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PROVINCIAL NOTICE

[No. 145 of 2018]

REGULATIONS IN TERMS OF THE FREE STATE TRADITIONAL LEADERSHIP AND GOVERNANCE ACT, 2005 (ACT NO. 8 OF 2005)

GUIDELINES ON THE PARTICIPATION OF TRADITIONAL LEADERS IN MUNICIPAL COUNCILS IN TERMS OF SECTION 81 OF THE LOCAL GOVERNMENT: MUNICIPAL STRUCTURES ACT, 1998 (ACT NO. 117 OF 1998) READ WITH SCHEDULE 6 THEREOF

I, MD Khoabane, Member of the Executive Council responsible for Co-operative Governance, Traditional Affairs and Human Settlements in the Province, acting in terms of section 31 of the Free State Traditional Leadership and Governance Act, 2005 (Act No. 8 of 2005), hereby publish the Regulations contained in the Schedule. Furthermore, the list of Traditional Leaders who were identified to participate in the proceedings of designated Municipal Councils is attached as Annexure "A", for general information.

SCHEDULE

WHEREAS the Constitution of the Republic of South Africa, 1996 (the “Constitution”), provides for the roles, duties and functions of traditional leadership and is supplemented by the provisions of various statutory instruments, including the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) (the “Structures Act”), which provides for the participation of traditional leaders in Municipal Councils, in order to promote sound relationships between the institution of traditional leadership and municipalities;

WHEREAS the legislative and regulatory framework for the management of relations between Municipal Councils and Traditional Leaders is primarily contained in section 81 of the Structures Act, 1998, which provides for the procedure for participation of Traditional Leaders in Municipal Councils, whilst Schedule 6 to the said Act deals with the identification of traditional leaders for the participation in Municipal Councils;

AND WHEREAS the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), establishes a framework for nation government, provincial governments and local governments to promote and facilitate intergovernmental relations,

NOW THEREFORE these Guidelines provide as follows:

1. DEFINITIONS

In these Guidelines

- 1.1 clause headings are for convenience only and may not be used in interpretation; and
- 1.2 any word or expression to which a meaning is assigned in the Structures Act, bear the meaning so assigned to it, and , unless the context indicates otherwise

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**Councilor**” means a member of the Municipal Council;

“**MEC**” means the Member of the Executive Council responsible for Local Governance and Traditional Affairs in the Free State;

“**MFMA**” means Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

“**Municipal Council**” means a Municipal referred to section 18 of the Structures Act;

“out-of pocket expenses” means actual and necessary expenses incurred by a traditional leader which have been specifically authorized or which are provide for in terms of the municipality’s policy, in connection with a specific official or ceremonial duty which has been delegated to the traditional leader in question;

“Provincial House” means the Provincial House of Traditional Leaders established in terms of section 2 of the House of Traditional Leaders Act, 1994 (Act No. 6 of 1994);

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

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

“Traditional Leader” means a senior traditional leader of the traditional community concerned, who has been recognized in terms of section 19 of the Free State Traditional Leadership and Governance Act, 2005 (Act No. 8 of 2005).

2. OBJECTIVE OF GUIDELINES

The purpose of these Guidelines is to –

- 2.1 provide an enabling framework that governs and regulates the working relations between the Municipal Councils and traditional leaders;
- 2.2 give effect to the provisions of section 81 of, and Schedule 6 to, the Structures Act and section 10 of the Free State Traditional Leadership and Governance Act (Act No. 8 of 2005);
- 2.3 strengthen and promote the good relations and partnerships between Municipal Councils and traditional leaders and Councils;
- 2.4 enhance good governance, service delivery, development and stability in traditional community areas;
- 2.5 promote uniformity in the participation of traditional leaders in all affected Municipal Councils throughout the Province;

- 2.6 promote joint mobilization and public participation activities in order to accelerate service delivery;
- 2.7 facilitate participation of traditional leadership in all processes of municipalities in the context of integrated development planning; and
- 2.8 ensure acceptable protocol mechanisms between the Municipal Councils and traditional leaders.

3. APPLICATION OF GUIDELINES

These Guidelines apply to all –

- 3.1 traditional leaders participating in Municipal Council; and
- 3.2 Municipal Councils in which traditional leaders have been identified to participate in the said council, as contemplated in section 81 of, and Schedule 6 to the Structures Act.

4. ENABLING PROVISIONS

These Guidelines are informed by section 81 and Schedule 6 of the Structures Act, which provide for the participation of traditional leaders in Municipal Councils and the manner of identification of the traditional leaders who are to participate in the Municipal Councils.

5. STATUS OF TRADITIONAL LEADERS PARTICIPATION IN MUNICIPAL COUNCILS

- 5.1 A Traditional leader identified by MEC may attend and participate in any meeting of the Municipal Council: Provided that the traditional leader concerned is subjected to –
 - (a) the rules and orders of the municipality;
 - (b) the Code of Conduct for Councilors contained in Schedule 1 of the Systems Act; and
 - (c) any regulation or prescribed role issued by MEC by notice in the *Provincial Gazette*.

- 5.2 A traditional leader identified by MEC must be resident of the municipality concerned.
- 5.3 Traditional leaders are *ex officio* members of the Municipal Council and are not entitled to vote in any meeting of Municipal Council.
- 5.4 A traditional leader identified by MEC cannot be counted for the purpose of the establishing a quorum in the Municipal Council.
- 5.5 A traditional leader identified by the MEC retains his or her status of traditional leader and will not become a councilor or a municipal officer by virtue of his or her participation in the proceeding of the Municipal Council.
- 5.6 A traditional leader is entitled to address and advise the Municipal Council on any matter which directly affects his or her jurisdiction, the traditional communities involve or any other matter involving traditional communities in the area of jurisdiction of the Municipal Council concerned.

6. ROLES OF TRADITIONAL LEADERS

Traditional leaders participating in Municipal Council have the following functions:

- 6.1 to support Municipalities in the identification of community needs in a non partisan manner;
- 6.2 to influence municipalities in embracing and promoting heritage, language, customs and traditions that are in line with the Constitution;
- 6.3 to facilitate the involvement of the traditional communities towards making inputs into the Municipal Integrated Development Plans in as far as traditional communities are concerned;
- 6.4 to support municipalities in promoting integrated local economic development planning;
- 6.5 to alert the relevant municipality of any hazard or calamity that threatens their area of jurisdiction, thus contributing to a disaster management programme; and
- 6.6 to support Municipalities in programmes that protect the environment and promotes a green economy.

7. ROLES OF MUNICIPALITY

- 7.1 The Municipal Council must pay, from its own budget, all out of pocket expenses to traditional leaders for participating in municipal proceedings: Provided that the relevant Municipal Council can determine the criteria for, and calculation of, such out-of-pocket expenses.
- 7.2 The Municipal Council must ensure that each traditional leader is provided with a copy of the Code of Conduct for Councilors and the Standing Rules and Order of the Municipal Council.
- 7.3 The Municipal Council, with the support of the Department, must strengthen the capacity of traditional leaders to participate in Municipal Council.
- 7.4 The Municipal Council must inform the Provincial House of Traditional Leaders and the MEC in the event of any breach of the Code of Conduct contained in Schedule 1 of the Systems Act by any traditional leader participating in a specific Municipal Council.

8. RELATIONSHIP BETWEEN MUNICIPAL COUNCIL AND TRADITIONAL LEADERS

- 8.1 The municipality and traditional leadership participating in Municipal Councils must give effect to the principles of co-operative governance.
- 8.2 The Municipal Council and traditional leaders must co-operate with one another in good faith and on the basis of mutual trust and respect by
- (a) establishing a sound working relationship;
 - (b) assisting and supporting one another in the execution of their roles and responsibilities; and
 - (c) developing communication channels for information sharing, coordinating and consultation.

9. ACCOUNTABILITY OF TRADITIONAL LEADERS PARTICIPATING IN MUNICIPALITIES

- 9.1 Traditional leaders participating in Municipal Councils must conduct themselves in terms of the provisions of the Code of Conduct as contemplated in Schedule 1 of the Systems Act.

- 9.2 Traditional leaders participating in Municipal Councils must table reports of their meetings at least quarterly to Traditional Councils and Local Houses concerned.
- 9.3 The above meetings must be held at the seat of the municipality or such other place as may be determined by the municipality.

10. CRITERIA AND PROCEDURE FOR IDENTIFICATION OF TRADITIONAL LEADERS

- 10.1 Schedule 6 to the Structures Act applies to the identification of traditional leaders for the purposes of section 81 of the Structures Act.
- 10.2 If it comes to the attention of the MEC for Local Governance and Traditional Affairs that one or more traditional councils traditionally observe a system of customary law in the area of municipality, the MEC must --
- (a) inform the Provincial House of Traditional Leaders to recommend the maximum number of traditional leaders that may be identified in terms of section 81 of the Structures Act to participate in the proceedings of the Council of that municipality;
 - (b) request the Provincial House of Traditional Leaders to recommend which traditional leaders of a particular traditional council can be identified for the purposes of section 81 of the Structures Act ;
 - (c) within 30 days after the request for recommendations in terms of paragraph (b) above has been made, may identify traditional leaders of that traditional council, or traditional councils; and
 - (d) submit the names of the identified traditional leaders to the municipal manager of that municipality.
- 10.3 The traditional leader to be identified must --
- (a) hold the supreme office of authority among leaders of that traditional council referred to in paragraph 10(2)(c); and
 - (b) ordinarily be resident within the area of the municipality concerned.

- 10.4 Traditional leaders within the boundaries of municipality must nominate traditional leaders who will participate in Municipal Councils as follows:
- (a) the traditional leader of the area of jurisdiction of the municipality concerned must provide the names of those traditional leaders recommended in accordance with the criteria set out in Schedule 6 to the Structures Act;
 - (b) recommended names of traditional leaders must be reached through consensus, but where consensus is not reached, voting by means of secret ballot must take place;
 - (c) traditional leaders identified for the purposes of section 81 of the Structures Act may not exceed twenty per cent (20%) of the total number of councilors in that Council, but if Council has less than ten (10) councilors, only one (1) traditional leader may so participate in terms of section 81(2)(b) of the Structures Act;
 - (d) the MEC must, by notice in the *Provincial Gazette*, publish the names of the identified traditional leaders; and
 - (e) each traditional leader identified for participation in a Municipal Council, is entitled to participate in such council for the period of the current Municipal Council and the MEC may identify other traditional leaders to participate in any elected Municipal Council.

11. MONITORING AND EVALUATION OF THE FRAMEWORK/ GUIDELINES

The Department must, on an ongoing basis, monitor and evaluate the participation of traditional leaders in a Municipal Council and may implement such recommendations as may be necessary to give effect to the provisions of the Structures Act and these Guidelines.

12. REVIEW OF THE FRAMEWORK/GUIDELINE

These Guidelines must regularly be reviewed to determine their effectiveness and appropriateness, as well as to be responsive to new challenges and circumstances as and when need arises.

13. SHORT TITLE AND IMPLEMENTATION DATE OF THE GUIDELINES

These Guidelines are called the Guidelines on the Participation of Traditional Leaders in Municipal Councils, 2019 and take effect from the date of publication in the *Provincial Gazette*.

ANNEXURE A

Name of Municipality	Number of Councilors	20% Number of traditional leaders to be identified for participation in municipal council	Number of traditional leaders who hold the supreme office of authority	Names of traditional leaders to be identified	Details of identified traditional leaders
Mangaung Metropolitan Municipality	100	20	1	1. Moemedi Kgosi Moutloatsi Setlogelo (Id no 640825 5824 087)	584 Van Rebeeck Thaba-Nchu 9780
Maluti a Phofung Local Municipality	69	13	11	1. Moemedi Mofumahadi Madichaba Mopeli (Id no 6409250773089)	547 Namahadi Village Witsiehoek 9870
				2. Morena Pinare Molefe (Id no 460401 5257 087)	No.19 Dinkoeng Village Witsiehoek 9870
				3. Morena Neo Mopeli (Id no 901225 6053 089)	252 Qoqolosing Village Witsiehoek 9870
				4. Morena Dira Sekonyela (Id no 560112 5571 083)	818 Motsheng Village Thibella District Witsiehoek 9870
				5. Moemedi Matele Clara Ramaili (Id no 4707290560081)	35022 Masanokeng Village Tsheseng Witsiehoek 9870
				6. Morena Retsilisitsoe Mopeli (Id no 830410 5836 082)	1510 Bolata Village Witsiehoek 9870

Name of Municipality	Number of Councilors	20% Number of traditional leaders to be identified for participation in municipal council	Number of traditional leaders who hold the supreme office of authority	Names of traditional leaders to be identified	Details of identified traditional leaders
				7. Morena Lefa Mopeli (Id no 900710 5346 080)	166 Letshalemaduke Village Mokodumela 9852
				8. Morena Paulos Molo (Id no 570320 5275 083)	186 Makholokoeng Village Harrismith 9852
				9. Morena Sebuli Mopeli (Id no 540519 5309 089)	318 Pabalong Village Witsiehoek 9870
				10. Morena Letsie Edgar Mopeli (Id no 8310225486088)	987 Maboela Village Witsiehoek 9870
				11. Morena Selshehetso Mohale (Id no 520614 5433 080)	261 Makeneng Village Witsiehoek 9870
Phumelela Local Municipality	15	3	1	1. Morena Nkgahle Tsolets (Id no 680507 5372 082)	No.3 De Jager Street Vrede 9870