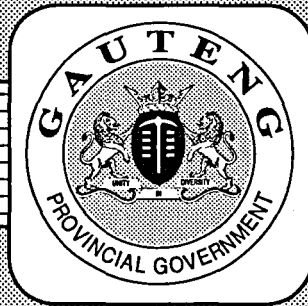


THE PROVINCE OF  
GAUTENG



DIE PROVINSIE  
GAUTENG

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## PREMIER'S NOTICE

No. 1468

5 March 1999

It is hereby notified that the Premier has assented to the following Act which is hereby published for general information—

No. 10 of 1998: Rationalisation of Local Government Affairs Act, 1998

# ACT

To provide for rationalisation of the legislative and administrative framework for the local sphere of government; and to provide for matters connected therewith.

*(English text signed by the Premier)  
(Assented to 2 March 1996)*

**B**E IT ENACTED by the Provincial Legislature of Gauteng, as follows:—

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**CHAPTER 1**

**DEFINITIONS, PURPOSE AND APPLICATION**

**Definitions**

1 In this Act, unless the context otherwise indicates —

“**action taken**”, includes issuing regulations, making by-laws, taking administrative 5  
or other measures, entering into contracts incurring obligations and instituting or  
defending any criminal or civil or other legal proceedings, for the purposes of section  
60(1) and (2) of this Act;

“**any other law**”, includes the common law;

“**by-law**”, means any law made by a municipal council and includes a code or 10  
procedure;

“**Chief Executive Officer**”, means the Chief Executive Officer appointed in terms  
of section 16;

“**committee**”, means a municipal committee of enquiry established under section 49;

“**Constitution**”, means the Constitution of the Republic of South Africa, 1996 (Act 15  
No. 108 of 1996);

“**designated officer**”, means the person designated in terms of section 22;

“**local government matter**”, for purposes of sections 49 and 50 does not include  
promoting, opposing or discussing the election of any person to any municipal,  
provincial or national body, organisation or corporation; 20

“**Local Government Ordinance**”, means the Local Government Ordinance, 1939  
(Ordinance 17 of 1939), as amended;

“**Local Government Transition Act**”, means the Local Government Transition Act,  
1993 (Act No 209 of 1993), as amended;

“**MEC**”, means the relevant member of the Executive Council responsible for local 25  
government matters in the Province of Gauteng;

“**powers, functions or duties**”, includes the notion of “powers and functions” as  
contemplated in the Constitution and “powers and duties” as contemplated in the  
Local Government Transition Act;

“**prescribed**”, means prescribed by regulation and “prescribe” has a corresponding 30  
meaning;

“**province**”, means the Province of Gauteng;

“**public place**”, means any road, street, thoroughfare, bridge, overhead bridge,  
subway, foot pavement, footpath, sidewalk, lane, square, open space, garden, park,  
path, bus or taxi rank, servitude or enclosed space vested in a municipality and 35  
includes any road, place or thoroughfare which is in the undisturbed use of the  
public or which the public have the right to use;

“**standard by-law**”, means a by-law made by the MEC in accordance with the  
provisions of sections 10 and 11; and

“**this Act**”, includes the section numbers, the schedules and any regulation or by-law 40  
issued or made in terms of this Act but does not include the headings.

**Purpose**

2 (1) The purpose of this Act is to rationalise the legislative and administrative  
framework within which the local sphere of government may conduct its affairs in  
relation to, amongst other things —

- (a) determining and standardising the status, powers, functions and duties of a municipal council;
  - (b) making and issuing of by-laws, standard by-laws and regulations;
  - (c) harmonising labour relations; and
  - (d) enabling municipalities to effectively conduct their affairs, more particularly with regard to the procurement of goods and services, the execution of works and the conducting of inspection, and the regulation of access to public places. 5
- (2) In respect of the matters referred to in sub-section (1) this Act seeks to facilitate the transformation of the local sphere of government by —
- (i) promoting and strengthening the capacity and integrity of the local sphere of government; 10
  - (ii) encouraging municipalities to maintain and improve adequate standards of governance and service delivery;
  - (iii) encouraging members of the public to contribute to the governance of municipalities; and 15
  - (iv) promoting a spirit of co-operation and shared responsibility within government.

#### Application of the Act

- 3 (1) Any person applying or interpreting this Act must —
- (a) give a construction of its provisions in a manner that — 20
    - (i) is consistent with the statements of purpose set out in section 2; and
    - (ii) takes account of the particular purpose, role and circumstances of the local sphere of government as contemplated in the Constitution and any other law.
- (2) The provisions of this Act must be considered — 25
- (a) in the light of any other law governing a municipal council; and
  - (b) in a manner that favours a reasonable interpretation of the relevant laws that avoids conflict between them over an interpretation that brings them into conflict.

## CHAPTER 2

30

### STATUS, POWERS, FUNCTIONS AND DUTIES OF MUNICIPALITIES

#### Status of municipalities

- 4 (1) Subject to any other law, every municipal council established in terms of the Local Government Transition Act, or declared to be established in terms of that Act, will — 35
- (a) continue to exist and retain its status as a municipal council; and
  - (b) be deemed to be a body corporate.
- (2) Subject to any other law, a municipal council, as a body corporate —
- (a) continues to exist despite any changes to its area of jurisdiction or composition of its governance structures; 40
  - (b) is capable of suing or being sued in its own name; and
  - (c) may purchase, hold, let or alienate property.

#### City status of municipalities

- 5 (1) A municipal council that has been declared to be a city in terms of the Local Government Ordinance or any other law, will retain its status as a city. 45
- (2) If a metropolitan council has within its area of jurisdiction a metropolitan local council that is declared or deemed to be a city as contemplated in sub-section (1), the metropolitan council acquires —
- (a) the status of a city; and
  - (b) all the powers, obligations, privileges and benefits conferred on a city in terms of any other law. 50

(3) A municipal council that has been declared to be a city as contemplated in sub-section (1) or has acquired city status as contemplated in sub-section (2), may reflect this status —

- (a) in its name; and
- (b) on any of its documents.

5

**The powers, functions and duties of municipal councils**

6 (1) In addition to the powers, functions or duties of a municipal council referred to in the Constitution, the Local Government Transition Act or any other law, a municipal council has the powers, functions or duties that are conferred, imposed, assigned or delegated to it in terms of this Act.

10

(2) A municipal council may take any step necessary for, or expedient to achieving the purpose of this Act.

(3) A municipal council may make and administer by-laws for the effective —

- (a) performance of its powers, functions or duties; and
- (b) administration of the matters in respect of which it has the right to administer.

15

**CHAPTER 3**

**BY-LAWS, STANDARD BY-LAWS AND REGULATIONS**

**(a) By-laws**

**The procedure for making by-laws**

7 (1) To make a by-law, a municipal council must pass a resolution declaring its intention to this effect. 20

(2) After the resolution has been passed, the municipal council must —

- (a) announce its intention to make by-laws by notice in the Provincial Gazette, and where these exist, in one or more newspapers circulating in the area concerned; 25

(b) specify the following in the notice:

- (i) that comment is being sought on a draft by-law;
- (ii) in summarised form, what the draft by-law deals with;
- (iii) the person to whom or place where enquiries relating to the draft by-law may be directed; 30
- (iv) subject to sub-sections (7) and (8), the place where, time when and the circumstances and manner in which a copy of the draft by-law may be obtained or displayed for inspection;
- (v) the period for comment on the draft by-law which must be no less than one month from the date of the notice; and 35
- (vi) the person with whom or place where comments on the draft by-law may be lodged;

(c) at any time before making the by-law, consultations with any relevant interest groups may be held in any form, including the holding of an enquiry; and

(d) the comments received and the content of consultations must be considered before making the by-law. 40

(3) If a municipal council has not made a by-law within one year of the announcement referred to in sub-section (1)(b), that by-law cannot be made unless the procedure provided for in sub-section (1) is repeated.

(4) The provisions of sub-sections (1)(b) and (2) do not apply in respect of — 45

- (a) any by-law which the public interest requires to be made without delay; and
- (b) an amendment to correct a textual error.

(5) The provisions of sub-sections (1) to (3) apply in respect of amending or repealing any by-law, with such changes as may be required by context. 50

(6) A by-law comes into operation on the date of its publication in the Provincial Gazette or such other date specified in the Provincial Gazette.

(7) A municipal council may determine a fee for obtaining a copy of the draft by-law.

(8) The place where the draft by-law is displayed must enable all those affected by the by-law to be speedily and conveniently informed of its contents. 55

(9) Every municipal council must develop and implement policies and programmes to assist members of the public to comment on the draft by-law.

#### Periodic review of by-laws

- 8 (1) A municipal council must conduct and complete a review of its by-laws —
- (a) that are in operation prior to or upon this Act coming into effect by not later than a date prescribed by the MEC; 5
  - (b) that come into operation after the this Act has taken effect, at intervals of no less than ten (10) years after the coming into operation of that by-law.
- (2) If a municipal council fails to conduct and complete a review within the time periods specified in sub-section (1), the MEC may request the municipal council to submit representations to outline the reasons for its failure. 10
- (3) A municipal council must comply with this request and submit the representations in writing to the MEC within one month of receipt of the request.
- (4) If upon considering these representations, the MEC is not satisfied with the reasons for the failure, the MEC may, by written notice, recommend to the municipal council to conduct the review within a reasonable time. 15
- (5) The notice referred to in sub-section (4) must contain the MEC's reasons for the decision.
- (6) For purposes of this section "conduct and complete a review" includes —
- (a) the evaluation or consideration of a by-law; and, if appropriate, 20
  - (b) the making, amendment or repeal of a by-law.

#### Access to and inspection of by-laws

- 9 (1) In addition to what may be provided for in any regulation issued in terms of section 13(1), a municipal council must determine the circumstances and the manner in which the public may have access to, inspect or obtain a copy of any by-law. 25
- (2) The determination referred to in sub-section (1) may not specify a fee for merely having sight of or inspecting a by-law.

#### (b) Standard by-laws

#### The MEC's power to make standard by-laws

- 10 For purposes of assisting municipalities, the MEC may make a standard by-law on any matter contemplated in section 6. 30

#### Procedure for making standard by-laws

- 11 The provisions of section 15 apply to the making of standard by-laws, with the changes as may be required by context.

#### Effect of a standard by-law 35

- 12 (1) A standard by-law or its amendment or repeal, is only binding on a municipal council if it makes a by-law to this effect.
- (2) A reference in a by-law to a standard by-law is sufficient to incorporate the contents of the standard by-law in the by-law.

#### (c) Regulations 40

#### The MEC's power to issue regulations

- 13 (1) Within one year of this Act coming into effect, the MEC must issue regulations on the circumstances and the manner in which the public may have access to, inspect or obtain a copy of any regulation, by-law, standard by-law, code or procedure.
- (2) The MEC may issue regulations on any matter necessary or expedient to achieving the purpose of this Act. 45



**Content of regulations**

- 14 (1) A regulation may —
- (a) confer a power or place a duty on a person, body or public authority;
  - (b) contain conditions including restrictions or prohibitions and may provide for exemptions; and
  - (c) be made in respect of —
    - (i) different parts of Gauteng; or
    - (ii) different categories of persons or bodies.
- (2) At any time and with respect to any person, body, organisation or corporation, and subject to the provisions of the regulation concerned, the MEC may by notice either in the Provincial Gazette, and where these exist, in one or more newspapers circulating in the area concerned, or delivered by post or hand —
- (a) impose, vary or withdraw any conditions contemplated in the regulation; or
  - (b) grant, vary or withdraw any exemption contemplated in the regulation.
- (3) The MEC may not vary or withdraw a condition or exemption imposed or granted in terms of sub-section (2) unless the person or body to whom it applies has been given an opportunity to make representations on the issue.
- (4) Any restriction or prohibition contained in the regulations must —
- (a) be proportionate to the objects of that regulation; and
  - (b) limit the conduct of persons and bodies as little as is reasonably possible.
- (5) If a failure to comply with a restriction or prohibition in terms of any regulation is an offence by which a person may be subject to criminal liability, that regulation must provide that, to the extent practicable, before being subject to criminal liability, the affected person must be given notice of the offence and an opportunity to comply with the regulations.

**Procedure for issuing regulations**

- 15 (1) To issue any regulation in terms of this Act, the MEC must —
- (a) announce its intention to issue the regulation by notice in the Provincial Gazette, and where these exist, in one or more newspapers circulating in the area concerned;
  - (b) specify the following in the notice:
    - (i) that comment is being sought on draft regulations;
    - (ii) in summarised form, what the draft deals with;
    - (iii) the person to whom or place where enquiries relating to the draft regulations may be directed;
    - (iv) subject to sub-sections (6) and (7), the place where, time when and the circumstances and manner in which a copy of the draft regulations may be obtained or displayed for inspection;
    - (v) the period for comment on the draft regulations which must be no less than one month from the date of the notice; and
    - (vi) the person to whom or place where comments on the draft regulations may be lodged;
  - (c) at any time before issuing the regulations, hold consultations with relevant interest groups in any form, including the holding of an enquiry;
  - (d) consider the comments received and the content of consultations; and
  - (e) obtain the concurrence of the committee of the provincial legislature responsible for local government matters before issuing the regulation.
- (2) If the MEC has not made regulations within one year of the announcement referred to in sub-section (1)(a), those regulations cannot be made unless the procedure provided for in sub-section (2) is repeated.
- (3) The provisions of sub-section (1) do not apply in respect of —
- (a) regulations which the public interest requires to be made without delay; and
  - (b) an amendment to correct a textual error.
- (4) The provisions of sub-sections (1) and (2) apply in respect of amending or repealing any regulations, with such changes as may be required by context.
- (5) Regulations will come into operation on the date of its publication in the Provincial Gazette or such other date specified in the Provincial Gazette.
- (6) A municipal council may determine a fee for obtaining a copy of the draft by-law.
- (7) The place where draft regulations are displayed must enable all those affected by the regulations to be speedily and conveniently informed of its contents.

(8) The MEC must take steps to ensure that policies and programmes are developed and implemented to assist members of the public to comment on draft regulations.

#### CHAPTER 4

#### MATTERS RELATING TO PERSONNEL, COUNCILLORS AND MAYORS

##### Appointment of chief executive officer and other personnel 5

16 Every municipal council must with due regard to transparency and public accountability —

- (a) appoint a chief executive officer and such personnel as are necessary for the proper carrying out of its powers, functions or duties; and
- (b) appoint the chief executive officer and personnel on such terms and conditions as may be negotiated. 10

##### Powers and duties of chief executive officer

17 (1) In addition to what is provided for in this Act or any other law, the powers and duties of the chief executive officer are —

- (a) to act as head of the municipal council's personnel and in this capacity to exercise authority over them — 15
  - (i) so far as this may be necessary for the efficient management and execution of the municipal council's powers, duties or functions; or
  - (ii) to the extent determined by a municipal council;
- (b) to supervise the efficient and effective implementation of the municipal council's programmes and policies and the performance of its powers, functions or duties; 20
- (c) to ensure that the resources of the municipal council are most effectively used to achieve the objectives of the municipal council;
- (d) to ensure that effective and fair personnel related policies are developed and implemented in all departments; and 25
- (e) to encourage and maintain good relations both in the municipal council and with the community it serves.

- (2) The chief executive officer will have such other powers and duties — 30
  - (a) as the municipal council considers appropriate; and
  - (b) as may be provided for in any other law.

##### Rationalisation of terms and conditions of employment

18 In the event of an amalgamation or merger of municipalities done in terms of any law —

- (a) the employees of the previously constituted municipalities are deemed to be employees of the amalgamated or merged municipal council; 35
- (b) the terms and conditions of employment of the employees affected by the amalgamation or merger must at all times be no less favourable than those that applied to them prior to the amalgamation or merger; and
- (c) as soon as it is practicable, the amalgamated or merged municipal council must design and implement measures to equalise any differences in the terms and conditions of employment that may exist between the employees from the previously constituted municipalities having regard to their respective post levels. 40

##### Medical aid benefits 45

19 (1) Every municipal council —

- (a) must provide access to a scheme or schemes which confer medical aid benefits to all its employees including its retired employees; and
- (b) may provide access to a scheme or schemes which confer medical aid benefits to all its councillors. 50

(2) The scheme or schemes contemplated in sub-section (1) need not be designed in a manner that confer medical aid benefits exclusively on the category of persons contemplated in sub-section (1)(a) and (b) respectively.

- (3) The scheme or schemes contemplated in sub-section (1) and the rules, obligations and benefits applicable to it, including rules pertaining to qualification for benefits of the contributions to be made by a municipal council or the beneficiaries of the scheme or schemes, must be determined —
- (a) where applicable, in accordance with the procedures specified in any existing collective bargaining procedural agreement; and
  - (b) after consultation with all affected beneficiaries.
- (4) Any scheme or schemes established in terms of the Local Government Ordinance, or any other applicable law or collective agreement which confer medical aid benefits to the employees or councillors of a municipal council, will continue to exist, and the rules, obligations and benefits applicable to the scheme or schemes continue to apply unless replaced or amended —
- (a) in terms of this Act or any other law;
  - (b) in terms of its own rules; and
  - (c) in accordance with the procedure contemplated in sub-section (3).
- (4) A replacement or amendment contemplated in sub-section (4) must not place any employee or councillor in a position that is less favourable than that position which existed prior to the replacement or amendment.

**Retirement benefits**

- 20 (1) Every municipal council —
- (a) must provide access to a scheme or schemes which confer retirement benefits to all its employees; and
  - (b) must provide access to a scheme or schemes which confer retirement benefits to all its councillors.
- (2) The scheme or schemes contemplated in sub-section (1) need not be designed in a manner that confer retirement benefits exclusively to the category of persons contemplated in sub-section (1)(a) and (b) respectively.
- (3) The scheme or schemes contemplated in sub-section (1) and the rules, obligations and benefits applicable to it, including rules pertaining to qualifications for benefits of the contributions to be made by a municipal council or the beneficiaries to the scheme or schemes must be determined —
- (a) if applicable, in accordance with the procedures specified in any existing collective bargaining procedural agreement, and
  - (b) after consultation with all other potential or affected beneficiaries.
- (4) Any scheme or schemes established in terms of the Local Government Ordinance, or any other applicable law or collective agreement which confer retirement benefits on the employees or councillors of a municipal council, will continue to exist, and the rules, obligations and benefits of the scheme or schemes continue to apply unless replaced or amended —
- (a) in terms of this Act or any other law;
  - (b) in terms of its own rules; and
  - (c) in accordance with the procedure contemplated in sub-section (3).
- (5) Any replacement or amendment contemplated in sub-section (4) must not place any employee or councillor in a position that is less favourable than that position which existed prior to the replacement or amendment.
- (6) Where funds have been established in terms of section 79ter and 79quat of the Local Government Ordinance, the municipal council concerned must design and implement measures to equalise the contributions in respect of employees belonging to these funds having regard to their respective post levels.
- (7) The municipal council must undertake the measures contemplated in sub-section (6) within two (2) years of the commencement of this Act.

**Miscellaneous provisions relating to mayors**

- 21 (1) When appointing a mayor —
- (a) a municipal council may fix the term of office of the mayor so as to coincide with the term of office of the municipal council; and
  - (b) to fill a vacancy that arises during a term of office of the municipal council, the appointment may be limited to the remaining portion of that term of office.

- (2) For purposes of removing a mayor from office, a municipal council may determine that this may only be done by a resolution decided by at least a two-thirds majority.
- (3) A municipal council may delegate to its mayor, the responsibility for implementing or monitoring the implementation of any aspect of a relevant national or provincial programme or campaign and this responsibility must be exercised within the parameters of the municipal council's policies and procedures. 5
- (4) A mayor may serve on an executive committee or any other committee of a municipal council either —
- (a) in the ordinary capacity as a councillor; or 10
- (b) by virtue of holding the office of mayor.
- (5) A municipal council may determine that a mayor has no voting rights when serving on the executive committee or any other committee in the circumstance contemplated in sub-section (4)(b).
- (6) If a municipal council considers it necessary to appoint a deputy mayor, the council may apply the provisions of sub-sections (1) to (5) to deputy mayors, with the changes required by context. 15

## CHAPTER 5

### DESIGNATED OFFICERS, EXECUTION OF WORK, INSPECTIONS, COMPLIANCE PROCEDURES AND RELATED OFFENCES 20

#### Authorisation of designated officers

- 22 The chief executive officer may authorise any person in the employ of a municipal council to be a designated officer.

#### Functions of designated officers

- 23 (1) Designated officers may execute work, conduct an inspection and monitor and enforce compliance with this Act and any other law which authorises a municipality to designate a person to execute work, conduct an inspection or monitor and enforce compliance. 25
- (2) Subject to any other law, a designated officer must carry out the functions contemplated in this section in accordance with the procedure outlined in sections 25 and 26. 30

#### Powers of designated officers

- 24 (1) The powers of designated officers provided for in this Chapter are —
- (a) in addition to any power conferred on a designated officer in terms of any other law; and 35
- (b) subject to these laws.
- (2) A designated officer who executes work or conducts an inspection may —
- (a) execute work on or inspect land or premises;
- (b) question a person present on any land or premises in respect of any matter which may be relevant to the work or inspection; 40
- (c) question a person whom the designated officer believes may have information relevant to the work or inspection;
- (d) inspect any document that a person is required to maintain in terms of any law or that may be relevant to any work or inspection;
- (e) copy any document referred to in sub-section (d) or if necessary, remove the document in order to copy it; 45
- (f) take samples of any substance that is relevant to the work or inspection;
- (g) monitor and take readings or make measurements;
- (h) take photos or make audio-visual recordings of anything or any person, process, action or condition on or regarding any land or premises; and 50
- (i) do what is necessary for the execution of work or the conducting of an inspection that a municipality is required to undertake in terms of any other law.
- (3) A designated officer who removes anything other than a substance contemplated in sub-section (2)(f) from land or premises being worked upon or inspected must — 55

- (a) issue a receipt for it to the owner of or person in control of the premises; and
- (b) return it as soon as is practicable after achieving the purpose for which it was removed.

**Procedure to execute work or conduct an inspection: entry with a written authorisation**

5

25 (1) A designated officer may enter any land or premises if a magistrate or a justice has issued a written authorisation to enter and execute work or inspect the land or premises, and the written authorisation is still valid.

(2) A magistrate or a justice may issue a written authorisation to enter and execute work or inspect any land or premises, if, from information on oath, there are reasonable grounds to believe either —

- (a) that, in the interest of the public, it is necessary to execute work or obtain information that cannot be obtained without entering that land or those premises; or
- (b) that there is non compliance with the terms of this Act or any other law contemplated in section 23 in respect of the land or those premises.

(3) A written authorisation in terms of sub-section (2) may be issued at any time and must specifically —

- (a) identify the land or premises that may be entered and worked on or inspected; and
- (b) authorise the designated officer to enter and execute work or inspect the land or premises and to do anything listed in section 24(2).

(4) A written authorisation in terms of sub-section (2) is valid until one of the following events occurs —

- (a) it is carried out;
- (b) it is cancelled by the person who issued it or, in that person's absence, by a person with similar authority;
- (c) the purpose for which it was issued has lapsed; or
- (d) three months have passed since the issuing date.

(5) A written authorisation in terms of sub-section (2) may only be carried out between 07h00 and 19h00, unless the magistrate or a justice who issues it states in writing that it may be carried out at a different time reasonable in the circumstances.

(6) Before commencing any work or inspection, designated officers who carry out a written authorisation must either —

- (a) if the owner of or a person apparently in control of the land or premises is present —
  - (i) identify themselves and explain their authority to that person or furnish proof of their authorisation; and
  - (ii) hand a copy of the written authorisation to that person;
- (b) if the owner or person apparently in control of the land or premises is absent or refuses to accept a copy, attach a copy of the written authorisation to the land or premises in a prominent and visible place.

**Procedure to execute work or conduct an inspection: entry without a written authorisation**

26 (1) A designated officer who does not have a written authorisation may enter and execute work or inspect —

- (a) any land or premises, with the consent of the owner or person apparently in control of the land or those premises; or
- (b) any land or premises, except residential land or premises, on a routine basis —
  - (i) no more frequently than six (6) times during a twelve (12) month period; or
  - (ii) more frequently if permitted by any other law for the purposes of the work or inspection.

(2) In addition to the entry permitted in terms of sub-section (1), a designated officer may enter any land or premises without a written authorisation —

- (a) if authorised to do so by any other law; or
- (b) in respect of which there is an outstanding compliance notice, issued in terms of section 32, for the purpose of determining whether that notice has been complied with.

(3) Before commencing work or inspecting any land or premises in terms of this section, designated officers must identify themselves and explain their authority or furnish proof of their authorisation to the person apparently in control of the land or premises or the person who gave them permission to enter.

(4) An entry and execution of work or inspection without a written authorisation must be carried out at a reasonable time in the circumstances. 5

#### Observing fundamental rights

27 Designated officers who enter and execute work or inspect any land or premises in terms of this Chapter must conduct themselves with strict regard for decency and orderliness and with regard for each person's human rights including the right to dignity, freedom, security and privacy. 10

#### Using force to enter

28 (1) A designated officer carrying out a written authorisation in terms of section 25 may overcome any resistance to entry, execution of work or inspection by using as much force as is reasonably required, including breaking a lock, door or window of the land or premises to be entered. 15

(2) Before resorting to force, the person carrying out the written authorisation must audibly demand admission and must announce his or her purpose, unless he or she reasonably believes that doing so may induce someone to destroy, dispose of, or tamper with, an article or document that is the object of the work or inspection. 20

(3) The funds of the municipal council must be used to compensate anyone who suffers damage because of forced entry during the execution of any work or an inspection when no one responsible for the land or premises was present.

(4) Force may not be used to effect an entry to execute work or conduct inspection in terms of section 26, unless an emergency arises or it is specifically authorised by any other law. 25

#### Designated officer may be accompanied

29 During the execution of any work or an inspection, a designated officer may be accompanied by either a member of the South African Police Service, or any other person reasonably required to assist in executing the work or conducting the inspection, or all of them. 30

#### Duty to produce documents

30 Any person who holds any document relevant to the execution of any work on inspection, must produce it at the request of the designated officer.

#### Duty to answer questions and assist designated officers 35

31 (1) Any person who is questioned by a designated officer in terms of this Chapter must answer truthfully and to the best of their ability.

(2) An answer or explanation given to a designated officer may not be used or admitted in criminal proceedings against the person who provides it, except in proceedings against that person on a charge relating to — 40

(a) the administration or taking of an oath;

(b) the making of false statements; or

(c) the failure to answer a lawful question fully and satisfactorily.

(3) An owner or occupier of any land or premises must provide any facility and assistance that is reasonably required by a designated officer to perform their functions effectively. 45

#### Compliance notices

32 (1) A designated officer who becomes aware that any provision of this Act has not been complied with, may issue a compliance notice to the owner or person apparently in control of the relevant land or premises. 50

(2) A designated officer who is satisfied that the owner or person apparently in control

of any land or premises has satisfied the terms of a compliance notice may issue a compliance certificate to that effect.

(3) A compliance notice remains in force until a designated officer has issued a compliance certificate in respect of that notice.

- (4) A compliance notice must set out — 5
- (a) the provision that has not been complied with;
  - (b) details of the nature and extent of non-compliance;
  - (c) any steps that are required to be taken and the period within which those steps must be taken; and
  - (d) any penalty that may be imposed in terms of section 51 in the event of 10 non-compliance with these steps.

**Offences**

- 33 (1) It is an offence for any person to —
- (a) refuse to grant a designated officer access to land or premises to which that designated officer is duly authorised to have access; 15
  - (b) obstruct, interfere or hinder a designated officer who is carrying out a duty under this Act;
  - (c) fail or refuse to provide a designated officer with a document or information that the person is required to provide under this Act;
  - (d) give false or misleading information to a designated officer; 20
  - (e) unlawfully prevent the owner of any land or premises, or a person working for that owner, from entering the land or premises in order to comply with a requirement of this Act;
  - (f) pretend to be a designated officer;
  - (g) falsely alter an authorisation to a designated officer or a written authorisation, compliance notice or compliance certificate issued in terms of this Chapter; 25
  - (h) falsify an authorisation to a designated officer or a written authorisation, compliance notice or compliance certificate contemplated in this Chapter;
  - (i) fail to comply with a compliance notice issued in terms of this Chapter;
  - (j) enter any land or premises without a written authorisation in circumstances 30 requiring a warrant;
  - (k) act contrary to a written authorisation issued in terms of this Chapter;
  - (l) without authority —
    - (i) enter or inspect land or premises;
    - (ii) carry out any act mentioned in section 24(1) or (2); or 35
  - (m) disclose any information relating to the financial or business affairs of any person, which was acquired in the performance of any function or exercise of any power in terms of this Act, except —
    - (i) to a person who requires that information in order to perform a function or exercise a power in terms of this Act; 40
    - (ii) if the disclosure is ordered by a court of law; or
    - (iii) if the disclosure is in compliance with the provisions of any law.

**Application of this Chapter**

34 (1) The provisions of this Chapter apply to all persons or bodies, including the State. 45

(2) A provision of this Chapter conferring a power or imposing a duty applies in respect of —

- (a) all land or premises;
- (b) any person or thing on all land or in any premises;
- (c) the owner or occupier of all land or premises; 50
- (d) any matter relating to land, premises, a person or thing.

(3) For the purposes of this Chapter, the head of a national, provincial or municipal department is deemed to be —

- (a) the owner and occupier of all land or premises that the department occupies or uses to the exclusion of any other person; and 55
- (b) the employer of the persons in the service of that department if, as an employer, the department —
  - (i) bears all duties imposed by this Act; and
  - (ii) exercises all powers conferred by this Act.

## CHAPTER 6

## PROCUREMENT OF GOODS AND SERVICES BY MUNICIPALITIES

## Procedure for procuring goods or services

- 35 (1) The MEC must prescribe the tender value of the services or goods in respect of which the procurement procedure as contemplated in section 36 applies. 5
- (2) Despite the provisions of sub-section (1), the procedure provided for in section 36 may be dispensed with in respect of prescribed goods or services —
- (a) in the case where the required goods or services have to be procured —
- (i) as a matter of emergency;
- (ii) as a matter of necessity; or 10
- (iii) from a sole supplier; and
- (b) if the procedure as contemplated in section 37 has been complied with.
- (3) In respect of the procurement of all other goods or services, the procedures contemplated in the financial regulations applicable to a municipality must be complied with. 15

## Procedure for procuring prescribed goods or services

- 36 (1) When intending to procure prescribed goods or services, a municipal council must comply with the following procedure:
- (a) The decision to procure the prescribed goods or services must be contained in a notice that is — 20
- (i) published at least in an appropriate newspaper circulating within the boundaries of the municipality; and
- (ii) displayed at least at a prominent place that is designated for that purpose by the municipal council.
- (b) The notice must state — 25
- (i) in summarised form the requirements and specifications of the prescribed goods or services;
- (ii) the place, and time when and the circumstances or manner in which the document containing the requirements or the specifications of the prescribed goods or services will be displayed for inspection or acquisition; 30
- (iii) the period within which tender applications could be made for supplying the prescribed goods or services, including the cut-off time after which no further tender application will be considered;
- (iv) the procedure for submitting a tender application including — 35
- (aa) the documents to be completed and additional information, documents, samples, materials or monetary deposits that must accompany the application; and
- (bb) the place where the tender application must be lodged;
- (v) other information that may be relevant for purposes of considering the tender application; and 40
- (vi) the place where all tender applications received will be registered as contemplated in sub-section (4).
- (2) Any person, body, organisation or corporation submitting a tender application must — 45
- (a) properly complete the appropriate tender application form; and
- (b) provide all information documents, samples, materials or monetary deposit relevant to the tender application.
- (3) A failure to materially comply with the provisions of sub-section (2) or a misrepresentation in the application may disqualify the application. 50
- (4) At the cut-off time contemplated in sub-section (b)(iii), the municipal council must enter the name and contact details of all tender applicants and their tender value in a register created for this purpose by the municipal council.
- (5) In respect of the register contemplated in sub-section (4), any member of the public may — 55
- (a) be present to witness the registration process; and
- (b) inspect the register at place, time and in the circumstances and manner that a municipal council deems reasonable in the circumstances.



- (6) When considering which tender to accept, a municipal council must give due consideration to, amongst other things —
- (a) the factors specified in any other law;
  - (b) policy made by a competent organ of state;
  - (c) only those tender applicants whose names have been entered in the register referred to in sub-section (4) and whose applications have not been invalidated; 5
  - (d) the promotion of small and medium sized enterprises;
  - (e) the affirmation of those preferred categories of persons, bodies, organisations or corporations as may be determined by the council; 10
  - (f) employment generation or the transfer of skills;
  - (g) effective and efficient delivery of municipal services;
  - (h) the capacity and ability of tender applicants to supply the goods or services; and
  - (i) the cost-effectiveness of the application. In this regard the municipal council is not obliged to award a tender to an applicant submitting the lowest tender value. 15

(7) The decision whether to accept, reject or disqualify a tender application must be taken by the municipal council. However, the municipal council may assign or delegate this function in respect of certain prescribed goods or services to the committee contemplated in section 42. 20

(8) The decision of the municipal council or the committee contemplated in section 42, is final and binding.

(9) The municipal council or the committee contemplated in section 42 must convey its decision in writing to the tender applicant and provide reasons for its decision to any tender applicant if — 25

- (a) (i) its application is deemed to be disqualified; or
- (ii) its application is rejected; and
- (b) the applicant makes a request for these reasons in writing.

**Expedited procedure for procuring prescribed goods or services 30**

37 (1) A municipal council may decide to dispense with the procedure specified in section 36 and appoint the person, body, organisation or corporation to supply the prescribed goods or services and convey its decision in writing to the appointee, if —

- (a) subject to sub-section (3) it is satisfied that the circumstances as contemplated in section 35(2)(a) prevail; and 35
- (b) it takes a resolution to this effect.

(2) If the chief executive officer is satisfied that for reasons of an emergency, a prescribed good or service has to be procured prior to the municipal council taking the relevant resolution, the chief executive officer with the concurrence of the mayor may procure the goods or service and report this fact to the municipal council at its next meeting. 40

(3) Within one month of the resolution contemplated in sub-section (1) or the action taken in terms of sub-section (2), the matters specified in sub-section (4) must be —

- (a) published by the municipal council at least in an appropriate newspaper circulating within the boundaries of the municipality; and 45
- (b) displayed at a prominent place that is designed for that purpose by a municipal council.

(4) The matters to be published or displayed are —

- (a) the reasons for dispensing with the procedure specified in section 36;
- (b) a summary of the requirements of the prescribed goods or services; 50
- (c) the place and time when and the circumstances or manner in which the document containing the requirements or specifications of the prescribed goods or service will be displayed for inspection or acquisition; and
- (d) the details of the person, body, organisation or corporation supplying the goods or services. 55

(5) The functions of a municipal council in terms of this section may not be assigned nor delegated.

**Extending or varying a tender agreement**

38 (1) Subject to sub-section (2), a municipal council on its own initiative or upon

- receipt of an application from the person, body, organisation or corporation supplying goods or services to the municipal council in terms of this Chapter, may resolve to extend or vary a tender agreement if —
- (a) the circumstances as contemplated in section 35(2)(a) prevail; or
  - (b) with due regard to administrative efficiency and effectiveness, the council deems it appropriate. 5
- (2) A municipal council may not extend or vary a tender agreement —
- (a) more than once;
  - (b) for a period exceeding the duration of the original agreement; or
  - (c) for an amount exceeding twenty (20) percent of the original tender value. 10
- (3) Within one month of the resolution referred to in sub-section (1), the matters specified in sub-section (4) must be —
- (a) published by the municipal council at least in an appropriate newspaper circulating within the boundaries of the municipality; and
  - (b) displayed at a prominent place that is designed for that purpose by a municipal council. 15
- (4) The matters to be published or displayed are —
- (a) the reasons for dispensing with the procedure specified in section 36;
  - (b) a summary of the requirements of the goods or services; and
  - (c) the details of the person, body, organisation or corporation supplying the goods or services. 20
- (5) The functions of a municipal council in terms of this section may not be assigned nor delegated.

#### **Invalid and irregular tender applications and breaches of tender agreements**

- 39 (1) For the purposes of this section — 25
- (a) the words "tender application" includes an application to extend or vary a tender; and
  - (b) the word "supplier" means the person, body, organisation or corporation supplying goods or services to the municipal council in terms of this Chapter.
- (2) If a municipal council is satisfied that a tender application has been accepted, varied or extended in the circumstances specified in sub-section (3)(a) and (b) or that a tender agreement has been breached in the circumstances specified in sub-section (3)(c) — 30
- (a) it must send the supplier a written notice of the decision and the reasons for that decision; and 35
  - (b) in that notice, it must inform the supplier that it has fourteen (14) days from the date of the notice to submit representations on why the municipal council should not take the steps specified in sub-section (5).
- (3) For purposes of sub-section (2), the circumstances are — 40
- (a) where a supplier —
    - (i) provided false information in any tender application;
    - (ii) exerted undue influence on any person involved in considering a tender application; or
    - (iii) provided a financial or other reward, to any person involved in considering a tender application in exchange for securing, varying or extending the tender; 45
  - (b) where a person involved in the consideration of a tender application has a material interest in the applicant body, organisation or corporation or the outcome of the tender application and this interest had not been disclosed prior to the consideration of the tender application; or 50
  - (c) where the supplier fails or is unable to satisfactorily comply with the requirements or specifications of the goods or services to be supplied.
- (4) If the tender applicant or supplier has received the notice in terms of sub-section (2) within the fourteen (14) day period and does not submit the representations or submits the representations within that time and the municipal council considers the representations to be unsatisfactory, the municipal council must take any or a combination of the steps specified in sub-section (5), and in writing notify the supplier of the reasons for the decision. 55
- (5) For purposes of sub-sections (2) and (4), the steps that must be taken are — 60
- (a) cancelling the tender agreement;

- (b) recovering any loss incurred or damage suffered by a municipality for having to cancel the tender agreement; or
- (c) barring the supplier from being considered for any tender for a period to be determined by the municipal council.

(6) A supplier may appeal against the decision of the municipal council to take the steps contemplated in sub-section (5) in accordance with the procedure provided for in section 40. 5

**Appeals in respect of invalid and irregular tenders and breaches of tender agreements**

40 (1) Any supplier of goods or services to a municipal council who has received a notice in terms of section 39(4), may appeal against the decision taken in terms of that section, by submitting within fourteen (14) days of the date of the notice, a notice of appeal setting out the grounds of the appeal to the procurement Appeals tribunal. The notice must also include copies of the following items —

- (a) the tender application and accompanying documentation; 15
- (b) the municipal council's notice issued in terms of section 39(2);
- (c) details of its response to the municipal council's notice; and
- (d) the municipal council's notice in terms of section 39(4) and reasons for the decision that is the subject matter of the appeal.

(2) Subject to sections 41(1) and (2), the municipal council must determine the procedures for noting, conducting and considering appeals and must inform the parties to the appeal of these procedures prior to the commencement of the appeal. 20

(3) The procurement appeals tribunal must consider the appeal in the manner determined by the municipal council and send a written notice of the decision to the supplier that instituted the appeal proceedings and the municipal council. If the appeal is not upheld, the notice must include the reasons for the decision. 25

(4) The procurement appeals tribunal may make an order for costs if a party, or person who represented that party in the appeal —

- (a) acted in a frivolous, vexatious or unreasonable manner by proceeding with or opposing the appeal or in conducting the appeal; or 30
- (b) without good cause, fails to attend or remain in attendance during the appeal.

(5) The decision of the procurement appeals tribunal is final and binding on all parties to the appeal.

(6) In any appeal proceeding conducted in terms of this Chapter, the following documents constitute the terms of a tender agreement — 35

- (a) the document containing the requirements or the specifications of the prescribed goods or services as referred to in sections 36(1)(b)(ii) and 37(3)(c), and if applicable, the terms and conditions contained in a tender application form; and
- (b) the written notification as contemplated in sections 36(7) and 37(1)(b) 40 confirming the acceptance of the application or the appointment.

**Procurement appeals tribunal and panel of arbitrators**

41 (1) A municipal council must establish a procurement Appeals tribunal which must be composed of at least two members from the panel of arbitrators.

(2) The members of the panel referred to in sub-section (1), may appoint any number of experts to the procurement Appeals tribunal either — 45

- (i) on their own initiative; or
- (ii) upon consideration of a written application received from either party to the appeal for the appointment of an expert.

(3) A municipal council must maintain a panel of arbitrators consisting of at least six (6) persons. These persons may not be councillors or employees of the municipal council. 50

(4) The following procedure applies whenever a municipal council is required to appoint a person to the panel of arbitrators:

- (a) The municipal council must publish a notice calling for nominees and stating the criteria for nominations, at least in an appropriate newspaper circulating within the boundaries of the municipality. 55
- (b) The municipal council must cause the nominations submitted in response to the notice to be considered and compile a short-list of nominees.

- (c) The municipal council must cause the nominees on the short-list to be interviewed and must thereafter make the necessary appointments.
- (5) The terms and conditions of appointment of members of the panel of arbitrators and expert must be determined by the municipal council.

#### Establishment of a committee responsible for procurement

5

42 (1) A municipal council may establish a committee responsible for procurement or confer on any of its committees this responsibility.

(2) In addition to its function specified in this Chapter, this committee may —

- (a) recommend policies, procedures and practices to enable a municipal council to exercise its powers, functions or duties in terms of this Chapter in an effective, efficient and transparent manner; 10
- (b) make recommendations to the municipal council concerning —
- (i) the standardisation and simplification of all tender application processes;
- (ii) the rendering of advice and other support services to tender applicants; 15
- (c) make recommendations concerning the criteria for determining the categories of persons, bodies, organisations or corporations to be affirmed as contemplated in section 36(6)(c); and
- (d) perform any function that a municipal council deems appropriate for purposes of giving effect to this Chapter, including conducting investigations, making recommendations and reporting on any matter. 20

### CHAPTER 7

#### RESTRICTION OF ACCESS TO PUBLIC PLACES FOR SAFETY AND SECURITY PURPOSES

25

##### A municipal council's power to restrict access

43 For purposes of enhancing safety and security, a municipal council may —

- (a) on its own initiative impose a restriction on access to any public place if it complies with the provisions of section 44; or
- (b) authorise any person, body or organisation to restrict access to any public place if the provisions of section 45 have been complied with. 30

##### Procedure for municipal councils to impose restrictions on access

44 (1) When intending to impose a restriction on access to a public place, a municipal council must —

- (a) determine the proposed terms of the restriction after consultation with the South African Police Service; 35
- (b) pass a resolution confirming the proposed terms and resolve to impose the restriction; and thereafter
- (c) comply with the following procedure:
- (i) The intention to impose the restriction must be announced by notice in the Provincial Gazette and where these exist, in one or more newspapers circulating in the area concerned. 40
- (ii) The notice must specify —
- (aa) that comment is being sought on the draft terms of a restriction; 45
- (bb) the public place affected by the restriction;
- (cc) the proposed terms of the restriction;
- (dd) the documents or written reports relied upon by the municipal council to pass its resolution;
- (ee) the person to whom or place where enquiries relating to the draft terms of the restrictions may be directed; 50
- (ff) subject to sub-sections (6) and (7), the place, time and circumstances when and in which a copy of the documents or original reports may be obtained or displayed for inspection;

- (gg) the period for comment on the draft terms of restrictions which must not be less than one month; and
- (hh) the person on whom or place where comment on the draft terms of the restriction may be lodged.
- (iii) At any time before imposing the restriction, consultations with any relevant interest group may be held in any form, including the holding of an enquiry; and 5
- (iv) Comments received and the content of all consultations must be considered before imposing the restriction.
- (2) If the municipal council has not imposed the restriction within four months of the announcement referred to in sub-section (1)(c)(i), that restriction cannot be made unless the procedure provided for in sub-section (1) has been repeated. 10
- (3) A municipal council may dispense with the procedures specified in sub-section (1) in respect of any restriction which in the public interest requires to be imposed without delay, but must implement this procedure within one month of the restriction coming into operation, failing which the restriction will no longer be valid. 15
- (4) A restriction will come into operation on the date of its publication in the Provincial Gazette or such other date as specified in the Provincial Gazette.
- (5) A municipal council may determine the fee for obtaining a copy of any document or written report relevant to determining the draft terms of the restriction. 20
- (6) The place where the documents and written reports may be obtained or displayed for inspection must enable all those affected by the restriction to be expeditiously and conveniently informed of its contents.
- (7) Every municipal council must develop and implement policies and programmes to assist members of the public to comment on the draft terms of the restriction. 25

**Procedure for municipal councils to authorise others to restrict access**

- 45 (1) Any person, body or organisation may apply to a municipal council for authorisation to restrict access to a public place by —
- (a) submitting a written application specifying —
    - (i) the name and contact details of the applicant; 30
    - (ii) a description of the public place which is the subject of the application;
    - (iii) a description of the circumstances giving rise to the application;
    - (iv) the category and estimated number of persons affected by the circumstances giving rise to the application; 35
    - (v) the nature and extent of the restriction in respect of which the application is sought; and
    - (vi) the category and an estimate number of persons who may be affected by the restriction in respect of which the application is sought; 40
  - (b) furnishing proof that at least two thirds of the persons affected by the circumstances giving rise to the application approve of the restriction in respect of which the application is sought; and
  - (c) paying a non-refundable administrative fee as may be determined by the municipal council. 45
- (2) After receiving the application, the municipal council must arrange for a meeting to be convened with the applicant and the South African Police Service for purposes of enabling it to determine —
- (a) the merits of the application; and
  - (b) the terms and conditions for granting the authorisation including the payment of fees and deposits. 50
- (3) If the municipal council intends granting the authorisation to restrict access to a public place pursuant to a determination made in terms of sub-section (2), the provisions of section 44 are applicable, with the changes as may be required by context.

**Duration of restriction to access or authorisation to restrict access 55**

- 46 (1) Unless otherwise stated in the Provincial Gazette and subject to this section, a restriction or authorisation to restrict access is valid for no longer than two (2) years.
- (2) A municipal council may extend the duration of the restriction or authorisation to restrict if —

- (a) it or the applicant initiates the procedures referred to in sections 44 and 45 respectively; and
  - (b) the procedures are initiated at least one month before the expiry of the restriction or authorisation to restrict.
- (3) For purposes of sub-section (2), the procedures are deemed to be initiated — 5
- (a) in respect of restricting access, when a municipal council passes the resolution referred to in section 44(1)(b); and
  - (b) in respect of an authorisation to restrict access, on the date on which the application referred to in section 45(1) is received by a municipal council.
- (4) Pending the outcome of the procedures contemplated in sub-section (2), a restriction or authorisation to restrict access remains valid. 10
- (5) The terms and conditions may include the payment of a deposit to recover costs incurred by a municipal council for removing any means of restriction.

#### Offences relating to authorisation to restrict access

- 47 It is an offence for any person, body or organisation to — 15
- (a) restrict access to a public place without having obtained authorisation in terms of this Act or any other law; or
  - (b) present itself as being validly authorised to restrict access to a public place in terms of this Act, when it is not so authorised.

#### Access to and inspection of the terms of a restriction or authorisation to restrict access 20

48 For purposes of ensuring that members of the public have access to or are able to inspect the terms of a restriction or authorisation to restrict access, the provisions of section 9, apply with the changes as may be required by context.

### CHAPTER 8 25

#### MISCELLANEOUS MATTERS

##### Municipal committee of enquiry

- 49 (1) A municipal council may establish a committee to investigate any local government matter —
- (a) it considers appropriate and which relates to its powers, functions or duties; 30
  - and
  - (b) of public interest.
- (2) (a) To establish a committee, a municipal council must pass a resolution to this effect.
- (b) A resolution referred to in paragraph (a) must specify the terms of reference of the committee including the time period within which the committee must complete its mandate. 35
  - (c) A municipal council may designate a member of the committee as the chairperson.
  - (d) A municipal council shall provide such committee with support staff and facilities. 40
- (3) The MEC must make regulations concerning the manner in which the committee will conduct its investigations.
- (4) When the committee has completed its mandate, it must send a report containing its findings and recommendations to the municipal council for consideration. 45
- (5) A municipal council may exercise or perform any power, function or duty it considers appropriate arising from its consideration of the findings and recommendations of the committee.

##### Public hearing

- 50 (1) A municipal council must convene a public hearing for purposes of considering and making recommendations in respect of any local government matter of public interest if it receives a petition calling for a public hearing which is signed by at least that number of registered municipal voters as may be determined by the municipal council. 50

The number to be determined may not exceed half a percent of the total number of registered municipal voters.

(2) The petition referred to in sub-section (1) must specify the local government matter to be considered.

(3) A municipal council may on its own initiative resolve to convene a public hearing for the purposes specified in sub-section (1). 5

(4) Subject to sub-section (5), a municipal council must determine the procedures for convening and conducting the public hearing.

(5) To convene a public hearing, the municipal council must —

(a) announce its intention to convene the public hearing in the Provincial Gazette and, where these exist, in one or more newspapers circulating in the area concerned; 10

(b) issue a notice specifying —

(i) the venue of the public hearing;

(ii) the date of the public hearing which must be at least fourteen (14) days after the notice and not later than two months after receipt of the petition referred to in sub-section (1) or the resolution referred to in sub-section (3); 15

(iii) in summarised form, the issues to be considered in the public hearing; and 20

(iv) procedures to be adopted for conducting the public hearing.

#### The MEC's power to issue guidelines to municipal councils

51 The MEC may issue guidelines to municipal councils to assist them in —

(a) exercising their powers, functions or duties; or

(b) giving effect to the purposes of this Act. 25

#### Financial management and credit control

52 (1) For purposes of promoting effective municipal financial management, all municipalities must make by-laws regulating its credit control measures in accordance with the provisions of sub-sections (2) and (3).

(2) The MEC, with the concurrence of the Member of the Executive Council responsible for finance in the province, may from time to time prescribe requirements that must be incorporated into the by-laws. 30

(3) The by-laws and prescribed requirements must make provision at least for the following matters —

(a) the services and products in respect of which taxes, rates, levies, fees, charges or surcharges may be imposed on residents or those conducting business within the boundaries of municipalities; 35

(b) the circumstances and manner of payment for these taxes, rates, levies, fees, charges or surcharges;

(c) the consequences of non-payment including — 40

(i) the discontinuance of any service or supply of any product;

(ii) the circumstances, manner and duration of this discontinuance;

(iii) the steps that a municipal council may take to recover amounts owing;

(iv) the steps that a municipal council may take to protect its equipment and property in the event of a discontinuance; and 45

(d) the prevention and termination of all services or the recovery of products acquired in an illegal or unauthorised manner.

### CHAPTER 9

#### GENERAL PROVISIONS

50

#### Penalties

53 Any person convicted of an offence in terms of this Act, shall be liable to a fine or imprisonment for a period not exceeding five (5) years, or to both fine and imprisonment.

**Indemnification from liability**

54 (1) Neither an employee of a municipality nor any person, body, organisation or corporation acting on behalf of a municipality nor a councillor is liable for any damages arising from —

- (a) any omission or act done in the cause of his or her duties and in good faith; or 5
- (b) the publication or disclosure in terms of this Act, of any report, finding point of view or recommendation that is given in good faith.

(2) A municipality is indemnified in respect of any legal proceedings instituted by an injured or aggrieved party arising out of the circumstances contemplated in sub-section (1) where the person, body, organisation or corporation acting on behalf of a municipality is an independent contractor. 10

**Right to legal representation**

55 (1) In legal proceedings instituted against councillors or employees of a municipality or at any inquest or enquiry in respect of which they have been summoned to attend and testify on matters falling within the course and scope of their duties, the municipal council must secure legal representation for the councillors or employees concerned and the cost for such representation must be borne by the municipality only in those circumstances or in a manner as may be determined by the municipal council. 15

(2) The municipal council must determine the circumstances and manner in which it would bear the cost of the legal representation referred to in sub-section (1). 20

**Delegations and agreements made and entered into by municipal councils**

56 (1) Subject to the provisions of this Act or any other law, a municipal council, may in writing, delegate on those terms and conditions it deems appropriate, any power, function or duty conferred on the municipal council by this Act or any other law to —

- (a) any person in the employ of the council; 25
- (b) any committee, sub-committee, board or body established by the council consisting of councillors and or persons in the employ of the council; or
- (c) any other municipal council.

(2) A municipal council may enter into agreements with any public or private provider of goods or services to enable the council to exercise and perform its powers, functions or duties. 30

(3) A municipal council must keep a register of all delegations and agreements made and entered into in terms of this Act.

(4) Within six (6) months of coming into office, a municipal council must review all delegations and agreements made and entered into by it in terms of this section. 35

(5) Despite the provisions of sub-section (4), a municipal council may review its delegations and agreements whenever it considers a review appropriate.

**Assignment and delegation of powers, functions, duties and responsibilities to municipal councils**

57 (1) The powers, functions, duties or responsibilities of the Premier, the MEC, the provincial government or the department responsible for local government matters in the province are assigned or delegated to municipal councils to the extent indicated in schedule 2. 40

(2) Subject to the provisions of this Act or any other law, the MEC may assign or delegate any other power, function, duty or responsibility conferred in terms of this Act or any other law on the MEC, to a municipal council by accordingly amending or making the appropriate entry to schedule 2. 45

(3) An assignment or delegation made in terms of this section may be made in respect of —

- (a) different municipalities; or 50
- (b) different groups or categories of municipalities.

**Repeal of laws**

58 The laws mentioned in schedule 1 are repealed to the extent indicated.



**Transitional provisions**

59 (1) Despite the repeal of the provisions of the Local Government Ordinance, 1939 (Ordinance 17 of 1939) as indicated in schedule 1, any action taken in terms of the repealed provisions shall be regarded to have been taken under the corresponding provision of this Act and will continue to be valid or have force and effect except if it is inconsistent with the Local Government Transition Act, this Act or any other law. 5

(2) Despite the repeal of the provisions of the Local Government (Administration and Elections) Ordinance, 1960, (Ordinance 40 of 1960) as indicated in schedule 1, any action taken in terms of the repealed provisions is deemed to have been taken under the corresponding provision of this Act and will continue to be valid and have force and effect except if it is inconsistent with the Local Government Transition Act, this Act or any other law. 10

**Short title and commencement**

60 This Act shall be called the **Rationalisation of Local Government Affairs Act, 1998**, and shall come into effect on a date to be fixed by the Premier by proclamation in the Provincial Gazette. 15

**SCHEDULE 1****LAWS REPEALED**

Number and year of law	Short title	Extent of repeal	
58 of 1903	Municipal Corporation Ordinance, 1903	The whole	5
506 of 1937	Administrators Notice—Local Authorities Depreciation Regulations	The whole	
17 of 1939	Local Government Ordinance, 1939	Sections 1; 5; 8; 34; 36; 41; 47A; 53; 54; 57; 62; 65; 70; 72; 77; 78; 79 bis; 79 ter; 79 quar; 79 sext; 89; 90; 91; 92; 93; 94; 95; 96; 96bis; 97; 98; 99; 100; 101; 102; 103; 104; 108; 114; 115; 116; 117; 118; 118 bis; 119; 120; 121; 122; 123; 124; 125; 125(A); 126; 126A; 127; 127A; 128; 129; 144; 145; 146; 147; 148; 149; 151; 154; 156; 156A; 157; 162; 164A; 165; 166; 173.	10 15 20
13 of 1958	Public Bodies (Language) Ordinance, 1958	The whole	
21 of 1958	Local Government Control, 1958	The whole	25
40 of 1960	Local Government (Administration & Elections) Ordinance, 1960	Sections 3 to 51; 62; 62A; 63 (1) to (20); 63A; 64; 65; 67; 69; 70; 70bis; 71.	30
15 of 1981	Town Council of Midrand, 1981	The whole	
24 of 1986	Local Government Areas Ordinance, 1986	The whole	
22 of 1988	Administrations Proclamation—Amendment of Ordinance 40 of 1960	The whole	35
23 of 1988	Administrators Proclamation—Regulations relating to the Establishment of Health Committee	The whole	

**SCHEDULE 2**

40

**ASSIGNMENT & DELEGATION OF POWERS, FUNCTIONS, DUTIES AND RESPONSIBILITIES TO MUNICIPAL COUNCILS**

ITEM A—LOCAL GOVERNMENT ORDINANCE, 1939			
PART 1—ASSIGNMENT			45
SECTION	SECTION TITLE	EXTENT OF ASSIGNMENT	
19(7)	Allowances to mayor, deputy-mayor and councillors.	The whole	
64(1)	Setting apart of sites for purpose or erection of public or municipal buildings.	The whole	50
65(bis)(4)(b)	Public vehicle routes, stopping places and stands.	The whole	
67(6) & (9)(b)	Permanent closing or diversion of street.	The whole	55
69(1)(a)	Numbering of houses and naming of public places.	The whole	
71(2)	Power to establish pounds.	The whole	
79(9)(bis)	General powers.	The whole	
79(10)	General powers.	The whole	60

79(28)	General powers.	The whole	
79(33) General powers.	The whole—except 79(33)(b)(ii)		
79(42)	General powers.	The whole	
79(53) General powers.	The whole		
80B(4)(b)(i)	Determination, amendment or withdrawal of charges by special resolution.	The whole	5
81(1)(c)	Works for supply of water.	The whole	
81(1)(d)	Works for supply of water.	The whole	
81(1A)	Works for supply of water.	The whole	10
81(2)	Works for supply of water.	The whole	
83(1)(bis)	Works for supply of light, heat, and power.	The whole	
83(3)(a)	Works for supply of light, heat, and power.	The whole	15
83(4)	Works for supply of light, heat, and power	The whole	
83A(1)	Restrictions on use of water and electricity.	The whole	
104(bis)	Power of local authority to relax requirements of building by-laws or to waive compliance there-with.	The whole	20
131(5)	Other special powers for town councils.	The whole	25
131(17)	Other special powers for town councils.	The whole	
133 Power to undertake sewerage and drainage.	The whole		
142(1)(b)	Power to execute drainage works on private land or premises or to make advances therefor.	The whole	30
155(1)	Sanitary control of surface and underground mine workings.	The whole	
<b>PART 2—DELEGATION</b>			35
<b>SECTION</b>	<b>SECTION TITLE</b>	<b>EXTENT OF DELEGATION</b>	
79(16)	General powers.	The whole	
79(17)(e)	General powers.	The whole	
79(18)(e)	General powers.	The whole	
79(18)(f)(aa)	General powers.	The whole	40
79(18)(f)(bb)	General powers.	The whole	
79(18)(h)(bb)	General powers.	The whole	
79(24)(c)	General powers.	The whole	
80A(b)(ii)	Incorporation in by-laws of specifications, regulations and other documents by reference.	The whole	45
83(1)(c)(i)	Works for supply of light, heat, and power.	The whole	
<b>ITEM B—LOCAL GOVERNMENT (ADMINISTRATION &amp; ELECTION ORDINANCE, 1960)</b>			
<b>PART 1—ASSIGNMENT</b>			50
<b>SECTION</b>	<b>SECTION TITLE</b>	<b>EXTENT OF ASSIGNMENT</b>	
57(6)(b)	Functions of Management Committee	The whole	
<b>PART 2—DELEGATION</b>			









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