

# WHAT YOU NEED TO KNOW ABOUT MUNICIPAL GOVERNANCE



By now, all municipal councils will have held their first council meeting and constituted most of their political structures. This article provides some basic governance information and highlights key issues that will be on the municipal council's agenda for its first 100 days in office.

## *When does a councillor legally assume office?*

A councillor legally assumes office when the Independent Electoral Commission (IEC) formally determines the result of the election in the municipality. The precise date is important in relation to, for example, remuneration. Legally, the IEC's declaration of the result of the election is the only decisive date. The swearing in of a councillor is an important ceremonial and political event, but the newly elected councillors are councillors **from the day the IEC declares them elected**.

## *How does the remuneration of councillors work?*

The municipality determines the remuneration of councillors, but must do this within the limits of the Remuneration of Public Office Bearers Act (Act 20 of 1998). In terms of the Act, the national Minister of Cooperative Governance and Traditional Affairs determines the **upper limits** of councillor salaries, allowances and benefits from time to time. The current determination is based on a combination of three factors:

- the municipality's '**grade**' (determined on the basis of municipal income and population);
- whether the councillor is **full-time or part-time**; and
- the individual councillor's **position** (eg mayor, member of exco, chief whip).

If a municipality pays someone more than is allowed for, this will be **irregular expenditure** and the municipality will be forced

by law to recover the money from the councillor. The municipal budget must include the proposed costs for the remuneration of councillors, and the municipality must report specifically on the remuneration of councillors in its annual report.

## *Declaration of financial interests and gifts by councillors*

The Code of Conduct for Councillors prescribes that each councillor must declare his or her financial interests within **60 days** of election as a councillor. The types of interests (eg shares, membership of close corporations, directorships) are listed in item 7(1) of the code. Any changes to this during the term of office must also be declared.

During his or her term of office, a councillor must also declare **gifts exceeding R1 000**. The financial interests and gifts are declared to the municipal manager, so the municipal manager must inform the councillors how declaration is to take place.

The council is not obliged to publicise everything that is declared in terms of these provisions, but it must decide which items to make public. This is a matter of balancing the public interest and the need for confidentiality.

## Election of office bearers

### *Speaker*

Each council should by now have elected a speaker. The role of the speaker is to chair council meetings, oversee compliance

with the Code of Conduct for Councillors and generally perform other statutory and delegated powers. Often the speaker carries specific responsibilities with regard to community participation and ward committees. When there is an equality of votes in the council, the speaker may cast an extra vote to determine the matter. The speaker's position is full-time.

In some municipalities (those that use the plenary executive system), there is no distinction between the speaker and the mayor. These municipalities do not elect an executive committee or executive mayor, and the offices of speaker and mayor are combined into one.

### *Chief whip*

Most municipal councils will by now also have elected a chief whip. A chief whip is responsible for the political management of all councillors. In large municipalities, the chief whip may be full-time. Schedule 3 of the Municipal Structures Act (Election of Municipal Office Bearers) does not apply to the election of a chief whip: the municipal council must treat this as a normal decision in terms of its rules and orders.

### *Municipal executive*

There are three types of municipal executives: executive committees, executive mayors and plenary executives.

#### Executive committee

Municipalities of the executive committee type should have elected an **executive committee** at their first council meeting. The council determines the procedure to elect members of the executive committee, as this is not regulated by Schedule 3 of the Structures Act. Members of the executive committee are **full-time**.

It is important to note that the Constitution provides that the executive committee may not simply be a 'winner takes all' committee. The council has a choice, but whatever it chooses, it must be '**fair**'. It is important for the council to take a resolution that indicates clearly which system is to be adopted for allocating executive committee seats.

- It may choose a **proportional system**. All parties and interests in the council are then proportionally reflected in the executive committee.

Tip: A council that chooses this system may want to use the formulas in Part 2 of Schedule 2 of the Municipal Structures Act to allocate seats on the executive committee. These formulas apply to the election of district representatives but could just as well be used as

a framework for proportional representation on the executive committee.

- However, the council may also choose an **alternative system**, provided that the system complies with the '**fairness**' principle of section 160(8) of the Constitution.

This means that the room for '**coalitions**' in municipalities of the executive committee type is not unlimited: the Constitution demands that the executive committee at least '**fairly**' represent political parties represented in the council. In other words, it may be illegal for a party that has significant representation in the council to be completely excluded from the executive committee. At the same time, it is not compulsory for each party to have representation on the executive committee in proportion to its representation in the council. This balance is very difficult to strike when the council is very small: there may be so little room to manoeuvre that it is impossible to grant every party representation.

Municipalities of the executive committee type must elect a **mayor** from among the members of the executive committee. A **deputy mayor** may be elected, but only if the MEC for local government agrees that the municipality may have one. The procedure for the election is set out in Schedule 3 of the Municipal Structures Act. The mayor chairs meetings of the executive committee, is the political head of the municipality and generally carries out important delegated and statutory powers. The mayor is full-time.

#### Executive mayor

Municipalities of the executive mayoral type elect an executive mayor. A **deputy executive mayor** may be elected, but only if the MEC for local government agrees that the municipality should have one. The procedure for the election of the executive mayor is set out in Schedule 3 of the Municipal Structures Act.

The executive mayor appoints a **mayoral committee**, comprised of councillors. The mayoral committee may not be larger than 20% of the council, or ten members, whichever is less. The executive mayor does not have to be counted as a member of the mayoral committee in determining the permissible size of the mayoral committee. Legally, the executive mayor is not compelled to appoint any member of another party. However, he or she is free to do so. Members of the mayoral committee, the executive mayor and the deputy executive mayor are full-time.

### *Appointing district representatives*

A newly elected local council must appoint a **delegation to the district council**. The larger the number of registered voters in a

local municipality, the larger its delegation to the district council will be.

The appointment of the district representatives is not an ordinary majority council resolution. The newly elected councillors of the local council cast votes for the district representatives in an election that is managed by the IEC (often through the municipal electoral officer) in terms of Part 2 of Schedule 2 of the Municipal Structures Act. The composition of the district delegation will broadly reflect the composition of the local council.

The political composition of the local council's delegation to the district will **stay the same** throughout its term of office, even if the political composition of the local council changes as a result of by-elections.

## Committees

### *Section 79 committees*

Each council may establish **council committees** in terms of section 79 of the Municipal Structures Act to assist the council. The council must appoint members and chairpersons to these committees. The council committees report directly to the council. Committee chairpersons may sometimes be full-time. These committees are generally linked to the municipality's overall organisational structure and dedicated projects or focal areas of the municipality.

### *Section 80 committees*

The municipal council may also establish **committees to assist the executive mayor or executive committee**. These committees are chaired by members of the executive committee or mayoral committee and report to the executive. The members are appointed by the council.

## Other governance matters

### *Budget and IDP*

Each municipality must ensure that its budget is adopted **before the start of the new financial year** on 1 July. Should the council fail to adopt a budget in time, the provincial government must intervene. The council must ensure that the annual review of its integrated development plan (IDP) has been completed so that the budget for 2011/12 can be adopted. The rules for the budget process and the key milestones are in the Municipal Finance Management Act, the Municipal Budget and Reporting Regulations, 2009 and relevant Treasury circulars.

Within 28 days after the adoption of the budget, the mayor

should approve the municipality's **service delivery and budget implementation plan** (SDBIP), a document that sets out service delivery targets as well as income and expenditure projections for the 2011/12 financial year.

### *Delegations*

The municipality's powers are vested in the council, subject to limits set in the law. Municipal councils must have systems of delegation to political structures, office bearers and municipal officials so that decision-making can be efficient. At the beginning of the term of office, the municipal council must **review its system of delegations**. This is done on the basis of a report prepared by the municipal manager for the executive committee or mayor. The law does not prescribe a deadline, but it is clear that this must be done as soon as possible.

### *Rules and orders*

The rules and orders (or 'standing orders') of the council determine how council and committee meetings are conducted. Typically, they deal with agenda-setting, decision-making, reporting, behaviour during council meetings and so on. These rules may need to be **updated**. For example, if the municipality has a 'hung council', it is important that the rules and orders provide for a casting vote for committee chairpersons, as this is not provided for in the law.

### *Election of ward committee members*

All local and metropolitan municipalities may have ward committees. The ward committee comprises **ten elected community members**, chaired by the ward councillor. The municipality must have a policy in place that sets out how the community members are elected. The term of the previous ward committees has now expired, so the municipality must prepare for **ward committee elections** to be carried out.

### *Expiry of municipal manager's contract*

By law, the current municipal manager's contract may not go beyond 18 May 2012, and most municipal managers have contracts that expire earlier. The municipal council appoints the municipal manager.

The council should therefore ensure that it starts the relevant procedures towards **extending the contract or recruiting someone else** in time, to avoid a vacancy when the current contract expires.



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