

# The Municipal Council

The municipal council receives ample attention in the Municipal Structures Act. The Act contains provisions on issues such as the election and removal from office of councillors, and the internal proceedings in, and the dissolution of the council. The Act also contains a Code of Conduct. This third part of our series on the Structures Act summarises chapter three of the Act that deals with the municipal council, discusses the Code of Conduct as well as the ward committees and the role of traditional leaders in municipal councils.

## Election, appointment and removal from office

The Structures Act stipulates that each municipality must have a municipal council which must meet at least four times a year. The MEC determines in the 'section 12 notice' the number of councillors and which councillors can be designated by the council as full-time councillors. Councillors of local municipal councils, metro councils and district management area councils are elected according to a system of proportional representation. In other words, the parties that entered into elections are represented proportionally in the council. District councillors are elected partly by the voters in the district and are partly appointed by the local councils to represent the interests of those local municipalities. The term of office of councillors is five years (s 24). A by-election must be held if a court sets aside the result of a municipal election, if a council is dissolved, when there is a vacancy in a ward or when the Electoral Commission has not declared the result of an election in time.

A councillor has to vacate office when he or she:

- resigns;
- no longer qualifies to be a councillor - section 158 of the Constitution and section 21 of the Act deal with the (dis)qualifications of councillors;
- ceases to be a member of the political party that he or she was listed under at the time of election;

- contravenes a provision of the Code of Conduct and is removed from office in terms of that code;
- is a representative from a local council to a district council and ceases to be a member of the local council that he or she represents;
- is a representative from a local council to a district council and is replaced with another representative by the local council;
- was elected to represent a ward and -
  - (i) ceases to be member of the party, which mark or symbol was used on the part of the ballot paper for wards; or
  - (ii) becomes a member of a party, which mark or symbol was not used on the part of the ballot paper for wards (s 27).

## Privileges and immunities

The privileges and immunities of councillors should be provided for by provincial legislation (s 28, see also s 161 of the Constitution). That legislation must at least give the councillors freedom of speech in the council and its committees. It must also deal with immunity from civil and criminal consequences for anything said by councillors in council or committee meetings. Until such legislation has been enacted, these two principles apply as they have been laid down in the Act.

## Procedures

When conducting its business, the council must act in an open manner. It can only close its sittings if it is really necessary, and consistent with the values of an open and free democracy. The council can only vote on a matter if at least half of the councillors are present (s 30, see also s 160(3)(a) of the Constitution). Certain matters can only be determined by a majority vote of the councillors. That means that, with regard to those matters, a majority of all the councillors must vote in favour of a particular proposal before a decision can be taken. All those matters are listed in section 160(2) of the Constitution and concern:

- the passing of by-laws;
- the approval of budgets;
- the imposition of rates and other taxes, levies and duties; and
- the raising of loans.

All other matters are determined by a majority of the votes cast. That means that a majority of the councillors present in the council meeting must vote in favour of a particular proposal before a decision can be taken. Therefore, in a situation where only half of the councillors is present, a decision can be taken with only a quarter of all the councillors + 1 voting in favour. In the case of an equal number of votes, the presiding councillor must cast an extra vote.

The council must ask the opinion of its executive committee or executive mayor (if there is one) before it decides on one of the 'special' matters, mentioned above, and before it decides on the approval of an Integrated Development Plan (IDP) or the appointment of a municipal manager (CEO)/head of a department.

## Delegation

The council can delegate powers and duties to the committees and persons listed in section 32(1):

- the executive committee;
- the executive mayor;
- metropolitan subcouncils;
- ward committees;
- other committees;
- elected office-bearers; and
- any municipal official.

The delegation must be in accordance with the Constitution and this Act. The council can always review a decision taken in consequence of a delegation. It must do so if 25 per cent of the councillors request it.

## Dissolution

The council may dissolve itself, as long as it has been in office for a minimum of two years (s 34). It can also be dissolved by the MEC:

- as a consequence of a boundary determination by the Demarcation Board; or

- when an intervention in terms of section 139 of the Constitution has not resulted in the municipality being capable of doing its work. It is unclear what form of intervention has to precede the dissolution by the MEC (section 139 authorises different forms of intervention). The MEC needs the concurrence of the Minister and the approval of the National Council of Provinces for dissolution of a council.

When a council is dissolved or does not have enough members for a quorum, the MEC can appoint administrators to ensure the continued functioning of the municipality until the council has sufficient members, or until a new council has been elected.

## The speaker

Each municipal council must elect a chairperson who will be called the 'speaker'. The council can remove the speaker from office by resolution. Powers and duties can be delegated to the speaker by the council. Among other things, the speaker must preside over and ensure order in meetings, and also ensure that the council and its committees comply with the Code of Conduct (s 37).

## The Code of Conduct for councillors

Schedule 5 to the Structures Act contains a Code of Conduct for councillors. The speaker of the municipal council must give each councillor a copy of this Code and make it available in every room where the council meets. In general, councillors must perform their duties in good faith, honestly, in a transparent manner, in the best interest of the municipality and without compromising the municipality's credibility or integrity.

## Attendance at meetings

Councillors must attend meetings of the council or committees of which they are members unless they have obtained leave of absence or are required to withdraw from the meeting. The council can determine fines, but failure to attend three or more consecutive meetings must result in removal from office.

## Personal interests

Councillors must disclose any personal interests in matters before the council or its

committees and withdraw from meetings about such matters unless the council decides otherwise. Financial interests in businesses, partnerships, employment and remuneration, gifts above a certain amount, directorships etc must be made known in writing to the municipal manager (CEO). The council can decide to make those financial interests public. Full-time councillors are not permitted to engage in any other paid work without the consent of the council.

## Personal gain

Section 6 of the Code of Conduct forbids councillors to use their position, privileges or confidential information for private gain for themselves or other persons. Without prior consent of the council, a councillor may not:

- be a party to or a beneficiary under a contract for -
    - (i) the provision of goods or services to the municipality; or
    - (ii) the performance of any work other than as a councillor for the municipality;
  - obtain a financial interest in any business of the municipality;
  - appear on behalf of any other person before the council or a committee in return for a fee or other consideration.
- A councillor may not use, take or acquire or benefit from any property or asset owned, controlled or managed by the municipality to which that councillor has no right (s 12).

## Bribery

Councillors may not request, solicit or accept rewards, gifts or favours for activities such as voting in a particular manner, persuading the council, making a representation to the council or disclosing confidential information (s 9).

## Confidentiality

Without the consent of the council, councillors are not allowed to disclose privileged or confidential information to unauthorised persons (s 10). 'Privileged or confidential' is information -

- that is declared so by the council, a committee or by law;
- that has been discussed in a closed session by the council or a committee; or
- disclosure of which would violate a person's right to privacy.

This does not derogate from the right to access to information in terms of national

legislation (ie s 32 of the Constitution and the forthcoming Open Democracy Bill).

## Administration

A councillor may not interfere in the administration of any of the municipality's organs (unless mandated by the council) or instruct any employee of the council without authorisation. Councillors may not obstruct the implementation of any council or committee decision or behave in such a way that would contribute to maladministration in the council.

## Consequences of a breach of the Code

There are three organs or persons that can instigate an investigation into an alleged breach of the Code.

### 1. The Speaker

If the Speaker suspects a breach of the Code of Conduct, he or she has to investigate, allow the councillor concerned to respond to the allegations and report the matter to a council meeting. This report is open to the public. The MEC should also be informed of the outcome of the investigation.

### 2. The council

The municipal council can investigate and make a finding on an alleged breach of the Code. It can also establish a special committee to investigate and make recommendations to the council.

The council can punish a councillor by:

- issuing a formal warning;
- reprimanding the councillor;
- requesting the MEC to suspend the councillor;
- fining the councillor; or
- requesting the MEC to remove the councillor from office.

Councillors can appeal to the MEC against a warning, reprimand or fine and the MEC can, after hearing both sides of the story, confirm or change the decision taken by the council.

### 3. The MEC

The MEC can appoint a person or committee to investigate any alleged breach and to recommend whether or not the councillor should be suspended or removed from office. If the MEC finds that there was a breach, he or she can either suspend the councillor or remove the councillor from office.

Any investigation into a breach of the Code by a councillor or traditional leader

should be in accordance with the rules of natural justice (s 14(7)). That means that a 'fair hearing' must take place - the councillor concerned should be notified of the intended action to be taken against him or her and he or she should be given a proper opportunity to be heard.

## Ward committees

Certain types of local and metropolitan municipalities can have ward committees. The object of ward committees is to increase the participation of citizens in local government. The ward committee serves as an advisory forum on matters affecting its ward. It can make recommendations to the ward councillor and, through him or her, to other organs of the municipality. The municipal council can delegate other duties and powers to the ward committee. If a ward committee fails to fulfil its objectives, it can be dissolved by the council (s 78).

A ward committee consists of the councillor that represents that ward in the municipal council and not more than 10 other persons, who must reside in the ward. The latter are unpaid committee members. The metropolitan council or the local council must regulate how the unpaid committee members are elected, taking into account the need for women to be equitably represented and the need for a diversity of interests in the ward committee (s 73).

## Traditional leaders

The role of traditional leadership in the council is twofold:

- traditional leaders have the right to participate in the proceedings of the council; and
- traditional leaders have the right to address the council on a matter that concerns their area.

The MEC must identify, along the procedure set out in Schedule 6 to the Act, which traditional leaders are allowed to attend and participate in the meetings of the district or local council concerned (s 1). The number of traditional leaders that may participate may not exceed 10 per cent of the total number of councillors. If a number larger than that has been identified, the MEC can determine a rotation system allowing them all to participate. The MEC can regulate their participation and prescribe a role for traditional leaders in the

affairs of the municipality. Before a district or local council takes a decision that affects the area of a traditional authority, the leader of that authority must be given the opportunity to express a view on the matter.

## The Code of Conduct

Most of the rules in the Code of Conduct apply to the traditional leaders who participate in proceedings of the council. The council may investigate any alleged breach of the Code by a traditional leader and issue a warning or request the MEC for suspension or cancellation of the traditional leader's right to participate in the proceedings. The MEC can appoint a person or committee to investigate a breach by the traditional leader. He or she can decide to suspend or cancel the right to participate. However, after suspension or cancellation, the traditional leader still has the right to address the council on matters affecting the area of traditional authority.

## Assessment and challenges

The Structures Act introduces a number of important new aspects regarding the municipal council. Most notably is perhaps the Code of Conduct for councillors, which will serve as a tool to fight corruption and mismanagement at local level. Another important issue is the possibility for the MEC to dissolve the council after an unsuccessful intervention, made in terms of section 139 of the Constitution. Special provision had to be made in the recent amendment of the Constitution (Act 65 of 1998, see *LGL Bulletin* 1999 (1) 7) to ensure the constitutionality of this provision. The introduction of a Speaker in the council has prompted the Cape Metropolitan Council to argue in their challenge of the Act before the Cape High Court (see *LGL Bulletin* 1999 (1) 10) that this deals exhaustively with a matter falling within the scope of the council's exclusive power to make by-laws regulating their own internal affairs (s 160(6) of the Constitution). Also noteworthy is the consequence of the Structures Act for municipal budgets - after the Act has come into power, budgets will no longer need a two-thirds majority, as is presently the case under the LGTA. A simple majority of the council members will suffice for a budget to be passed.