close family member, has or acquires in common with other residents of the municipality.

## **CHAPTER 14 BREACH AND SANCTIONS**

### **47. Breach**

Any councillor who fails or refuses to obey any of these rules and orders, or any resolution of Council, may be guilty of a breach of the Code of Conduct.

### **48. Sanction**

Where it is alleged that a councillor has breached these rules, the council must, in terms of Item 14 of the Code of Conduct, investigate the alleged breach and may impose a sanction.

## **CHAPTER 15 GENERAL PROVISIONS**

### **49. Suspension of a rule or order**

- (1) In instances of urgency or where a council considers that adherence to a rule would be unreasonable and would prejudice the operation of a meeting of the council, then the council may with the approval of the majority of the number of councillors of the municipality and for the duration of that meeting, temporarily relax the provisions of a rule, provided that:
- (a) Such relaxation must not be in contravention of any national or provincial legislation or any by-law of the municipality;
  - (b) The suspension or relaxation of the rule relates to an item on the agenda for the meeting of the council or committee of the council; and
  - (c) Rule 22 must not be suspended;
  - (d) the reasons for the suspension of the rule are recorded in the minutes of the meeting.

### **50. Adoption as by-laws**

These rules and orders must be adopted as a by-law of the municipality.

**51. Repeal of existing by-laws**

The council's existing by-laws in respect of rules and orders are hereby repealed.

**52. Short title and commencement**

These standing rules and orders shall be called the .....Municipal Standing Rules and Orders, 200..., and shall come into operation on .....

## EXPLANATORY MANUAL ON THE CODE OF CONDUCT FOR COUNCILLORS

### A. OBJECTIVE

The aim of this manual is to increase awareness and create a better understanding of the Code of Conduct for Councillors and to assist and support councillors in the interpretation and application of the various provisions of the Code by providing a practical explanation thereof.

### B. INTRODUCTION

#### 1. ETHICAL CONDUCT

Although not specifically mentioned in the Code of Conduct, the ethical behavior of councillors is inherent in every item of the Code.

*"We will never bring disgrace to this our city, by any act of dishonesty or cowardice, or ever desert our suffering comrades in the ranks; we will fight for the ideal and sacred things of the city, both alone and with many; we will revere and obey the city's laws and do our best to incite a like respect in those above us who are prone to annul and set them at naught; we will strive unceasingly to quicken the public's sense of duty. This in all these ways we will transmit this city not only less, but greater and more beautiful than it was transmitted to us".*

This is the oath that was taken by every youth in the City State of Athens about the year 500 B.C. It gives something of the strong sense of public duty, honesty, courage and sense of unified purpose that sought to build up and preserve the people and their community.

Ethics is the study of human conduct in respect to its propriety, its rightness or goodness when measured against accepted value norms. The activity attracts ethical appreciation, evaluation or condemnation at the local government level, as in many other spheres broadly speaking, includes the intention, words and actions of public functionaries in carrying out all that is contained in local government administration.

The moral quality sought for in public officials certainly those that have a role in decision-making or the public interface includes qualities such as, balanced conduct, thoroughness, honesty, integrity, empathy; loyalty modesty, optimism (especially about the future), courage (especially to make decisions), self-discipline, and self-control.

In listing qualities such as these, it is not to say that possession of a reasonable measure of these qualities will solve the ethical problems which might confront one in the public sector but it probably does say that there would be perceived a more reasonable basis or approach for the decision-making or conduct which might lead to a decision. Ultimately,

as in many cases of human conduct, a decision may not always please everyone but if principles, other than that of personal interest, are applied to its determination then at least that "moral logic" can be followed and accepted, if not actually agreed with. But where the applicable principle or rule is one largely of self-interest or personal or relationship benefit, or favours some person(s) unfairly; or against the normal rule or out of order of priority or in breach of normal or due process, then the civic or group morality tends to oppose, criticise or stigmatise such conduct as not being part of normal or reasonable democratic government and administration. It promotes resistance, distrust, lack of confidence and possibly even retaliation in local government, where all citizens, as in the national context, should be equal before the law and treated with administrative fairness and justice as equals, where there is no valid differentiating consideration.

Public officials, certainly those of senior level, are normally expected to maintain accepted standards. This is related to the trust and faith that the public like and are entitled to have in their officials carrying out public service. It is as though the public officials' serving all people represents the steadfastness of the norm. Moral weakness in these elements may be seen to be cracks not only in the official's personal moral character but may also lead to suspicion and distrust of the ethical nature of other decisions or public conduct with which he is connected.

There are many, if not daily, examples where the tensions and pressures between the individual or situational demand and action conflict with the rule of law or fairness or universality ethic. For example, this is found regularly in the tendering procedure and contracting where the pressures of competition and private enterprise business aggression seek to intrude on normative practice; or in land use zoning where again large pecuniary benefit can accrue through prior knowledge of confidential information; or in the setting of priorities for the disbursement of public monies; or in the promotion of development projects involving commercial ventures; etc.

It is clear that the bringing together of the four concepts of People, Finance, Resources and Power, the latter being the decision concerning the use and distribution of finance and resources, is what generates the need for ethical judgment and conduct beyond the basic legal requirements.

The basic foundation of ethics in local government rests on: -

- **MORAL ATTRIBUTES**
- **PUBLIC INTEREST AND WELFARE.**
- **MAINTENANCE OF DEMOCRATIC PURPOSES, STRUCTURES AND PROCEDURES**

These three could provide the cornerstones from which one could build many, if not all, of the practical rules or guidelines by which one could seek to test the ethical nature of

conduct in the local government sector. Municipal councils may, therefore, consider the adoption of a Code of Ethics for Councillors.

A Code of Ethics for Councillors must incorporate the following principles, which must be adhered to by each councillor at all times.

- A municipal councillor shall: -
- Be dedicated to the concepts of effective and democratic local government
- Promote the dignity and worth of the services rendered by local government and maintain a constructive, creative and practical attitude toward local government and a deep sense of social responsibility as an elected representative;
- Be dedicated to the highest ideals of honour and integrity in all public and personal relationships in order that the community, officials and employees may merit the respect and confidence of the elected officials.
- Recognize that the chief function of local government is at all times to serve the best interests of all of the people;
- Set community goals, and uphold municipal policies.
- Refrain from interference in the administration of the municipality, and from all other partisan political activities which would impair performance as an elected representative;
- Make it a duty continually to improve his or her professional ability and to develop the competence required to perform the duties of an elected representative;
- Keep the community informed on municipal affairs, encourage communication between the citizens and emphasize friendly and courteous service to the community and seek to improve the quality and image of municipal councillors;
- Handle each challenge without discrimination and with principle and justice;
- Seek no favour and believe that personal gain or profit secured by a councillor's position is dishonest;
- Shall not grant special consideration, treatment or advantage to any person, which would not be made available to any other member of the public in similar circumstances.
- Should conduct themselves so as to promote the full confidence of the public in the integrity of its local government, and their conduct in both official and private affairs should be above reproach.
- Should not take part in reports or decision where he may have a conflict of interest.
- Avoid all forms of illegal or unfair discrimination, deception or mismanagement, abuse or waste of public funds, which brings discredit to or lack of confidence in democratic structures, values and control and the promotion of public interest.
- Adhere to the Code of Conduct for Councillors and comply with the standing rules and orders of a municipal council;

- Recognise that South Africa is a constitutional democracy and at all times adhere to the Rule of Law.

## 2. ACCOUNTABILITY

The Constitution of the Republic of South Africa Act 16 of 1996 provides that local government has a duty to pursue the object of providing “*democratic and accountable government for local communities*<sup>1</sup>”.

The Local Government: Municipal Systems Act emphasizes and fortifies the above by providing that the council has the duty to provide, *without favour or prejudice, democratic and accountable government*.<sup>2</sup>

Members of the local communities have the right to demand that the proceedings of the council and its committees are conducted impartially, without prejudice and untainted by personal self interest.<sup>3</sup>

It is clear from the aforementioned provisions that **ACCOUNTABILITY** is firstly linked to the municipality’s own local communities.

A simple definition of “**accountability**” is: *Responsibility and being required to account for one’s conduct (accountable for one’s actions)*.<sup>4</sup>

## 3. ACCOUNTABILITY AND THE ROLE OF COUNCILLORS

Firstly, councillors are required to assist the municipality to meet its constitutional objectives.

The objects of the municipality in terms of the Constitution<sup>5</sup> are as follows:

- To provide democratic and accountable government for local communities;
- To ensure the provision of services to communities in a sustainable manner;
- To promote social and economic development;
- To promote a safe and healthy environment; and
- To encourage the involvement of communities and community organizations in the matters of local government.

***Councillors are thus an important link between the local communities they serve and their respective municipal councils.***

<sup>1</sup> Section 152(1)(a) of the Constitution, 1996

<sup>2</sup> Item 4(2)(b) of the Systems Act 32 of 2000

<sup>3</sup> Item 5(1)(e) Schedule 1 of the Systems Act 32 of 2000

<sup>4</sup> The Concise Oxford Dictionary, 1990, Clarendon Press, Oxford

<sup>5</sup> Section 152(1) of the Constitution, 1996

The role of councillors is to ensure that municipalities are accountable to local communities and to provide services to meet the priority needs of communities.

*This means that councillors must be accountable to their communities.*

To ensure that councillors fulfill their obligations to their communities and support the achievement by the municipality of its objectives, the Code of Conduct for Councillors was promulgated.

#### **4. WHAT IS THE CODE OF CONDUCT?**

The Code of Conduct is found in Schedule 1 to the Local Government: Municipal Systems Act 32 of 2000 hereinafter referred to as the "Code").

The Code may be defined simply as a legislated mechanism to ensure:

- the good conduct of councillors
- the prevention of misconduct
- the encouragement of good conduct of councillors
- provision for the enforcement of the Code.
- sanctions for breaches of the Code.

#### **5. PROVISIONS OF THE CODE**

##### **5.1 THE PREAMBLE**

The Preamble sets the tone for the Code and provides as follows:

- Councillors are either elected or nominated to represent local communities on municipal councils;
- Councillors must ensure that municipalities have structured mechanisms of accountability to local communities and must meet the priority needs of communities by providing services equitably, effectively and sustainably within the means of the municipality;
- Councillors must be accountable to the local communities they serve and report back at least quarterly to constituencies on council matters, including the performance of the municipality in terms of established indicators.

It is quite clearly evident from the Preamble<sup>6</sup> to the Code, that the Code is not only designed to ensure that councillors conduct themselves honestly and with integrity, but is also concerned with their accountability towards the local communities they serve.

##### **5.2 ITEM 2: GENERAL CONDUCT OF COUNCILLORS**

This section stipulates that councillors must firstly, perform their functions in good faith, honestly and in a transparent manner<sup>7</sup>.

<sup>6</sup> Preamble Schedule 1 of the Systems Act 32 of 2000

Secondly, a councillor must at all times act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality is not compromised<sup>8</sup>.

### 5.2.1 DISCUSSION

This section requires councillors to act with integrity at all times and to refrain from conducting themselves in any way that may deceive the communities they serve.

What is expected here of councillors is **LOYALTY** to the communities they serve.

Councillors are also required to prioritise the interests of the community they serve and the municipality. This means that at all material times, especially in council meetings and in the general execution of their duties and functions, ***councillors must put the interest of the municipality first.***

#### ❖ EXAMPLE 1

Councillor A makes the following statements about municipal officials, to the Daily Newspaper:

“Municipal officials are awarding a number of tenders, which should have been awarded to previously disadvantaged individuals, to their friends and we will get to the bottom of this and leave no stone unturned while our people suffer in poverty and misery, whilst those bureaucrats (municipal officials) live a life of luxury”.

***These statements compromise the credibility and integrity of the municipality and councillors must bear in mind that they are required in terms of the Code to uphold the credibility and integrity of the municipality.***

#### ❖ EXAMPLE 2

Councillor A's spouse is a member of a close corporation that conducts the business of cleaning services. At a council meeting at which this matter is being considered, he propagates the outsourcing of cleaning services, however, research shows that it would be cost effective for the municipality to do it themselves.

***Councillor A is clearly motivated by his own interests and is not acting in the best interests of the municipality.***

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<sup>7</sup> Item 2(a) Schedule 1 of the Systems Act 32 of 2000

<sup>8</sup> Item 2(b) Schedule 1 of the Systems Act 32 of 2000

### ❖ EXAMPLE 3

The X local community is unhappy about service charges levied by the X Municipality and approaches their elected councillor, Councillor A and voice their unhappiness at the service charges levied and indicates a reluctance to pay. Councillor A pacifies the community and although being fully aware of the importance of service charges as an important source of revenue for the municipality and that the municipality's financial viability will be threatened by the non payment of service charges, propagates the non payment of service charges in the council meeting as he is afraid that his popularity with his voters may be negatively affected.

*Councillor A's loyalty must lie with the municipality. There is, however, a conflict between his interest and that of the municipality.*

## 5.3 ITEM 3: ATTENDANCE AT MEETINGS

This section is prescriptive and thus councillors are expected to attend all meetings of the council or committees of council of which he/she is a member unless:

- leave of absence has been granted to the councillor in terms of an applicable law or as determined by the rules and orders of the council. (All councils must establish rules and orders to govern their meetings and to also to regulate the conduct of councillors at the meetings); or the councillor is required in terms of the Code to withdraw from the meeting<sup>9</sup>.

### 5.3.1 DISCUSSION

The word "**prescribe**" means *to lay down or impose authoritatively*<sup>10</sup>.

The legislators use the word "must" in many of the provisions of the Code which means that councillors are obliged to act in accordance with those provisions.

Failure to attend council meetings, without having obtained leave of absence cannot be viewed as just a minor breach of the rules as councillors are paid monthly allowances for their functions and responsibilities, one of which is to attend council meetings.

Councillors who deliberately fail to attend council meetings or walk out of meetings after the meeting commences, with the intent of frustrating a vote on a controversial issue or for any reason whatsoever, should be wary of this section which prescribes that councillors **must** attend each meeting of the council.

Councillors are required to sign an attendance register at each council meeting. Merely appending a signature on an attendance register does not suffice as irrefutable record of

<sup>9</sup> Item 5(b) Schedule 1 of the Systems Act 32 of 2000

<sup>10</sup> The Concise Oxford Dictionary, 1990, Clarendon Press, Oxford

attendance and is only rebuttal evidence to support a councillor's contention that he/she was present at a meeting.

Councillors, who sign an attendance register and promptly exit a council meeting, without having obtained leave of absence, must be penalised for doing so.

It is important for councillors to be aware of the sanctions<sup>11</sup> imposed by the Code for non attendance of meetings of the municipal council and of a committee of which councillors are members, as the consequences can be detrimental.

All councils must adopt Standing Rules and Orders that clearly define and outline the circumstances in which leave of absence may be granted and the procedure for the application for leave of absence.

#### 5.4 ITEM 4: SANCTIONS FOR NON ATTENDANCE OF MEETINGS

This item stipulates that a municipal council *may* impose a fine on a councillor, as determined by the standing rules and orders of the municipal council, for:

- not attending a meeting that a councillor is required to attend in terms of item 3<sup>12</sup>; or
- failing to remain in attendance at such meeting<sup>13</sup>.

A councillor who has failed to attend three or more consecutive meetings of the council or a committee, of which he/she is a member, *must be removed from office*<sup>14</sup>.

A council must have a clearly formulated procedure for the removal of a councillor and must adopt a set of uniform fines commensurate with the nature of the breach<sup>15</sup>. This can be achieved in a council's Standing Rules and Orders which must make provision for these and other breaches.

##### 5.4.1 DISCUSSION

The Code in terms of the aforementioned item confers on the municipal council the discretionary right to impose a fine on a councillor for failing to attend or remaining in attendance at a council meeting.

The word "**discretion**" may be defined as *the freedom to act and think as one wishes, within legal limits*<sup>16</sup> and *freedom to decide a sentence*<sup>17</sup>.

<sup>11</sup> Item 4(2) Schedule 1 of the Systems Act 32 of 2000

<sup>12</sup> Item 4(a) Schedule 1 of the Systems Act 32 of 2000

<sup>13</sup> Item 4(b) Schedule 1 of the Systems Act 32 of 2000

<sup>14</sup> Item 4(2) Schedule 1 of the Systems Act 32 of 2000

<sup>15</sup> Item 4(3) Schedule 1 of the Systems Act 32 of 2000

<sup>16</sup> The Concise Oxford Dictionary, 1990, Clarendon Press, Oxford

<sup>17</sup> The Concise Oxford Dictionary, 1990, Clarendon Press, Oxford

This simply means that although the council may impose a fine it is not obligated to do so in all instances in which councillors fail to attend a meeting.

The council ought to consider the circumstances of each breach and should exercise its discretion having due regard to the varying circumstances that give rise to the breach.

However, there is ***no discretion*** applicable to the council if the councillor is absent for three or more consecutive meetings without having obtained leave of absence, the defaulting councillor must be removed from office as a councillor.

When considering the role of councillors, the importance of the council business and the rate at which council meetings are held, it is necessary to ensure that our councillors attend all meetings of the council.

It is therefore necessary that all councils make provision for the signing of registers as well as sanctions for absenteeism in a detailed and comprehensive set of standing rules and orders.

#### ❖ **EXAMPLE**

Councillor A fails to attend two consecutive meetings of the council of which he is a member. He attends the next meeting immediately after being absent for the two previous meetings. Thereafter, later in the year, he fails to attend another council meeting.

*Councillor A must not be removed from office as he has not been absent for three consecutive meetings, however, the circumstances*

### 5.5 **ITEM 5: DISCLOSURE OF INTERESTS**

Councillors attention is drawn, firstly, to Section 111 of the Municipal Finance Management Act 2003<sup>18</sup> (“MFMA”), which requires that every municipality must have and implement a supply chain management policy. Secondly, Section 117 of the MFMA provides that:-

***“No councillor of any municipality may be a member of a municipal bid committee or any other committee evaluating or approving tenders, quotations, contracts or other bids, nor attend any such meeting as an observer.”***

Attention is also drawn to Section 118(a) of the MFMA which provides that no person may interfere with the supply chain management system of a municipality.

The Code deals with direct and indirect interests and requires a councillor to disclose to the council or any committee of which that councillor is a member the following:

- Any direct or indirect personal or private business interest that that

<sup>18</sup> Municipal Finance Management Act No. 56 of 2003

councillor may have in any matter before the council or committee.

- Any direct or indirect personal or private interest that the councillor's spouse, partner or business associate may have in any matter before the council or committee<sup>19</sup>.

Furthermore, a councillor is required to withdraw from the proceedings of the council or committee when the aforementioned matter is being considered by the council or the committee, unless the council or the committee decides that the councillor's direct or indirect interest in the matter is trivial.<sup>20</sup>

If a councillor, his/her spouse, partner, business associate or close family member, has already acquired or stands to acquire any direct benefit from a contract that has already been concluded with the municipality, then that councillor is obligated to disclose full details of the benefit at the first meeting of the council at which it is possible for the councillor to make this disclosure<sup>21</sup>.

Section 5 shall not apply to any interest or benefit which the councillor, or his spouse, partner, business associate or close family member, has or acquires in common with other residents of the municipality.<sup>22</sup>

### 5.5.1 DISCUSSION

A partner is defined as a person who permanently lives with another person in a manner as if married<sup>23</sup>.

Councillors are required to disclose their direct and indirect personal or private business interests and those that a spouse, partner or business associate may have, to the council or committee.

An “**interest**” may be defined as an *advantage or profit especially financial, and a legal concern, title or right*.<sup>24</sup>

A councillor would have a **DIRECT INTEREST** in the following instances if a municipality has any business dealings with such councillor:

- Where he/she is a **member** of a **close corporation**
- Where he/she is a **shareholder** of a **limited company**
- Where he/she is a **trustee** of a **business trust**
- Where he/she is a **beneficiary** of a **business trust**
- Where he/she is a **partner** to a **partnership**
- Where he/she is a **sole proprietorship**

<sup>19</sup> Item 5(a) Schedule 1 of the Systems Act 32 of 2000

<sup>20</sup> Item 5(b) Schedule 1 of the Systems Act 32 of 2000

<sup>21</sup> Item 5(2) Schedule 1 of the Systems Act 32 of 2000

<sup>22</sup> Item 5(3) Schedule 1 of the Systems Act 32 of 2000

<sup>23</sup> Item 1 Schedule 1 of the Systems Act 32 of 2000

<sup>24</sup> The Concise Oxford Dictionary, 1990, Clarendon Press, Oxford

Thus where a councillor has a direct interest in a matter this councillor must disclose this to the council or the committee.

❖ **EXAMPLE**

Councillor A is a silent partner in a partnership that provides road marking services. The municipality requires all of its parking bays to be repainted. Issues relating to the service required by the municipality are to be discussed at a meeting to be held by the council of which meeting, Councillor A has been given notice of the meeting. Councillor A's business partner may be eligible to bid.

*It must be noted that Councillor A, when elected, was legally required in terms of Item 7 of the Code to declare in writing his financial interests in any entity. Therefore even as a silent partner this information must have been disclosed to the Municipal Manager.*

*Councillor A, even as a silent partner, must disclose his/her direct or indirect financial or other interest when the matter is before the council.*

A councillor would have an **INDIRECT BENEFIT**, when the councillors' spouse, business partner or partner has a direct interest in any matter before the council or committee;

A councillor in terms of the Code is given the opportunity to withdraw from the proceedings when a matter, in which he/she has a direct or indirect interest, is being considered.

The council has the final word on whether a councillor ought to withdraw from the proceedings of the council when the matter in which the councillor has the direct or indirect interest is being considered by the council. The council shall decide whether the councillor's interest is trivial or irrelevant and their decision shall determine whether the councillor shall withdraw or not from the proceedings of the council.

A councillor must, however, disclose full particulars of any direct benefit that he/she, the councillor's spouse, close family member, partner or business associate, acquired or stands to acquire from a contract concluded with the municipality and must do so at the first meeting at which it is possible for him/her to make this disclosure after he becomes aware of such benefit.

❖ **EXAMPLE**

Councillor A's brother-in-law Mr. B is a trustee and beneficiary of a business trust that conducts an Information Technology business involved with development of computer programmes, IT training and development and other IT services. Mr. B has concluded a contract with the municipality to facilitate training of the municipality's staff on the new computer programme developed for the monitoring

of the municipalities various objectives. Mr. B has already started the training with the municipal staff.

*When he becomes aware of the award of the bid, Councillor A must disclose this to the council and must do so at the first meeting at which it is possible.*

## 5.6 ITEM 6: PERSONAL GAIN

This section operates together with the disclosure of interests to prevent councillors from using;

- A councillor's position or privileges as a councillor; and
- Confidential information that a councillor may be privy to, and for private gain or to improperly benefit another person<sup>25</sup>.

Other than with the prior consent of the municipal council, a councillor may not:

- be a party to or beneficiary under a contract for (i) the provision of goods or services to the municipality or (ii) the performance of any work otherwise than as a councillor for the municipality<sup>26</sup>;
- obtain a financial interest in any business of the municipality<sup>27</sup>; or
- for a fee or other consideration appear on behalf of any other person before the council or a committee<sup>28</sup>.

If more than 25% of the number of councillors of a council object to a councillors involvement in any contract or financial interest in a business of the municipality or the councillor's appearance on behalf of another person before the council for a fee, then such consent may be given to the councillor with the approval of the MEC for local government in the province<sup>29</sup>.

### 5.6.1 DISCUSSION

It should be noted that The Local Government Laws Amendment Bill, currently before Parliament, provides that a councillor may not contract with the municipality in which he is a councillor, which is linked to the idea or principle in this item, which aims to ensure that councillors do not abuse or manipulate their position as a councillor, or transmit any confidential information which if used by a third party other may result in an unfair advantage or undue benefit for that third party.

The unauthorized use of council facilities such as, properties, vehicles as well as allowances (subsistence and travel) falls within the ambits of this provision.

<sup>25</sup> Item 6(1) Schedule 1 of the Systems Act 32 of 2000

<sup>26</sup> Item 6(2)(a) Schedule 1 of the Systems Act 32 of 2000

<sup>27</sup> Item 6(2)(b) Schedule 1 of the Systems Act 32 of 2000

<sup>28</sup> Item 6(2)(c) Schedule 1 of the Systems Act 32 of 2000

<sup>29</sup> Item 6(3) Schedule 1 of the Systems Act 32 of 2000

❖ **EXAMPLE**

A municipal council decides to change the usage and classification of a particular piece of land in an urban area from private property to commercial property, resulting in an increase in the value of the property. Councillor A sees this as an ideal opportunity to increase her capital income. Councillor A, before the change to the usage/classification is effected and before the public becomes aware of such change, makes an offer to the owner of the property and purchases the property.

*Councillor A has clearly used confidential information for personal gain.*

**PRIOR CONSENT**

A councillor is required to obtain *prior consent* of the municipal council before being a contractual party to a contract with the municipality.

Thus a councillor *before any contemplated contractual relations with the municipality or before undertaking any other work other than that of a councillor* must have obtained the council's permission or consent. A councillor who seizes an opportunity whilst presented with it and only months after proceeds to obtain the council's consent, must be penalized.

It is clear from this section that the Code also aims to ensure that councillors are most effective in their roles as the link between the local communities and the municipality, as it prohibits a councillor from undertaking any other work or functions other than that of a councillor. This also minimizes any conflict of interest.

A council must, however, not unreasonably withhold its consent. If a council does not provide the necessary consent then this is not the end of the road for a councillor, as he/she may still obtain consent with the approval of the MEC for local government in the province.

## 5.7 ITEM 7: DECLARATION OF INTERESTS

Within 60 days of being elected or appointed, all councillors are required to declare in writing to the municipal manager the following interests<sup>30</sup>:

- Shares and securities in any company;
- Membership of any close corporation;
- Interest in any trust;
- Directorships;
- Partnerships;
- Other financial interests in any business undertaking;
- Employment and remuneration;
- Interest in property;

<sup>30</sup> Item 7(1) Schedule 1 of The Systems Act 32 of 2000

- Pension; and
- Subsidies, grants and sponsorships by any organisation.

During the course of the year, if there are any changes in the nature of the aforementioned interests then the nature and detail of **changes must be declared** in writing to the municipal manager<sup>31</sup>.

A councillor must also declare any gifts above a certain amount prescribed by the Minister from time to time and that he/she may have received from any person within 60 days of being elected or appointed as a councillor<sup>32</sup>.

The municipal council may decide which of the financial interests must be made public having regard to the need for confidentiality and the public interest for disclosure<sup>33</sup>.

### 5.7.1 DISCUSSION

This section is prescriptive. Councillors have no discretion in whether they want to declare their financial interests or not, it has to be done.

This requirement is not restricted to councillors as members of Parliament as well as senior Public Servants are also required to declare financial interests.

#### ❖ EXAMPLE

Councillor resides within a small farming community. He conducts a business from home for the sale of day-day grocery and food items. His spouse tends to customers at home, whilst Councillor A carries out his functions as a councillor.

*Although it seems as though Councillor's A's business interest is a trivial or irrelevant one, he is required to, despite the simple nature of his business interest, declare this to the Council. It is left to the Council to decide whether this is a trivial or irrelevant interest.*

It is the responsibility of a councillor to ensure that the information provided to the municipal manager is correct and the municipal manager must be informed in writing of all changes to the information provided.

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<sup>31</sup> Item 7(2) Schedule 1 of the Systems Act 32 of 2000

<sup>32</sup> Item 7(3) Schedule 1 of the Systems Act 32 of 2000

<sup>33</sup> Item 7(4) Schedule 1 of the Systems Act 32 of 2000

## 5.8 ITEM 8: FULL-TIME COUNCILLORS

A full-time councillor may not undertake any other paid work except with the consent of the council, which consent the council shall not unreasonably withhold<sup>34</sup>.

### 5.8.1 DISCUSSION

A councillor must be committed and accountable to the community he/she serves. Councillors must also actively participate in the proceedings of the council and important decision making.

A full time councillor must avail himself to the municipality for a full 40 hour week and any other time that the municipality or the community requires his/her services.

However, with the council's consent and if such work does not interfere with a councillor's duties, a councillor may undertake other *after hours* paid work in addition to his/her full time position as a councillor.

It is important to emphasize that a full time councillor is expected to be just that i.e. fulltime which implies a 40 hours full week.

## 5.9 ITEM 9: REWARDS, GIFTS AND FAVOURS

A councillor may not request, solicit or accept any reward, gift or favour for;

- Voting or not voting in a particular manner on any matter before a municipal structure;
- persuading the council or committee in regard to the exercise of any power, function or duty;
- making representation to the council or any committee of the council ; or
- disclosing privileged or confidential information<sup>35</sup>.

### 5.9.1 DISCUSSION

A councillor *may not approach* any person with an interest in a matter before the council *or be approached* by such person with the view of benefiting that person by either voting in a particular manner, persuading the council, making a representation to the council or disclosing privileged or confidential information.

This section aims to prevent bribery, although it is not expressly stated.

**“Bribery”** means to *persuade to act improperly in ones favour by a gift of money, services etc*<sup>36</sup>.

<sup>34</sup> Item 8 Schedule 1 of The Systems Act 32 of 2000

<sup>35</sup> Item 9 Schedule 1 of the Systems Act 32 of 2000

<sup>36</sup> The Concise Oxford Dictionary,1990, Clarendon Press, Oxford

Councillors may not receive or ask for anything which compromises them in the exercise of their position as councillor and can influence them directly or indirectly to do the donor a favour.

❖ **EXAMPLE**

The municipality is considering the purchase of a new mayoral vehicle. Councillors are expressly prohibited from serving on a bid committee, however, Councillor A approaches a member of the bid committee, and offers him a discount on a new vehicle if the member influences the bid committee to purchase a certain type of vehicle.

*Councillor A cannot make such an approach. By doing so, he is guilty of bribery, and has compromised his position as a councillor. It is important for councillors to be wary of the manner in which they conduct themselves as well as the manner in which their conduct may be perceived.*

## 5.10 ITEM 10 : UNAUTHORISED DISCLOSURE OF INFORMATION

A councillor may not without the permission of the council or a committee, disclose any privileged or confidential information of the council or committee to any unauthorized person<sup>37</sup>.

Privileged or confidential information includes any information<sup>38</sup>:

- determined by the municipal council or committee to be privileged or confidential;
- discussed in closed session by the council or committee;
- disclosure of which would violate a person's right or privacy; or
- declare to be privileged, confidential or secret in terms of law.

This section does however not derogate from the right of any person to access to information in terms of national legislation<sup>39</sup>. (Promotion of Access to Information Act 2 of 2000)

### 5.10.1 DISCUSSION

The Code defines privileged and confidential as that determined by the council or committee as privileged or confidential. It is difficult for the council however, to decide what information is confidential or privileged and whether the public should or should not have access to or sight of.

<sup>37</sup> Item 10(1) Schedule 1 of the Systems Act 32 of 2000

<sup>38</sup> Item 10(2) Schedule 1 of the Systems Act 32 of 2000

<sup>39</sup> Item 10(3) Schedule 1 of the Systems Act 32 of 2000

In terms of the Promotion of Access to Information Act<sup>40</sup>, the municipal manager is the “information officer” of the municipality and is responsible for granting access to information that might be requested by an individual.

An example would be if a member of the community requests copies of the agendas of meetings of the council. The information officer must then decide whether it can be released or not. No agendas of meetings can be distributed to members of the public before councillors have the agendas in their possession. Council must decide whether they are prepared to release the agendas and at what stage.

Councillors are accountable to the communities they serve and hence must conduct themselves in a transparent manner keeping the community informed of council affairs. However, councillors should seek guidance from the council and committees in determining what information ought to remain confidential and privileged. This would be the safest option for a councillor and could prevent undesirable consequences.

Closed sessions are council meetings that are closed to the public and hence from the outset there is a need for confidentiality thus any discussions that take place should remain confidential not to be divulged by councillors to any other persons other than another councillor of the council or those involved in the proceedings.

Councillors must be cautious not to divulge information that may violate a person’s right to privacy, a right enshrined in the Constitution<sup>41</sup>. Matters dealing with individual staff matters like disciplinary action against a staff member should be treated as confidential because of the constitutional rights of an individual to his/her privacy.

Legislation may also stipulate and declare certain information confidential and privileged. For example, a persons HIV status is confidential and may only be disclosed with the consent of the affected person. Attorney Client confidentiality is a well known example of confidential and privileged information, this also may not be divulged to anyone without the client’s consent.

Councillors must be mindful of the fact that a violation of rights as well as a breach of confidentiality or privilege may lead to a litigious and expense situation.

## 5.11 ITEM 11: INTERVENTION IN ADMINISTRATION

A councilor may not, except as provided by law:

- Interfere in the management or administration of any department of the municipal council unless mandated by council;
- give or purport to give any instruction to any employee of the council except when authorized to do so;
- obstruct or attempt to obstruct the implementation of any decision of the council or committee by an employee of the council; or

<sup>40</sup> Act No.2 of 2000

<sup>41</sup> Chapter 2 Section 14 of the Constitution, 1996

- encourage or participate in any conduct which would cause or contribute to maladministration in the council<sup>42</sup>

### 5.11.1 DISCUSSION

It is important to remember that *councillors are elected representatives who make political decisions on policy*, whilst the administration consists of employed *public servants who must carry out these decisions*.

The council has both legislative and executive functions, however, councillors must not mistakenly believe that they may perform administrative functions.

Although councillors are accountable for the performance of the municipality to their respective communities, this does not mean that councillors have any authority to give instructions to municipal staff unless mandated by his/her council.

#### ❖ EXAMPLE

Councillor A arrives at the ABC Municipality building and notices a very dirty municipal vehicle. Mr. X, a municipal staff member is sitting outside the building having lunch. Councillor A instructs Mr. X to wash the dirty municipal vehicle.

*Councillor A has clearly breached the provisions of the Code of Conduct as he is in terms of Item 11 not authorized to give any instruction to municipal staff.*

## 5.12 ITEM 12: COUNCIL PROPERTY

Councillors may not use, take, acquire or benefit from any property or asset owned, controlled or managed by the municipality to which that councillor has no right.<sup>43</sup>

### 5.12.1 DISCUSSION

This section is clear and unambiguous and therefore not much explanation is necessary save to say that it aims to prevent an abuse of municipal assets, both movable and immovable. This would include that property owned by the municipality and also property that the municipality is in control of or manages.

The municipality may have entered into a lease agreement for the occupation of premises which is owned by someone else. The municipality is the lessee and is thus in control of the property. A councillor however, may not sub-let any portion of this property in terms of this section.

A simple illustration is a councillor who uses municipal facilities to send notices of an official meeting in a ward to the ward residents, however, that councillor may not send

<sup>42</sup> Item 11 Schedule 1 of the Systems Act 32 of 2000

<sup>43</sup> Item 12 Schedule 1 of the Systems Act 32 of 2000

any notice of political meetings using municipal facilities without first obtaining permission and paying for the services.

### **5.13 ITEM 12A: COUNCILLOR IN ARREARS**

A councillor may not be in arrears to the municipality for rates and service charges for a period longer than 3 months<sup>44</sup>.

#### **5.13.1 DISCUSSION**

A municipality exercises its legislative or executive authority by imposing rates, taxes, levies, duties, service fees and surcharges on fees, including setting and implementing tariff, rates and tax debt collection policies<sup>45</sup>.

A municipality shall and must recover from any defaulting councillor any rates and service charges that are in arrears for more than three months. He/she must be treated in the same manner as an ordinary ratepayer

The Code stipulates that councillors must act in the best interests of the municipality and councillors are aware that the payment of rates and service charges help to ensure the financial viability of a municipality, thus it would only be in the best interests of the municipality for councillors to ensure that they pay their rates and service charges like all other residents of the municipality.

Councillors play a vital role as community representatives and therefore must conduct themselves in a manner that would encourage the community's adherence to the municipality's rules and regulations. If councillors disregard the essential services provided by the municipality by not paying for such services this would be a poor example to the community.

### **5.14 ITEM 13: DUTY OF CHAIRPERSONS OF MUNICIPAL COUNCILS**

In terms of this section if the speaker, on reasonable suspicion, is of the opinion that a provision of the Code has been breached, the speaker must;

- authorize an investigation of the facts and circumstances of the alleged breach;
- give the councillor a reasonable opportunity to reply in writing regarding the alleged breach; and
- report the matter to a meeting of the municipal council after such an investigation and the reply having been received from the councillor<sup>46</sup>.

The report on the investigation must be open to the public<sup>47</sup>.

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<sup>44</sup> Item 12A Schedule of the Systems Act 32 of 2000

<sup>45</sup> Item 11(3)(i) of the Systems Act 32 of 2000

<sup>46</sup> Item 13(1) Schedule 1 of the Systems Act 32 of 2000

<sup>47</sup> Item 13(2) Schedule 1 of the Systems Act 32 of 2000

The speaker must report the outcome of the investigation to the MEC for local government in the province<sup>48</sup>.

The speaker must ensure that each councillor has a copy of the Code of Conduct and that the Code is made available in every place where the council meets<sup>49</sup>.

#### 5.14.1 DISCUSSION

The speaker plays a particularly pivotal role in the enforcement of the Code. This section establishes a responsibility on the speaker of the council to ensure compliance of councillors with the Code.

In terms of this section the speaker must on *reasonable suspicion* formulate his/her opinion as to whether the code has been breached or not, he/she cannot act with any malice or unreasonably.

The speaker must authorize an investigation into the facts and circumstances of the alleged breach and is not precluded from conducting the investigation.

The councillor concerned must then be given an opportunity to reply in writing regarding the alleged breach.

The Code does not clearly stipulate as to when exactly the MEC ought to be informed, whether it should be before or after the investigation is conducted into the allegation of the breach, however, it seems appropriate, in light of the principles of cooperative government that the MEC is informed after the council has had an opportunity to discuss the report and the councillors reply to the allegations.

Therefore, upon completion of the investigation and submission of the reply of the councillor to the allegation of the breach, the council must report the outcome of the investigation to the MEC.

#### 5.15 ITEM 14: BREACHES OF THE CODE

A municipal council may;

- Investigate and make a finding on any alleged breach of a provision of the Code<sup>50</sup>; or
- establish a special committee-
  - to investigate and make a finding on any alleged breach of the Code<sup>51</sup>; and
  - to make appropriate recommendations to the council<sup>52</sup>.

If the council or committee finds that a councillor has breached the provisions of the Code, the council may<sup>53</sup>;

<sup>48</sup> Item 13(3) Schedule 1 of the Systems Act 32 of 2000

<sup>49</sup> Item 13(4) Schedule of the Systems Act 32 of 2000

<sup>50</sup> Item 14(1)(a) Schedule 1 of the Systems Act 32 of 2000

<sup>51</sup> Item 14(1)(b)(i) Schedule 1 of the Systems Act 32 of 2000

<sup>52</sup> Item 14(1)(b)(ii) Schedule 1 of the Systems Act 32 of 2000

- issue a formal warning to a councillor;
- reprimand the councillor;
- request the MEC for local government in the province to suspend the councillor for a period;
- fine the councillor; and
- request the MEC to remove the councillor from office.

A councillor who has been warned, reprimanded or fined may within 14 days of having been notified of the decision of the council, appeal to the MEC in writing explaining the grounds for his/her appeal<sup>54</sup>.

The council must be provided with a copy of the appeal<sup>55</sup>;

The council may within 14 days of receipt of the appeal make any representation pertaining the appeal to the MEC for local government in writing<sup>56</sup>.

The MEC for local government may after having considered the appeal and any representations made by the council, confirm, set aside or vary the decision of the council and inform the council and the councillor accordingly<sup>57</sup>.

The MEC for local government may appoint a person or a committee to investigate any alleged breach of a provision of the Code and to make a recommendation on whether the councillor should be suspended or removed from office<sup>58</sup>.

The Commissions Act, 1947, or, where appropriate, applicable provincial legislation, may be applied to an investigation in terms of the Code<sup>59</sup>.

If the MEC is of the opinion that the councillor has breached a provision of the Code, and that such contravention warrants a suspension or removal from office, the MEC may:-

- (i) suspend the councillor for a period and on conditions determined by the MEC<sup>60</sup>;  
or
- (ii) remove the councillor from office<sup>61</sup>.

Any investigations in terms of this item must be in accordance with the rules of natural justice<sup>62</sup>.

<sup>53</sup> Item 2 Schedule 1 of the Systems Act 32 of 2000

<sup>54</sup> Item 3(a) Schedule 1 of the Systems Act 32 of 2000

<sup>55</sup> Item 3(b) Schedule 1 of the Systems Act 32 of 2000

<sup>56</sup> Item 3(c) Schedule 1 of the Systems Act 32 of 2000

<sup>57</sup> Item 13(d) Schedule 1 of the Systems Act 32 of 2000

<sup>58</sup> Item 13(4) Schedule 1 of the Systems Act 32 of 2000

<sup>59</sup> Item 13(5) Schedule 1 of the Systems Act 32 of 2000

<sup>60</sup> Item 14(6)(a) Schedule 1 of the Systems Act 32 of 2000

<sup>61</sup> Item 14(6)(b) Schedule 1 of the Systems Act 32 of 2000

<sup>62</sup> Item 14(7) Schedule 1 of the Systems Act 32 of 2000

#### 4.15.1 DISCUSSION

The Code establishes an ethical standard for councillors by implicitly including extensive provisions on ethical conduct of councillors.

This section primarily sets out the enforcement provisions and gives life to the Code. It is one of the essential provisions that ensure the Code's application and effectiveness.

A municipal council bears the responsibility to initiate any investigation and/or action against a councillor who allegedly has breached a provision of the Code. An investigation may be conducted and a finding made by the chairperson of the council himself/herself or a special committee may be established to conduct the investigations, make a finding and an appropriate recommendation to the council.

Remember the saying "*innocent until proven guilty*". A councillor who allegedly has breached the Code is only guilty until a finding of guilty has been made, whether by the special committee or the speaker of the council. Therefore, no councillor must be treated unfairly or prejudicially simply because he/she allegedly breached the Code.

Any investigation either by the speaker or a special committee must be in accordance with the rules of natural justice.

#### ***RULES OF NATURAL JUSTICE***

The rules of natural justice are applicable to all administrative and quasi-judicial enquiries and hearings. These rules are concerned with procedural fairness.

The two basic principles that are fundamental to the rules of natural justice, are the following:

- The affected individual must be heard, i.e. given an opportunity to state his/her case before any sanction is imposed. (this is called the *audi alteram partem* rule)

This implies that:

- timeous notice of any intended action must be given;
- reasonable time must be provided for the preparation of a defense;
- the affected individual must be given a proper opportunity to be heard; and
- the allegation or charge, including any potentially prejudicial fact and consideration must be communicated to the individual concerned, to allow for a proper defense and rebuttal of the allegations.

- The investigation and the hearing must be conducted with impartiality and must be free of bias or interest (whether pecuniary or personal), on the part of the decision maker. Impartiality means *treating all sides in a dispute equally, unprejudiced and fairly*<sup>63</sup>.

The council therefore has to be its own watchdog over members who are falling short of the standard set by the Code, but also at all times has to act fairly, adopting a democratic process for dealing with breaches of the Code.

The Code vests the council alternatively the MEC with the authority to impose sanctions for the breach of the code. This means that councils are expected to agree on what sanction should be applied.

Importantly a council may not suspend or remove a councillor from office, however, it may request that the MEC takes such action.

It is only when a council imposes a sanction, i.e. fine, reprimand or formal warning, does a councillor have the right to appeal to the MEC.

However, where a council makes a request to the MEC for the removal or suspension of a councillor that councillor is therein afforded the right to appeal as section 14(4) provides that the MEC may appoint a person or committee to investigate any alleged breach of the Code and thereafter make recommendation on whether the councillor should be removed from office or suspended.

When adopting a restrictive interpretation of the Code it appears that the MEC in terms of Section 14(6) is vested with the power to only either suspend or remove a councillor from office, however applying the maxim "*in the greater the less also is always included*", the MEC is, together with the power to either suspend or remove a councillor from office, conferred with the power to impose the lesser sanctions in terms of Section 14(2)(a), (b) and (d).

Therefore, it may be that a council is of the view that a councillor should be removed for a particular breach of the Code and requests the MEC to remove the said councillor, however, the MEC may be of the opinion that the breach does not warrant a sanction and would appear to be harsh under the circumstances. The MEC may in terms of the Code not remove the councillor and recommend that the councillor be suspended for a period.

Notwithstanding that the council may have already established a committee to conduct its own investigations, the MEC may still appoint a committee if he/she is of the opinion that it is necessary to do so.

Therefore when the MEC receives the request from the Council for the removal or suspension of a councillor from office, the MEC must first formulate his opinion as to the nature of the contravention as well as whether the breach warrants a removal or

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<sup>63</sup> The Concise Oxford Dictionary, 1990, Clarendon Press, Oxford

suspension of the councillor, bearing in mind that the sanction must be commensurate with the nature and seriousness of the offence.

Due to the procedural nature of these provisions, no examples have been provided.

Attached as a schedule (Schedule 1) to this manual are **Procedural Guidelines** for the application of Items 13 and 14 of the Code of Conduct.

#### **4.16 APPLICATION OF CODE TO TRADITIONAL LEADERS**

Traditional leaders when participating in proceedings of a municipal council are subject to the appropriate provisions of the Code of Conduct, set out therein<sup>64</sup>.

#### **C. CONCLUSION**

The Code of Conduct must be consistently applied to all councillors of a municipal council and traditional leaders participating in the council proceedings. It is clear from the Code that councils must have fair and transparent procedures for dealing with breaches of the Code prior to any intervention by provincial government, however if the measures and processes adopted by the municipalities fail or are inadequate, then Provincial Government has the authority and obligation to hold councillors accountable for their actions.

The Department is hopeful that this manual encourages and inspires municipalities to review the measures in place to deal with breaches of the Code of Conduct and ensure that councillors and traditional leaders participating in the council proceedings are fully aware of all the provisions of the Code, the interpretation thereof, the measures and processes in place to deal with breaches of the Code as well as councillor rights in terms of the Code.

#### **SCHEDULE 1/.....**

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<sup>64</sup> Item 81(5)(a) of Act 117 of 1998

## **SCHEDULE 1**

### **PROCEDURAL GUIDELINES FOR THE APPLICATION OF ITEMS 13 AND 14 OF THE CODE OF CONDUCT FOR COUNCILLORS**

#### **ARRANGEMENT OF CLAUSES AND ANNEXURES**

#### **PREAMBLE**

#### **INTERPRETATION**

1. Definitions

#### **LEGISLATIVE PROVISIONS**

2. Preamble to the Code of Conduct
3. Item 13 of the Code of Conduct
4. Item 14 of the Code of Conduct

#### **PROCEDURAL GUIDELINES**

5. Application of Item 13 of the Code of Conduct
6. Application of Item 14 of the Code of Conduct

#### **ADMINISTRATIVE JUSTICE**

7. Principles of administrative justice
8. Rules and principles of natural justice

#### **ANNEXURES**

- Annexure "A" – Flowchart.
- Annexure "B" – Notice of a preliminary investigation.
- Annexure "C" – Notice to attend a hearing.
- Annexure "D" – Record of hearing.
- Annexure "E" – Outcome of hearing.

#### **WHEREAS**

- A. There have been many inconsistencies with regard to the application of items 13 and 14 of the Code of Conduct by municipalities;
- B. It is necessary to avoid non-compliance with the Code of Conduct by municipalities;
- C. It is necessary to minimise the risk of the MEC's decision to suspend or remove a councillor from office being challenged in court;
- D. Guidelines will assist municipalities and councillors to understand the correct procedure to be followed before any disciplinary measures are instituted when the Code of Conduct is alleged to have been breached by any councillor;

- E. These guidelines strive to adhere to the principles of fairness, due process of law and the principles of natural justice and administrative justice, and are therefore in line with the basic principles of justice underlying the constitution; and
- F. It is the responsibility of every councillor to familiarise themselves with the contents of the Code of Conduct and to ensure that the Code of Conduct is properly understood,

**THEREFORE** the following guidelines are to be applied:-

## **INTERPRETATION**

### Definitions

1. In these Guidelines, unless the context indicates otherwise-

**“administrative decision”** means a decision that–

- (a) implements policy or legislation;
- (b) has a legal effect; and
- (c) constitutes a legally binding determination of rights;

**“Code of Conduct”** means the Code of Conduct for Councillors contained in Schedule 1 of the Act;

**“MEC”** means the KwaZulu-Natal Member of the Executive Council for local government, and any successor-in-title to the position; and

**“the Act”** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)

## **LEGISLATIVE PROVISIONS**

### Preamble to Schedule 1 to the Code of Conduct

2. The Preamble to the Code of Conduct provides as follows:

"Councillors are elected to represent local communities on municipal councils, to ensure that municipalities have structured mechanisms of accountability to local communities, and to meet the priority needs of communities by providing services equitably, effectively and sustainably within the means of the municipality. In fulfilling this role councillors must be accountable to local communities and report back at least quarterly to constituencies on council matters, including the performance of the municipality in terms of established indicators. In order to ensure that councillors fulfill their obligations to their communities, and support the achievement by the municipality of its objectives set out in section 19 of the Municipal Structures Act, the following Code of Conduct is established."

### Item 13 of the Code of Conduct

3. Item 13 of the Code of Conduct provides as follows:

#### *Duty of chairpersons of municipal councils*

(1) *If the chairperson of a municipal council, on reasonable suspicion, is of the opinion that a provision of this Code has been breached, the chairperson must—*

- (a) authorise an investigation of the facts and circumstances of the alleged breach;*
- (b) give the councillor a reasonable opportunity to reply in writing regarding the alleged breach; and*
- (c) report the matter to a meeting of the municipal council after paragraphs (a) and (b) have been complied with.*

(2) *A report in terms of subitem (1) (c) is open to the public.*

(3) *The chairperson must report the outcome of the investigation to the MEC for local government in the province concerned.*

(4) *The chairperson must ensure that each councillor when taking office is given a copy of this Code and that a copy of the Code is available in every room or place where the council meets."*

### Item 14 of the Code of Conduct

4. Item 14 of the Code of Conduct provides as follows:

#### *"Breaches of Code.*

(1) *A municipal council may—*

- (a) investigate and make a finding on any alleged breach of a provision of this Code;*
- or*
- (b) establish a special committee—*
  - (i) to investigate and make a finding on any alleged breach of this Code; and*
  - (ii) to make appropriate recommendations to the council.*

(2) *If the council or a special committee finds that a councillor has breached a provision of this Code, the council may—*

- (a) issue a formal warning to the councillor;*
- (b) reprimand the councillor;*
- (c) request the MEC for local government in the province to suspend the councillor for a period;*
- (d) fine the councillor; and*
- (e) request the MEC to remove the councillor from office.*

(3)(a) *Any councillor who has been warned, reprimanded or fined in terms of paragraph (a), (b) or (d) of subitem (2) may within 14 days of having been notified of the decision of council appeal to the MEC for local government in writing setting out the reasons on which the appeal is based.*

(b) *A copy of the appeal must be provided to the council.*

*(c) The council may within 14 days of receipt of the appeal referred to in paragraph (b) make any representation pertaining to the appeal to the MEC for local government in writing.*

*(d) The MEC for local government may, after having considered the appeal, confirm, set aside or vary the decision of the council and inform the councillor and the council of the outcome of the appeal.*

*(4) The MEC for local government may appoint a person or a committee to investigate any alleged breach of a provision of this Code and to make a recommendation on whether the councillor should be suspended or removed from office.*

*(5) The Commissions Act, 1947 (Act No. 8 of 1947), or, where appropriate, applicable provincial legislation, may be applied to an investigation in terms of subitem (4).*

*(6) If the MEC is of the opinion that the councillor has breached a provision of this Code, and that such contravention warrants a suspension or removal from office, the MEC may—*

*(a) suspend the councillor for a period and on conditions determined by the MEC; or*

*(b) remove the councillor from office.*

*(7) Any investigation in terms of this item must be in accordance with the rules of natural justice.*

### **PROCEDURAL GUIDELINES**

#### Application of Item 13 of the Code of Conduct

5.(1) The obligation of the chairperson of the municipal council in terms of item 13(1)(a) of the Code of Conduct to authorise an investigation of the facts and circumstances of an alleged breach does not preclude that chairperson from conducting the investigation personally.

(2) When an investigation of an alleged breach has been completed, the chairperson of the municipal council must notify the councillor in writing of the allegations against him or her and give the councillor an opportunity to respond to the said allegations in writing.

(3) The written notification must at least contain the following:

(a) the specific item or items alleged to have been breached;

(b) the time period for a written response; and

(c) the right to request any relevant documentation or information.

(4) A period of at least fourteen days is a reasonable period to allow for a response from the councillor concerned.

(5) The chairperson of the municipal council must report the matter to the first meeting of the municipal council once an investigation has been authorised and a councillor has been given an opportunity to respond to the allegations against him or her.

(6) The outcome of the said investigation and the Council's decision on the matter must be reported to the MEC, which report, together with the Council's resolution on the matter, must be forwarded to the MEC within fourteen days of the Council's decision.

#### Application of Item 14 of the Code of Conduct

6.(1) If the Council decides to establish a special committee to investigate the matter and make recommendations to the Council, the following must be taken into account when the special committee is constituted:

- (a) the committee must comprise, as far as possible, of fellow councillors.
  - (b) the committee must not be one of the Council's standing committees;
  - (c) any person involved in the preliminary investigation must not be a member of the committee;
  - (d) the council must strive to have equitable political representation on the committee; and
  - (e) the committee itself must elect a chairperson.
- (2) Prior to a hearing taking place the councillor must be notified in writing of the intention to conduct a hearing.
- (3) The councillor must be given at least twenty one days' written notice of the hearing.
- (4) The notification to attend the hearing must contain, at least, the following:
- (a) the alleged breach;
  - (b) the time, date and venue of the hearing;
  - (c) the councillor's rights; and
  - (d) the implications of a failure to attend the hearing.
- (5) A hearing must be conducted by the special committee.
- (6) Both parties must be given the opportunity to present their case.
- (7) The hearing must be open to the public.
- (8) The hearing must be recorded and such record must contain all particulars related to the hearing including-
- (a) the names of the parties and their representatives;
  - (b) the names of the witnesses;
  - (c) the plea;
  - (d) the evidence led;
  - (e) the finding; and
  - (f) any recommended sanction.
- (9) At the end of the hearing the special committee must consider all the evidence and make an appropriate finding and recommendation to council.
- (10) The council must consider the finding and recommendation of the special committee and make a decision as to an appropriate sanction.
- (11) The council must consider any mitigating and extenuating circumstances prior to the imposition of a sanction.

- (12) The council should be consistent with regard to the sanction imposed for similar breaches.
- (13) When deciding on a sanction, council may consider sanctions imposed for similar breaches at other municipalities.
- (14) The council should endeavor to ensure that the sanction is proportionate to the breach.
- (15) The councillor must be notified in writing of the decision of the Council and the said notice must at least contain the following information-
- (a) whether or not the councillor has been found guilty of the alleged breach;
  - (b) the grounds on which such a finding was made;
  - (c) the sanction to be imposed; and
  - (d) the councillor's right to appeal to the MEC.
- (16) The chairperson of the municipal council must notify the councillor of the sanction imposed, if any, within seven days of the decision of the council.

## **ADMINISTRATIVE JUSTICE**

### Principles of administrative justice

7. All administrative decisions of a municipality must comply with the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), and before taking an administrative decision that affects an individual, the municipality must do the following:

- (a) give adequate notice of the proposed administrative decision, by timeously informing the affected person of the decision it proposes taking;
- (b) allow the affected person a reasonable opportunity to make representations in writing;
- (c) give the affected person a clear statement of the administrative decision;
- (d) give the affected person an opportunity to present and dispute information and arguments, by personally debating the decision with the decision-making body within the council;
- (e) inform the affected person of their right to representation;
- (f) inform the affected person that they have a right to ask for reasons for the decision taken; and
- (g) advise the affected person of any internal appeal procedures available to him or her and inform the person of their right to appeal to a court of law.

### Rules and principles of natural justice

8.(1) The rules of natural justice are common law rules applicable to all administrative and quasi-judicial enquiries and hearings, focusing primarily on procedural protection, in that they require a fair procedure to be followed.

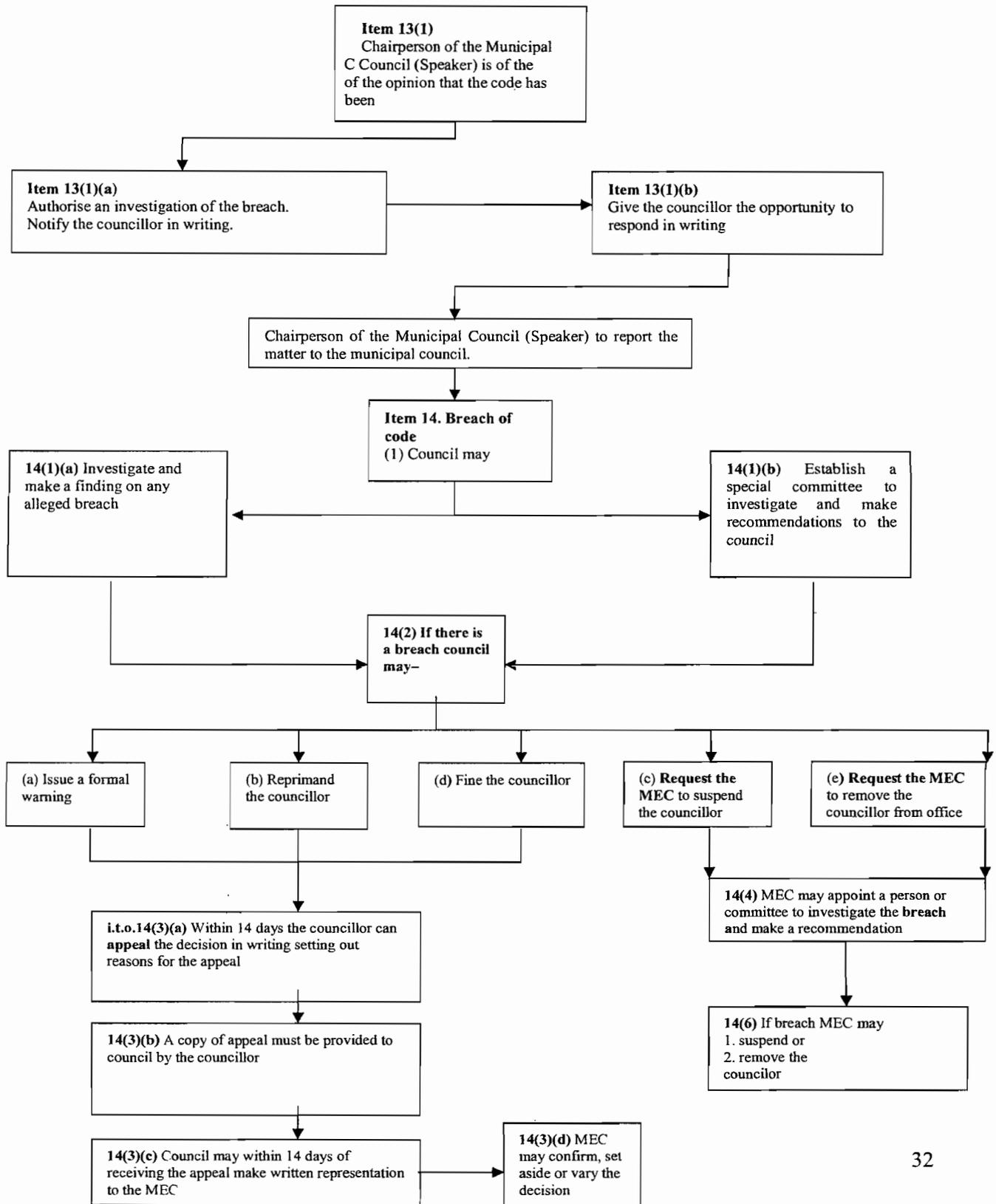
- (2) The two basic principles that are fundamental to the rules of natural justice, are the following:
- (a) The affected individual must be given the opportunity to state his or her case before the intended prejudicial action is taken, which is referred to as the *audi alteram partem* rule, and this implies that—
    - (i) sufficient and timeous notice of the intended action must be given;

- (ii) reasonable time must be given to prepare a defence;
  - (iii) the affected individual must be given a proper opportunity to be heard; and
  - (iv) the charge, including any potentially prejudicial fact and consideration, must be communicated to the individual concerned, to allow for rebuttal thereof.
- (b) The investigation and the hearing must be conducted with impartiality, which is referred to as the *nemo iudex in sua causa* principle, so as to ensure the absence of bias or interest, whether pecuniary or personal, on the part of the decision maker.

**FLOWCHART/.....**

## Annexure "A"

## FLOWCHART



Annexure "B"

NOTICE OF A PRELIMINARY INVESTIGATION

\_\_\_\_\_ MUNICIPALITY

Per Hand:

Date:

Councillor:

This serves to notify you that an investigation into the following allegation(s) against you has been commissioned:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

1. You may request further particulars pertaining to the allegations.
2. You must respond to the abovementioned allegations within \_\_\_\_\_ days of receiving this notice.

Yours faithfully,

Chairperson	Date

I, the undersigned, confirm that I have received the above notification.

Councillor	Date

Annexure "C"

NOTICE TO ATTEND A HEARING

\_\_\_\_\_ MUNICIPALITY

Per Hand:

Date:

Councillor:

This serves to notify you that you are required to attend a hearing to consider the following allegation(s) against you:

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Details regarding the hearing are as follows:

Time: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

You have the following rights-

1. You may be represented at the hearing;
2. You may present evidence at the hearing;
3. You may call witnesses;
4. You are entitled to question any of council's witnesses;
5. You are entitled to an interpreter.
6. You have the right to be present at the hearing. If you fail to attend without good cause, the hearing may be conducted in your absence.
7. You are requested to notify the committee prior to the hearing if an interpreter is required in order to allow for the necessary arrangements to be made.

Yours faithfully,

For Municipality	Date

I, the undersigned, confirm that I have received the above notification.

Councillor	Date

## Annexure "D"

## RECORD OF HEARING

Details of the hearing and representation

Date and time of hearing:

Name of councillor:

Name of councillor representative:

PRESENT:

Chairperson:

Members of Special Committee:

Interpreter:

Councillor's witnesses:

Council's witnesses:

Preliminary steps

2.(1) The Chairperson introduces all present.

(2) The Chairperson explains the proceedings that are to be followed and the method of recording the proceedings.

(3) Confirm the language preference of the councillor and ensure interpreter is present (if applicable).

(4) Confirm if councillor has representation.

(5) Establish presence of witnesses.

(6) Read the councilor his or her rights.

The charge

3. The councillor is charged with the following offence(s):

Plea

4.(1) Record a guilty or not guilty plea:

(2) If a plea of guilty is recorded, skip item 5 to 6 below.

Council's case

5.(1) Council presents its case:


(2) Cross-examination by councilor or representative:


Councillor's case

6.(1) Councillor presents his or her case:


(2) Cross-examination by committee:


**Finding**

7. After having considered the evidence, the committee makes a finding on the alleged breach.

(1) The reasons for the finding :


(2) The recommendations are:


(3) If a finding of not guilty is made, close the hearing.

**Sanction**

8.(1) Mitigating or extenuating circumstances, prior to the imposition of a sanction:


(2) The council considers the committee’s recommendation and councillor’s representation’s and imposes the following sanction:


**Notification of outcome of hearing**

9. The councillor is notified in writing of the outcome of the disciplinary hearing and of any sanction imposed.

**Right of appeal**

10. The councillor is advised of his or her right of appeal against the sanction in terms of Item 14(3)(a) of the Code of Conduct.

Annexure "E"

OUTCOME OF HEARING

MUNICIPALITY	Date:
To: (councillor's name and address)	
<p>OUTCOME OF HEARING</p> <p>With reference to the hearing held on in which a breach was investigated against you, the findings are as follows:</p> <p>1. you have been found to have breached / not breached Item _____ of the Code of Conduct;</p> <p>2. the reasons for the finding are as follows:</p> <p>_____</p> <p>_____</p> <p>3. The council considered the findings and imposed the following sanction:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Please take note that you have the right to appeal against the sanctions of the hearing. If you decide to appeal, your grounds for appeal must be lodged within fourteen working days of having been notified of the decision of the council. Please lodge your appeal with the MEC for local government in terms of item 14(3)(a) and 14(3)(b) of the code.</p>	
..... Council	..... Date