



PROVINCE OF THE EASTERN CAPE
IPHONDO LEMPUMA KOLONI
PROVINSIE OOS-KAAP

Provincial Gazette Igazethi Yephondo Provinsiale Koerant

Vol. 22

BISHO/
KING WILLIAM'S TOWN, 22 JANUARY 2015

No. 3328
(Extraordinary)

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CONTENTS • INHOUD

<i>No.</i>	<i>Page No.</i>	<i>Gazette No.</i>
LOCAL AUTHORITY NOTICE		
1 Local Government Municipal Systems Act (32/2000): Municipality of Port St Johns: Amended By-laws relating to the Rules and Procedures of the Council and its Committees	3	3328

LOCAL AUTHORITY NOTICE

No. 1

P.N. 82

13 January 2015

LOCAL GOVERNMENT NOTICE**MUNICIPALITY OF PORT ST JOHNS**

The Municipal Manager hereby publishes, in terms of Section 13 of the Local Government Municipal Systems Act, 2000 (Act 32 of 2000) read with Section 162 of the Constitution of the Republic of South Africa Act 1996 (Act 108 of 1996) the amended By-Laws Relating to the Rules and Procedures of the Council and its Committee and for matters incidental thereto which By-laws shall come into operation on the date of publication thereof.

**AMENDED BY-LAWS RELATING TO THE RULES AND PROCEDURES
OF THE COUNCIL AND ITS COMMITTEES**

TABLE OF CONTENTS

	Page(s)
Preamble	6

CHAPTER 1**ORDER OF BUSINESS AND RELATED MATTERS****COUNCIL MEETINGS****Part 1: Order of Business****Sections**

(1) Definitions	6-8
(2) Commencement of meeting of Council	9
(3) Order of Business	9-10
(4) Election of Speaker	10
(5) Statements and Communications by Speaker	10
(6) Attendance at meetings	11-12
(7) Agendas and Minutes	12-13
(8) Deputations	14
(9) Notices of Motion and Notices of Questions	14-15
(10) Absence of mover or Questioner	15
(11) Motions and Questions on matters dealt with by a Committee	15

(12)	Rescission or alteration of Resolutions	15-16
(13)	Recommendations of Committees	16
(14)	Questions	17
(15)	Motions of Exigency	17

Part 2: Related Matters

(16)	Motions of Course	17-18
(17)	Recording of protest	18-19
(18)	Motion or question reintroduced or put again	19
(19)	Member to address Speaker	19
(20)	Length of speeches	19
(21)	Order of Precedence	19
(22)	Precedence of Speaker	19-20
(23)	Relevance	20
(24)	Member may speak only once, except mover of original motion	20
(25)	Point of Order and personal explanation	20
(26)	Speaker's ruling on point of order	20
(27)	Withdrawal of motion, amendment or question	20-21

Part 3: Order of Debate: Motions

(28)	Order of Debate	21
(29)	That the motion be amended	21
(30)	That consideration of the question be postponed	21-22
(31)	That the Council do now adjourn	22-23
(32)	That the Council now adjourn for a caucus meeting	23
(33)	That the debate now be adjourned	23-24
(34)	That the question now be put	24
(35)	That the Council proceed to the next business	24

Part 4: Council in Committee

(36)	Application of by-laws in the case of special meetings and meetings of the Council in Committee	25
------	---	----

(37)	Committee of the Whole Council	25
Part 5: Unopposed Business		
(38)	Unopposed Business	25-26
Part 6: Quorum		
(39)	Quorum	26
Part 7: Decisions and Voting		
(40)	Decisions by Council	26-27
(41)	Voting by show of hands	27
(42)	Voting by division	27-28
(43)	Procedure in conducting a ballot	28-30

CHAPTER 2 **DELEGATIONS**

(44)	Delegation to Committees and other functionaries	30-32
(45)	Duty to Report to delegating authorities	32
(46)	Review of Delegations	32

CHAPTER 3 **INTERNAL STRUCTURES AND COMMITTEES**

Part 1: Criteria for establishment of Committees

(47)	Criteria for establishment of Committees	33
------	--	----

Part 2: Executive Committee

(48)	Executive Committee	33-34
(49)	Functions and Powers of Executive Committee	34-35
(50)	Term of office of members	35
(51)	Vacancies	35-36
(52)	Meetings of Executive Committee	36
(53)	Procedures of Executive Committee	36
(54)	Quorum and Decisions	36

(55)	Removal from Office of Executive Committee	36
Part 3: Committee to Assist the Executive Committee		
(56)	Committees to Assist the Executive Committee	37
Part 4: Other Committees		
(57)	Establishment of Other Committees	37-38
Part 5: Advisory Committees		
(58)	Establishment of Advisory Committees	38-39
Part 6: The Rules Committee		
(59)	Establishing of Rules Committee	39-40
Part 7: Ward Committees		
(60)	Object of Ward Committees	40
(61)	Establishment of Ward Committees	40-41
(62)	Functions and Powers of Ward Committees	41
(63)	Term of Office of Members	41
(64)	Vacancies	41
(65)	Remuneration of Members	41-42
(66)	Dissolution of Ward Committees	42
Part 8: Incidental Matters		
(67)	Incidental Matters: Committees	42-43
CHAPTER 4		
<u>OFFICE BEARERS – THE SPEAKER</u>		
(68)	Election of Speaker	44
(69)	Functions of Speaker	44
(70)	Term of Office of Speaker	44
(71)	Vacation of office of Speaker	44-45
(72)	Removal from Office of Speaker	45
(73)	Acting Speaker	45

OFFICE BEARERS – THE MAYOR

- | | | |
|------|--|-------|
| (74) | Election of Mayor | 46 |
| (75) | Functions and Powers of Mayor and Deputy Mayor | 46-47 |

CHAPTER 5
COUNCIL AND COMMITTEE MEETINGS

- | | | |
|------|--|-------|
| (76) | Maintenance of Order at Council and Committee Meetings | 47-48 |
|------|--|-------|

CHAPTER 6
MISCELLANEOUS MATTERS

- | | | |
|------|--|-------|
| (77) | Supply of address for serving of official communications | 48 |
| (78) | Frequency of meetings of Council | 48-49 |
| (79) | Speaker to call Council meetings | 49 |
| (80) | Admission of public to meetings | 49-51 |
| (81) | Public notice of meetings | 51 |
| (82) | Legislative procedure | 51-52 |
| (83) | Procedurally fair administrative action | 52 |
| (84) | Reasons for administrative action | 52 |
| (85) | Privileges and immunities | 52-53 |
| (86) | Use of language at Council and Committee meetings | 54 |
| (87) | Every member to be in possession of Rules and Procedures | 54 |
| (88) | Penalties | 54 |
| (89) | Applicability of Municipalities Act, 20 of 1979 (Transkei) | 54 |
| (90) | Review of these By-Laws | 54 |

CHAPTER 7
REPEAL OF BY-LAWS

- | | | |
|------|-------------------|----|
| (91) | Repeal of By-Laws | 54 |
|------|-------------------|----|

PREAMBLE

AND WHEREAS the Constitution establishes local government as a distinctive sphere of government;

AND WHEREAS section 160(6) of the said Constitution authorizes a Municipal Council to adopt policies and make By-laws which prescribe Rules and Procedures for:

- (a) Its internal arrangements;
- (b) Its business and proceedings; and
- (c) The establishment, composition, procedures, powers and functions of its Committees.

AND WHEREAS the Municipal Structures Act, the Municipal Systems Act and other legislation provides for certain matters which may be included in the Rules and Procedures of a Municipality and be incorporated in the By-laws of a Municipality.

The Council of the Municipality hereby adopts the following By-laws:

(1) Definitions

In these By-laws, words used in the masculine gender include the feminine, the singular includes the plural and vice versa and unless the context otherwise indicates -

"Accredited Organization" means a community organization, excluding political parties, which in the opinion of the Council, has substantial support in the community, has a constitution, and is accredited by the Council;

"Administrative Unit" means a former municipality as envisaged in Section 14(3) of the Structures Act;

"Advisory Committee" means a Committee established in terms of Section 17(4) of the Systems Act;

"Code of Conduct for Councillors" means the Code of Conduct for Councillors contained in Schedule 1 of the Systems Act;

"Chairperson" means the Chairperson of a Standing or any other Committee established by the Council;

"Chief Whip" means the Whip of the ruling party in the Council who must, together with any other Whip or the member so designated by the political parties in the Council who do not enjoy an outright majority, ensure the smooth functioning of the Council provided that, in the event of the Council comprising

members of a single party only, any reference in these By-laws to the Chief Whip shall be construed as reference to the Whip of such single party;

"**Committee**" means a Committee established in terms of sections 79 or 80 of the Structures Act;

"**Community**" means that body of persons comprising the residents, the ratepayers, any civic organization, non-governmental, private sector or labour organization or body which is involved in local affairs within the municipality;

"**Constitution**" means the Constitution of the Republic of South Africa, Act 108 of 1996, as amended;

"**Council Meeting**" means a meeting of councilors which consists of a quorum of 50 percent plus one, which is convened in terms of Section 29 (1) of the Municipal Act 117 of 1998 read with Section 18 (2) of the same Act.

"**Delegation**", in relation to a duty, includes an instruction or request to perform the duty, and "**delegate**" has a corresponding meaning;

"**Delivery**" means the delivery of Council Documents by self-collection and/ or personal delivery to a councillor's place of residence and/ or electronically.

"**Deputy Mayor**" means the member of the Executive Committee elected as Deputy Mayor in terms of Section 48 of the Structures Act;

"**Executive Committee**" means an Executive Committee referred to in Sections 42 and 43 of the Structures Act and elected in terms of Section 45 of the said Act;

"**In-Committee Meeting**" A closed meeting of Councillors with the inclusion of the Council Secretary and Municipal Manager being present in order to give support to the council.

"**Mayor**" means the member of the Executive Committee elected as Mayor in terms of Section 48 of the Structures Act;

"**MEC for local government**" means the member of the Executive Council responsible for local government in the Eastern Cape Province;

"**Member**" means a member of the Council of the Municipality;

"**Municipal Finance Management Act**" means the Local Government: Municipal Finance Management Act, 2003 hereinafter referred to as the "Municipal Finance Management Act";

"Municipal Manager" means a person appointed by the Council in terms of section 82 of the Municipal Structures Act as Municipal Manager and includes any person acting in this post;

"Municipal Structures Act" means the Local Government: Municipal Structures Act, No. 117 of 1998, as amended, herein referred to as the "Structures Act";

"Municipal Systems Act" means the Local Government: Municipal Systems Act, No 32 of 2000 as amended, herein referred to as the "Systems Act";

"Municipality" means the Municipality of Port St Johns as established in terms of Section 12 of the Structures Act and, where the text so requires, includes the Council, a political structure or official of the municipality;

"Party" means a party registered in terms of the Electoral Commission Act, 1996 (Act No 51 of 1996);

"Political office bearer" means a political office bearer as defined in the Structures Act;

"Political Structure", means the Council of the Municipality or any Committee or other collective structure of the Municipality elected, designated or appointed in terms of a specific provision of the Structures Act and/or these by-laws;

"Promotion of Access to Information Act" means Act 2 of 2000 as amended;

"Promotion of Administrative Justice Act" means Act 3 of 2000 as amended;

"Promotion of Equality and Prevention of Unfair Discrimination Act" means Act 4 of 2000;

"Ratepayer" means a person who is liable to the Municipality for the payment of rates on property in the Municipality, any other tax, duty or levy imposed by the Municipality or fees for services provided either by the Municipality or in terms of a services delivery agreement as defined in the Systems Act and concluded with the Municipality;

"Resident" means a person who is ordinarily resident in the Municipality;

"Speaker" means a member elected in terms of section 36 of the Structures Act to be the Speaker of the Council and includes the Acting Speaker;

"Ward" means a Ward mentioned in item 2 of Schedule 1 of the Structures Act;

“Whip” means a member of a party in the Council appointed by that party as Whip to ensure, together with the Chief Whip, the smooth functioning of the proceedings of the Council in terms of these by-laws.

CHAPTER 1

ORDER OF BUSINESS AND RELATED MATTERS

COUNCIL MEETINGS

Part 1: Order of business

(2) Commencement of meeting of Council

- (a) At each meeting of the Council, the chair shall be taken precisely at the time for which the meeting is convened by notice under the hand of the Speaker.
- (b) The notice referred to in sub-section (a) shall state the nature of the meeting, the date of the meeting, the venue at which it will be held and also the commencing time of the meeting.
- (c) Every notice of a meeting of the Council shall be signed by the Speaker and be delivered or conveyed to members at the address supplied by a member in accordance with section 77 of these By-laws.
- (d) The provisions of this section shall not apply in respect of a meeting convened in terms of section 79(d) of these By-laws.

(3) Order of business

The business at ordinary meetings of the Council shall be disposed of in the following order:

- (a) Opening and Welcoming;
- (b) Election of Speaker if necessary;
- (c) Election of Executive Committee if necessary;
- (d) Election of Mayor if necessary;

- (e) Election of Deputy Mayor if necessary;
- (f) Consideration of applications for leave of absence from Council meetings received from members in the manner provided in these By-laws;
- (g) Confirmation of minutes of previous Council meeting(s);
- (h) Statements or Communications by the Speaker;
- (i) Interviews with deputations;
- (j) Statutory business including such reports as must be submitted by either the Mayor or Municipal Manager in terms of the Municipal Finance Management Act 2003;
- (k) Consideration of reports by the Executive Committee, other Committees, delegates, deputations and officials of the Council;
- (l) Consideration of reports, communications, petitions and applications dealing with matters of urgency submitted by the Speaker or Municipal Manager;
- (m) Consideration of notices of motion and notices of questions which shall appear on the agenda in order in which they have been received by the Municipal Manager;
- (n) Consideration of motions of exigency;
- (o) Closure -

provided that the Chief Whip, may, at any time during the proceedings, move as a motion of course that any item appearing on the agenda shall have precedence and may briefly state the reasons for such motion. If such motion is seconded, it shall be put to the vote forthwith without discussion, and if carried, such item shall have precedence accordingly.

(4) Election of Speaker

The Speaker is the Chairperson of all Council meetings. If the Speaker is absent or not available to perform his functions, or during a vacancy, the Council must elect another member as Speaker.

(5) Statements and communications by Speaker

The Speaker may, without notice, make any statement or read any communication at any meeting.

(6) Attendance at meetings

- (a) Every member present at a meeting of the Council shall sign his name in a meeting attendance register which shall be in bound book form and contain details of the nature of the meeting and the date on which it was held. The Councillors must be seated five minutes before the commencement of the Council Meeting and they must have all signed the attendance register. The aforesaid register shall be made available and be maintained by the Municipal Manager. Non signature by a member in the said attendance register shall be conclusive proof that such member has not attended the meeting. During the Council Meeting not more than two Councillors can leave at the same time in order to use the bathroom facilities.
- (b) The Council Secretary shall at all times read all written apologies in respect of Councillors and/ or all other members who are required to attend the Council meeting, who are absent during the meeting. The names of all members present at any Council meeting and of all members to whom leave of absence from any such meeting has been granted shall be recorded in the minutes of such meeting.
- (c) All applications for leave of absence from Council meetings must be submitted in writing to the Municipal Manager or his nominee, prior to the commencement of the relevant meeting and such applications must be considered by Council.
- (d) If a member is absent from a Council meeting without the permission of the Council or if he fails to remain in attendance at such a meeting, the following fines may be imposed in writing by the Speaker and automatically be deducted from the member's monthly allowance:

First meeting: R200 fine

Second meeting: R500 fine

provided that, before imposing the aforementioned fines, the Speaker shall:

- (i) in writing inform the member of his absence from a specified meeting or of his failure to remain in attendance at such meeting;
- (ii) call upon such member to advance reasons within a period of 10 days from the date of the aforementioned notice as to why he should not be fined;
- (iii) consider such reasons:

provided further that a member who is dissatisfied with the decision of the Speaker aforesaid shall have the right of appeal to the Council which right shall be exercised by the member concerned in a signed written statement setting out the grounds of appeal and delivered to the Speaker within a period of 10 days from the date the member concerned is informed of the decision of the Speaker.

- (e) Any appeal lodged by a member in terms of the proviso to sub-section (d) shall be submitted by the Speaker together with his comments thereon to the next ensuing meeting of the Council and the decision of the Council on such appeal shall be final and binding upon the member concerned.
- (f) The Council must, subject to the approval of the MEC for local government and upon the recommendation of the Speaker, remove, as a member of the Council, a member who has been absent from three or more consecutive meetings of the Council or a Committee which that member is required to attend provided that, before the Council adopts a decision to remove the member concerned, the Speaker shall:
 - (i) in writing inform the member of his intention to recommend to the Council that such member be removed;
 - (ii) call upon the member concerned to advance reasons within a period of 10 days from the date of receipt of such notification as to why he should not be removed from office;
 - (iii) consider the aforesaid submissions made by the member;
 - (iv) in the light of such submissions, make an appropriate recommendation to the Council:

provided further that nothing contained in this sub-section shall prevent the Council from appointing a special committee to investigate and make recommendations to it on the alleged transgression by the member concerned in terms of the Code of Conduct for Councillors.

(7) Agendas and Minutes

- (a) All matters submitted for the consideration of the Council shall be contained in written reports included in an agenda signed by the Speaker. The said agenda shall be conveyed to all members by the Municipal Manager at least 7(seven) days before a meeting at their official address referred to in section 77 of these By-laws. Matters to be considered by the Council in open session shall be contained in an agenda separate from those matters to be considered by the Council in Committee which agenda shall be clearly marked as such.

-
- (b) The agenda for a meeting may be conveyed to members either together with the notice convening the meeting or separate from such notice provided that where an agenda is conveyed to members separate from the notice of the meeting, such agenda shall clearly make cross reference to the notice convening the meeting.
 - (c) Minutes of the proceedings of every meeting of the Council shall be recorded in writing with each resolution consecutively numbered and such minutes shall be submitted for confirmation at the next ordinary meeting of the Council.
 - (d) Where at any meeting a verbal report is made on any matter in respect of which a resolution of the Council is required, the contents of such report shall be quoted verbatim in the minutes of the meeting or alternatively such report shall be reduced to writing and be attached to the minutes of the meeting as an annexure.
 - (e) Should a member arrive after a meeting has commenced or leave a meeting during the consideration of any item of business on the agenda for such meeting, then the time of arrival and departure of such member as well as the item of business then under consideration shall be recorded in the minutes of the meeting.
 - (f) The minutes shall be taken as read for the purpose of confirmation if a copy thereof was sent to each member at least forty-eight hours prior to the meeting at which they are to be confirmed.
 - (g) Except as to accuracy, no motion or discussion on the minutes shall be permitted.
 - (h) A motion of course to correct the minutes shall be permissible and, if carried, the minutes shall be corrected accordingly, provided that the full text of the resolution correcting minutes shall be recorded in the minutes of the meeting at which such corrections were made.
 - (i) If there is a dispute about the contents and accuracy of the minutes:
 - (i) the relevant debate, if it had been recorded, must be transcribed; or
 - (ii) if the debate had not been recorded, the Municipal Manager must submit a report to the Council setting out his recollection of the debate; and
 - (iii) after considering the transcription of the relevant debate or the report by the Municipal Manager as the case may be, the Council shall, by vote, decide on the disputed minutes with only those members who were present at the time of the disputed debate

being entitled to vote in the event that the disputed debate was not recorded.

- (j) Except in respect of confidential minutes, copies of all minutes of the Council must be made available to the public, subject to payment of the prescribed fee for reproduction thereof, if any.
- (k) The minutes of all meetings of the Council shall be compiled in book form with the pages numbered consecutively and, after confirmation thereof, they shall be signed by the Speaker in full on the last page and each other page shall be initialed by the said Speaker.
- (l) The Municipal Manager shall be responsible for the safekeeping of all the minutes of the Council in a fireproof safe which shall be provided by the Council for this purpose.

(8) Deputations

- (a) A deputation wishing to interview the Council shall give the Council at least seven days notice of its intention to do so and shall send a memorandum to the Municipal Manager setting out briefly the representations to be made and the source of the deputation.
- (b) The Municipal Manager shall submit the memorandum to the Speaker and the Mayor and, if the Speaker is of the opinion, after consultation with the Mayor, that it should be brought before the Council, the Municipal Manager shall notify the deputation to attend the Council meeting at a specified time. Should the request be refused by the Speaker, reasons for such refusal must be given by the Speaker and conveyed to the deputation by the Municipal Manager.
- (c) The Speaker may allow any deputation to address the Council without written notice having been given if, in his opinion, after consultation with the Mayor, the matter to be presented is of an urgent nature.
- (d) A deputation shall not consist of more than ten members.
- (e) Except with the consent of the Speaker or in reply to questions from members, only two members of a deputation shall address the Council.
- (f) Except with the consent of the Speaker, a member of a deputation shall not address the Council for more than ten minutes.

(9) Notices of motion and notices of questions

- (a) The Speaker shall not accept any motion except a motion of exigency or a motion of course, unless notice thereof has been given in terms of sub-section (c).
- (b) The Speaker shall not allow any question to be put except one put in terms of section 15 unless notice thereof has been given in terms of sub-section (c).
- (c) Every notice of intention to introduce a motion or put a question shall:
 - (i) be in writing;
 - (ii) be signed and dated by the member submitting the same;
 - (iii) specify in full the motion or question; and
 - (iv) be delivered to the Municipal Manager at least seven working days before the date of the meeting at which it is intended to be introduced or put.

(10) Absence of mover or questioner

In the event of the mover or questioner not being in attendance at the meeting of the Council when called upon by the Speaker to introduce a motion or put a question standing in his name on the agenda, any other member may introduce such motion or put such question in his own name, unless the original mover or questioner has notified the Municipal Manager in writing of a substitute member to introduce the relevant motion or put the relevant question.

(11) Motions and questions on matters dealt with by a Committee

- (a) A member shall not give notice of motion in regard to any matter assigned to the Executive Committee, unless such motion has previously been submitted to such Committee or unless it is in the form of a reference to such Committee for consideration and report.
- (b) The Mayor may, if he is of the opinion that the matter is one of urgency, give notice of his intention to introduce a motion or put a question on a matter assigned to the Executive Committee, notwithstanding the fact that such motion or question has not been considered previously by such Committee.

(12) Rescission or alteration of resolutions

- (a) If a member wishes to give notice of his intention to move the rescission or alteration of a resolution, or part thereof, of the Council, he shall give such notice by delivery to the Municipal Manager of a notice of motion in writing, which notice of motion shall be signed and dated by such member and shall state at which meeting of the Council it will be introduced, and it shall

be in the hands of the Municipal Manager at least seven working days before the said meeting. Such notice of motion shall further state that the mover will move that the resolution, which shall be mentioned, be rescinded or altered, as the case may be, and stating, in the case of an alteration, the exact alteration desired.

- (b) If the Executive Committee has resolved to recommend to the Council that a resolution, or part thereof, of the Council be rescinded or altered, notice of intention to move such rescission or alteration shall be given by the inclusion of such recommendation in a report of this Committee to the Council, and the Municipal Manager shall send a copy of such report as well as information concerning the meeting at which it will be considered to each member, at the address which each member is required to furnish to the Municipal Manager in terms of section 77 of these by-laws to reach him as least twenty four hours before the meeting at which the recommendation will be considered.
- (c) Except upon the recommendation of the Executive Committee, a resolution, or part thereof, shall not be reviewed at any meeting of the Council unless the permission of the majority of the members present at such meeting has been obtained.

(13) Recommendations of Committees

- (a) The adoption of a recommendation contained in a report which is submitted to the Council by the Executive or any other Committee shall be deemed to have been moved pro forma by the Mayor or the Chairperson of such other Committee or, in their absence or when they oppose such recommendation, by a member of the Executive Committee or other Committee deputed by the Mayor or Chairperson of such other Committee, as the case may be, to act at the time when the Speaker intimates that such recommendation is open for discussion, and such pro forma motion need not be seconded, nor shall it preclude the Mayor or Chairperson of the other Committee concerned from exercising their right to speak thereon.
- (b) Any matter submitted for decision in terms of sub-section (a) may be amended prior to a decision being taken thereon.
- (c) The proposal to amend must be seconded.
- (d) The Council must decide a proposal to amend first and only, thereafter, take a decision on the substantive matter before it.
- (e) An amendment may not amount to a negation of the matter submitted for a decision.

(14) Questions

- (a) After any motion or amendment has been moved and seconded, or at the conclusion of every speech thereon, a member may put any question relevant to such motion or amendment.
- (b) No supplementary questions shall be put except by the member who put the original question, and then only in respect of matters arising from the reply to such original question.
- (c) The Speaker shall not disallow any such question; provided that the member to whom such question is directed may either reply thereto forthwith or require that notice thereof be given in terms of section 9.

(15) Motions of exigency

- (a) A member may direct the attention of the Council to any matter which does not appear on the agenda and of which no previous notice has been given, by stating briefly the subject and without comment thereon moving "that the question to which attention has been directed be considered forthwith as a matter of exigency".
- (b) For the purposes of these By-laws, such motion shall be referred to as a motion of exigency.
- (c) If such motion is seconded and carried by a two-thirds majority of the members present at the meeting, the mover shall be permitted, without notice, to have the matter considered by means of a motion or question; provided that no motion of exigency shall be in order while any other question is being considered.
- (d) A motion of exigency may only be put to the Executive Committee in respect of a matter which it has delegated power to resolve.

Part 2: Related Matters**(16) Motions of course**

In addition to the motions provided for elsewhere in these By-laws, the following shall be regarded as motions of course:

- (a) That the consideration of any particular item appearing on the agenda shall have precedence;

- (b) That any report referred to in the agenda be received, adopted, acted upon or referred back;
- (c) That any document before the Council be acted upon in the manner specified in the motion;
- (d) That action be taken in regard to any matter submitted for consideration in the manner specified in the motion;
- (e) That the Council do now resolve itself into Committee;
- (f) That certain persons proposed for appointment be eliminated as provided in section 43; and
- (g) A motion referred to in section 28.

(17) Recording a protest

- (a) A member may, when he is in the minority on a question which has been decided, forthwith request that his dissent or protest be entered in the minutes of the meeting in which the decision of the Council is recorded, and such dissent or protest shall be entered accordingly.
- (b) Dissent or protest which casts an improper reflection on or imputes any improper motive to the Council or any member or employee of the Council shall be entered verbatim in the minutes to enable the accused member or employee to respond thereto and, in the event of the accused member or employee being in a position to respond to such accusation at the meeting, such response shall also be included verbatim in the minutes.
- (c) In the event of the accused member or employee not being available at the meeting referred to in sub-section (b), the Municipal Manager shall forward a copy of the said verbatim minutes to the accused member or employee for comment and such comment shall be submitted to the next meeting of the Council for consideration.
- (d) The Council shall decide whether or not the allegation is substantiated and, in the event of such substantiation, action shall be taken against the accused member or employee in terms of the Code of Conduct for Councillors or the employee disciplinary code of the Council, as the case may be.
- (e) In the event of the Council deciding that the allegation is not or cannot be substantiated, the member making such allegation shall be called upon to apologise to the accused member or employee and such apology shall be entered in the minutes.

- (f) In the event of the member making the accusation refusing to apologize aforesaid, the Council shall take disciplinary action against such member in terms of the Code of Conduct for Councillors on the grounds that such member has brought the Council in disrepute.
- (g) Nothing contained in this section shall prohibit a member or employee from taking legal action against the member making the relevant accusation on the basis of the infringement of a personal right.
- (h) This section shall not be interpreted in a manner which negates any privileges and immunities which members may enjoy in terms of Section 28 of the Structures Act or Section 85 of these By-laws.

(18) Motion or question reintroduced or put again

No motion which has been rejected by the Council and no question put in accordance with the provisions of section 9 and replied to at any meeting of the Council shall again be moved or put within a period of three months of such meeting, except with the consent of the majority of the whole Council.

(19) Member to address Speaker

A member speaking at a meeting of the Council or any person addressing the Council shall address the chair.

(20) Length of speeches

- (a) Except with the consent of the Speaker, a member shall not speak for more than five minutes on any subject.
- (b) The mover of an original motion or of any amendment may, however, speak for ten minutes on such motion or amendment or for such extended period as the Speaker may permit.

(21) Order of precedence

If two or more members rise to speak at the same time, the Speaker shall determine who shall have precedence.

(22) Precedence of Speaker

Whenever the Speaker wishes to speak during a debate, any member then speaking or offering to speak shall keep quiet and all members shall be silent so that the Speaker can be heard without any interruption.

(23) Relevance

A member who speaks shall confine his speech strictly to the motion or question under discussion or to an explanation or a point of order.

(24) Member may speak once only, except mover of original motion

- (a) A member shall not address the Council more than once on any motion or amendment except with the consent of the majority of members present at the meeting.
- (b) The mover of an original motion may, however, speak to the motion and reply to the debate, but in so replying, he shall confine himself strictly to replying to the questions of previous speakers and shall not introduce any new points of discussion into the debate.
- (c) The right of reply to a debate shall not extend to the mover of an amendment which, having been carried, has become the substantive motion.

(25) Point of order and personal explanation

A member or the Municipal Manager may seek the permission of the Speaker to address the meeting -

- (a) On a point of order with a view to calling attention to any departure from these By-laws; or
- (b) In personal explanation, in order to explain some material part of his former speech or submission which may have been misunderstood, and any person so asking shall be heard forthwith, unless the Speaker rules the point of order or explanation to be inadmissible.

(26) Speaker's ruling on point of order

- (a) The ruling of the Speaker on a point of order or on the admissibility of a personal explanation shall be final and shall not be open to discussion.
- (b) The ruling of the Speaker upon any point of order raised as to the interpretation of these By-laws shall be entered in the minutes.

(27) Withdrawal of motion, amendment or question

- (a) A motion, amendment or question may, without discussion and with the permission of the seconder, be withdrawn by the mover.
- (b) A member shall not speak upon such motion or amendment after the mover has indicated its withdrawal.

Part 3: Order of Debate: Motions

(28) Order of debate

When a motion is under discussion at any meeting of the Council, no further motion shall be received except the following:

- (a) That the motion be amended;
- (b) That consideration of the question be postponed;
- (c) That the Council do now adjourn;
- (d) That the Council do now adjourn for a caucus meeting;
- (e) That the debate now be adjourned;
- (f) That the question now be put; and
- (g) That the Council proceed to the next business.

(29) That the motion be amended

- (a) Every amendment shall be relevant to the motion on which it is moved.
- (b) An amendment shall be put in writing, signed by the mover, handed to the Speaker and be read out before being moved.
- (c) An amendment shall not be discussed or put to the Council until it has been seconded.
- (d) If there are any amendments to a motion, the amendment last proposed shall be put to the vote first, and if carried, the question shall be resolved accordingly.
- (e) If the amendment last proposed is not carried, the amendment proposed immediately prior to such amendment shall be put to the vote.
- (f) No further amendment shall be moved to a motion or amendment after the Speaker has commenced to take a vote on such motion or amendment.

(30) That consideration of the question be postponed

- (a) A member may, at the conclusion of a speech, move that consideration of the question be postponed to a fixed date.
- (b) Such motion shall be seconded but need not be put in writing.
- (c) The mover of such motion may speak for not more than ten minutes, but the seconder shall not be permitted to speak beyond formally seconding it.
- (d) Upon such motion being moved, the mover of the question under discussion may, without prejudice to his ultimate right to reply to the debate if the motion that the question be postponed is not carried, be heard in reply for five minutes, after which the motion shall be put without further discussion.
- (e) If postponement to a fixed date is agreed to, the question shall be placed first on the list of points of discussion for the day on which the postponed motion shall be considered.

(31) That the Council do now adjourn

- (a) A member may, except during the course of a speech by another member or while a vote is being taken, move "that the Council or the Committee do now adjourn".
- (b) Such motion shall be seconded but need not be put in writing.
- (c) The mover may speak to the motion for five minutes, but the seconder shall not speak beyond formally seconding the motion.
- (d) If the motion is carried, the Council shall forthwith adjourn; provided that the Speaker may direct that the meeting proceed first to dispose of unopposed business.
- (e) If a motion that the Council do now adjourn is not carried, the Speaker shall not accept another such motion until a period of half an hour has elapsed.
- (f) A member shall not, on the same day, during the course of any one meeting of the Council move or second more than one motion to adjourn.
- (g) Save as provided in sub-section (c), no discussion on a motion to adjourn shall be permitted, except that the member who first rises for that purpose may speak against such motion for not more than five minutes.

- (h) No amendment to such motion shall be moved except in relation to the period of adjournment.
- (i) If a motion to adjourn a meeting of the Council has been carried during a debate and prior to the closure thereof, then upon consideration of the subject of such debate at the adjourned meeting, the member who moved the adjournment shall be entitled to speak first.
- (j) No business shall be transacted at an adjourned meeting except such as is set out on the agenda for the meeting.
- (k) The Speaker has the right to adjourn a meeting at any time after every two hours for a maximum of 10 minutes, but not during the taking of a vote.

(32) That the Council now adjourn for a caucus meeting

- (a) A party whip may, at any time, except while a vote is being taken, move "that the Council now adjourn for a caucus meeting".
- (b) Such motion shall be seconded but need not be put in writing.
- (c) The mover may speak to the motion for five minutes, but the seconder shall not speak beyond formally seconding the motion.
- (d) The Speaker shall decide whether or not to allow the request for a caucus meeting. If the request is refused by the Speaker, he shall give reasons for refusing such request, which reasons shall be entered into the minutes. The ruling of the Speaker on the request will be final and not be open for discussion. If the request for a caucus meeting is approved by the Speaker, the Council shall forthwith adjourn, provided that the Speaker may direct that the meeting proceed first to dispose of other business.
- (e) The Speaker shall impose a time limit for the proposed caucus meeting.
- (f) The caucus requesting the adjournment shall gather at another venue.
- (g) If the caucus members have not taken their seats at the time when the Council is required to reconvene, the Council shall proceed with its normal business, provided a quorum of members is present.
- (h) If a quorum of members is not present, the meeting shall adjourn for 10 minutes. If the caucus members do not return within 10 minutes, the meeting shall be closed by the Speaker and the reasons for such closure shall be recorded in the minutes.

(33) That the debate now be adjourned

- (a) After 30 minutes of debate on a specific matter or matters, a member may, at the conclusion of any speech, move that the debate be adjourned.
- (b) Such motion shall be seconded but need not be put in writing.
- (c) The mover of such motion may speak to it for five minutes, but the seconder shall not speak beyond formally seconding it.
- (d) Save as provided in sub-section (c) no discussion on such motion shall be permitted except in relation to the period of adjournment, and the member who first rises for that purpose may speak against it for five minutes.
- (e) If such motion is carried, the meeting shall proceed to the next business on the agenda, and the discussion of the adjourned debate, unless otherwise resolved, shall be resumed at the next ordinary meeting.
- (f) On the resumption of the adjourned debate, the member who moved the adjournment shall be entitled to speak first.
- (g) If a motion that a debate be adjourned is not carried, the Speaker shall not accept another such motion until half an hour has elapsed.
- (h) A specific member shall not, during the course of any one debate, move or second more than one motion to adjourn the debate.

(34) That the question now be put

- (a) After 30 minutes of debate on a specific matter, a member may at the conclusion of a speech, move, without discussion, that the question now be put, and the motion, if seconded, shall be put forthwith. If the motion is carried, the motion or amendment under discussion shall be put forthwith.
- (b) A second motion that the question now be put shall not be moved within fifteen minutes.

(35) That the Council proceed to the next business

- (a) After 30 minutes of debate on a specific matter, a member may, at the conclusion of a speech on any question, move, without discussion, that the Council proceed to the next business, and the motion concerned, if seconded, shall be put forthwith.
- (b) When a motion is carried that the Council proceed to the next business, the question under discussion shall be deemed to have lapsed.
- (c) During a debate on the same question, a second motion that the Council proceed to the next business shall not be moved within fifteen minutes of such first motion.

Part 4: Council in Committee

(36) Application of by-laws in the case of special meetings and meetings of the Council in Committee

These By-laws (excluding the provision that a member may only speak once) shall, insofar as the conduct of meetings is concerned, apply to Special Council meetings and meetings of the Council in Committee.

(37) Committee of the Whole Council

- (a) A member may at any time after the confirmation of the minutes during a meeting of the Council move "that Council do now resolve itself into Committee", and may briefly state the reasons for such motion. If such motion is seconded, it shall be put to the vote forthwith without discussion.
- (b) If such motion is carried, the place of meeting shall be cleared of all members of the public, the press and those members of staff whose presence, in the opinion of the Speaker, after consultation with the Mayor and the Municipal Manager, are considered unnecessary or undesirable.
- (c) A member may during the course of the discussion in Committee move "that the Council do now resume" and may briefly state the reasons for such motion. If such motion is seconded, it shall be put to the vote forthwith without discussion.
- (d) If the Council resumes without the question in Committee having been disposed of, the debate shall resume at the point at which the Council resolved itself into Committee.

Part 5: Unopposed Business

(38) Unopposed business

- (a) When a meeting of the Council has been in progress for not less than two hours, the Speaker may interrupt the proceedings and direct that the Council proceed forthwith to dispose of unopposed business.
- (b) After the disposal of such business, the proceedings shall resume at the point at which they were interrupted, unless all other remaining business has been adjourned until a future meeting.
- (c) For the purposes of these By-laws, an item on the agenda shall be deemed to be opposed business if a member signifies his intention to discuss such item immediately after the Speaker has intimated to the

meeting that such item is open for discussion; provided that no item shall be deemed to be opposed by reason only of questions being put in connection therewith.

Part 6: Quorum

(39) Quorum

- (a) A majority of members allocated to the Municipality must be present at a meeting of the Council before a vote may be taken on any matter.
- (b) All matters mentioned in section 160(2) of the Constitution are determined by a decision taken by the Council with a supporting vote of a majority of the members.
- (c) A resolution to dissolve the Council in terms of Section 34(1) of the Structures Act must be taken by a supporting vote of at least two thirds of the members allocated to the Municipality.
- (d) All other questions before a Council are decided by a majority of the votes cast.
- (e) Whenever during a meeting of the Council there is no quorum, the Speaker shall adjourn the meeting temporarily and, if, within ten minutes thereafter, there is still no quorum, the names of the members present shall be entered in the minutes of the meeting by the Municipal Manager and the Speaker shall declare the meeting closed.

Part 7: Decisions and voting

(40) Decisions by Council

- (a) If, on any question at a Council meeting, except those mentioned in sections 39 (b) and (c) of these By-laws, there is an equality of votes, the Speaker must exercise a casting vote in addition to his deliberative vote as a member.
- (b) Before the Council takes a decision on any of the under-mentioned matters, it must first require the Executive Committee to submit to it a specific report and recommendation on such matters:
 - (i) Any matter mentioned in section 160(2) of the Constitution;
 - (ii) The approval of an integrated development plan for the Municipality and any amendment to an approved plan;

- (iii) The appointment of and conditions of service of the Municipal Manager and a head of a department of the Municipality regardless of the designation of such head;
- (iv) The entering into of a service delivery agreement envisaged in Section 76 (b) of the Systems Act by the Municipality;
- (v) The dismissal of the Municipal Manager or any Manager accountable to him;
- (vi) Disciplinary action against the Municipal Manager or any Manager accountable to him;
- (vii) Any alleged act of financial misconduct against the Municipal Manager or any Manager accountable to him; and
- (viii) The assessment of the performance of the Municipal Manager and any Manager accountable to him as well as the payment of a performance bonus to these Managers.

(41) Voting by show of hands

Except as otherwise provided in any law or resolved by the Council, the decision of the Council on any question before it shall be determined by a show of hands.

(42) Voting by division

- (a) Immediately after a question has been put to a meeting of the Council for the purpose of being voted upon, put to the vote, or immediately after the decision upon a show of hands has been declared by the Speaker, any two members may demand a division, and the Speaker shall, thereupon, request those members who desire to support such demand to rise in their places.
- (b) Upon a division being about to be taken, the Speaker shall request all members who wish to participate in such a voting to remain in the venue of the meeting and those who do not wish to participate in such a voting to leave the venue of the meeting within two minutes, and thereafter, no member shall enter or leave such venue of the meeting.
- (c) Whenever a division is taken, the Municipal Manager shall call out the names of all members in alphabetical order and shall record the vote of every member present as "for" or "against" and shall record the names of absentee members.
- (d) The Speaker shall, from such record, declare the decision of the Council and the number of members who voted for or against the question.

- (e) All divisions shall be entered in the minutes.

(43) Procedure in conducting a ballot

- (a) Where a question, other than the appointment or election of a person or persons, is to be decided by ballot, a ballot paper containing the question to be decided shall be handed to each member who shall signify his vote by means of a cross in the appropriate column according to whether he is in favour of or against the proposal.
- (b) Where the appointment or election of one or more persons from among a number of persons proposed is to be decided, each member shall be handed a ballot paper and he shall signify his vote or votes, as the case may be -
- (i) In the case where the names of the persons proposed appear on such ballot paper, by means of a cross opposite the name or names of the person or persons whom he favours according to the number of vacancies to be filled; or
- (ii) In the case where the names of the persons proposed do not appear on such ballot paper, by writing the name or names of the person or persons whom he favours on the ballot paper according to the number of vacancies to be filled.
- (c) After the ballot papers have been marked as provided in sub-section (a) or (b), they shall be folded and placed in a ballot box provided by the Municipal Manager.
- (d) The Municipal Manager and two members appointed by the Speaker for this purpose shall act as counters under direction of the Speaker and shall count the votes and report to the Speaker the result thereof by means of a written and signed statement, and the Speaker shall, thereafter, announce such result.
- (e) Where any ballot is taken in terms of sub-section (a), the Speaker shall declare the majority vote to be the decision of the Council on the question in respect of which such ballot has been taken; provided that, in the case of an equality of votes, the question in respect of which the ballot has been taken shall be determined by lot in accordance with the Regulations for the Determination of Matters by Lot published in Provincial Notice 228 of 1975 or any other superseding enactment adopted or published by the Council in this connection.
- (f) Where a ballot is taken in terms of sub-section (b) and more than one vacancy is to be filled from among a number of persons proposed, the Speaker shall declare those persons appointed or elected to the

vacancies, as the case may be, who have received the greatest number of votes; provided that -

- (i) If all the persons in respect of whom the ballot has been taken have received an equal number of votes, the question shall be determined by lot in the manner prescribed by the Regulations for the Determination of Matters by Lot published in Provincial Notice 228 of 1975 or any other superseding enactment adopted or published by the Council in this connection; or
 - (ii) If, owing to an equality of votes, all the vacancies have not been filled, the process of balloting shall continue in respect of those persons who remain unappointed or unelected, and if, after any balloting as aforesaid, only one vacancy still requires to be filled, such vacancy shall be filled in accordance with the provisions of sub-section (g).
- (g) Where a ballot is taken in terms of sub-section (b) for the filling of one vacancy only and -
- (i) There are only two persons to fill the vacancy, the person who receives the votes of the majority of the members present shall be declared by the Speaker to have been duly appointed or elected, as the case may be; provided that in the case of an equality of votes, the question shall be determined by lot in the manner prescribed in the Regulations for the Determination of Matters by Lot published in Provincial Notice 228 of 1975 or any other superseding enactment adopted or published by the Council in this connection; or
 - (ii) There are more than two persons to fill such vacancy, the person who receives the votes of the majority of the members present shall be declared by the Speaker to have been duly appointed or elected, as the case may be; provided that -
 - (a) If no person receives the votes of the majority of the members present, the person who has received the smallest number of votes shall be eliminated and a fresh ballot shall be taken in respect of the remaining persons, unless the Council has, by resolution, determined that the names of all persons but the person who has received the largest number of votes be eliminated and, in such event, such person shall be declared by the Speaker to have been duly appointed or elected, as the case may be;
 - (b) Unless the Council has in terms of sub-section (a) of this proviso determined by resolution to eliminate all but the person who received the largest number of votes, the

process of elimination as provided therein shall be repeated as often as is necessary until only two persons remain to fill the vacancy, and in such event the vacancy shall be filled in accordance with the provisions of sub-section (g)(i);

- (c) If, as a result of a ballot taken in respect of those persons who have not been eliminated in accordance with paragraphs (a) and (b) of this proviso, two or more persons receiving the smallest number of votes in such ballot have received an equal number of votes, a separate ballot shall be taken in respect of such persons, and the person or persons, as the Council may decide, receiving the smallest number of votes in such separate ballot shall be eliminated and thereafter the process of balloting as hereinbefore provided shall, if necessary, be proceeded with; or
- (d) Notwithstanding the provisions of paragraphs (a), (b) and (c) of this proviso, if all the persons in respect of whom any ballot is taken in terms of sub-section (g)(ii) have received an equal number of votes in such ballot, the question shall be determined by lot in the manner prescribed by the Regulations for the Determination of Matters by Lot published in Provincial Notice 228 of 1975 or any other superseding enactment adopted or published by the Council in this connection.
- (h) If any ballot paper contains votes in favour of a larger number of persons than the number of vacancies to be filled, such ballot paper shall be rejected, and the votes appearing thereon shall not be counted.
- (i) A member may register one vote only in favour of a person, and if any ballot paper contains more than one vote in favour of any person, only one of such votes shall be counted.
- (j) All ballot papers issued to members shall be of equal size and of the same colour, and any ballot paper placed in the ballot box, not being a ballot paper handed to a member as hereinbefore provided, shall be rejected, and the votes appearing thereon shall not be counted.

CHAPTER 2

DELEGATIONS

(44) Delegation to Committees and other functionaries

- (a) The Council shall, with due regard to its system of local government and applicable law, develop a system of delegation that will maximize

administrative and operational efficiency and provide for adequate checks and balances, and, in accordance with that system may -

- (i) delegate appropriate powers, excluding a power mentioned in section 160(2) of the Constitution, the power to set tariffs, the power to enter into a service delivery agreement in terms of Section 76(b) of the Systems Act and the power to approve or amend its integrated development plan which powers are herein referred to as "reserved" powers to:

The Executive Committee;

Special Committees established by the Council;

Elected Office Bearers; and

Municipal Manager or, with the consent of the Municipal Manager, any of its other officials.

- (ii) instruct any such Committee or functionary to perform any of the Council's duties except in respect of reserved powers; and
- (iii) withdraw any delegation or instruction.

- (b) A delegation or instruction in terms of sub-section (a) -

- (i) must be in accordance with the Constitution, the Structures Act, the Systems Act and the Municipal Finance Management Act;
- (ii) must be in writing;
- (iii) is subject to such limitations, conditions and directions as the Council, by resolution, may impose;
- (iv) may include the power to sub-delegate a delegated power provided that where the Municipal Manager sub-delegates a power delegated to him, the relevant sub-delegation shall only take effect after the Council has noted such sub-delegation; and
- (v) does not divest the Council of the responsibility concerning the exercise of the power or the performance of the duty.

- (c) The Council must -

- (a) at the request in writing of at least one quarter of the members; or
- (b) at the request in writing of the Mayor or the Chairperson of Special Committee established by it; or

- (c) at the request in writing of the Municipal Manager on the grounds that a decision of the Council was administratively unfair, ultra vires, or has adversely affected the rights of the public; or
- (d) at the request in writing of a Whip; or
- (e) at the request in writing of at least 300 ratepayers on the grounds that their rights have been adversely affected; or
- (f) when an appeal in terms of section 62 of the Systems Act is received in writing from a person, stating that his rights or legitimate expectations have been materially and adversely affected by a decision taken by a political structure, political office bearer or member in terms of a delegated authority-

review any decision taken by such political structure, political office bearer or member in consequence of a delegation or instruction, and may either confirm, vary or revoke same without prejudice to any vested rights which have already accrued to a person or persons in whose favour such decision was made or who will benefit from such decision or who will, in future, obtain such vested rights or benefit.

(45) Duty to report to delegating authorities

- (a) A political structure, political office bearer, member or official to whom a delegating authority has delegated or sub-delegated a power or duty, must report to the delegating authority at such intervals as the delegating authority may require, on decisions taken in terms of that delegated or sub-delegated power or duty. If no such intervals are specifically determined by the delegating authority, such reports shall be made at least bi-annually.
- (b) The Municipal Manager shall report to the Council on any power delegated to him and which he sub-delegates to another official of the Council.

(46) Review of Delegations

On the election of a new Council, the delegations of the Municipality must be reviewed in terms of Section 59(2)(f) of the Systems Act and, to this end, the Municipal Manager shall submit a report to the Council on existing delegations authorized by the Council and other delegating authorities together with any recommendations on any changes thereto.

CHAPTER 3

INTERNAL STRUCTURES AND COMMITTEES

Part 1: Criteria for establishment of Committees

(47) Criteria for establishment of Committees

The Municipality may establish Committees in terms of the Structures and Municipal Finance Management Acts if the establishment of such Committees are necessary, taking into account:

- (a) the system of local government applicable to the Municipality;
- (b) the extent of the functions and powers of the Municipality;
- (c) the need for the delegation of those functions and powers in order to ensure efficiency and effectiveness in their performance;
- (d) the financial and administrative resources of the Municipality available to support the proposed Committees;
- (e) the need to develop a culture of municipal governance that compliments formal representative government with a system of participatory government;
- (f) the right of communities to participate in the decision making process of the Municipality;
- (g) the requirements of national and provincial legislation.
- (h) public participation in the monitoring of the financial affairs of the municipality and auditing.

Part 2: Executive Committee

(48) Executive Committee

- (a) The council must elect the members of its executive committee from among its members at a meeting that must be held within 14 days after the council's election.
- (b) The aforesaid committee shall comprise a number of members necessary for effective and efficient government, provided -
 - (i) that no more than 20 per cent of the members or 10 members, whichever is the least are elected; and
 - (ii) the committee shall comprise at least 3 members; and

- (iii) the committee must be composed in such a way that parties and interests represented in the council are represented in the committee in substantially the same proportion they are represented in the council.
- (c) Despite the provisions of sub-section (a), the council may determine any alternative mechanism for the election its executive committee provided that such mechanism complies with the provisions of Section 160(8) of the Constitution.

(49) Functions and Powers of Executive Committee

- (1) The executive committee is the principal committee of the council and is entitled to receive reports from other committees of the council which reports it must forward to the council together with its recommendations when it cannot dispose of matters dealt with in such reports in terms of its delegated powers.
- (2) The executive committee:
 - (i) must identify the needs of the municipality;
 - (ii) review and evaluate those needs in order of priority;
 - (iii) recommend to the council strategies, programmes and services to address priority needs through the integrated development plan and estimates of revenue and expenditure, taking into account any applicable national and provincial development plans;
 - (iv) recommend or determine the best methods, including partnership and other approaches, to deliver the aforementioned strategies, programmes and services to the maximum benefit of the community; and
 - (v) assist the Mayor in a manner determined by him in carrying out his duties and responsibilities in terms of the Finance Management Act.
- (3) The executive committee in performing its duties must -
 - (a) identify and develop criteria in terms of which progress in the implementation of the aforementioned strategies, programmes and services can be evaluated, including key performance indicators which are specific to the municipality and common to local government in general;
 - (b) evaluate progress against the key performance indicators;
 - (c) review the performance of the municipality in order to improve -

- (i) the economy, efficiency and effectiveness of the municipality;
 - (ii) the efficiency of credit control and revenue and debt collection services; and
 - (iii) the implementation of the municipality's by-laws.
- (d) monitor the management of the municipality's administration in accordance with the policy directions of the council;
 - (e) oversee the provision of services to communities in the municipality in a sustainable manner;
 - (f) perform such duties and exercise such powers as the council may delegate to it in terms of Section 32 of the Structures Act;
 - (g) annually report on the involvement of communities and community organisations in the affairs of the municipality;
 - (h) ensure that regard is given to public views; and
 - (i) report on the effect of consultation on the decisions of the council.
- (4) An executive committee must, in writing, report to the council on all decisions taken by the committee.
- (5) A report in terms of sub-section (4) shall separately contain those items which must be considered by the Council and those items in respect of which the Committee has delegated power.

(50) Term of office of members

The members of an executive committee are elected for a term ending, subject to section 55 of these By-laws, when the next municipal council is declared elected.

(51) Vacancies

- (1) A member of an executive committee vacates office during a term if that member-
 - (a) resigns as a member of the executive committee;
 - (b) is removed from office as a member of the executive committee in terms of section 55 of these by-laws; or
 - (c) ceases to be a member.

- (2) The filling of a vacancy in an executive committee is subject to Section 43 of the Structures Act.

(52) Meetings of Executive Committee

- (1) The mayor decides when and where the executive committee meets, but if a majority of the members requests the mayor in writing to convene a committee meeting, the mayor must convene a meeting at a time set out in such request.
- (2) The Mayor shall be guilty of an offence if he refuses or fails to convene a meeting requested by the majority of the members of the Executive Committee in terms of sub-section (1).
- (3) If both the mayor and the deputy mayor are absent from a meeting and there is a quorum, the members present must elect another member to preside at the meeting.

(53) Procedures of Executive Committee

Subject to any directions of the council, these rules and orders and procedures of the council, an executive committee, by resolution taken with a supporting vote of a majority of its members, may determine its own procedures.

(54) Quorum and decisions

- (1) A majority of the members of an executive committee constitutes a quorum for a meeting.
- (2) A question before the committee is decided if there is agreement among at least the majority of the members present at the meeting.
- (3) If on any question there is an equality of votes, the member presiding must exercise a casting vote in addition to that member's vote as a member.

(55) Removal from office of Executive Committee Member

- (1) The council may, by resolution remove from office one or more or all the members of its executive committee. Prior notice of an intention to move a motion for the removal of members must be given.
- (2) If all the members of an executive committee are removed, a new election of members and the mayor and, if the municipality has a deputy mayor, the deputy mayor, must be held in terms of sections 48 and 74, respectively.

- (3) The election of a member or members of an executive committee following a removal from office in terms of this section, is subject to section 48.
- (4) The procedures referred to in Section 72 shall, with the necessary changes, apply to the removal of the executive committee or any member thereof.

Part 3: Committee to Assist the Executive Committee

(56) Committees to Assist the Executive Committee

- (1) The council may appoint committees of councillors, to be known as Standing Committees, to assist the executive committee.
- (2) The Committees referred to in sub-section (1) may not in number exceed the number of members of the executive committee.
- (3) The executive committee by majority vote may-
 - (a) appoint a chairperson for each committee from the executive committee;
 - (b) may delegate any powers and duties of the executive committee to the committee.
- (4) A committee established in terms of this section does not divest the executive committee of its responsibility concerning the exercise of any power or the performance of the duty entrusted to it.
- (5) The executive committee may vary or revoke any decision taken by a committee established in terms of this section, subject to any vested rights.
- (6) A committee established in terms of this section must report to the executive committee in accordance with such directions as the executive committee may determine.

Part 4: Other Committees

(57) Establishment of other Committees

- (a) The Council may, with due regard to its system of local government -
 - (i) establish one or more Committees necessary for the effective and efficient performance of any of its functions or the exercise of any of its powers and to comply with applicable national and/or provincial legislation;

- (ii) appoint the members of such a Committee from among its members;
 - (iii) dissolve a Committee at any time; and
 - (iv) associate with or be represented on any Committee established by a District Municipality.
- (b) The Council -
- (i) must determine the functions of a Committee;
 - (ii) may, with due regard to its system of local government and the provisions of its system of delegation, delegate duties and powers to a Committee;
 - (iii) must appoint the Chairperson of a Committee;
 - (iv) must determine the political structure to and manner in which the Committee must report provided that Standing Committees shall always report to the Executive Committee;
 - (v) may authorize a Committee to co-opt advisory members who are not members of the Council within the limits determined by the Council;
 - (vi) may, for just cause, remove a member of a Committee at any time;
 - (vii) may determine a Committee's procedures provided that, unless where specifically otherwise indicated, the rules and procedures pertaining to Council meetings as set out in these by-laws shall, with the necessary adjustments, apply to meetings of committees of the Council and any reference to the Speaker where applicable must be read as being a reference to the Chairperson of a Committee;
- (c) the provisions of this sub-section shall not apply in respect of a committee established by the district municipality on which the Council is represented or with which the Council is associated.

Part 5: Advisory Committees

(58) Establishment of Advisory Committees

- (a) The Council may establish one or more advisory Committees consisting of persons who are not members to advise the Council on any matter within the Council's competence.

- (b) The provisions of Section 57(b) with the necessary changes apply to a Committee established by the Council in terms of this section.

Part 6: The Rules Committee

(59) Establishment of Rules Committee

- (a) The Council shall establish a Rules Committee comprising:
- (i) the Speaker;
 - (ii) the Mayor;
 - (iii) the Chairperson of the Administration Committee;
 - (iv) the Chairperson of any Committee the Council may determine;
 - (v) the Whip of each political party represented on the Council;
 - (vi) an attorney or advocate who is on the Council's panel, as may be required by the Committee from time to time; and/or
 - (vii) a legal officer in the Council's service as may be required by the Committee from time to time.
- (b) The Speaker is the Chairperson of the Rules Committee.
- (c) The Rules Committee shall have the following functions and powers:
- (i) to develop, formulate and adopt policy concerning the exclusive business of the Council including its proceedings, procedures, rules, orders and practices;
 - (ii) to monitor and oversee the implementation of policy on all matters referred to in sub-section (i);
 - (iii) to make recommendations to the Council on any matter falling within the functions and powers of the Committee;
 - (iv) to lay down guidelines, issue directives, and formulate regulations regarding any aspect referred to in this sub-section;
 - (v) to appoint sub-committees to assist it with the performance of any of its functions or the exercise of any of its powers; and
 - (vi) to perform any other functions assigned to it by legislation, the provisions of these By-laws and/or the resolutions of the Council.

- (d) The Committee may deal with a matter falling within its functions and powers -
 - (i) on its own initiative; or
 - (ii) when referred to it for consideration and report by -
 - (a) the Council; or
 - (b) the Speaker; or
 - (c) the Mayor
- (e) The responsibility for the implementation of policy determined by the Rules Committee and the control and management of all matters relating to the administration of the Council vests in the Speaker subject to legislative provisions, the decisions of the Rules Committee and resolutions of the Council.
- (f) The Municipal Manager in conjunction with the Mayor may appoint officials to assist the Committee with the performance of its functions.
- (g) A question before the Rules Committee is decided when there is a quorum present and there is agreement on the question among the majority of the members of the Committee.
- (h) The recommendations of the Rules Committee shall be submitted by the Speaker to the Council in a separate report.

Part 7: Ward Committees

The following prescriptions, rules and procedures will apply to Ward Committees established by the Council in terms of its establishment notice:

(60) Object of Ward Committees

The object of a Ward Committee is to enhance participatory democracy at local level.

(61) Establishment of Ward Committees

- (a) The Council shall establish a Ward Committee for each delimited Ward in its municipal area.
- (b) Ward Committees shall be subject to the provisions of these By-laws and such by-laws and resolutions as the Council may promulgate or adopt relating to the operation and administration of such Committees.

- (c) A Ward Committee consists of the member representing a Ward in the Council who shall be Chairperson of the Committee and not more than 10 persons.
- (d) The Council shall make uniform rules regulating the procedure to elect the 10 members of a Ward Committee taking into account the need for women to be equitably represented thereon and for the Committee to reflect a diversity of interests in each Ward.
- (e) The Council shall, further, make uniform rules regulating the circumstances under which members of Ward Committees vacate office and the frequency of Ward Committee meetings.
- (f) The Council must make administrative arrangements to enable Ward Committees to perform their functions and exercise their powers effectively and, to this end, shall make adequate provision in its operating budget for such expenditure.

(62) Functions and powers of Ward Committees

- (a) A Ward Committee may make recommendations on any matter affecting its Ward to the Ward member or through the Ward member to the Council as the case may be.
- (b) The Council shall, with due regard to the responsibilities of a Ward member, determine the method of communication between Ward Committees and itself.

(63) Term of office of members

Members of Ward Committees, excepting the Chairperson, are elected for a term of office determined by the Council.

(64) Vacancies

If a vacancy occurs among the members of a Ward Committee, the vacancy must be filled in accordance with a procedure determined by the Council.

(65) Remuneration of members

- (a) With the exception of the Chairperson of a Ward Committee who is a member of the Council, no remuneration is payable to members of Ward Committees.
- (b) Subject to national legislation, the Council may pay to members of Ward Committees, excepting its Chairperson, out of revenue, reasonable out-

of-pocket expenses incurred by them in carrying out their duties as members of Ward Committees.

- (c) In the event of national legislation permitting the payment of allowances to members of Ward Committees excepting the Chairperson thereof, this section shall be regarded as having been automatically amended by such legislation.

(66) Dissolution of Ward Committees

The Council may, after due notice, dissolve a Ward Committee if the Committee fails to fulfill its objects.

Part 8: Incidental Matters

(67) Incidental matters: Committees

- (a) The members of a Standing Committee shall hold office until their successors have been appointed or until such Committee is dissolved, except as hereinafter provided.
- (b) The Council may, at any time withdraw, extend or modify any reference to a Committee but any proposal to do so shall first be referred to that Committee for consideration and report.
- (c) A Committee may at any meeting grant leave of absence to any member provided that leave of absence shall not be granted in respect of a period prior to such meeting.
- (d) Applications for leave of absence must be in writing and be submitted to the Municipal Manager in accordance with these By-laws before the commencement of the relevant meeting.
- (e) A member who, without leave of absence, fails to attend three consecutive meetings of such Committee shall cease to be a member thereof provided that the provisions of section 6 of these By-laws shall, with the necessary adjustments, be applied prior to the removal of a member of a Committee in terms of this sub-section.
- (f) A member of a Committee may resign from such Committee by notice in writing, signed by him and submitted to the Municipal Manager and such

resignation shall take effect upon receipt thereof by the Municipal Manager.

- (g) The Municipal Manager shall notify the Council of a vacancy on a Committee at the first ordinary meeting of the Council after it has arisen and such vacancy shall, unless otherwise decided, be filled by the Council.
- (h) During the absence on leave granted to any member by the Council, any other member may be appointed to act in his place on any Committee of which the absent member is a member.
- (i) Except in the case of any emergency, members of a Committee shall be given notice of every meeting of such Committee by the Municipal Manager who shall send an agenda to each member so that the same may, in the ordinary course of events, be delivered at the address nominated by him in terms of section 77 of these By-laws at least seventy-two hours before the hour of the meeting provided that, in the event of an emergency, the aforesaid period may, with the consent of the Chairperson of a Committee, be reduced to 24 hours.
- (j) Failure to give notice of a Committee meeting shall not affect the validity of such meeting.
- (k) The Speaker and Mayor and any member may attend any Committee meeting, and the Chairperson may, with the consent of such Committee, permit the Speaker and Mayor and any such member attending a meeting to address a Committee.
- (l) The Chairperson of a Committee shall have a casting vote in addition to his deliberative vote.
- (m) The majority vote of the members of a Committee present and voting by show of hands shall constitute a decision of the Committee; provided that any two members present and voting may require the names of the persons voting and the votes cast to be minuted in respect of any matter considered by a Committee.
- (n) Every Committee shall submit a written report or reports on its proceedings to the Executive Committee or the Council, as the case may be, for consideration or noting as the case may be.
- (o) The reports of a Committee shall be drawn up in consecutively numbered sections and shall contain the recommendations or decisions, as the case may be, on the matters reported upon by a Committee.
- (p) Nothing contained herein shall permit a Committee to accept an apology from a member of a Committee in respect of non attendance at a meeting.

CHAPTER 4**OFFICE BEARERS – THE SPEAKER****(68) Election of Speaker**

- (a) At its first sitting after its election, or when necessary to fill a vacancy, the Council must, from amongst the members, elect its Speaker.
- (b) The Municipal Manager or, if the Municipal Manager is not available, a person designated by the MEC for local government presides over the election of a Speaker.
- (c) The election of the Speaker shall take place in accordance with the procedures contained in Schedule 3 to the Structures Act.

(69) Functions of Speaker

The Speaker -

- (a) presides at meetings of the Council;
- (b) performs the duties and exercises the powers delegated to him in terms of Section 32 of the Structures Act;
- (c) must ensure that the Council meets at least quarterly;
- (d) must maintain order during meetings;
- (e) must ensure compliance in the Council and Council Committees with the Code of Conduct for Councillors; and
- (f) must ensure that Council meetings are conducted in accordance with any applicable law, these By-laws and any other relevant rules and procedures which the Council, by resolution, may adopt.

(70) Term of office of Speaker

The Speaker is elected for a term ending, subject to Section 39 of the Structures Act, when the next Council is declared elected.

(71) Vacation of office of Speaker

The Speaker vacates office during a term if he-

- (a) resigns as Speaker;
- (b) is removed from office; or

- (c) ceases to be a Member.

(72) Removal from office of Speaker

- (a) The Council may, by resolution, remove the Speaker from office.
- (b) Prior notice of an intention to remove the Speaker shall be contained in a notice of motion to this effect signed by a majority of the members of the Council and which notice shall be lodged with the Municipal Manager at least 21 days before the meeting at which it will be introduced.
- (c) The aforesaid notice of motion shall contain the grounds on which it is intended to remove the Speaker from office.
- (d) Upon receipt of the notice of motion referred to in sub-section (b), the Municipal Manager shall forward a copy thereof to the Speaker and request the Speaker to comment on the contents thereof and advance written reasons within a period of 7 days from the date of receipt of the said notice of motion by him, as to why he should not be removed from office.
- (e) The notice of motion together with the comments of the Speaker shall be tabled at the meeting referred to in sub-section (b).
- (f) Prior to the adoption of a resolution to remove the Speaker, the Council shall afford the Speaker, if he so desires, an opportunity to be heard on the matter and to make verbal representations on his submission submitted in terms of sub-section (d).
- (g) At the same meeting that the Council resolves to remove its Speaker, it shall appoint an acting Speaker.
- (h) A new Speaker shall be elected at a Special Council meeting called specifically for this purpose no later than 30 days from the date the Speaker is removed from office in terms of this section.
- (i) Nothing contained in this section shall prevent the Council from appointing a Special Committee to investigate and report upon an alleged contravention of the Code of Conduct for Councillors by the Speaker.

(73) Acting Speaker

If the Speaker of a Municipal Council is absent or not available to perform the functions of Speaker, the Council must elect another member to act as Speaker.

OFFICE BEARERS - THE MAYOR

(74) Election of Mayor

- (1) The Council must elect a member of its executive committee as the mayor and, if the MEC for local government so approves, another member of the executive committee as the deputy mayor of the municipality.
- (2) The election of a mayor and deputy mayor takes place when the executive committee is elected or when it is necessary to fill a vacancy.
- (3) The procedure set out in Schedule 3 to the Structures Act applies to the election of a mayor and deputy mayor.
- (4) A mayor and deputy mayor are elected for the duration of that person's term as a member of the executive committee, but vacates office during a term if that person -
 - (a) resigns as mayor or deputy mayor;
 - (b) is removed from office as a member of the executive committee in terms of section 55; or
 - (c) ceases to be a member of the executive committee.
- (5)
 - (a) No member may hold office as mayor for more than two consecutive terms.
 - (b) No person may hold office as deputy mayor for more than two consecutive terms.
- (6) A mayor whose two consecutive terms have expired as provided for in sub-section (5)(a), may not immediately after the expiry be elected as deputy mayor.

(75) Functions and powers of Mayor and Deputy Mayor

- (1) The mayor -
 - (a) presides at meetings of the executive committee; and
 - (b) performs the duties, including any ceremonial functions, and exercises the powers delegated to the mayor by the council or the executive committee.
- (2) The deputy mayor exercises the powers and performs the duties of the mayor if the mayor is absent or not available or if the office of the mayor is vacant.

- (3) The mayor may, in writing, delegate such duties as he may determine to the deputy mayor.
- (4) If the mayor is absent or not available and the municipality does not have a deputy mayor, or the deputy mayor is also absent or not available-
 - (a) the member of the executive committee designated thereto in writing by the mayor acts as mayor; or
 - (b) a councillor elected by the members of the executive committee from amongst themselves acts as mayor if the mayor has not designated a member thereto or if the designated member is absent or not available.

CHAPTER 5

COUNCIL AND COMMITTEE MEETINGS

(76) Maintenance of order at Council and Committee meetings

- (a) Any person other than a member who behaves in a disorderly or unseemly manner or interrupts the proceedings at any meeting shall, if the Speaker so directs, be removed from the place where the meeting is held.
- (b) If a member behaves in a disorderly or an unseemly manner, or obstructs the business of any meeting of the Council, or challenges the ruling of the Speaker on any point of order, or declines to withdraw any expression when required to do so by the Speaker, or indulges in tedious repetition or unbecoming language, or contravenes any provision of these By-laws, the Speaker shall direct such member to behave properly, and, if speaking, to discontinue his speech and resume his seat.
- (c) In the event of a persistent disregard of the directions of the Speaker, the Speaker shall direct such member to retire from the place of meeting for the remainder of such meeting and may, if necessary, cause him to be ejected therefrom.
- (d) Any such person or member who -
 - (i) refuses or fails to comply with a direction of the Speaker given in terms of these By-laws;

- (ii) returns to the place of meeting prior to the conclusion of the meeting from which he was directed to retire; or
 - (iii) offers resistance whilst being ejected from the place of meeting-
- shall be guilty of an offence.
- (e) The provisions of this section shall, unless otherwise expressly provided, also apply to meetings of Committees of the Council and any reference herein to the Speaker shall be construed as reference to the Chairpersons of such Committees.

CHAPTER 6

MISCELLANEOUS MATTERS

(77) Supply of address for serving of official communications

- (a) Every member of the Council shall, within a period of 14 days from the date of his election, supply the Municipal Manager with an address at which official communications from the Municipality may be delivered. It shall be the responsibility of the member concerned to ensure that a person is always available at the aforesaid address to receive official communications, alternatively to advise the Municipal Manager of the means of delivering such official communications.
- (b) Non receipt of an official communication shall not relieve the member concerned of his responsibility to attend a meeting or any matter referred to in an official communication.
- (c) For purposes of this section, an official communication shall include a verbal, telephonic and fax communication provided that a full record of any verbal or telephonic communication shall be made.

(78) Frequency of meetings of Council

- (a) The Council shall hold an Ordinary Meeting as least quarterly.

- (b) Special meetings of the Council may be held at such intervals as the Speaker may determine to deal with specific matters which cannot be delayed until the next ordinary meeting of the Council.
- (c) Other Advisory Committees must meet regularly, depending on the matters to be considered.

(79) Speaker to call Council meetings

- (a) The Speaker of the Council decides when and where the Council meets, subject to the provision that a Council must hold at least one ordinary meeting per quarter, but if a majority of the members requests the Speaker in writing to convene a meeting, the Speaker shall convene such meeting at a time set out in the request.
- (b) If the Speaker fails or refuses to call a meeting at the request of the members in terms of sub-section (a), he shall be guilty of an offence.
- (c) The Municipal Manager or, in the absence of a Municipal Manager, a person designated by the MEC for local government, must call the first meeting of Council within 14 days after the Council has been declared elected.
- (d) Notwithstanding the provisions of sub-section (a), the Municipal Manager may, in a case of an absolute emergency, having obtained the consent of the Speaker and the Mayor, call a special meeting of Council. No business other than specified in the notice shall be transacted at such a special meeting and such a meeting may from time to time be adjourned; provided that, if the total number of serving members is present at a special meeting convened aforesaid, and no objections are raised, an urgent matter not specified in such notice may be dealt with after disposal of the business of which notice has been given.
- (e) A meeting convened in terms of sub-section (d) shall be regarded as having properly convened if 12 hours notice thereof has been given to all members.

(80) Admission of public to meetings

- (a) Subject to sub-section (b), members of the public have the right to attend all Council and Committee meetings.
- (b) Subject to the provisions of Section 20 (2) of the Systems Act and any Council policy, the Speaker, in the case of the Council or the Chairperson, in the case of any Committee, may close a meeting or part of the proceedings of a meeting to the public if, in their opinion, as the case may be:

- (i) sensitive and personal staff matters are to be discussed at a meeting;
- (ii) sensitive land matters are to be discussed at a meeting the disclosure of which would be prejudicial to the interests of the Council;
- (iii) there might otherwise be unreasonable disclosure to the public of personal information regarding any person;
- (iv) trade secrets of any person might otherwise be disclosed;
- (v) financial, commercial, scientific or technical information, other than trade secrets, of any person might otherwise be disclosed, and such disclosure would be likely to cause harm to the commercial or financial interests of such person;
- (vi) information which had been supplied in confidence by any person might be disclosed, and such disclosure could reasonably be expected to put such person at a disadvantage in contractual or other negotiations or to prejudice such person in commercial competition;
- (vii) information might be disclosed and such disclosure would give rise to an action for breach of a duty of confidence owed to any person in terms of an agreement;
- (viii) information might be disclosed and such disclosure could reasonably be expected to endanger the life or physical safety of any person, or would be likely to prejudice or impair the security of a building, structure or system, means of transport or any other property;
- (ix) information might be disclosed which is privileged from production in legal proceedings;
- (x) information might be disclosed which contains trade secrets of the municipality or financial, commercial, scientific or technical information, other than trade secrets, the disclosure of which would be likely to cause harm to the commercial or financial interests of the municipality or the disclosure of which could reasonably be expected to put the municipality at a disadvantage in contractual and other negotiations or to prejudice it in commercial competition;
or

- (xi) information might be disclosed about research being or to be carried out by or on behalf of any person or the municipality and the disclosure of such information would be likely to expose any person or the municipality or the subject-matter of the research to serious disadvantage.

(81) Public notice of meetings

The Municipal Manager must give public notice of the time, date and venue of every -

- (a) Ordinary meeting of the Council; and
- (b) Special or Urgent meeting of the Council, except when time constraints make this impossible, by -
 - (i) annually publishing the program of Council meetings for that year in the local press; and
 - (ii) publishing any amendments to the program referred to in sub-section (i); and
 - (iii) advertising special or urgent meetings on the official notice board(s) of the Municipality; and
 - (iv) if the Council so directs advertising such meetings in the press at least 7 days before a meeting is to be held.

(82) Legislative procedure

- (a) Only a member or Committee of the Council may introduce a draft By-law in the Council.
- (b) A By-law must be made by a decision taken by the Council with a supporting vote of a majority of its members.
- (c) No By-law may be passed by the Council unless -
 - (i) all the members of the Council have been given reasonable notice thereof;
 - (ii) the intention of Council to draft a By-law dealing with a specific issue has been advertised and the public, Ward Committees and Accredited Organisations have been invited to make representations thereon and the Council has indeed considered such representations when drafting the draft By-law; and

- (iii) the draft By-law has been published for public comment in a manner that allows the public, Ward Committees and Accredited Organisations an opportunity to make representations with regard to such draft By-law.
- (d) Sub-sections (a) to (c), with the exception of sub-section c (iii), also apply when the Council incorporates by reference, as a By-law, the provisions of:
 - (i) Legislation passed by another legislative organ of state; or
 - (ii) Standard draft by-laws made for local government by any organ of state, body or person.

(83) Procedurally fair administrative action

Any administrative action which is taken by Council or any of its structures including political office bearers and officials acting under delegated power or any decision adopted by the aforementioned which results in administrative action which materially and adversely affects the rights or legitimate expectations of the public or any person, must be procedurally fair.

(84) Reasons for administrative action

Any person whose rights have been materially and adversely affected by administrative action and who has not been given reasons for such action, and who has applied in writing for such reasons, must be given adequate reasons for same, unless it is reasonable and justifiable in the circumstances not to give reasons. In such an instance, the applicant must be informed of such circumstances.

(85) Privileges and immunities

- (a) Subject to the conditions set out in sub-section (b) and further subject to provincial legislation to be promulgated in terms of Section 28(1) of the Structures Act, members are not liable to civil or criminal proceedings, arrest or imprisonment or damages for -
 - (i) anything that they have said in, produced before or submitted to the Council or any of its Committees; or
 - (ii) anything revealed as a result of anything that they have said in, produced before or submitted to the Council or any of its Committees, subject to the conditions set out in sub-section (b).
- (b) The above-mentioned privileges and immunities are subject to the following:

-
- (i) anything that has been said in, produced before or submitted to the Council or any of its Committees by a member being the truth;
- (ii) adherence by members to the provisions of the Promotion of Access to Information Act, and particularly the provisions relating to the mandatory protection of -
- privacy of a third party who is a natural person;
 - safety of individuals, and protection of property;
 - police dockets in bail proceedings, and protection of law enforcement and legal proceedings;
 - the economic interests and the financial welfare of the Republic and commercial activities of public bodies.
- (iii) members adhering to the provisions of the Promotion of Equality and Prevention of Unfair Discrimination Act and particularly the requirement that no member may unfairly discriminate against any person on the grounds of -
- race;
 - gender;
 - disability.
- (iv) no member propagating, advocating or communicating words against any person that could reasonably be construed to demonstrate a clear intention to -
- be harmful;
 - incite harm; and
 - promote or propagate hatred.
- (v) no member subjecting any person to harassment;
- (vi) adherence by members to the provisions of the Code of Conduct for Councillors.

(86) Use of Language at Council and Committee meetings

Any member, official or member of the public may address Council in any of the languages determined by the Council in its language policy.

(87) Every Member to be in possession of a copy of these Rules and Procedures

- (a)** The Municipal Manager shall supply a copy of these By-laws to every member upon his election to the Council.
- (b)** A member shall acknowledge receipt of these By-laws in writing and shall undertake to bind himself to the provisions contained therein, including the Code of Conduct for Councillors.

(88) Penalties

Any person or member who contravenes a provision of these by-laws shall be guilty of an offence and be liable on conviction to a fine or imprisonment for a period of six months or to such imprisonment without the option of a fine or to both such fine and such imprisonment, and, in the event of such person being a member, the Council shall taken disciplinary action against him for a contravention of the Code of Conduct for Councillors.

(89) Applicability of Municipalities Act 20 of 1979 (Transkei)

Unless otherwise provided in these By-laws but subject to the Constitution and the provisions of any other law:

- (a)** any word or phrase not defined in these By-laws shall have the meaning assigned to same in terms of the Municipalities Act 20 of 1979 (Transkei);
- (b)** the provisions of the said Act shall apply in any respect of any matter, event or procedure not provided for in these By-laws.

(90) Review of these by-laws

These By-laws shall be reviewed by the Council in the event of its system of local government changing to a Mayoral executive system of local government.

CHAPTER 7

REPEAL OF BY-LAWS

(91) Repeal of By-Laws

Any By-laws relating to the rules and procedures of the Council and its Committees including Rules of Order or any standard regulations or by-laws relating to the maintenance of order at meetings adopted by or applicable to the municipality or the Council of a municipality now comprising an administrative unit of the municipality are, from the date of promulgation of these by-laws, hereby repealed.