

BERGRIVIER MUNICIPALITY



RULES OF ORDER FOR MEETINGS OF COUNCIL AND COMMITTEES POLICY

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AND COUNCIL

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RULES OF ORDER FOR MEETINGS OF COUNCIL AND COMMITTEES

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CHAPTER 1 INTRODUCTION

Definitions

1. In these rules, unless the context indicates otherwise—

“**Code**” means the Code of Conduct for Councillors set out in Schedule 7 to the Structures Act;

“**committee**” means a committee established by the Council in terms of section 79 of the Structures Act, and includes a committee appointed in terms of section 80 of the Structures Act;

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

“**Council**” means the municipal council of the municipality;

“**councillor**” means a member of the Council, and includes a political office bearer as defined in section 1 of the Systems Act;

“**hybrid meeting**” means a meeting where some councillors are physically present in the meeting venue and some councillors attend the meeting virtually;

“**meeting**” means any meeting of the Council or a committee, as the case may be;

“**member of the public**” means a person who is not a councillor or a municipal employee and who attends a meeting of the Council or a committee, and includes—

- (a) the media;
- (b) a dignitary; and
- (c) a representative of a sphere of government;

“**municipal employee**” means an employee of the municipality;

“Municipal Manager” means the municipal manager as defined in the Systems Act;

“municipality” means the municipality of Bergrivier;

“ordinary Council meeting” means an ordinary meeting of the Council convened in accordance with rule 6;

“physical meeting” means a meeting where councillors are physically present in the same venue;

“platform” means the virtual platform where a virtual meeting is held;

“Provincial Minister” means the member of the Provincial Cabinet responsible for local government matters in the Province;

“Province” means the Province of the Western Cape;

“quorum and decisions” A majority of the number of councillors determined in terms of section 20 of the Structure Act (MEC determination) must be present at a meeting of the council when a vote is taken on any matter.

“rules” means these rules;

“Speaker” means the Speaker of the Council elected in terms of section 36 of the Structures Act or the Acting Speaker elected in terms of section 41 of the Structures Act;

“special Council meeting” means a special meeting of the Council convened in accordance with rule 7;

“Structures Act” means the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

“Systems Act” means the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);

“**venue**” means the Council chamber or committee room where a physical meeting is held, unless otherwise determined by the Speaker or chairperson, as the case may be;

“**virtual**” means streamed live to the internet, using any or all of the following:

- (a) video;
- (b) text;
- (c) audio;

“**virtual meeting**” means a meeting where councillors are not physically present in the same venue and the meeting is conducted utilising virtual means;

“**whip**” means a councillor appointed by his or her party to perform the duties attached to the position of a whip as contemplated in these rules; and

“**working day**” means any day of the week except—

- (a) a Saturday, Sunday, and public holiday; and
- (b) when the Council is in recess.

Application and interpretation

2. (1)(a) Subject to clause (b), these rules apply to all meetings of the Council and its committees.

(b) These rules do not apply to the following committees:

- (i) a committee established in terms of item 14(1)(b) of the Code;
- (ii) a committee contemplated in section 62(4)(c)(ii) of the Systems Act;
- (iii) a mayoral committee contemplated in section 60 of the Structures Act;
- (iv) a planning committee;
- (v) a municipal public accounts committee; and
- (vi) a committee contemplated in section 32(2) of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003).

(2) Unless it is inconsistent with the context or clearly inappropriate, a reference in these rules to—

- (a) the Council must be construed as a reference to a committee;
 - (b) the Speaker must be construed as a reference to the chairperson of a committee;
- and
- (c) a councillor must be construed as a member of a committee.

(3) Except where it is clearly inappropriate, a rule applying to a councillor in any proceedings also applies to a municipal employee and a member of the public who takes part in those proceedings.

(4) If, in terms of these rules, a notice, motion, question, or request is required or permitted to be given in writing to any councillor or person, it is sufficient if it is transmitted electronically directly to that councillor or person in such a manner and form that it can conveniently be printed by the recipient within a reasonable time.

(5) If, in terms of these rules, a document is required to be published, provided or delivered, it is sufficient if an electronic original or reproduction thereof is published, provided or delivered by electronic communication in such a manner and form that it can conveniently be printed by the recipient within a reasonable time: Provided that this sub-rule does not apply to any publication to inform the public.

(6) If, in terms of these rules, a document is required to be signed by—

(a) a single councillor or person, signing may be effected in any manner provided for in the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002);

or

(b) two or more councillors or persons, it is sufficient if—

(i) all of those councillors or persons sign a single original of the document, in person or as contemplated in clause (a); or

(ii) each of those councillors or persons signs a separate duplicate original of the document, in person or as contemplated in clause (a), and in such a case, the signed duplicate originals, when combined, constitute the entire document.

(7)(a) In instances of urgency, during an emergency or where the Council considers that adherence to a rule would be unreasonable and would prejudice the operation of a meeting of the Council, the Council may, with the approval of the majority of the incumbent councillors and for the duration of that meeting, temporarily suspend or relax the provisions of a rule: Provided that the suspension or relaxation of a rule—

(i) may not be in contravention of any national or provincial legislation or any by-law of the municipality; and

(ii) must relate to an item on the agenda for the meeting of the council.

(b) The reasons for the suspension of the rule must be recorded in the minutes.

(c) This sub-rule does not apply to a motion of no confidence contemplated in rule 54.

Duty of Speaker, councillors, municipal employees and members of public

3. (a) The Speaker, councillors, municipal employees and members of the public must familiarise themselves with these rules; and

(b) The Speaker of the municipality presides over the election of the whip.

CHAPTER 2

MEETINGS

Transaction and order of business

4. (1) The Council transacts its business at ordinary Council meetings and special Council meetings, convened for that purpose in terms of these rules.

(2) The order of business in ordinary Council meetings is as follows, unless the order has been changed in terms of sub-rule (4):

- (a) Election of Acting Speaker, if necessary;
- (b) application for leave of absence;
- (c) confirmation of minutes;
- (d) statements and communications by Speaker;
- (e) statements and communications by Executive Mayor or Executive Committee, if applicable;
- (f) consideration of reports;
- (g) consideration of report on delegated powers;
- (h) urgent matters submitted by Municipal Manager;
- (i) motions;
- (j) questions;
- (k) motions of exigency; and
- (l) adjournment.

(3) The order of business of a special Council meeting is as follows, unless the order has been changed in terms of sub-rule (4):

- (a) Election of Acting Speaker, if necessary;
- (b) application for leave of absence;
- (c) consideration of matters contained in the notice convening a special Council meeting or set out in the request contemplated in rule 7; and
- (d) adjournment.

(4) The Speaker may change the order of business appearing on the agenda or the Council may resolve accordingly.

(5) A councillor who wishes to have the order of business on the agenda changed, must approach the Speaker in this regard prior to the meeting.

Agenda

5. (1)(a) The Speaker or a person designated by the Speaker must prepare the agenda for a meeting in liaison with the, Executive Mayor, if applicable, and the Municipal Manager.

(b) The Municipal Manager must assist the Speaker in preparing the agenda.

(2) The Speaker may at any time during a meeting introduce an urgent matter which does not appear on the agenda, unless—

(a) a councillor indicates his or her opposition to the introduction of the matter;

(b) the procedure contemplated in rule 18 is followed; and

(c) the Council resolves otherwise with a supporting vote of a majority of the votes cast.

(3) Except as otherwise provided in these rules or in terms of sub-rule (2), a matter not appearing on the agenda may not be transacted at a meeting.

(4) The Speaker may refuse an item, motion or question to the agenda if such item, motion or question—

(a) falls outside the jurisdiction of the municipality;

(b) is racist in nature or advocates hate speech;

(c) is *sub judice*;

(d) does not comply with procedural requirements for submission of agenda items as provided for in these rules;

(e) lacks sufficient information;

(f) violates legislation or is contrary to the law; or

(g) is of defamatory nature,

in which event the procedure in rule 35(2) and (3) must be followed.

Meetings

6. (1) The Speaker must—

- (a) at least quarterly convene ordinary Council meetings; and
- (b) ensure that the Council meets at least quarterly in accordance with section 18(2) of the Structures Act.

(2) The Speaker must decide whether a meeting should be a—

- (a) physical meeting;
- (b) virtual meeting; or
- (c) hybrid meeting.

(3)(a) All physical meetings must be open to members of the public, unless members of the public are excluded as contemplated in rule 23.

(b) All virtual meetings must be livestreamed on the municipality's website, unless members of the public are excluded as contemplated in rule 23.

(c) All hybrid meetings must be—

- (i) open to members of the public; and
- (ii) livestreamed on the municipality's website, unless members of the public are excluded as contemplated in rule 23

(4) Subject to sub-rule (1) and rule 7(3), the Speaker must decide when and where the Council must meet.

(5)(a) At least five working days before an ordinary Council meeting, the Municipal Manager must give written notice to each councillor of the date, time and venue or platform of that meeting.

(b) If the Municipal Manager accidentally omits to give a notice contemplated in clause (a) to any councillor, such omission does not invalidate a meeting.

(6)(a) The Speaker may at any time change the date, time, and venue or platform of an ordinary Council meeting which has been convened.

(b) The Municipal Manager must give reasonable notice in line with this rule of any change to the date, time and venue or platform of a meeting.

(7) If the position of Speaker is vacant or the Speaker is absent, unavailable, unwilling or unable to perform his or her functions—

(a) the Municipal Manager; or

(b) a person designated by the Provincial Minister if the Municipal Manager is absent, unavailable, unwilling or unable,

must convene a Council meeting to elect a Speaker or an Acting Speaker, as the case may be, and preside over such election.

(8) Recording of virtual meetings and hybrid meetings -

The Municipal Manager must ensure that every virtual meeting and every hybrid meeting is digitally recorded and that the recording is stored for a period of not less than three years from the date of the meeting.

(9) The municipal manager must give notice to the public, in a manner determined by the municipal council, of the time, date and venue of every—

(a) ordinary and special meeting of the council or a meeting of a committee of a council;

(b) ordinary or special meeting of the council or a meeting of a committee of a council that was postponed; and

(c) urgent meeting of the council or meeting of a committee of a council, except when time constraints make this impossible.

(10) The manner determined by Municipal Council refer to in par.9 above will be as follows:

(a) the final schedule of key deadlines and final annual calendar as approved by Council annually before the end of August be publish on the municipal website;

(b) special and urgent meetings of Council and Committees will be publish within two working days before the meeting on the municipal website; and

(c) ordinary or special meetings of Council or a Committee that was postponed, will be recorded in the annual report.

Special Council meetings

7. (1)(a) The Speaker may call a special Council meeting on a date, time and venue or platform determined by him or her.

(b) When the Speaker has determined the date, time and venue or platform of a special Council meeting, he or she must inform the Municipal Manager thereof.

(2) If the position of Speaker is vacant or the Speaker is absent, unavailable, unwilling or unable to perform his or her functions—

(a) the Municipal Manager; or

(b) a person designated by the Provincial Minister if the Municipal Manager is absent, unavailable, unwilling or unable,

must convene a special Council meeting to elect a Speaker or an Acting Speaker, as the case may be, and preside over such election.

(3) The Speaker must, if a majority of the councillors requests him or her in writing to convene a special Council meeting for the consideration of a specified matter or matters and if the request complies with the requirements set out in this rule and the Structures Act—

(a) convene a special Council meeting on the date and at the time set out in the request and at a venue or platform determined by him or her; and

(b) inform the Municipal Manager of the date, time and venue or platform and supply him or her with a copy of the request.

(4) A request to call a special Council meeting must indicate the matter or matters, as the case may be, to be dealt with at that special Council meeting, and indicate the date and the time of the special Council meeting, which date may not be less than—

(a) six working days from the date the request is submitted to the Speaker; or

(b) four working days from the date the request is submitted to the Speaker if the matter is regarded as an urgent matter, in which event the reasons for urgency must be stated in the request.

(5) For the purposes of sub-rule (3), a majority of councillors must be construed as reflected in the municipality's establishment notice, notwithstanding any declared vacancies.

(6)(a) If the Speaker, for whatever reason, fails to convene a special Council meeting in terms of sub-rule (3) within one working day of receipt of the request, the Municipal Manager must convene the special Council meeting on the date and at the time set out in the request and at a venue determined by him or her.

(b) If the Municipal Manager, for whatever reason, fails to convene a special Council meeting in terms of clause (a) within one working day of the failure by the Speaker, a person designated by the Provincial Minister must convene the special Council meeting on the date and at the time set out in the request and at a venue determined by him or her.

(7)(a) If the Speaker is absent, unavailable, unwilling or unable to chair the special Council meeting, the Municipal Manager or a person designated by the Provincial Minister if the Municipal Manager is absent, unavailable, unwilling or unable, must preside at the election of an Acting Speaker in accordance with section 36(3) of the Structures Act.

(b) The Acting Speaker may only preside over the special Council meeting concerned.

(8) Only the matter or matters specified in the notice convening a special Council meeting or set out in the request contemplated to in sub-rule (3), may be dealt with at a special Council meeting.

(9) Rule 54 applies to a special Council meeting to vote on a motion to remove the Speaker, Executive Mayor or Deputy Executive Mayor from office.

(10)(a) The Municipal Manager must give notice of a special Council meeting at least two working days prior to the meeting, in the manner contemplated in rule 6(5) and (6).

(b) If the Speaker determines that the special Council meeting is an urgent meeting, the Municipal Manager must, at least one working day before the meeting, give written notice as contemplated in rule 6(4) and (5), except if time constraints make this impossible.

(c) If the Municipal Manager accidentally omits to give notice to any councillor, such omission does not invalidate a meeting.

(11)(a) The Speaker may, on reasonable grounds, determine that a special Council meeting is an emergency meeting, in which event the time periods specified in this rule do not need to be complied with.

(b) The Municipal Manager must take all reasonable steps to notify each councillor and the public of a special Council meeting that is an emergency meeting.

Functions of Speaker regarding meetings

8.(1) Subject to rule 14(2), the Speaker must take the chair at the time the meeting has been scheduled for.

(2) In addition to the functions contemplated in section 37 of the Structures Act and any other law, the Speaker—

(a) must give a ruling in respect of—

(i) a point of order raised by a councillor; and

(ii) a question in relation to the priority of business; and

(b) may give a ruling in respect of any procedural eventuality for which these rules do not provide.

(3) The rulings contemplated in sub-rule (2) must be recorded in the minutes and may not be debated.

Attendance by councillor

9.(1) Subject to item 3 of the Code and rule 11, a councillor must—

(a) attend each meeting;

(b) sign his or her name in the attendance register if the councillor is physically attending the meeting, or verbally identify the councillor when directed to do so by the Speaker if the councillor is virtually attending the meeting; and

(c) remain in attendance, unless he or she is required in terms of the Code, sub-rule (2), rule 10 or 25 (4) or 32 (7), or any other law to withdraw from the meeting.

(2) A councillor who attends—

- (a) a virtual meeting; or
- (b) a hybrid meeting virtually,

is deemed present for establishing a quorum, taking a decision, voting on a matter, and for any other purposes.

(3) For purposes of these Rules, a councillor is—

- (a) present at, and attending, a virtual meeting; or
- (b) virtually present at, and attending, a hybrid meeting,

if the councillor is able to hear the proceedings, and the Speaker can hear the councillor.

(4)(a) A councillor must disclose an interest in any matter before Council as contemplated in item 5 of the Code and withdraw from proceedings when that matter is considered, unless the Council decides that the councillor's interest is trivial or irrelevant.

(b) If a councillor withdraws from proceedings as contemplated in paragraph (a), the Speaker must ensure that virtual access by the councillor to the meeting must be denied for the duration of the consideration of that matter.

Order for councillor to withdraw from meeting

10.(1) If the Speaker is of the opinion that a—

- (a) councillor is deliberately contravening a provision of these rules or the Code;
- (b) councillor is in contempt of or is disregarding the authority of the Speaker; or
- (c) councillor's conduct is grossly disorderly,

(2) the Speaker may—

- (a) order the councillor to withdraw immediately from the chamber or committee room

for the remainder of the day's meeting if the councillor is physically attending the meeting; or

(b) deny the councillor virtual access for the remainder of the meeting if the councillor is attending the meeting virtually.

(3) The Speaker may order that any councillor who refuses to leave a meeting of the Council when directed to do so by him or her in terms of these rules, be removed by a person designated by him or her.

Procedure for leave of absence

11. (1) A councillor must, before absenting him- or herself from the whole or part of a meeting—

(a) apply for permission from the Speaker; and

(b) provide the Speaker with reasonable and *bona fide* reasons and show good cause for granting the application, at least one working day before the meeting.

(2) Upon receipt of the application contemplated in sub-rule (1), the Speaker must—

(a) consider the application, taking into account the impact it may have on the meeting;

(b) approve or reject the application; and

(c) notify the councillor of his or her decision as soon as possible before the meeting.

(3) If the Speaker rejects the application contemplated in sub-rule (1), he or she must provide a reason therefor.

(4) The Speaker, on good cause shown, may grant leave of absence to a councillor who has been prevented by special circumstances from applying for leave of absence in accordance with sub-rule (1), which may include, amongst others, illness of the councillor, or illness or death of a member of the councillor's family.

(5) The names of all councillors—

(a) present at a meeting;

(b) absent from a meeting or a part of a meeting; and
(c) to whom leave of absence from the meeting has been granted,
must be recorded in the minutes.

(6) Leave is deemed to have been granted if a councillor—

- (a) has been delegated to attend a meeting or engagement on behalf of the Council;
- or
- (b) withdraws from proceedings as contemplated in rule 9(2).

(7) Sub-rules (1) to (6) also apply with the necessary changes to leave of absence of the Speaker: Provided that a reference in this rule to the Speaker is regarded to be a reference to the Council.

Procedure for non-attendance

The procedure will be followed as set out in Schedule 1.

Sanctions for non-attendance

12.(1) Except for the instances contemplated in rules 11(4) and 11(6), a councillor may not without leave—

- (a) absent him- or herself from a meeting;
- (b) fail to be in attendance at the commencement of a meeting; or
- (c) fail to remain in attendance until the end of a meeting.

(2) An investigation into an alleged contravention of sub-rule (1) will be conducted as follow:

A Councillor who has been recorded as absent without leave from any of the following meetings of Council, namely Council meeting, Special Council Meeting, Section 79 and 80 Committees, MPAC, Oversight Committee, Labour Forum and Training Committee, will be fined with an amount of R500 per meeting. The fine amount will escalate with 5% per annum (financial year). The fine amount will be deducted from the Councillor's remuneration in the month following the approval of the minutes of the relevant meeting. The permission to deduct will be given by the Speaker. If the Speaker is absent without leave and subject to sanction, the permission to deduct will be given by the executive

mayor. The Director Corporate Services (or his/her delegate) will administratively verify the deductions to ensure that deductions are only made from the remuneration of Councillors who have been recorded as being absent without leave in the official minutes of the relevant meeting.

(3) If a councillor absents him- or herself from three or more meetings without permission, the Council must request the Provincial Minister to remove the councillor from office.

Minutes

13.(1) The Municipal Manager must—

(a) compile the minutes of the proceedings of a meeting in writing within two weeks of the meeting; and

(b) provide each councillor with a copy of the minutes within a reasonable period.

(2) The minutes of a meeting must be considered by the Council at its next meeting and, if confirmed, must be signed by the Speaker.

(3) The minutes are taken as read, for the purpose of sub-rule (2), if they were provided to each councillor within a reasonable period before the meeting considering them.

(4) No motion or discussion is allowed on the confirmation of the minutes, except in connection with the correctness thereof.

(5) If a councillor is dissatisfied with the correctness of the minutes, he or she must—

(a) state the item with which he or she is dissatisfied; and

(b) propose a motion clearly outlining the alternative wording to amend the minutes.

(6) The minutes of a meeting must set out the date, time and place of the meeting and the decisions or other action taken at the meeting.

(7) The Municipal Manager must keep a record of the signed minutes.

Quorum

14. (1) A meeting may not commence until a quorum is present.

(2) If there is no quorum at the time for which the meeting is scheduled, the Speaker must take the chair as soon as a quorum is present.

(3) If there is no quorum, the start of the meeting must be delayed for not longer than 30 minutes and if at the end of that period, there is still no quorum, the Speaker must—

(a) adjourn the meeting to another time, date and venue or platform at his or her discretion; and

(b) record the time of such adjournment and the names of those councillors present.

(4) If the Speaker is not present and there is no quorum, the start of the meeting must be delayed for not more than 30 minutes and if there is still no quorum at the end of that period, the meeting may not take place and the Municipal Manager must record the time of such adjournment and the names of the councillors present.

(5) If during a meeting there is no quorum, the Speaker must suspend the proceedings until a quorum is again present: Provided that if after 10 minutes or such longer time as the Speaker may allow, there is still no quorum, the Speaker must—

(a) adjourn the meeting to another time, date and venue or platform at his or her discretion; and

(b) record the time of such adjournment and the names of those councillors present.

(6) No technical failure on the part of a councillor or group of councillors during a virtual meeting or a hybrid meeting that leads to a break in the virtual connection for a total period of not more than five minutes invalidates any action taken by a majority of the councillors attending the meeting.

Adjournment of proceedings

15. (1) The Speaker may only adjourn a meeting—

(a) after the Council has transacted all of its business on the agenda;

(b) in the absence of a quorum as contemplated in rule 14;

- (c) upon a successful motion to adjourn as contemplated in rule 42 or 43;
- (d) when a meeting has fallen into disarray and has become unruly;
- (e) in the event of a resignation as contemplated in rule 54(11); or
- (f) in the event of *vis major*.

(2) When the Speaker adjourns a meeting, the members may leave the venue or platform.

Continuation of meeting if Speaker unlawfully adjourns meeting

16.(1) If the Speaker has adjourned a meeting in circumstances other than those contemplated in rule 15, such adjournment is improper and the remaining councillors may proceed with the remainder of the agenda: Provided that a quorum is still present.

(2) The remaining councillors must elect an Acting Speaker to preside over the proceedings to conclude the agenda.

(3) The Municipal Manager or, if the Municipal Manager is absent, unavailable, unwilling or unable, a person designated by the Provincial Minister, presides at the election of an Acting Speaker in accordance with section 36(3) of the Structures Act.

(4) The Acting Speaker may only preside over the remainder of the meeting that was improperly adjourned by the Speaker.

CHAPTER 3 DECISIONS

Unopposed matters

17. If the Council is called upon to consider a matter before it, the Speaker must ask the Council if there is any opposition to the matter from any councillor, and if there is none, a unanimous vote must be recorded in the minutes of the meeting.

Opposed matters

18. If the Council is called upon to consider a matter before it, the Speaker must ask the Council if there is any opposition to the matter from any councillor, and if there is opposition—

- (a) the Speaker must put the matter to the vote as contemplated in these rules;
- (b) the Speaker must announce the result of the vote; and
- (c) upon the announcement of the result of the vote, a councillor may demand that his or her dissenting vote, abstention or supporting vote be recorded in the minutes of the meeting.

Decisions by voting

19. (1) As contemplated in section 160(3)(a) of the Constitution and section 30(1) of the Structures Act, a quorum must be present before a vote may be taken on any matter.

(2) A supporting vote of a majority of incumbent councillors is necessary to decide on any matter prescribed by legislation, or, in accordance with section 160(3)(b) of the Constitution and section 30(2) of the Structures Act, on the—

- (a) passing of a by-law;
- (b) approval of the budget;
- (c) imposition of rates and other taxes, levies and duties; and
- (d) raising of loans.

(3) A supporting vote of at least two-thirds of incumbent councillors is necessary to adopt a decision to dissolve the Council, in accordance with section 34 of the Structures Act.

(4) All other questions before the Council are decided by a majority of the votes cast, as contemplated in section 160(3)(c) of the Constitution.

(5) If on any question other than a matter contemplated in section 160(2) of the Constitution, there is an equality of votes, the Speaker must exercise a casting vote in addition to his or her vote as a councillor as contemplated in section 30(4) of the Structures Act.

(6) The Executive Mayor, if applicable, must submit a report and recommendations before the Council takes a decision on the following matters:

- (a) Any matter contemplated in sub-rule (2)(c);

- (b) the approval of an integrated development plan or any amendment thereof; and
- (c) the appointment and conditions of service of a Municipal Manager and a Senior Manager directly reporting to a Municipal Manager.

(7) As contemplated in item 2A of the Code, a councillor may not vote in favour of, or agree to, a resolution which is before the Council and conflicts with any legislation applicable to local government.

Method of voting

20. (1) Voting must take place in the manner contemplated in rule 21(2), unless the—

- (a) law prescribes otherwise; or
- (b) Speaker determines that voting must take place by a secret ballot,

in which case voting must take place in the manner contemplated in rule 21(3).

(2) When the Speaker exercises the power to determine the appropriate voting procedure or method, the following factors must be taken into account:

- (a) The subject and content of the matter to be voted on;
- (b) the prevailing circumstances relating to the matter to be voted on;
- (c) the weight to be afforded to the advancement of the principles of transparency, accountability, and good governance, and enabling councillors to vote according to their conscience and in the furtherance of the best interest of the people;
- (d) which voting procedure or method would ensure that councillors exercise their powers, perform their functions, and carry out their duties most effectively;
- (e) the imperative of the Speaker's impartiality;
- (f) the possible consequences of the resolution on the municipality, members of the public, and councillors;
- (g) the possibility of corruption if voting takes place by way of a secret ballot; and
- (h) any other relevant factors.

(3) A councillor may not leave the Council chamber or committee room during the taking of a vote.

Casting of votes

21. (1) Unless any law provides otherwise, voting takes place in accordance a manual voting system.

(2) At a meeting held in a chamber or committee room where an electronic voting system is in operation, questions are decided by the utilisation of such system, unless the Speaker directs otherwise and-

(a) councillors may vote only from the seats allocated to them individually in the chamber or committee room;

(b) councillors must vote by pressing the “Yes”, “No” or “Abstain” button on the electronic consoles at their seats when directed by the Speaker to cast their votes;

(c) a councillor who is unable to cast a vote, must draw this to the attention of the Speaker and may in person or through the relevant party whip inform the Speaker of the councillor’s vote;

(d) after all councillors have cast their votes, the Speaker must immediately announce the result of the division; and

(e) the names and votes of the councillors must be recorded in the minutes of the meeting.

(3) Where no electronic voting system is in operation, and unless it is a virtual meeting, the manual voting system must be used in accordance with a procedure predetermined by the Speaker and—

(a) the Municipal Manager or his or her nominee must count the votes cast in the presence of a representative of each party represented on the Council or the committee, as the case may be, and present at such meeting and must record the result of voting;

(b) after councillors’ votes have been counted, the Speaker must immediately announce the result of the division; and

(c) the names and votes of the councillors must be recorded in the minutes of the meeting.

- (4) Where a secret ballot is held in a physical meeting, in which case —
- (a) the Municipal Manager must hand to each councillor a ballot paper having the alternates to be voted for clearly depicted thereon;
 - (b) the Municipal Manager must collect all the ballot papers and count them in the presence of a representative of each party represented on the Council, or the committee, as the case may be, and present at such meeting; and
 - (c) the Speaker must immediately announce the result of the division.
- (5) Where a virtual meeting is held—
- (a) only councillors who are in attendance when the vote is called are permitted to vote;
 - (b) the Speaker must give a councillor who is in attendance but experiences a technical failure that leads to a break in the virtual connection, one other opportunity to vote after a period of five minutes have lapsed since first calling such councillor to vote;
 - (c) councillors may vote in the order indicated by the Speaker;
 - (d) councillors must switch on their video function, clearly identify themselves and record their votes by stating “Yes”, “No” or “Abstain” when directed by the Speaker to cast their votes;
 - (e) a councillor who is unable to cast the councillor’s vote, must draw this to the attention of the Speaker and may in person or through the relevant party whip inform the Speaker of the councillor’s vote;
 - (f) after all councillors have cast their votes, the Speaker must immediately announce the result of the division;
 - (g) the names and votes of the councillors must be recorded in the minutes of the meeting;
 - (h) councillors must ensure that their votes are correctly recorded;
 - (i) the Municipal Manager must maintain a system that is capable of verifying the votes cast.

- (6) Where a hybrid meeting is held—
- (a) the Speaker must direct which voting system must be utilised by the councillors who are physically attending the meeting; and
 - (b) the councillors who are virtually attending the meeting must vote in the manner contemplated in sub-rule (5).

CHAPTER 4

ATTENDANCE OF MEMBERS OF PUBLIC

Attendance of and address by municipal employee or member of public

22. (1) The Speaker must—

- (a) take reasonable steps to regulate public access to, and public conduct at, meetings as contemplated in section 20(4)(b) of the Systems Act; and
- (b) ensure that meetings are accessible to persons with disabilities.

(2) The Council must conduct its business in an open manner and may close its meetings as contemplated in rule 23 only when it is reasonable to do so, having regard to the nature of the business being transacted as contemplated in section 160(7) of the Constitution.

(5) Arrangements relating to attendance-

A councillor, municipal employee or who virtually attends a meeting, must—

- (a) switch on the video function, unless otherwise directed by the Speaker;
- (b) mute the microphone when not speaking;
- (c) use the chat function to ask recognition from the Speaker to speak; and
- (d) wait for the Speaker to be called upon to speak or unmute the microphone.

Exclusion of members of public from meeting

23. (1) Subject to section 20(1) of the Systems Act and sub-rules (2) and (3), members of the public may be excluded from a meeting—

- (a) if so directed by the Speaker;
- (b) if so decided by Council upon a motion from any councillor to that effect; or
- (c) where matters are marked confidential.

(2) Members of the public may not be excluded when considering or voting on a matter contemplated in section 20(2) of the Systems Act.

(3) Members of the public may be excluded when the Council, due to the nature of the business being transacted or when the disclosure of any matter may be prejudicial to the interests of the municipality, deems it reasonable and justifiable to do so, having regard to the principles of an open and democratic society.

(4) If a motion to exclude members of the public from the meeting as contemplated in sub-rule (1)(b) is seconded, the motion must be put to the vote, after a discussion of the reasons, but without discussion of the matter.

(5) If members of the public are excluded from-

(a) a physical meeting, the venue must be cleared of all members of the public;

(b) a virtual meeting, virtual access by the public must be denied; or

(c) a hybrid meeting, the venue must be cleared of all members of the public and virtual access by the public must be denied.

(6) The motivation for the exclusion of members of the public must be recorded in the minutes of the meeting.

Re-admission of members of public

24.(1) A councillor may during the course of a meeting from which members of the public were excluded, move a motion “that the meeting again be opened” and state the reasons for the motion.

(2) If the motion is seconded, it must be put to the vote forthwith without debate.

(3) If the motion is carried, the Speaker must ensure that members of the public are permitted -

(a) physical access to a physical meeting;

- (b) virtual access to a virtual meeting; or
- (c) physical and virtual access to a hybrid meeting.

CHAPTER 5

CONDUCT IN MEETINGS

Conduct of councillors, municipal employees and members of public

25.(1) Councillors, municipal employees and members of the public must preserve order at meetings, and may not—

- (a) behave in an unseemly manner;
- (b) obstruct the business of a meeting;
- (c) commit any breach of the rules;
- (d) indulge in an irrelevant argument or the tedious repetition of arguments; or
- (e) use offensive or unbecoming language or remarks which are of a defamatory nature.

(2) Councillors may not challenge a ruling of the Speaker as contemplated in rule 8(2)(b) and (c).

(3) If a councillor, municipal employee or member of the public breaches sub-rule (1), the Speaker must direct him or her to refrain from the breach.

(4) If a councillor, municipal employee or member of the public disregards the direction of the Speaker contemplated in sub-rule (3), the Speaker may direct the councillor, municipal employee or member of the public—

- (a) if speaking, to discontinue his or her speech;
- (b) to withdraw from the chamber or committee room for the remainder of the meeting or, if necessary, to be removed by a person designated by the Speaker; and/or
- (c) mute the microphone of the councillor, municipal employee or member of the public for the remainder of the meeting if the councillor, municipal employee or member of the public is virtually attending the meeting.

(5) If the Speaker fails to act under sub-rule (3) or (4), any councillor may move a motion to require the Speaker to do so.

(6) The motion contemplated in sub-rule (5) must be moved without notice, and if the motion is seconded, it must be put to the vote forthwith without debate.

CHAPTER 6 DEBATE AND MOTIONS

Address to Speaker

26.(1) A councillor, or a municipal employee or member of the public contemplated in rule 22(4) who is recognised to speak at a meeting, must address the Speaker.

(2) A member of the public who is recognised by the Speaker must state his or her name, and if he or she is representing an organisation or group, identify such organisation or group.

Right to speak and limitation

27. (1) As contemplated in section 160(8)(a) and (b) of the Constitution, a councillor is entitled to participate in Council proceedings in a manner that—

(a) allows the parties and interests reflected within the Council to be fairly represented; and

(b) is consistent with democracy.

(2) A councillor has freedom of speech in any meeting of the Council and in any committee of which he or she is a member in accordance with section 28 of the Structures Act and section 2 of the Western Cape Privileges and Immunities of Councillors Act, 2011 (Act 7 of 2011): Provided that he or she must—

(a) confine his or her speech to municipal matters;

(b) avoid personal attacks on other councillors; and

(c) refrain from defaming another councillor, a person or an institution.

- (3) The right to freedom of speech of a councillor contemplated in sub-rule (2)—
- (a) includes participation in the deliberations and voting on any resolution, decision, report, paper or minutes adopted or approved by the Council or any of its committees; and
 - (b) is subject to these rules.
- (4) A councillor who is not a member of a committee has the right to speak at a meeting of that committee: Provided that such councillor has been permitted by the chairperson to speak to a specific item on the agenda.
- (5) A councillor may speak or proceed to speak at a meeting after being recognised by the Speaker.
- (6) A councillor may speak only once to—
- (a) a matter before the Council;
 - (b) any motion before the Council;
 - (c) any amendments to a motion before the Council; or
 - (d) a point of order or a question,
- unless authorised by the Speaker or as provided for in these rules.
- (7) A councillor may not be interrupted while speaking, unless called to order by the Speaker or a point of order is raised by any other councillor.
- (8) The Speaker may not recognise a councillor to speak on a matter once that matter has been voted on.
- (9) The Speaker may not allow a debate on a matter—
- (a) which may anticipate any matter on the agenda; or
 - (b) in respect of which a decision by a judicial or administrative body or a commission of inquiry is pending.
- (10) **Length of speeches**

- (a) Except with the consent of the speaker, no member may speak for more than five minutes on any matter.
- (b) The mover of an original motion or of any amendment may, however, speak for five minutes on such motion or amendment.

Participation by Speaker in debate

28. (1) If the Speaker wishes to take part in a debate, he or she may do so from the floor and must—

- (a) request the meeting to elect an Acting Speaker in the manner contemplated in rule 16(3) for the duration of the debate in which he or she wishes to take part; and
- (b) in the event of a physical meeting, or a hybrid meeting where the Speaker is physically attending the meeting vacate the chair and take up his or her seat amongst the other councillors;

(2) The Speaker does not have to vacate the chair if he or she is reporting on matters relating to the Council and its administration.

Tabling of documents

29. (1) Where any law requires any document or report to be tabled in the Council by a councillor or municipal employee, tabling is deemed to be effected-
in the case of a physical meeting, or a hybrid meeting where the Speaker and the councillor or municipal employee concerned are physically attending the meeting, by presenting it to the Speaker at such meeting; or

(a) in the case of a virtual meeting, or a hybrid meeting where—

- (i) either the Speaker or the councillor or municipal employee concerned is not physically attending the meeting; or
- (ii) both the Speaker and the councillor or municipal employee concerned are not physically attending the meeting,

upon an announcement by the Speaker that the document or report had been presented in person or electronically to the Speaker prior to the commencement of the meeting.

(2) All documents and reports tabled in the Council must be recorded in the minutes.

(3) The Speaker must ensure that all documents and reports tabled in the Council are included in the agenda of a subsequent meeting of the Council for consideration or resolution, or both.

Questions

30.(1) A councillor may submit a question on any matter relevant to a political office bearer or municipal employee concerning any matter related to the effective performance of the functions of the municipality and the exercise of its powers and carrying out of its duties, by giving 10 working days' notice in writing to the Speaker.

(2) A question must be in writing, dated and signed by the councillor and the date of receipt must be endorsed on it.

(3) The Speaker may—

(a) refer the question back to the councillor with a reason why it cannot appear on the agenda, which reason may include, amongst others, that he or she is of the opinion that the question is out of order, not clearly put, irrelevant or not submitted in accordance with these rules; or

(b) accept the question and refer it to the appropriate political office bearer or municipal employee to answer.

(4) The Municipal Manager must ensure that a response is given at the next Council meeting: Provided that if an answer cannot be put before the meeting, it must be considered at the subsequent Council meeting.

(5) If a question served before the Council, a similar question may not be put before the Council until a period of three months has lapsed, unless the Council directs otherwise.

(6) A debate will not be allowed on a question, except a question of clarity from the councillor who posed the question.

(7) A question may be published for public notification.

Content of debate

31. A councillor who speaks, must direct his or her speech to the matter before the Council.

Point of order

32.(1) A councillor may interject during a Council meeting to raise a point of order to call the attention of the Speaker to a breach of the rules, the Code or a statutory provision.

(2) A point of order may be raised in relation to—

- (a) a procedural matter; or
- (b) the conduct of a councillor, municipal employee, or member of the public.

(3) A councillor raising a point of order must immediately be heard, and he or she must state the—

- (a) point of order; and
- (b) rule, item in the Code or statutory provision that is being breached.

(4)(a) A councillor who is speaking when a point of order is raised must immediately stop speaking until the point of order is ruled on by the Speaker.

(b) All other matters before the Council must be suspended until the point of order is ruled on.

(5) If ruled to be—

- (a) in order, the councillor must be allowed to proceed with his or her speech; or
- (b) out of order, the councillor must remain silent or must retract or change any remarks so as to comply with the ruling.

(6) The Speaker's ruling on a point of order—

- (a) is final and not open to debate; and

(b) must be recorded in the minutes.

(7)(a) If a councillor persists in irrelevant, frivolous or unsubstantiated points of order it will be considered a progression of item 2 of the Code of Conduct for councillors and be dealt with in terms of Schedule 7 of the Structures Act.

(b) The Speaker may—

(i) rule that the councillor must withdraw immediately from the chamber or committee room for the remainder of the day's meeting if the councillor is physically attending the meeting;

(ii) mute the microphone of the councillor if the councillor is virtually attending the meeting; and

(iii) refer the councillor for discipline in terms of the uniform standing proceedings relating to councillor discipline adopted by the Council.

(c) If the Speaker fails to act under clause (a), any councillor may move a motion to require the Speaker to do so.

Explanation

33. (1) The Speaker may allow a councillor to explain a previous speech, but only when and to the extent that a material part of the speech may have been misunderstood.

(2) The councillor giving the explanation may not introduce any new matter, and no debate on the explanation may be allowed.

Motion

34. A councillor may move a motion only when it is put by the Speaker and if seconded by another councillor, unless provided otherwise in these rules.

Notice of motion

35. (1) Unless provided otherwise in these rules, a notice of motion must be—

(a) in writing, dated, motivated and signed by the relevant councillor; and

(b) delivered to the Speaker at least two working days before the date of the meeting at which it is to be moved.

(2) Subject to rule 5(4), the Speaker may refuse an item, motion or question, in which event he or she must refer the item, motion or question—

(a) back to the councillor concerned, with the reason why it cannot be placed on the agenda;

(b) to the committee that is mandated by the Council to deal with the matter; or

(c) to the Executive Mayor, if applicable, if by law such motion or question must first be considered by the Executive Mayor.

(3) If an item, motion or question was put before, and refused by, the Council, a similar item, motion or question may not be put before the Council until a period of three months has lapsed, unless the Council directs otherwise.

(4) Sub-rule (1) does not apply to the following motions:

(a) A motion of exigency; and

(b) a motion of course.

Question for debate

36. (1) During a debate and—

(a) after a motion has been moved and seconded; or

(b) at the conclusion of any speech on a motion,

any councillor may ask any question relevant to the motion to another councillor.

(2) Only the councillor who asked the question may ask a supplementary question, and then only in respect of matters arising out of the reply to that question.

(3) The councillor to whom the question is directed may—

(a) reply thereto forthwith; or

(b) require that notice be given of the question, in which event the Speaker must ensure that the reply is placed on the agenda of the next meeting.

Motion of exigency

37. (1) A councillor may direct the attention of the Council to any matter which does not appear on the agenda and of which no notice has been given, by stating briefly the subject of the matter and, without comment thereon, moving a motion “that the motion to which attention has been directed be considered forthwith as a matter of exigency”.

(2) If the motion in sub-rule (1) is seconded and carried, the councillor who moved the motion may be permitted without notice to have the matter considered.

(3) This rule does not apply to a motion of no confidence as contemplated in rule 54.

Motion of course

38. (1) The following are regarded as motions of course:

(a) That precedence be given to the consideration of any particular matter appearing on the agenda;

(b) that any report referred to in the agenda be noted, 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 with regard to any matter submitted for consideration in the manner specified in the motion;

(e) that the Speaker must direct that a councillor, municipal employee or a member of the public withdraw from the meeting; and

(f) any motion contemplated in rule 39.

(2) If a motion of course is seconded, it must be put to the vote forthwith without debate.

Precedence of debate

39. When a motion is under debate, no further motion may be received, except that—

- (a) the motion be amended;
- (b) the consideration of the matter be postponed to a fixed or undetermined date;
- (c) members of the public be excluded as contemplated in rule 23;
- (d) members of the public be re-admitted as contemplated in rule 24;
- (e) the meeting be adjourned to another date;
- (f) the meeting be adjourned for a specified time;
- (g) the debate on the matter be adjourned for a specified time;
- (h) the motion be put to the vote;
- (i) the motion be removed from the agenda; or
- (j) the motion be referred to a committee; or
- (k) the motion be withdrawn.

Amendment motion

40. (1) A councillor may move an amendment motion by stating—

- (a) “that the motion be amended”; and
- (b) how the original motion should be amended.

(2) Subject to sub-rule (6), the motion contemplated in sub-rule (1)—

- (a) need not be in writing; and
- (b) must be seconded.

(3) The amendment must be relevant to the original motion on which it is moved, and must be moved while the original motion is under consideration.

(4)(a) The amendment may not amend, in a material way, the principle embodied in the original motion, but may vary its terms in one or more particulars.

(b) The Speaker must decide whether or not the amendment complies with clause (a), and must rule accordingly.

(5) The amendment must be considered before considering the original motion.

(6) If the Speaker so requires, a proposed amendment must be in writing, signed by the councillor who moved it, and –

(a) handed to the Speaker; or

(b) delivered to the Speaker by electronic communication.

(7)(a) If there is more than one amendment to the original motion, the last proposed amendment must be put to the vote first, and if carried, the matter must be resolved accordingly.

(b) If the last proposed amendment is rejected, the amendment proposed immediately before the last amendment must be put to the vote.

(c) When all amendments have been disposed of, the original motion must be put to the vote.

(8) No further amendment to the original motion may be moved after the Speaker has commenced to take the vote on the original motion.

Motion for postponement of matter

41. (1) A councillor may at the conclusion of a speech move “that the consideration of the matter be postponed to a fixed or undetermined date”.

(2) The motion—

(a) need not be in writing; and

(b) must be seconded.

(3) The councillor who moved the motion may speak to the motion.

(4) The councillor who moved the original motion in respect of the matter under debate may reply, after which the motion contemplated in sub-rule (1) must be put to the vote without further debate.

(5) If the motion contemplated in sub-rule (1) is carried, the matter must be placed first on the agenda of matters to be considered at the meeting to which it has been postponed.

(6) If the motion contemplated in sub-rule (1) is not carried, the meeting must proceed as though no interruption occurred.

Motion for adjournment of meeting to another date

42. (1) A councillor may, at any time during the meeting, except during the course of a speech by another councillor or when a vote is being taken, move “that the meeting adjourn to another date”.

(2) The motion—

(a) need not be in writing; and

(b) must be seconded.

(3) The councillor who moved the motion may speak to the motion.

(4) A debate on the motion may not be permitted: Provided that the first councillor to indicate his or her opposition to the motion, may speak in opposition thereof.

(5) An amendment to the motion may not be moved, except in relation to the period of adjournment.

(6) If the motion is carried, the meeting must forthwith adjourn and be reconvened on the date specified in the motion or amended motion, unless the Speaker directs that the meeting proceed first to dispose of business other than the opposed business.

(7) If the motion is not carried, the meeting must proceed as if no interruption occurred, and the Speaker may not accept a similar motion until 30 minutes has lapsed.

(8) Before the conclusion of a motion that is carried during a debate, the councillor who moved the adjournment is entitled to speak first when the matter is reopened for discussion at the adjourned meeting.

(9) No business may be transacted at an adjourned meeting other than the business that was on the agenda for the meeting of which it is an adjournment.

Motion for adjournment of meeting for specified time

43. (1) A councillor may at any time, except during the course of a speech by another councillor or when a vote is being taken, move “that the meeting adjourn for a specified time”, which may not exceed 60 minutes.

(2) The motion—

(a) need not be in writing; and

(b) must be seconded.

(3) If the motion is carried, the meeting must forthwith adjourn for the specified time and reconvene on the time specified in the motion.

(4) If the motion is not carried, the meeting proceeds as though no interruption occurred, and the Speaker may not accept a similar motion until 30 minutes has lapsed.

(5) The Speaker may at any time adjourn a meeting for a specified time, on good cause shown.

Motion for adjournment of debate on matter for specified time

44. (1) A councillor may, at the conclusion of any speech on a matter, move “that the debate on the matter be adjourned for a specified time”.

(2) The motion—

(a) need not be in writing; and

(b) must be seconded.

(3) The councillor who moved the motion may speak to the motion.

(4) No debate is permitted on the motion, except that the first councillor to indicate his or her opposition to the motion, may speak in opposition thereto.

(5) No amendment to the motion may be moved, except in relation to the period of adjournment.

(6)(a) If the motion is carried, the meeting proceeds to the next item on the agenda, and the adjourned debate is resumed at the time specified in the motion.

(b) On the resumption of the adjourned debate, the councillor who moved the adjournment is entitled to speak first.

(7) If the motion is not carried, the debate on the matter proceeds as though no interruption occurred, and the Speaker may not accept a similar motion until 30 minutes has lapsed.

(8) A councillor may not move or second more than one motion for the adjournment of the debate on the matter during the course of that debate.

(9) The Speaker may at any time adjourn a debate for a specified time, on good cause shown.

Motion that matter be put to vote

45. (1) A councillor may, at the conclusion of any speech on a matter, move “that the matter be put to the vote”.

(2) The motion—

(a) need not be in writing; and

(b) must be seconded.

(3) Subject to sub-rule (4), a motion contemplated in sub-rule (1) is not open to debate.

(4) The councillor who moved the original motion under debate may, when a motion contemplated in sub-rule (1) has been moved, speak on that original motion, whereupon the motion contemplated in sub-rule (1) must be put to the vote without any further debate.

(5) If a motion contemplated in sub-rule (1) has been adopted, the motion must be put to the vote without any further debate.

(6) If the motion contemplated in sub-rule (1) is not carried, the meeting proceeds as though no interruption occurred, and the Speaker may not accept a similar motion on that item.

Motion to remove matter from agenda

46. (1) A councillor may move “that the matter be removed from the agenda”.

(2) The motion—

(a) need not be in writing; and

(b) must be seconded.

(3) Subject to sub-rule (4), a motion contemplated in sub-rule (1) is not open to debate.

(4) The councillor who moved the original motion under debate may, when a motion contemplated in sub-rule (1) has been moved, speak on that original motion, whereupon the motion contemplated in sub-rule (1) must be put to the vote without any further debate.

(5) If the motion contemplated in sub-rule (1) is carried, the matter must be removed from the agenda of the meeting, and may not be further pursued at that meeting.

(6) If the motion contemplated in sub-rule (1) is not carried, the meeting proceeds as though no interruption occurred, and the Speaker may not accept a similar motion on that item.

Motion to refer matter to committee

47. (1) A councillor may, at the conclusion of any speech on a matter, move “that the matter be referred to a committee”.

(2) The motion—

(a) need not be in writing; and

(b) must be seconded.

(3) Subject to sub-rule (4), a motion contemplated in sub-rule (1) is not open to debate.

(4) The councillor who moved the original motion under debate may, when a motion contemplated in sub-rule (1) has been moved, speak on that original motion, whereupon the motion contemplated in sub-rule (1) must be put to the vote without any further debate.

(5) If the motion contemplated in sub-rule (1) is carried, the matter under debate may not be further pursued at the meeting.

(6) If the motion contemplated in sub-rule (1) is not carried, the meeting proceeds as though no interruption occurred, and the Speaker may not accept a similar motion on that item.

Withdrawal of motion or question

48. (1)(a) A councillor who has moved a motion may at any time withdraw it.

(b) A councillor may not speak on a motion after the Council has permitted the withdrawal of the motion.

(c) If a motion is withdrawn, a similar motion may not be put before the Council until a period of three months has lapsed, unless the Council directs otherwise.

(2)(a) A councillor who has asked a question may withdraw it at any time before the question is answered.

(b) If a question is withdrawn, a similar question may not be put before the Council until a period of three months has lapsed, unless the Council directs otherwise.

Absence of councillor who gave notice of motion or question

49. (1) If the councillor who gave notice of a motion or a question is not present when called upon by the Speaker, the motion may be moved or the question may be asked by any other councillor.

(2) If the motion contemplated in sub-rule (1) is not moved, the meeting proceeds as though no interruption occurred, and the Speaker may not accept a similar motion on that item.

Re-introduction of motion or question

50. A motion which has been rejected by the Council or a question which has been answered, may not again be moved or asked within a period of three months of the meeting at which it was rejected or answered, unless the Council directs otherwise.

Motion or question on matter referred to committee

51. (1) A councillor may not give notice of a motion or question with regard to any matter that is before a committee for consideration, unless notice thereof has also been—

(a) submitted to that committee; or

(b) referred to that committee for consideration and report.

(2) A member of a committee may, if he or she is of the opinion that the matter is one of urgency, give notice of a motion or question on a matter referred to the committee, despite the fact that the motion or question has not been submitted to or considered by that committee.

Recommendation by Executive Mayor or committee

52. (1) A recommendation contained in a report submitted by the Executive Mayor or a committee to the Council is considered to have been moved by the Executive Mayor or the committee, as the case may be.

(2) The motion does not need to be seconded.

(3) The Executive Mayor or any member of the Mayoral Committee or chairperson of a committee, as the case may be, may speak on the matter and reply, but the reply must be confined to the matter and may not introduce any new matter into the debate.

Report on delegated powers

53. An Executive Mayor, Speaker, committee or Municipal Manager must report to the Council on decisions taken with respect to a delegated or sub-delegated power or duty at such intervals as the Council may require.

CHAPTER 7

REMOVAL OF OFFICE-BEARER FROM OFFICE

Removal of Speaker, Executive Mayor or Deputy Executive Mayor from office

54. (1)(a) A councillor may, by written motion addressed to the Speaker, move that the Speaker, Executive Mayor or Deputy Executive Mayor be removed from office.

(b) A motion of no confidence contemplated in clause (a) must be seconded by at least three other councillors.

(2) A motion of no confidence must contain a brief summary of the reasons for the removal, and indicate the date and the time of the special Council meeting, which date may not be less than—

(a) six working days from the date that the motion is submitted to the Speaker; or

(b) four working days from the date the request is submitted to the Speaker if the matter is regarded as an urgent matter, in which event the reasons for urgency must be stated in the request.

- (3) The Speaker must, upon receipt of a motion of no confidence—
- (a) forthwith send a copy to the Municipal Manager and the Executive Mayor, if applicable; and
 - (b) if the motion complies with the requirements set out in this rule and the Structures Act—
 - (i) convene a special Council meeting on the date and at the time set out in the motion and at a venue or using a platform determined by him or her; and
 - (ii) inform the Municipal Manager of the date, time and venue or platform.
- (4)(a) If the Speaker, for whatever reason, fails to convene the special Council meeting in terms of sub-rule (3) within one working day from receipt of the motion, the Municipal Manager must convene the special Council meeting on the date and at the time set out in the motion and at a venue determined by him or her.
- (b) If the Municipal Manager, for whatever reason, fails to convene a special Council meeting in terms of clause (a) within one working day of the failure by the Speaker, a person designated by the Provincial Minister must convene the special Council meeting on the date and at the time set out in the motion and at a venue or using a platform determined by him or her.
- (5)(a) If the Speaker is absent, unavailable, unwilling or unable to chair the special Council meeting, the Municipal Manager or a person designated by the Provincial Minister if the Municipal Manager is absent, unavailable, unwilling or unable, must preside at the election of an Acting Speaker in accordance with section 36(3) of the Structures Act.
- (b) The Acting Speaker may only preside over the special Council meeting concerned.
- (6) Only the motion of no confidence contemplated in sub-rule (1) may be dealt with at the special Council meeting.
- (7)(a) The Municipal Manager must give notice of the special Council meeting at least two working days prior to the meeting, in the manner contemplated in rule 6(4) and (5).

(b) If the Speaker determines that the special Council meeting is an urgent meeting, the Municipal Manager must, at least one working day before the meeting, give written notice as contemplated in rule 6(4) and (5).

(c) If the Municipal Manager accidentally omits to give notice to any councillor, such omission does not invalidate a meeting.

(8) If the Speaker, Executive Mayor or Deputy Executive Mayor to whom the motion relates, resigns from office at any time before the special Council meeting takes place, the motion of no confidence lapses and the meeting does not go ahead.

(9) The Speaker, Executive Mayor or Deputy Executive Mayor to whom the motion relates, has the right and must be allowed the opportunity during the special Council meeting to respond to every allegation made—

(a) in the motion of no confidence; and

(b) during the meeting.

(10) If the Speaker, Executive Mayor or Deputy Executive Mayor to whom the motion relates, is not present during the special Council meeting, the Council may continue with the proceedings in his or her absence.

(11) If the Speaker, Executive Mayor or Deputy Executive Mayor to whom the motion relates, at any time during the special Council meeting, but before the motion of no confidence is put to the vote, resigns from office, the—

(a) special Council meeting is adjourned immediately; and

(b) motion lapses;

despite any provisions to the contrary in these rules: Provided that if the motion of no confidence concerns the Speaker, the Council must proceed to elect a new Speaker.

(12) If the motion of no confidence is carried, the Speaker, Executive Mayor or Deputy Executive Mayor to whom the motion relates, is removed from office with immediate effect and the Council proceeds to elect a new Speaker, Deputy Executive Mayor or Deputy Executive Mayor, as the case may be, despite any provisions to the contrary in these rules.

(13) A councillor elected as Speaker, Executive Mayor or Deputy Executive Mayor in terms of sub-rule (11) or (12), as the case may be, serves for the unexpired term of his or her predecessor.

(14) If the motion of no confidence is not carried, no motion forwarding the same allegations may be put before the Council until a period of three months has lapsed, unless the Council directs otherwise.

CHAPTER 8

LEGISLATIVE PROCESS

Introduction of draft by-law

55. A draft by-law may be introduced only by a councillor or a committee, as contemplated in section 12 of the Systems Act.

Introduction of draft by-law by councillor

56. (1) A councillor may introduce a draft by-law by submitting it, together with a memorandum on its objects, to the Municipal Manager.

(2) If one or more committees deal with the subject of the draft by-law, the Municipal Manager must submit a report with his or her comments on the draft by-law to such committee or committees, as the case may be, for comment.

(3)(a) The Municipal Manager must submit a report on the draft by-law, together with any comments received from the committee or committees, as the case may be, as contemplated in sub-rule (2), if applicable, to the Executive Mayor for a report and recommendation to the Council as contemplated in section 30(5) of the Structures Act.

(b) The Executive Mayor must within three months of receipt of a draft by-law from the Municipal Manager, consider the draft by-law and decide to either support it with or without amendments, or not support it.

(4) After the Executive Mayor has made a decision as contemplated in sub-rule (3)(b), he or she must submit a report to the Council which sets out the following:

- (a) An executive summary of the draft by-law;
- (b) a memorandum on the objects of the draft by-law;
- (c) the contents of the draft by-law;
- (d) other by-laws that will have to be repealed or amended if the draft by-law is adopted;
- (e) the reasons why the draft by-law is supported with or without amendments or not supported, as the case may be;
- (f) any relevant comments or proposals, which may include proposals for amendments; and
- (g) a recommendation or recommendations.

(5)(a) After considering the report contemplated in sub-rule (4), the Council must decide to either reject the draft by-law or to approve it with or without amendments.

(b) If the Council rejects the draft by-law, a by-law of the same substance may not be introduced until a period of six months from the date of rejection has lapsed, unless the Council directs otherwise.

(c) If the Council approves the draft by-law, the draft by-law must be published for public comment in accordance with rule 58.

Introduction of draft by-law by committee

57. (1) A committee may introduce a draft by-law by submitting it, together with a memorandum on its objects, to the Municipal Manager for comment.

(2) The committee must consider the comments received from the Municipal Manager as contemplated in sub-rule (1), and submit it again to the Municipal Manager.

(3)(a) If any other committee deals with the subject of the draft by-law, the Municipal Manager must submit a report on the need for the by-law for consideration to such committee.

(b) If the committee contemplated in clause (a) agrees that the by-law is necessary, the Municipal Manager must submit the draft by-law to that committee for comment.

(4) The Municipal Manager must submit the draft by-law with the comments contemplated in sub-rule (3)(b), if applicable, to the Executive Mayor.

(5) The process contemplated in rule 56(3)(b) to 56(5) applies to the introduction of a draft by-law by a committee.

Publication of draft by-law

58.(1)(a) The Municipal Manager must, as soon as possible after the Council has granted approval for a by-law contemplated in rule 56 or 57, in terms of rule 56(5)(c) publish the draft by-law for public comment.

(b) The comment period must be at least 30 working from the date of publication, unless the Council has approved a shorter period.

(2) Publication for public comment must be in a manner that allows the public the opportunity to make representations with regard to the proposed by-law as contemplated in section 12(3)(b) of the Systems Act.

Consideration of draft by-law

59.(1) The Municipal Manager must as soon as possible after the closing date for public comment contemplated in rule 58, submit a report to the Executive Mayor together with—

(a) a copy of the draft by-law;

(b) a copy of the publication contemplated in rule 58;

(c) comments received from the public; and

(d) comments or recommendations from the Municipal Manager.

(2) The Executive Mayor must consider the report by the Municipal Manager and must—

(a) submit a report to the Council which sets out the following:

(i) An executive summary of the draft by-law; and

(ii) any relevant comments or proposals; and
(b) recommend to the Council to pass the by-law with or without amendments, to postpone the passing of the by-law, or to reject the by-law.

(3) If the Council rejects the draft by-law, a by-law of the same substance may not be introduced until a period of six months from the date of rejection has lapsed, unless the Council directs otherwise.

(4) As contemplated in rule 19(2)(a), a supporting vote of a majority of incumbent councillors is necessary to decide on the passing of a by-law.

(5) The Council may not pass a by-law unless all the councillors were given reasonable notice as contemplated in section 160(4)(c) of the Constitution and section 12(3)(a) of the Systems Act.

(6) When a by-law has been passed, it must be published in accordance with section 13 of the Systems Act.

(7) These rules also apply to the adoption of standard draft by-laws as contemplated in section 14(4) of the Systems Act.

CHAPTER 9

MISCELLANEOUS MATTERS

Official languages

60. Any person who speaks at a meeting may use any of the three official languages recognised by the Constitution of the Western Cape, 1997 (Act 1 of 1998), namely English, Afrikaans and isiXhosa.

Municipal employees

61. A municipal employee must attend a meeting if requested to do so by the Municipal Manager.

Breaches and offences

62.(1) A councillor, municipal employee or member of the public who physically attends a meeting and who—

(a) refuses to withdraw from the chamber or committee room in the circumstances contemplated in rule 9(4) or when directed to do so by the Speaker in terms of rule 10, 25(4), or 32(7); or

(b) returns to a meeting from which the councillor, municipal employee or member of the public has withdrawn or was removed for the duration of the meeting in terms of these rules,

may be removed by a person designated by the Speaker.

(2) A councillor, municipal employee or member of the public who—

(a) refuses to withdraw from the chamber or committee room when directed to do so by the Speaker in terms of these rules; or

(b) returns to a meeting from which he or she has withdrawn or was removed for the duration of the meeting in terms of these rules,

may be removed by a person designated by the Speaker, is guilty of an offence and is liable on conviction to a—

(i) fine;

(ii) imprisonment as determined by the presiding officer; or

(iii) both such fine and such imprisonment.

(3) A councillor, municipal employee or member of the public may not—

(a) interfere or impede the Council when such Council is exercising its powers, performing its functions, or carrying out its duties;

(b) interfere with or impede the exercise, performance or carrying out by a councillor of his or her powers, functions and duties as a councillor;

(c) threaten or obstruct a councillor proceeding to or going from a meeting of the Council or committee;

(d) assault or threaten a councillor;

(e) fail or refuse to comply with an instruction by the Speaker; or

(f) fail or refuse to comply with an instruction by a duly authorised municipal employee regarding—

(i) the presence of persons at a particular meeting of the Council or a committee; or

(ii) the possession of any article, including a firearm, on the premises where a meeting takes place or on municipal land.

(4) A person, including a councillor, who contravenes sub-rule (2) is guilty of an offence and is liable on conviction to a—

(i) fine;

(ii) imprisonment as determined by the presiding officer; or

(iii) both such fine and such imprisonment.

(4) Sub-rules (2) and (3) do not derogate from any other criminal or civil sanctions, or, in the case of councillors, sanctions regarding a transgression of the Code.

(5) A councillor who contravenes any of these rules during a meeting compromises the integrity of the municipality and must be dealt with in accordance with the code of conduct for councillors (Schedule 7 of the Structures Act) and may be charged in terms of the Code in addition to criminal charges that may be instituted against him or her.

(6) Every councillor, municipal employee and member of the public must act in accordance with the provisions of the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004).

(7) All contraventions done by an employee must be referred to the Municipal Manager in terms of Section 55 of the System Act and will be dealt with in terms of the relevant disciplinary procedures applicable.

**“SCHEDULE 7
CODE OF CONDUCT FOR COUNCILLORS**

PREAMBLE

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

Definitions

1. In this Schedule ‘partner’ means a person who permanently lives with another person in manner as if married.

General conduct of councilors

2. A councillor must—
 - (a) perform the functions of office in good faith, honestly and in a transparent manner; and
 - (b) at all times act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised

Voting at meetings

3. A councillor may not vote in favour of or agree to a resolution which is before the council or a committee of the council, which conflicts with any legislation applicable to local government.

Attendance at meetings

4. A councillor must attend each meeting of the municipal council and of a committee of which that councillor is a member, except when—
 - (a) leave of absence is granted in terms of an applicable law or as determined by the rules and orders of the council; or
 - (b) that councillor is required in terms of this Code to withdraw from the meeting.

Sanctions for non-attendance of meetings

5. (1) A municipal council may impose a fine as determined by the standing rules and orders of the municipal council on a councillor for—

- (a) not attending a meeting which that councillor is required to attend in terms of item 4; or
 - (b) failing to remain in attendance at such a meeting.
- (2) A councillor who is absent from three or more consecutive meetings of a municipal council, or from three or more consecutive meetings of a committee, which that councillor is required to attend in terms of item 4, must be removed from office as a councillor.
- (3)(a) Proceedings for the imposition of a fine or the removal of a councillor must be conducted in accordance with a uniform standing procedure which each municipal council must adopt for the purposes of this item.
- (b) The uniform standing procedure must comply with the rules of natural justice.

Disclosure of interests

6. (1) A councillor must-
- (a) disclose to the municipal council, or to any committee of which that councillor is a member, any direct or indirect personal or private business interest that that councillor, or any spouse, partner or business associate of that councillor may have in any matter before the council or the committee; and
 - (b) withdraw from the proceedings of the council or committee when that matter is considered by the council or committee, unless the council or committee decides that the councillor's direct or indirect interest in the matter is trivial or irrelevant.
- (2) A councillor who, or whose spouse, partner, business associate or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the municipality, must disclose full particulars of the benefit of which the councillor is aware at the first meeting of the municipal council.
- (3) This section does not apply to an interest or benefit which a councillor, or a spouse, partner, business associate or close family member, has or acquires in common with other residents of the municipality.

Personal gain

7. (1) A councillor may not use the position or privileges of a councillor, or confidential information obtained as a councillor, for private gain or to improperly benefit another person.
- (2) No councillor may be a party to or beneficiary under a contract for the provision of goods or services to any municipality or any municipal entity established by a municipality.

Declaration of interests

8. (1) When elected or appointed, a councillor must within 60 days declare in writing to the municipal manager the following financial interests held by that councillor:
- (a) Shares and securities in any company;
 - (b) membership of any close corporation;
 - (c) interest in any trust;
 - (d) directorships;
 - (e) partnerships;
 - (f) other financial interests in any business undertaking;
 - (g) employment and remuneration;
 - (h) interest in property;
 - (i) pension; and
 - (j) subsidies, grants and sponsorships by any organisation.
- (2) Any change in the nature or detail of the financial interests of a councillor must be declared in writing to the municipal manager annually.
- (3) Gifts received by a councillor above a prescribed amount must also be declared in accordance with subitem (1).
- (4) The municipal council must determine which of the financial interests referred in subitem (1) must be made public having regard to the need for confidentiality and the public interest for disclosure.

Full-time councillors

- 9 A councillor who is a full-time councillor may not undertake any other paid work except with the consent of a municipal council which consent shall not unreasonably be withheld.

Rewards, gifts and favours

10. A Councillor may not request, solicit or accept any reward, gift or favour for—
- (a) voting or not voting in a particular manner on any matter before the municipal council or before a committee of which that councillor is a member;
 - (b) persuading the council or any committee in regard to the exercise of any power, function or duty;
 - (c) making a representation to the council or any committee of the council; or
 - (d) disclosing privileged or confidential information.

Unauthorised disclosure of information

- 11.(1) A councillor may not, without the permission of the municipal council or a committee, disclose any privileged or confidential information of the council or committee to any unauthorised person.
- (2)For the purpose of this item ‘privileged or confidential information’ includes any information—
- (a) determined by the municipal council or committee to be privileged or confidential;
 - (b) discussed in closed session by the council or committee;
 - (c) disclosure of which would violate a person’s right to privacy; or
 - (d) declared to be privileged, confidential or secret in terms of law.
- (3)This item does not derogate from the right of any person to access to information in terms of national legislation.

Interference in administration

12. A councillor may not, except as provided by law—
- (a) interfere in the management or administration of any department of the municipal council, unless mandated by the council;
 - (b) give or purport to give any instruction to any employee of the council, except when authorised to do so;
 - (c) obstruct or attempt to obstruct the implementation of any decision of the council or a committee by an employee of the council; or
 - (d) encourage or participate in any conduct which would cause or contribute to maladministration in the council.

Municipal property

13. A councillor may not use, take, acquire or benefit from any property or asset owned, controlled or managed by the municipality to which that councillor has no right.

Councillor in arrears

14. A councillor may not be in arrears to the municipality for rates and service charges for a period longer than three months.

Breaches of Code

15. (1) If the speaker of a municipal council, on reasonable suspicion, is of the opinion that a provision of this Code has been breached, the speaker must—
- (a) authorise an investigation of the facts and circumstances of the alleged breach;
 - (b) give the councillor a reasonable opportunity to reply in writing regarding the alleged breach; and
 - (c) report the matter to a meeting of the municipal council after paragraphs (a) and (b) have been complied with.
- (2) A report in terms of subitem (1)c is open to the public.
- (3) The speaker must report the outcome of the investigation to the MEC for local government in the province concerned.
- (4) The speaker must ensure that each councillor, when taking office, is given a copy of this Code and that a copy of the Code is available in every room or place where the council meets.
- (5) If the speaker of council is the alleged perpetrator, or the speaker refuses to authorise an investigation, the council must establish a special committee, as contemplated in Item 16(1)(b), to investigate and make a finding on any alleged breach of this Code.

Investigation of breach

16. (1) A municipal council may—
- (a) investigate and make a finding on any alleged breach of a provision of this Code
 - (b) establish a special committee—
 - (i) to investigate and make a finding on any alleged breach of this Code; and
 - (ii) to make appropriate recommendations to the council.
- (2) If the council or a special committee finds that a councillor has breached a provision of this Code, the council may—
- (a) issue a formal warning to the councillor;
 - (b) reprimand the councillor;

- (c) request the MEC for local government in the province to suspend the councillor for a certain period;
 - (d) fine the councillor; or
 - (e) request the MEC to remove the councillor from office.
- (3) The speaker must inform the MEC for local government in the province concerned within 14 days of the finding and sanction decided on by the council.
- (4)(a) Any councillor who has been warned, reprimanded or fined in terms of paragraph (a), (b) or (d) of subitem (2) may within 14 days of having been notified of the decision of council appeal to the MEC for local government in writing setting out the reasons on which the appeal is based.
- (b) A copy of the appeal must be provided to the council by the MEC.
- (c) The council may within 14 days of receipt of the appeal referred to in paragraph (b) make any representation pertaining to the appeal to the MEC for local government in writing.
- (d) The MEC for local government may, after having considered the appeal, confirm, set aside or vary the decision of the council and inform the councillor and the council of the outcome of the appeal.
- (5) The MEC for local government may appoint a person or a committee to investigate any alleged breach of a provision of this Code and to make a recommendation as to the appropriate sanction in terms of subitem (2) if a municipal council does not conduct an investigation contemplated in subitem (1) and the MEC for local government considers it necessary.
- (6) The Commissions Act, 1947 (Act No. 8 of 1947), or, where appropriate, applicable provincial legislation, may be applied to an investigation in terms of subitem (4).
- (7) If the MEC is of the opinion that the councillor has breached a provision of this Code, and that such contravention warrants a suspension or removal from office, the MEC may—
- (a) suspend the councillor for a period and on conditions determined by the MEC; or
 - (b) remove the councillor from office.
- (8) Any investigation in terms of this item and any action by the MEC in terms of subitem (7) must be in accordance with section 3 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

Application of Code to traditional leaders

17 (1) Items 1, 2, 6, 7, 10 (b) to (d), 11, 12, 13, 15 and 16 (1) apply to a traditional leader who participates or has participated in the proceedings of a municipal council in terms of section 81.

(2) These items must be applied to the traditional leader in the same way they apply to councillors.

(3) If a municipal council or a special committee in terms of item 16(1) finds that a traditional leader has breached a provision of this Code, the council may—

- (a) issue a formal warning to the traditional leader; or
- (b) request the MEC for local government in the province to suspend or cancel the traditional leader's right to participate in the proceedings

of the council.

- (4) The MEC for local government may appoint a person or a committee to investigate any alleged breach of a provision of this Code and to make a recommendation on whether the right of the traditional leader to participate in the proceedings of the municipal council should be suspended or cancelled.
- (5) The Commissions Act, 1947 (Act No. 8 of 1947), may be applied to an investigation in terms of subitem (4).
- (6) If the MEC is of the opinion that the traditional leader has breached a provision of this Code, and that such breach warrants a suspension or cancellation of the traditional leader's right to participate in the council's proceedings, the MEC may—
 - (a) suspend that right for a period and on conditions determined by the MEC; or
 - (b) cancel that right.
- (7) Any investigation in terms of this item and any action by the MEC in terms of subitem (6) must be in accordance with the rules of natural justice.
- (8) The suspension or cancellation of a traditional leader's right to participate in the proceedings of a council does not affect that traditional leader's right to address the council in terms of section 81(3).''