

# Rules and orders

## THE BUILDING BLOCKS OF GOOD GOVERNANCE

How does a municipality make its decision-making procedures clear and legally sound? How does it ensure that every councillor can participate meaningfully in council meetings? How does it keep council and committee meetings orderly and prevent councillors from abusing their freedom of expression?

The basis for addressing these concerns is the adoption of proper 'rules and orders'. The Constitution provides that each municipality may adopt a by-law that prescribes rules and orders dealing with internal arrangements, council business and proceedings, and the establishment, composition, procedures, powers and functions of its committees. This article discusses those rules and orders (or 'rules of order' or 'standing orders' as they are sometimes called) and highlights the main issues that need to be addressed in such a by-law.

### Importance of rules and orders

It is important that municipalities have proper rules and orders. Firstly, the delivery of services and the promotion of local development depend on municipal councils taking decisions. When it is not clear how decisions should be taken, or when legal uncertainty surrounds a council decision, the consequences for the local community can be devastating.

Unnecessary legal costs are only a small part of the damage that a malfunctioning council does to its community.

Secondly, the Constitution and the Municipal Structures Act provide that councillors may not be sued for things they say or produce in council or committee meetings. Provincial laws may complement this. A councillor's freedom of expression is important to ensure free debate (see *Local Government Bulletin* 9(1), February 2007).

This is by no means, however, a licence to say absolutely anything or to behave inappropriately. Hateful speech, personal insults and utterances that have no connection with council business may still be grounds for suing a councillor. In addition, councillors must be punished for inappropriate speech or inappropriate behaviour in terms of the rules and orders even if they enjoy immunity from criminal or civil liability for a particular action. In other words, even though it might not be possible to sue a councillor in court for insulting a colleague in council, he or she must be disciplined in terms of the municipality's rules and orders. This is why it is important that the contents of the rules and orders be clear, that councillors be familiar with the rules and orders and that the rules and orders be upheld and enforced by the Speaker of the council.

## Democracy

The rules and orders are not just there to keep order. They also ensure that every councillor can participate in council and committee meetings. Every councillor was duly elected and carries out a political mandate, be it in a ruling party, a ruling coalition or the opposition. The Constitution provides that each member of the council may participate in council and committee meetings in a manner that "allows fair representation" and "is consistent with democracy". It is therefore important that the rules and orders facilitate the democratic functioning of the council. Councillors of ruling parties or coalitions, those in opposition parties and independent councillors should all be enabled by the rules and orders to participate meaningfully in council business.

## Link with delegations

It is important that the content of a municipality's rules and orders be in line with that municipality's delegations policy. The delegations policy determines the powers of the speaker of the council, for example. If, for argument's sake, the council has delegated the power to grant leave of absence to the speaker, then the rules and orders must be in line with this. Conflicts between the rules and orders and the delegations policy must be avoided.

- It is advisable for a municipality to adopt one set of rules and orders that also applies to committee meetings.
- All councillors, including those in opposition parties and independent councillors, should be enabled by the rules and orders to participate meaningfully in council business.
- The speaker has a crucial role to ensure that councillors are familiar with the rules and orders and that they are enforced.
- The content of a municipality's rules and orders must be in line with its delegations policy.

## Rules and orders for all meetings

It is advisable for the municipality to adopt one set of rules and orders that also applies to committee meetings. Having different sets of rules that chairpersons and councillors have to comply with at different meetings is not efficient.

This does mean, though, that the text of the rules and orders must be drafted carefully so that it can be applied across the board. For example, the text should refer to the chair of a meeting as "chairperson" rather than "speaker", so as not to exclude the chairperson of a council committee.

However, the rules and orders must also allow a chairperson to be flexible. Council meetings are very formal, but committee meetings may not have to be that formal.

## Traditional authorities

Traditional leaders occupy a special position in the council. If they have been identified by the MEC for local government, they may participate in council meetings, albeit without the right to vote. Also, the council must hear the view of a traditional leader if it is about to take a decision that affects that leader's traditional area. It is important for the municipality to make this significant role a reality in its rules and orders.

The rules must make clear how traditional leaders participate in council meetings and whether they may participate in committee meetings.

## Role of speaker

It is clear that the role of the speaker (or the chairperson of a committee) is critically important. The rules and order must make it clear that the chairperson is responsible for applying the rules and orders. The means, for example, the following:

- *Calling meetings.* In terms of the Municipal Structures Act, the speaker of the council (and the chairperson of the executive committee) will decide where and when the council meets, unless a majority of councillors requests a meeting and determines the time and date.
- *Precedence of chairperson.* Whenever the chairperson speaks, other councillors must remain silent.
- *Maintaining order.* The chairperson should be empowered to maintain order in the council and on the public gallery, with the assistance of security personnel, if need be.
- *Flexibility.* Applying the rules and orders is not an exact science. The chairperson must have the power to deviate from the rules if complying with them would be absurd. However – and this is important – he or she must provide reasons for any deviation.
- *Finality of chairperson's ruling.* When the chairperson makes a ruling, it is final. There is no further debate on the issue. This is not undemocratic but ensures that meetings are not bogged down by disagreements on procedure.

Municipalities must ensure that their rules and orders are in line with new legislation and drafted in such a way that all councillors can exercise their democratic rights to participate in council and committee meetings.

speaker having the final word. Other municipalities put control over the agenda squarely in the hands of the speaker. A standard order of business, which outlines the agenda items of a normal council meeting, is critical to make sure that the agenda is predictable.

### Attendance at meetings

It is self-evident that councillors must attend council and committee meetings. Not only does the meeting need a quorum (a majority of all councillors) before it can take decisions, but every councillor's attendance and participation is essential for the functioning of the municipality and the report-back to communities. However, too many municipalities struggle with poor attendance at council and committee meetings. The rules and orders should deal with this issue firmly. They should provide rules for granting leave of absence and should also deal with the disciplining of councillors who are absent without leave. More and more municipalities are issuing fines to such councillors. National law prescribes dismissal as the punishment for absence from three or more consecutive council or committee meetings.

The rules and orders should provide for a fair procedure prior to the imposition of a fine or dismissal, and should explain that dismissal follows after a councillor is absent from three consecutive council meetings or three consecutive committee meetings. They should also provide that failure to remain in attendance is the same as absence, and that signing the attendance register and leaving before a meeting ends is the same as absence without leave.

The practice of 'walkouts' as a political strategy is quite unfortunate. There appears to be a misplaced belief that it is a councillor's democratic right to be absent from a meeting where matters are being discussed that he or she feels strongly about. There is no such right. 'Walkouts' often result in problems with the quorum. They frustrate decision-making and hold the municipality, which has to ensure service delivery and development, to ransom. The democratic way in which to

## Decision-making

The rules and orders need to explain how the council takes decisions and whether there are any special procedures or special voting requirements for certain matters. Normally, decisions are taken by a simple majority of the councillors present. However, the law contains a number of provisions that prescribe a special majority. For example, some issues (by-laws, the budget, rates, taxes, levies and loans) must be decided by a majority *of all the councillors on the council*. Sometimes the law prescribes a special procedure: certain matters (by-laws, the budget, rates, taxes, levies and loans, the IDP and the appointment of the top two layers of management) cannot be decided without a report of the executive committee or executive mayor. Another example is the special procedural requirements for the adoption of a by-law. The rules and orders must be aligned with all of these requirements

## Agenda

The rules and orders need to make clear how the agenda of a council meeting is put together. How are items added to the agenda? What are the roles of the speaker, the mayor and the chief whip? There is no hard and fast rule in the law on who finalises the agenda, so a municipality has to devise its own system. Sometimes municipalities include a consultative process between the speaker, the mayor and chief whip, with the

register discontent with a decision is to ensure that one's disagreement is noted in the minutes.

## Debate management

Who can speak and for how long? The rules and orders must make provision for debate management. Some rules and orders provide that a councillor may speak for only five minutes on a particular item. Others include a formula that allocates speaking time based on the number of seats a party has. It is not undemocratic to afford larger parties more speaking time than smaller parties. However, the Constitution provides that every councillor must be able to participate meaningfully, irrespective of the size of the party he or she belongs to. If the formula for speaking time results in an allocation that makes meaningful participation impossible for a party or independent councillor, municipalities should look into creative ways of allocating speaking time that is fair and democratic. Again, the role and discretion of the chairperson are critical.

## Instruments for debate

One of the most important aspects of the rules and orders is the way they provide councillors with the instruments for engaging in debate and decision-making. How can a councillor put an issue on the agenda or ask the mayor a question? How can a councillor suggest a change to a recommendation made by the executive committee? Below are some of the instruments most commonly used in rules and orders. It is important to note that municipalities have the discretion to adopt their own terminology and procedure surrounding these instruments, as long as the instruments themselves are democratic and allow for meaningful participation in the council.

- *Motion.* A councillor suggests that the council undertakes a particular action or makes a particular statement. The motion is tabled before the meeting, debated and (if there is disagreement) put to a vote.
- *Question.* A councillor may ask any colleague a question that is not related to a motion or a report. The question must be tabled before the meeting. The relevant councillor (often representing the executive) will be asked to respond.
- *Recommendation.* A report to the council (by, for example, the executive mayor or committee) is normally accompanied by a recommendation suggesting what the council should do with the report. If there is disagreement on the recommendation, the council must

vote on it. Normally, the debate on a recommendation permits councillors to ask questions.

- *Amendment.* Any councillor can suggest an amendment to a motion that is before the council. If the amendment is supported by a majority, the motion is automatically changed accordingly. The same can happen to a recommendation.

The rules and orders need to stipulate how and when these instruments must be tabled. Some provision needs to be made for urgent motions or questions to be tabled without prior notice. Also, the rules should be clear on which motions or questions are impermissible. Motions or questions with racist implications or those that raise issues that are before the courts, for example, should not be entertained.

## Procedural issues

Councillors can also try to influence the way in which meetings are managed. For example, a councillor can make a suggestion to postpone the meeting, to move to the next item on the agenda, to put a matter to the vote, to close the meeting to the public or to refer a matter to a committee. If the suggestion is accepted by the majority, the meeting proceeds accordingly.

Points of order can be used to argue that the rules and orders are not being followed. The chairperson must rule after a point of order has been made. Often, rules and orders also permit councillors to present an explanation. If a councillor's earlier input has been misunderstood, he or she can ask the chairperson for the opportunity to clarify the issue so that a confused debate is avoided.

With all these instruments for engagement available, it is important that they not be abused, and the rules and orders should guard against that. A point of order should not be used to make a speech and an urgent motion should not be used to raise an issue that can wait for the next meeting, and so on.

## Conclusion

A municipality's rules and orders contain the building blocks of its governance system. It is important for municipalities to ensure that their rules and orders are up to date, in line with new legislation and drafted in such a way that all councillors can use them to exercise their democratic rights to participate in council and committee meetings.