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LOCAL AUTHORITY NOTICE

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LOCAL GOVERNMENT NOTICE

MAKANA MUNICIPALITY

The Municipal Manager hereby publishes, in terms of Section 13 of the Local Government Municipal Systems Act, 2000 (Act 32 of 2000) read with Section 162 of the Constitution of the Republic of South Africa Act 1996 (Act 108 of 1996) the By-Laws Relating to the Standing Rules and Orders of the Council and its Committee and for matters incidental thereto which by-laws shall come into operation on the date of publication thereof.

BY-LAWS RELATING TO THE STANDING RULES AND ORDERS OF THE COUNCIL

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PREAMBLE

AND WHEREAS the Constitution establishes local government as a distinctive sphere of government;

AND WHEREAS section 160(6) of the Constitution authorizes a municipal council to adopt policies and make by-laws which prescribe rules and procedures for:

- (a) its internal arrangements;
- (b) its business and proceedings; and
- (c) the establishment, composition, procedures, powers and functions of its committees.

AND WHEREAS the Municipal Structures Act, the Municipal Systems Act and other legislation provides for certain matters which may be included in the rules and orders of a municipality and be incorporated in its by-laws.

The council of the municipality hereby adopts these by-laws.

CHAPTER 1
DEFINITIONS**1. Definitions**

In these rules and orders, unless the context otherwise indicates-

"administration"-

- (a) as an entity means the municipal manager and the other employees of the municipality;
- (b) as a functional activity, includes management and means the tasks that employees perform to enable the council to make and implement policies and by-laws.

"advisory committee" means a committee established by the council in terms of section 17(4) of the Systems Act to advise it on any matter within its competence, the members of which are not councillors;

"agenda" means a list of matters to be considered at a meeting of the council and committees established by the council including reports regarding such matters;

"audit report" means any report submitted to the council by or on behalf of the Auditor-General with regard to the auditing of the municipality's annual financial statements and accounting records;

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"chairperson" means the chairperson of a meeting and, unless the text provides otherwise, means the speaker in respect of a meeting of the council, the mayor in respect of a meeting of the mayoral committee and the appointed chairperson of a section -79 and any other committee established, elected or appointed by the council;

"chief whip" means the whip of the ruling party in the council who, together with any other whip or the councillor so designated by the political parties in the council who do not enjoy an outright majority, and in conjunction with the speaker, must ensure the smooth functioning of the proceedings of the council in terms of these by-laws and other applicable legislation;

"code of conduct" means the code of conduct for councillors contained in Schedule 1 to the Systems Act;

"committee" includes:

- (a) a committee elected or appointed by the council in terms of section 80 read with section 79 of the Structures Act to assist the mayor and "a section -79 committee" shall have the same meaning;
- (b) a committee appointed by the council in terms of section 79 of the Structures Act;
- (c) the mayoral committee unless specifically provided to the contrary in these by-laws;
- (d) unless expressly provided to the contrary in these by-laws, excludes an advisory committee; provided further that -
- (e) unless expressly provided to the contrary in these by-laws, a reference to a section 79 –committee shall be construed as a reference to a committee established by the council to assist the mayor;

"Constitution" means the Constitution of the Republic of South Africa 1996 (Act No. 108 of 1996);

"constituency" means-

- (a) for the purpose of a constituency meeting, the residents in a ward in the municipal area;
- (b) for the purpose of a public hearing:
 - (i) a political party that contested a general election for councillors in the municipal area; and

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- (ii) any readily identifiable group of residents in the municipal area (whether they are organized or not) that share common economic or social interests or conditions;

"constituency meeting" means a meeting of the residents within a ward in the municipal area as contemplated in rule 171;

"continuation meeting" means a council or committee meeting held in terms of rule 34 that takes place to complete the unfinished business standing over from a meeting that had not previously been concluded;

"council" means the municipal council of the municipality;

"councillor" means an elected member of the council;

"departmental manager" means an employee of the municipality appointed by the council as departmental manager of a department and includes an employee acting in his or her stead and, for purposes of these by-laws, a "director" and "directorate" shall have the same meaning;

"Finance Management Act" means the Local Government: Municipal Finance Management Act 2000 (Act No. 56 of 2003);

"functionary" includes, as the text may require, the responsible political structure, political office bearer as defined in the Systems Act, municipal manager or any staff member acting under delegated authority;

"mayor" means a councillor elected by the council as mayor of the municipality in terms of section 55(1) of the Structures Act and **"executive mayor"** shall bear the same meaning;

"MEC" means the member of the executive council of the province responsible for local government;

"motion" means a written proposal;

"municipal budgeting and reporting regulations" means the Municipal Budgeting and Reporting Regulations contained in Government Notice 393 of 17 April 2009;

"municipality" means the Municipality of Makana, a local municipality established in terms of section 12 of the Structures Act;

"municipal area" means the area of jurisdiction of the municipality demarcated in terms of the Local Government: Municipal Demarcation Act 1998 (Act No. 27 of 1998);

"municipal manager" means the manager of the municipal administration and accounting officer of the municipality appointed by the council in terms of section 82 of

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the Structures Act and includes any employee of the municipality who acts in his or her stead or to whom he or she has delegated power in connection with any matter regulated in terms of these by-laws and, in the event of the municipality being subject to an intervention in terms of section 139 of the Constitution or any other applicable law, includes the "Administrator" appointed as a consequence of such intervention or in terms of the conditions pertaining thereto to perform the duties of the municipal manager;

"mayoral executive system" means a system of local government which allows for the exercise of executive authority through an executive mayor in whom the executive leadership of the municipality is vested and who is assisted by a mayoral committee;

"mayoral committee" means a committee of councillors appointed by the mayor in terms of section 60 of the Structures Act;

"newspaper" means a newspaper -

- (a) registered in terms of any law; and
- (b) that is published at least weekly; and
- (c) circulates within the municipal area; and
- (d) that has been determined by the council as a newspaper of record;

"petition" means a written statement, proposal or grievance irrespective of form addressed to the municipality or an office-bearer or employee of the municipality and signed by more than five residents within the municipal area or any part thereof;

"Property Rates Act" means the Local Government: Municipal Property Rates Act 2004 (Act No. 6 of 2004);

"proposal" means a draft resolution submitted orally by a councillor during a debate on any matter at a meeting of the council or any committee thereof;

"public hearing" means a meeting arranged by the council to solicit the views and opinions of members of the public and/or specific constituencies on a matter or matters affecting the interests of the residents within the municipal area;

"public holiday" means a public holiday contemplated in the Public Holidays Act 1994 (Act No. 36 of 1994);

"public meeting of voters" means a meeting of which public notice has been given and which is open to all voters registered in the municipal segment of the national common voters roll relating to the municipality;

"question" means a question in terms of rule 59 or 60 and asked during a meeting of the council or any of its committees;

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"quorum" means the minimum number of councillors and other members, if any, that must be present at a meeting before it may commence or continue with its business;

"rule" means the provisions of any section of these by-laws and includes a sub-rule, any legal requirement contained in or referred to in the Structures and Systems Acts pertaining to any matter legislated in these by-laws and any standard practice relating to the holding and conduct of meetings in terms of the common law;

"section 79-committee" means a committee contemplated in section 79 of the Structures Act and **"standing committee"** or **"portfolio committee"** shall have the same meaning;

"speaker" means the councillor elected as speaker of the council in terms of section 36 of the Structure Act and includes any councillor who had been elected by the council as acting speaker during the temporary incapacity or absence of the speaker and, in these by-laws, any reference to the chairperson in relation to a meeting of the council shall be a reference to the speaker or acting speaker, as the case may be;

"Structures Act" means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

"Systems Act" means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

"term" means a period of office as defined in or envisaged in the Structures Act;

"Whip" means a councillor of a party in the council appointed by that party as whip to ensure, together with the chief whip and in conjunction with the speaker, the smooth functioning of the proceedings of the council in terms of these by-laws and other applicable legislation.

CHAPTER 2
GENERAL PROVISIONS RELATING TO COUNCIL
AND COMMITTEE MEETINGS

2. Determination of time and venue of meetings

- (1) Meetings of the council or any committee of the council may not be held on a Saturday, Sunday or a public holiday unless exceptional circumstances exist necessitating such meetings in which case the speaker or the chairperson, as the case may be, shall determine the place, date and time for such meetings;
- (2) Meetings of the council or any committee of the council or a public hearing must be held at a venue within the municipal area.
- (3) When determining the venue for a meeting or hearing, the responsible functionary must take the following factors into account:

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- (a) the availability of seating accommodation at the designated venue for members of the public and the media who wish to attend the meeting;
 - (b) the accessibility of the designated venue to members of the public and the media; and
 - (c) the reasonable steps that may be taken to regulate public access to such venue.
 - (d) the availability of equipment for recording the proceedings of the meeting or hearing concerned, as the case may be.
- 3. Determination of the venue and time of ordinary council and committee meetings**
- (1) The municipal manager or, if there is not a municipal manager, a person appointed by the MEC, must determine the date, time and venue of the first meeting of the council after a general election for councillors of the municipality which meeting must be held within fourteen days after the council had been declared elected.
 - (2) The speaker or the chairperson of a committee, as the case may be:
 - (a) must determine the schedule of the dates, times and venue of meetings for a period of twelve months in advance;
 - (b) may, at any time, amend the schedule of dates, time or venue of meetings;
 - (c) must inform the municipal manager as soon as the aforementioned schedule has been determined or immediately after amending such schedule.
 - (3) Meetings must be held in accordance with the schedule referred to in sub-rule (2) provided that:
 - (a) the council must hold at least one ordinary meeting every three months; and
 - (b) not more than one ordinary council meeting may take place during any month;
 - (c) no committee meeting may take place during an ordinary or special council meeting except with the express approval of the council.
 - (4) The municipal manager must supply each councillor and departmental manager with a copy of the schedule referred to in sub-rule (2) and any amendments thereto.

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4. Determination of the venue and time of special council and committee meetings

- (1) The speaker or the chairperson of a committee, as the case may be, may, at any time, convene a special meeting of the council or committee concerned on a date, time and venue determined by him or her.
- (2) The speaker or the chairperson of a committee, as the case may be, must, if a majority of councillors or a majority of the members of the committee who are councillors, requests him or her in writing to convene a special meeting, convene a special council or committee meeting, on a date set out in such request and at a time and venue determined by him or her.
- (3) The speaker or the chairperson of a committee, as the case may be, must forward a copy of the aforementioned request to the municipal manager.
- (4) As soon as the speaker or the chairperson of a committee, as the case may be, has determined the date, time and venue of a special meeting, he or she must inform the municipal manager thereof.
- (5) A request in terms of sub-rule (2) to call a special meeting must set out the matter or matters to be dealt with at that special meeting. No business other than that specified in the notice convening a special meeting or set out in the request referred to in sub-rule (2) may be dealt with at the special meeting concerned.
- (6) Should the speaker or the chairperson of a committee, as the case may be, fail to convene a special council or a special committee meeting in terms of sub-rule (2), the municipal manager must convene the meeting at the date set out in the request and at a time and venue determined by him or her and inform the speaker or chairperson concerned accordingly.
- (7) Notice by the municipal manager to the speaker or chairperson of a committee in terms of sub-rule (6) shall, unless the contrary is proved, be conclusive proof that they had knowledge of such meeting.

5. Meetings by telephone or video conference

- (1) The municipality may hold a council or committee meeting using tele-communications or video conferencing facilities.
- (2) A meeting in terms of sub-rule (1) may only be held if:
 - (a) all the councillors who are required to attend the meeting concerned have access to the required facilities;
 - (b) practicable arrangements can be made for members of the public and the media to follow the proceedings of such a meeting provided that the

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meeting concerned is a meeting which may be opened to the public and the media;

- (c) practicable arrangements can be made for the recording of the minutes of the relevant meeting: and
 - (d) the chairperson of the meeting approves the holding of the meeting in terms of this rule.
- (3) A meeting in terms of sub-rule (1) is subject to these by-laws, provided that the venue stated in the notice of the meeting must be the places where councillors can access the facilities required for the meeting.

6. Notice of council and committee meetings

- (1) At least 5 days before an ordinary or special meeting of the council and its committees including a continuation meeting referred to in rule 34 or such shorter period in these by-laws expressly provided, the municipal manager must, in writing, give notice to each councillor and departmental manager of such meeting including its venue and commencing time.
- (2) In the case of an urgent meeting, the period of 5 days referred to in sub-rule (1) may be reduced to 48 hours prior notice of the meeting.
- (3) The municipal manager must give notice to the public, in a manner determined by the council, of the time, date and venue of every ordinary and also every special or urgent meeting of the council, except when time constraints make this impossible.
- (4) The method of giving notice of a meeting referred to in sub-rule (3) shall include at least the placement of a notification of such meeting on the official notice board(s) of the municipality.
- (5) A councillor and departmental manager to whom notice had been given in terms of sub-rule (1) shall, until such date, venue or time is changed and written notice of such change has been given, be required, without further notice, to attend the meeting stipulated in such notice.
- (6) A notice referred to in sub-rule (1) given to a councillor and a departmental manager must contain the agenda for the meeting concerned (except in the case of a continuation meeting in terms of rule 34. In the case of a special meeting in terms of rule 4, the agenda may contain only the matter or matters that must be dealt with at the scheduled meeting.
- (8) A notice given in terms of sub-rule (1) to a councillor and departmental manager is deemed read for the purpose of the meeting to which it applies.

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- (9) Any notice given by the municipal manager in terms of this rule must be signed by him or her and be countersigned by the speaker in respect of a council meeting and by the chairperson in respect of a meeting of a committee.

7. Councillors must supply municipal manager with an address

- (1) Every councillor must, within two days after he or she had been declared elected and, thereafter, as often as is necessary, supply the municipal manager in writing with an address within the municipal area or an electronic mail address to which official communications and notices to him or her must be sent.
- (2) The municipal manager may deliver a notice contemplated in rule (6) to a person that appears to be over the age of sixteen at the address supplied in terms of sub-rule (1).
- (3) Non-receipt of any official communication or notice sent to an address referred to in sub-rule (1) or delivered in terms of sub-rule (2):
- (i) does not affect the validity of any meeting or proceedings of the council or its committees; and
 - (ii) does not constitute sufficient reason for a councillor to be absent from the meeting concerned without leave of absence.
- (4) The municipal manager shall maintain a record of all notices and official communications delivered or conveyed to councillors in terms of sub-rule (2).

8. Leave of Absence

- (1) A councillor who-
- (a) is unable to attend a meeting or hearing of which prior notice has been given; or
 - (b) is unable to remain in attendance at a meeting or hearing; or
 - (c) will arrive after the stipulated commencing time for a meeting or hearing -
- must, at least twenty four hours before the commencement of the meeting or hearing concerned, lodge with the municipal manager a written application for leave of absence from the whole or any part of such meeting or hearing.
- (2) As soon as it is possible for him or her to do so, a councillor who did not apply for leave of absence in terms of sub-rule (1) and who was absent from a meeting or hearing or any part thereof, may, after that meeting or hearing, lodge with the municipal manager a written application for condonation of his or her failure to

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apply for leave of absence and the retrospective grant of leave of absence to him or her in respect of his or her period of absence. Such an application must:

- (a) state the reasons for the late submission of the application for leave of absence; and
 - (b) the reasons for his or her absence from the meeting or hearing concerned.
- (3) The municipal manager must inform the chairperson of the relevant meeting or hearing of any application for leave of absence.
- (4) An application in terms of sub-rule (1) or (2) is considered and granted or refused by:
 - (a) the speaker, in the case of a council meeting;
 - (b) the responsible chairperson in the case of a committee meeting.
- (5) The speaker or responsible chairperson, as the case may be, must inform the municipal manager of his or her decision in terms of sub-rule (4).
- (6) Whenever an application for leave of absence in terms of sub-rule (1) or (2) is refused:
 - (a) the speaker or responsible chairperson, as the case may be, must supply the reasons for such refusal; and
 - (b) the municipal manager must immediately after such decision is conveyed to him or her, in writing, inform the councillor concerned of such refusal and supply the reasons for same.
- (7) A councillor -
 - (a) who failed to make application in terms of sub-rule (1) or (2) and was absent from a meeting or hearing he or she was required to attend; or
 - (b) whose application for leave of absence was refused and was absent from the meeting or hearing he or she was required to attend; or
 - (c) whose application for leave of absence was refused and who did not appeal in terms of rule 9; or
 - (d) whose appeal was not upheld; or
 - (e) who did not sign the attendance register contemplated in rule 12 -

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is deemed to have been absent without leave from the meeting or hearing concerned.

- (8) A councillor contemplated in sub-rule (7) must pay to the municipality a fine equal to 10 percent of his or her monthly salary which fine shall be deducted from the first next payment due to him or her by the municipality unless he or she pays the fine in cash before the relevant pay day. A fine in terms of this sub-rule escalates at a rate of 5 percent for every subsequent absence without leave by the relevant councillor. The municipal manager must inform the councillor concerned in writing of the imposition of the aforesaid fine.
- (9) The municipal manager must keep a record of all occurrences in terms of sub-rule (7) and must submit a written report thereon to the speaker on a quarterly basis.

9. Appeal against refusal of applications for leave of absence

- (1) A councillor whose application for leave of absence had been refused in terms of rule 8 (6) may appeal against such refusal. Such an appeal must -

- (a) be in writing; and
(b) be lodged with the municipal manager,

within fourteen days after the date that the decision is conveyed to him or her in writing by the municipal manager, provided that the council or the committee that must consider the appeal may condone the late submission of an appeal in exceptional circumstances.

- (2) The council shall consider an appeal in terms of sub-rule (1);
(3) A decision with regard to an appeal in terms of sub-rule (1) is final.

10. Removal of a councillor from office for absence from meetings without leave

- (1) Whenever a report submitted to the speaker in terms of rule 8 (9) identifies a councillor that has been absent from three or more consecutive council meetings or three or more consecutive committee meetings which that councillor was required to attend, the speaker must, in writing, report the matter to the council at its first ordinary council meeting next ensuing.
- (2) The speaker shall also send the councillor referred to in sub-rule (1) a copy of his or her report referred to therein.

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- (3) The council must consider the report of the speaker in terms of sub-rule (1) and must give the councillor concerned an opportunity to state his or her case in response thereto;
- (4) The affected councilor shall withdraw from the meeting of the council immediately after he or she has been heard to enable the council to consider the matter.
- (5) If, after consideration of the matter, the council is of the opinion that the councillor concerned was absent without a good and acceptable reason, such councillor concerned shall be deemed to have contravened item 4 of the code of conduct and the council must resolve to request the MEC to remove that councillor from office. If the council finds that the reason for the absence of the councillor concerned from any of the meetings in respect of which he was charged aforesaid was a good and acceptable reason, then the council may issue a formal warning to the relevant councillor and determine the period during which the warning will be valid.
- (6) The municipal manager shall convey the decision of the council adopted in terms of sub-rule (5) and any supporting information to the MEC within five working days from the date of its adoption.
- (7) The councillor concerned ceases to be a councillor on the date that the MEC informs the municipal manager that he or she has been removed from office.
- (8) The removal of a councillor from office or a warning does not exempt that councillor from paying any fine payable by him or her in terms of rule 8 (8).
- (9) For purposes of this rule, a meeting shall exclude a meeting of the mayoral committee.
- (10) Sub-rule (9) shall not be interpreted in a manner which detracts from the right of the mayor to take action against the relevant councillor in terms of rule 82.

11. Who may attend meetings?

- (1) Until the council or a committee closes a meeting, a meeting may be attended by members of the public, employees of the council and the media, provided that a public meeting of voters, a constituency meeting or a public hearing may not be closed. An employee may only attend a council or committee meeting with the express prior approval of his or her departmental manager.
- (2) Every councillor or member of a committee, as the case may be, must, from the time stipulated in the notice convening the meeting, attend every meeting of the council and a committee of which he or she is a member, public meeting of voters and public hearings and remain in attendance at such meetings unless leave of absence has been granted to him or her in terms of these by-laws or when he or she must leave a meeting in terms of the code of conduct.

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- (3) The speaker, by virtue of his or her office, may attend any committee meeting as an observer but may not participate in any discussion or vote on any matter before such meeting, provided that this sub-rule shall not preclude the speaker, at the invitation of the chairperson of the meeting concerned, from providing advice or guidance with regard to the interpretation and application of these by-laws;
- (4) Any councillor who is not a member of a committee may only attend a meeting of such committee with the express prior permission of the chairperson thereof, which permission may not be unreasonably withheld. Such councillor may participate in the proceedings of such meeting with the prior approval of the chairperson concerned but may not vote on any matter before the committee.
- (5) The speaker or the chairperson of a committee, as the case may be, may invite any person to attend an open council or committee meeting, but such person may not participate in discussions at such meetings nor vote on any matter before the council or committee concerned.
- (6) The municipal manager and departmental managers must attend public meetings of voters, public hearings, council and committee meetings, provided that the speaker or chairperson of a committee may, after consultation with the municipal manager, exempt the municipal manager or any departmental manager from attending any meeting of the council or committee concerned or, if he or she is not exempted, grant permission for him or her to be absent from any such meeting, subject to such conditions as the speaker or chairperson concerned may deem desirable and necessary.
- (7) Notwithstanding sub-rule (6), the municipal manager may not be exempted from nor be granted permission to be absent from a meeting of the council or any committee of the council at which a report from the Auditor-General or the municipality's annual report is tabled or discussed.

12. Attendance register

- (1) The municipal manager must supply an appropriate attendance register at all meetings of the council, its committees and hearings convened in terms of these by-laws. This register shall make provision for the recording of the following information therein:
 - (a) the nature of the meeting;
 - (b) the venue of and date on which the meeting is held;
 - (c) the names of at least all municipal attendees;
 - (d) the time an attendee first attends the meeting.
- (2) Every councillor who is present at a meeting or hearing must sign the aforesaid attendance register.

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- (3) Any councillor who was present at a meeting or hearing but who failed to sign the attendance register for such meeting or hearing, shall be deemed to have been absent therefrom without leave of absence.

13. Documents to be available at meetings

The municipal manager must ensure that the under-mentioned legislation and documents are available at every meeting of the council and its committees:

- (a) these by-laws;
- (b) the Constitution;
- (c) the Structures Act;
- (d) the Systems Act;
- (e) the Municipal Finance Management Act;
- (f) the Property Rates Act;
- (g) the municipal code; and
- (h) such other legislation as the council may, from time to time, determine.

14. General powers and duties of chairpersons

- (1) The chairperson of a meeting must -
- (a) ensure that the meeting at which he or she presides, commences promptly at the convened time as stated in the notice convening the meeting and is conducted in accordance with these by-laws;
 - (b) ensure that councillors participate in the proceedings of the meeting in a manner that allows parties and interests reflected within the council to be fairly represented and in a manner which is consistent with democracy;
 - (c) when requested to do so, interpret these by-laws;
 - (d) reject any motion, proposal or question which, in his or her opinion:
 - (i) may lead to the discussion of a matter already contained in the agenda for that meeting;
 - (ii) advances arguments, expresses opinion or contains unnecessary tactless, incriminating, disparaging or improper suggestions;
 - (iii) may encourage, engender, advocate or aggravate hatred, discrimination, exclusion, restriction, ridicule, contempt or preference based on colour, descent, race, ethnicity, gender or religion so as to cause harm, hostility, degradation, violence or

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- which insults, degrades, defames or encourages abuse of any racial, ethnic, gender or religious group, through the uttering of words, whether in writing or orally, or the performance of deeds;
- (iv) contains unwelcome suggestions, innuendoes, remarks or hints of a sexual nature, sexual advances, comments with sexual overtones, sex-related jokes or insults or unwelcome graphic comments of another person's body;
 - (v) contains threatening, abusive or insulting language towards an employee which causes that employee harassment, alarm or distress due to any alleged, suspected or proven act, omission or statement by that employee in the exercise of any of his or her rights or the discharge of any of his or her duties so as to harass or cause or advocate unfair treatment of that employee;
 - (vi) does not pertain to the governance, administration or management of, or the conditions in, the municipality;
 - (vii) may be contrary to these by-laws or any other law, including another by-law of the municipality or against the values generally existing in the community;
 - (viii) may have an impracticable result or cause uneconomical, inefficient or ineffective use of resources or will be incapable of execution; or
 - (ix) may result in unauthorized expenditure;
- (e) reject any motion, proposal or question regarding a matter:
- (i) beyond the municipality's executive or legislative authority unless, prima facie, the proposal intends to convince the meeting to make representations with regard to that matter to a body or institution which has such authority; or
 - (ii) on which a decision of a judicial or quasi-judicial body is being awaited;
- (f) reject any motion, proposal or question which:
- (i) is not properly seconded;
 - (ii) prima facie, may threaten or affect a fundamental human right of any person; or
 - (iii) is unclear;

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- (g) reject any proposal that does not comply with rule 50 (2) that a meeting or part of a meeting be closed;
 - (h) call the attention of any person at the meeting to:
 - (i) irrelevance, tedious repetition or language unbecoming; or
 - (ii) any breach of order by a councillor or such other person;
 - (i) submit every motion and proposal made and seconded to the vote;
 - (j) declare the result of any vote in terms of sub-rule (i) of this sub-rule; and
 - (k) instruct any member of the public or media and any employee of the municipality who may be present at a meeting to leave such meeting when the meeting resolves to close any part of its session and not to return to it until the meeting continues in public.
- (2) The chairperson's ruling with regard to a motion, proposal or question is final. When a ruling is made, the chairperson must state the grounds for such ruling.
- (3) The chairperson's interpretation of these by-laws or a ruling as to procedure is final, provided that:
 - (a) if the interpretation or ruling is contested or called into question, the chairperson must, at the first meeting next ensuing, provide a written interpretation or ruling;
 - (b) a councillor may request that the chairperson provide a written interpretation or ruling at the first meeting next ensuing;
 - (c) the council or committee, as the case may be, may, upon receipt of such written interpretation or ruling, consider the matter and amend or substitute the interpretation of the chairperson provided that such amendment or substitution shall not affect any vested rights arising from any decision adopted by the council or committee concerned pursuant to the initial interpretation or ruling by the chairperson thereof nor result in any illegality; and provided further -
 - (d) the ruling or interpretation of the chairperson in terms of this sub-rule may be contested in any competent court of law.
- (4) The chairperson may, in performing his or her functions and powers:
 - (a) consult with the municipal manager;
 - (b) after consultation with the municipal manager, obtain a legal opinion on the interpretation of any rule or sub-rule in these by-laws;

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- (c) direct any person who is speaking to discontinue his or her speech or to desist from breaching the order or to discontinue making interjections;
 - (d) direct any person to apologize for or to apologize for and withdraw any allegation, statement or remark if it is unbecoming, unnecessarily tactless, incriminating, disparaging, improper, racist or sexist or incites violence or injury or impairs the dignity or honour of a councillor or employee of the municipality;
 - (e) direct any person who persists in disregarding the chair or who obstructs the business at a meeting, to retire from the meeting; and
 - (f) instruct any person to leave a meeting if the meeting resolves to close its session or any part of it.
- (5) If a person refuses to retire from a meeting after having been directed to do so in terms of sub-rule (4)(e) or (f), the chairperson may direct an authorized employee of the municipality present at the meeting to remove that person or cause his or her removal and to take steps to prevent that person from returning to the meeting concerned.
- (6) The chairperson may, after consultation with the chief whip, change the order of business at the meeting despite any provisions to the contrary in these by-laws.
- (7) This rule, with the necessary changes as the circumstances may require, shall apply in respect of all hearings held by or at the instance of the council.
- 15. Failure or refusal to exercise powers or discharge duties by chairperson at a meeting or hearing**
- (1) Whenever a councillor who attended a meeting or hearing is of the opinion that the chairperson at that meeting or hearing, as the case may be, failed or refused to exercise any of his or her powers or to discharge any of his or her duties in terms of these by-laws properly, he or she may lodge a written allegation against the chairperson concerned with the municipal manager.
 - (2) An allegation in terms of sub-rule (1) must quote the relevant rule in these by-laws or practice that has been breached or not fulfilled and must also state to what extent same has been breached or not fulfilled.
 - (3) The municipal manager must, with a view to further investigation and the holding of a hearing into the complaint, submit the allegation to:
 - (a) the council at its next ensuing meeting, in the case of an allegation against the speaker;

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- (b) the speaker, in the case of an allegation against the chairperson of a section 79 - committee -
- and send a copy thereof to the councillor who made the allegation.
- (4) Where the complaint is submitted to the council in terms of sub-rule (3), the speaker shall withdraw from the meeting at which such complaint is considered and the chair shall be taken by the municipal manager for the duration of the debate on such complaint;
- (5) The council or the speaker, as the case may be, must determine the time and place of the hearing when the matter will be considered and inform the municipal manager accordingly;
- (6) The municipal manager must inform the councillor who made the allegation and the speaker or chairperson against whom the allegation has been made, as the case may be, of the time and place where the matter will be heard.
- (7) At the hearing, the councillor making the allegation and the speaker or chairperson against whom the allegation has been made, as the case may be, must have the opportunity to state their respective cases, to call witnesses, to examine any documents submitted and to cross examine any witnesses.
- (8) The municipal manager shall chair the hearing referred to in sub-rule (7) in the case of a hearing held by the council in respect of an allegation against the speaker;
- (9) After the matter had been heard, the council or speaker, as the case may be, must make a ruling as to the most probable version of the event and make a finding.
- (10) Should it be found that an allegation against the speaker was true, the council must decide an appropriate penalty. Whenever the speaker finds that an allegation against the chairperson of a section 79 -committee was true, he or she must submit his or her finding to the council and recommend an appropriate penalty.
- (11) An appropriate penalty may include the issue of a formal warning or reprimand. Whenever a formal warning is issued, the council must determine the period during which such warning shall remain in force.

16. Status of chairperson at a meeting

Whenever the chairperson at a meeting speaks, any person then speaking or offering to speak, must resume his or her seat, if he or she stood, and all persons in the meeting must remain silent so that the chairperson may be heard without interruption.

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17. Presiding at the first council meeting after a general election

- (a) The municipal manager, or if there is not a municipal manager, a person appointed by the MEC, presides at the first meeting of a council after a general election of councillors until a speaker is elected in terms of section 36 of the Structures Act.
- (b) The provisions of schedule 3 to the Structures Act shall apply in respect of the election of the speaker.

18. Presiding at council and committee meetings

- (1) With due regard for the provisions of these by-laws:
 - (a) the speaker presides at council meetings;
 - (b) the mayor presides at mayoral committee meetings;
 - (c) the designated member of the mayoral committee presides at every meeting of a section 79 –committees for which he or she is responsible.
- (2) Whenever the speaker or the chairperson of a committee, as the case may be, is absent from or is unable to preside at or during any part of a meeting, the council or the members of the committee, as the case may be, must, subject to sub-rule (4), elect from amongst the councillors present at that meeting, an acting speaker or chairperson for the duration of the speaker's or the chairperson's absence or inability provided that, in the case of the mayoral committee, the deputy mayor, if the council has elected a deputy mayor, shall act as chairperson of this committee.
- (3) The municipal manager presides over the election of an acting speaker or chairperson in terms of sub-rule (2) and shall ensure that the procedure referred to in schedule 3 to the Structures Act is followed in respect of the election of the acting speaker and mayor, as the case may be.
- (4) A section 79 -committee may not elect the speaker as acting chairperson in terms of sub-rule (2).

19. Presiding at council meetings when the office of the speaker is vacant

- (1) Whenever the office of speaker becomes vacant, the municipal manager must, on a date and at a time and venue determined by him or her, call a special council meeting for the purpose of electing a new speaker: provided that such special council meeting must take place within fourteen days after the office of the speaker first became vacant.
- (2) The municipal manager presides over the election of a speaker in terms of sub-rule (1).

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- (3) The municipal manager must ensure that the speaker is elected in accordance with the procedure contained in schedule 3 to the Structures Act.
- (4) Subject to the right of the council to remove the speaker from office in accordance with these by-laws and any other applicable law, the speaker elected at a meeting convened in terms of sub-rule (1) serves as speaker for the unexpired term of office of his or her predecessor.

20. Conduct of members of the public at council or committee meetings

- (1) A member of the public or the media attending a council or committee meeting may not-
 - (a) address the meeting at any time, unless he or she is a member of a deputation in terms of rule 55 or has been granted permission in terms of that rule to address the council or committee concerned, as the case may be;
 - (b) obstruct the business of the meeting;
 - (c) make any interjections;
 - (d) make unwelcome suggestions, innuendoes, remarks or hints of a sexual nature, sexual advances, comments with sexual overtones, sex-related jokes or insults or unwelcome graphic comments of another person's body;
 - (e) encourage, engender, advocate or aggravate hatred, discrimination, exclusion, restriction, ridicule, contempt or preference based on colour, descent, race, ethnicity, gender or religion so as to cause harm, hostility, degradation, violence or to insult, degrade, defame or encourage abuse of any racial, ethnic, gender or religious group, through the uttering of words, whether in writing or orally, or the performance of deeds;
 - (f) use threatening, abusive or insulting language towards an employee or display any writing, sign or other visible presentation which is threatening, abusive or insulting and which causes that employee harassment, alarm or distress due to any alleged, suspected or proven act, omission or statement by that employee in the exercise of any of his or her rights or the discharge of any of his or her duties so as to harass or cause or advocate unfair treatment of that employee; or
 - (g) make unwelcome or obscene gestures.
- (2) Whenever a meeting resolves to close its session or a part thereof, any member of the public or media must leave such meeting immediately and not return to such meeting until it resumes as a public meeting.

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- (3) A member of the public or media attending a council or committee meeting is subject to the authority of the chairperson of that meeting.

21. Recording of proceedings during meetings

Except for the purpose of an employee or contractor of the municipality recording the official minutes of a meeting, no person may, unless the express prior approval of the chairperson of a meeting has been obtained, make any recording, whether audio or visual or both audio and visual, of a meeting or any part thereof.

22. Conduct of councillors during meetings and after meetings have ended

- (1) The under-mentioned conduct by a councillor during a meeting or immediately after a meeting has ended and before a councillor leaves the precincts of the council chamber, as the case may be, is deemed contrary to the provisions of item 2(b) of the code of conduct which requires that a councillor shall, 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:
- (a) the making of unnecessary tactless, incriminating, disparaging or improper suggestions or the expression of such opinions;
 - (b) the making of unwelcome suggestions, innuendoes, remarks or hints of a sexual nature, sexual advances, comments with sexual overtones, sex-related jokes or insults or unwelcome graphic comments of another person's body;
 - (c) the making of unwelcome or obscene gestures;
 - (d) the making of or seconding of a proposal that may be contrary to these by-laws or any other law, including any other by-laws of the municipality, or against the values generally existing in the community;
 - (e) the making or seconding of a proposal that may have an impracticable result or cause uneconomical, inefficient or ineffective use of resources;
 - (f) the making or seconding of a proposal that may result in unauthorized expenditure;
 - (g) the making or seconding of a proposal on a matter on which the municipality has no executive or legislative authority unless the intention is to convince the meeting to make representations to an institution that has the required authority;
 - (h) the making or seconding of a proposal that is calculated to or may threaten or affect a fundamental human right of any person;

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- (i) conduct aimed at encouraging, engendering, advocating or aggravating hatred, discrimination, exclusion, restriction, ridicule, contempt or preference based on colour, descent, race, ethnicity, gender or religion or to cause harm, hostility, degradation, violence or to insult, degrade, defame or encourage abuse of any racial, ethnic, gender or religious group, through the uttering of words, whether in writing or orally, or the performance of deeds;
- (j) the incitement of imminent violence;
- (k) the compelling or attempt to compel employees or councillors by threats to partake in any actions against their will;
- (l) the breach of the order;
- (m) the disregard for the chair;
- (n) the use of threatening, abusive or insulting language towards an employee or the display of any writing, sign or other visible presentation which is threatening, abusive or insulting or which causes that employee harassment, alarm or distress due to any alleged, suspected or proven act, omission or statement by that employee in the exercise of any of his or her rights or the discharge of any of his or her duties so as to harass or cause or advocate unfair treatment of that employee; or
- (o) the making of an allegation, statement or remark that is unbecoming a councillor or injures or impairs the dignity or honour of a councillor or staff member of the municipality; or
- (p) the submission of a motion or request to the municipal manager or any other employee of the municipality to formulate a motion that:
 - (i) may be contrary to these by-laws or any other law, including any other by-laws of the municipality or against the values generally existing in the community;
 - (ii) may have an impracticable result or cause uneconomical, inefficient or ineffective use of resources;
 - (iii) may result in unauthorized expenditure;
 - (iv) falls outside the municipality's executive or legislative authority unless the intention is to convince the meeting to make representations to an institution that has the required authority; or
 - (v) is calculated to or may threaten or affect a fundamental human right of any person.

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- (q) the reading of a newspaper or similar article not forming part of an official communication a during a meeting;
 - (r) the eating of food or the drinking of beverages including alcohol except where the council has adjourned for refreshments that are served in the council chamber;
 - (s) the making of noise, shouting and the playing of music or any speech or lecture from any instrument including a cellphone;
- (2) This rule must not be interpreted in such a manner that detracts from or diminishes the right of councillors to claim privilege and immunity as envisaged in section 28 of the Structures Act and councillors shall generally not be liable to civil or criminal proceedings, arrest, imprisonment or damages for anything that they have said in, produced before or submitted to the council or any of its committees or anything revealed as a result of anything that they have said in, produced before or submitted to the council or any of its committees.

23. Dress code

The council may, by resolution, prescribe a dress code for councillors attending council and committee meetings.

24. Person speaking to address the chairperson

A person addressing a meeting or hearing must address the chairperson of that meeting or hearing, as the case may be.

25. Councillor to stand while speaking

- (1) Unless otherwise directed by the chairperson of a meeting or hearing, a councillor addressing a meeting or hearing must stand while speaking.
- (2) If a councillor who is not speaking raises his or her hand on a point of order while another councillor is speaking or to make a proposal and the chairperson addresses such councillor, the councillor then speaking must resume his or her seat (if he or she stood) and remain silent until the chairperson has made a ruling on the point of order or the proposal concerned.

26. Duration and reading of speeches

- (1) Unless expressly otherwise determined in these by-laws, a councillor may not speak for longer than five minutes on any matter before the council or a committee.
- (2) Except when the mayor or designated councillor is delivering the mayoral report in terms of the Finance Management Act or presenting a budget (including a draft

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and adjustments budget) he or she may not read a speech, but may refresh his or her memory by referring to notes pertaining thereto.

27. Councillor to speak only once

- (1) Unless expressly otherwise determined in these by-laws, a councillor may speak only once on a matter.
- (2) The introducer of a motion or proposal may reply in conclusion of the debate but must confine his or her reply to addressing matters raised by previous speakers during the debate.
- (3) The speaker may, during a meeting of the council, allow the mayor and the mayor may, during a meeting of the mayoral committee, allow the chairperson of a section 79 -committee to make an explanatory statement prior to the consideration of any particular matter in a report of such committee or during the discussion of such report in reply to a specific question.

28. Relevance

- (1) A councillor who speaks must confine his or her speech strictly to the matter under discussion.
- (2) No discussion may take place which will anticipate a matter on the agenda unless the chairperson has granted leave to discuss two or more items at the same time or the municipal manager has indicated, in the agenda, that two or more items should be considered together or on any motion or proposal that has been rejected in terms of rule 14 (1).

29. Councillor's right to information

A councillor has the right to request the municipal manager to supply such information as may be required for the proper performance of his or her duties as a councillor, including the making of a speech at a meeting or hearing. The municipal manager is not obliged to entertain any request for information where-

- (a) the information sought is privileged or confidential as defined in item 10 of the code of conduct;
- (b) in his or her opinion, the information sought constitutes an invasion of another person's privacy;
- (c) the request is, in his or her opinion, unreasonable given the period allowed for obtaining the required information and the complexity of the information sought;

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- (d) the information sought is a trade secret or confidential commercial information of a supplier to the municipality or a person seeking to become a supplier to the municipality; or
- (e) the request will, in his or her opinion, cause an extraordinary administrative or financial burden on the municipality.

30. Personal explanation, point of order and clarification

- (1) A councillor may, at any time during a meeting, whether or not he or she is participating in a debate then taking place, rise -
 - (a) on a point of order for the purpose of drawing attention to a departure from these by-laws or any law; or
 - (b) to explain any part of his or her speech that may have been misunderstood.; or
 - (c) to request that any part of a speech that he or she may have misunderstood, be explained.
- (2) A councillor referred to in sub-rule (1) must be heard forthwith.
- (3) The ruling of the chairperson of the meeting on a point of order or a personal explanation is, subject to rule 14 (3), final and may not be discussed.

31. Right of the municipal manager to have advice recorded in the minutes

- (1) The chairperson of a meeting must afford the municipal manager an opportunity to address that meeting on any matter before it in order to advise members thereof on the legality of any proposal or motion before the meeting.
- (2) The municipal manager has the right to have his or her advice regarding any motion or proposal which may -
 - (i) cause unauthorized, irregular, wasteful or fruitless expenditure; or
 - (ii) be beyond the authority of the municipality -
 recorded in the minutes of the meeting where such advice was given.

32. Adjournment of meeting in the absence of a quorum

- (1) If no quorum for a meeting is present within 15 minutes after the time stipulated in the notice referred to in rule 6, such meeting shall not be held but a continuation meeting shall be held in terms of rule 34.

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- (2) If, at any time during the course of a council or committee meeting, it is suspected that no quorum is present at such meeting -
- (i) the chairperson must discontinue the proceedings immediately; and
 - (ii) cause the councillors present to be counted -

and, if the lack of a quorum is found to exist, the chairperson must instruct the municipal manager to ring the call bell for one minute. If there is still no quorum five minutes after the bell had been rung, the chairperson must adjourn the meeting forthwith.

- (3) If the shortfall of councillors contemplated in sub-rule (2) is due to the withdrawal of one or more councillors in compliance with the code of conduct, the chairperson must rule that such matter be dealt with at the first meeting next ensuing and that the unfinished business of the meeting be dealt with.
- (4) If a sufficient number of councillors is present after the call bell had been rung, the meeting must continue, provided that the councillor who was speaking when the proceedings were discontinued, shall, in his or her own discretion, be entitled to start his or her speech afresh.
- (5) Any business except a matter referred to in sub-rule (3) which has not been dealt with at a meeting that has been adjourned, must be considered at a continuation meeting contemplated in rule 34, provided that any unfinished business arising from a special meeting must be considered at the first ordinary meeting next ensuing, unless the date of such ordinary meeting is later than the date contemplated in rule 34.

33. Adjournment of a meeting before it completes its business

- (1) A councillor may, at any time during a meeting, propose that the meeting be adjourned and must state the reasons for the proposal, provided that no councillor may, more than twice during the same meeting, propose that it be adjourned.
- (2) A proposal in terms of sub-rule (1) must be seconded by at least three councillors present at the meeting, provided that a councillor may not second a proposal to adjourn more than twice during the same meeting. Such a proposal lapses if it is not properly seconded.
- (3) A proposal in terms of sub-rule (1) is carried if a majority of the members present at the meeting vote in favour thereof.
- (4) Whenever a meeting adjourns in terms of sub-rule (1) before it has completed the business stated in the agenda for that meeting, the meeting must resume as a continuation meeting in terms of rule 34 to deal with any unfinished business,

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unless the date of the first ordinary meeting next ensuing is earlier than the date referred to in rule 34, in which case the unfinished business of an adjourned meeting is dealt with at that ordinary meeting.

34. Continuation of an adjourned meeting

- (1) A continuation meeting is held at the same time and venue as a meeting that has been adjourned in terms of rule 32 or 33 on a day seven days later, provided that if the said seventh day falls on a Sunday or public holiday, the continuation meeting must take place on the first working day after such Sunday or public holiday.
- (2) The agenda for a continuation meeting is the agenda for the meeting that has been adjourned.

35. Temporary adjournment of a meeting

- (1) A councillor may, at any time during a meeting, propose that the meeting be adjourned for a period proposed by him or her and must state the reasons for such proposal, provided that not more than two such proposals may be made during the same meeting and that no such adjournment may exceed thirty minutes.
- (2) Despite the provisions of sub-rule (1), the chairperson of a meeting may, if he or she is of the opinion that a third temporary adjournment thereof may facilitate the discussion and resolution of a matter, allow a third adjournment in terms of sub-rule (1).
- (3) A proposal in terms of sub-rule (1) must be seconded by at least three councillors present at the meeting, provided that a councillor may not second a proposal to adjourn more than twice during the same meeting. Such a proposal lapses if it is not properly seconded.
- (4) A proposal in terms of sub-rule (1) is carried if a majority of the members present at a meeting vote in favour thereof.
- (5) The meeting shall resume after the expiry of the period referred to in sub-rule (1) and shall deal with any unfinished business contained in its agenda.

(36) Adjournment of meeting for a caucus

- (1) A party whip may, at any time, except while a vote is being taken, move "that the council now adjourn for a caucus meeting".
- (2) Such motion shall be seconded but need not be put in writing.

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- (3) The mover may speak to the motion for five minutes, but the seconder shall not speak beyond formally seconding the motion.
- (4) The speaker shall:
 - (i) decide whether or not to allow the request for a caucus meeting;
 - (ii) if the request is refused, he or she shall give reasons for refusing such request, which reasons shall be entered into the minutes.
- (5) The ruling of the speaker on the request for a caucus meeting shall be final and not be open for discussion.
- (6) If the request for a caucus meeting is approved by the speaker, the council shall forthwith adjourn, provided that the speaker may direct that the meeting proceed first to dispose of other business.
- (7) The Speaker shall impose a time limit for the proposed caucus meeting.
- (8) The caucus requesting the adjournment shall gather at another venue.
- (9) If the caucus members have not resumed their seats at the time when the council is required to reconvene, the meeting shall proceed with its normal business, provided a quorum of members is present.
- (10) If a quorum of members is not present, the meeting will adjourn for 10 minutes.
- (11) If the caucus members do not return within the 10 minute adjournment period, the meeting must be closed by the speaker and the reasons for such closure must be recorded in the minutes of the meeting.
- (12) The speaker may, in terms of these by-laws and the code of conduct, take appropriate action against the members of a caucus who fail to comply with this rule.
- (13) It shall not be permissible for a section 79 -committee to adjourn for the purpose of holding a caucus meeting.

37. Agendas of meetings

- (1) Subject to the provisions of sub-rules (3) and (6), only matters included in an agenda for a meeting may be dealt with.
- (2) Agendas for open and closed meetings of the council and the mayoral committee shall be contained in separate documents which shall be clearly marked to reflect the status of the meeting and, for purposes of this sub-rule, the matters referred

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to in rule 50 (2)(b) shall be included in an agenda for a closed meeting of the council.

- (3) The chief whip, may, at any time during a meeting, propose that sub-rule (1) be suspended to allow discussion of any matter not included in the agenda and must give reasons for his or her proposal.
- (4) A proposal in terms of sub-rule (3) need not be seconded and no debate on such proposal shall be allowed.
- (5) A proposal referred to in sub-rule (3) is carried if the councillors present at a meeting unanimously adopt it.
- (6) An urgent report received from mayor may be tabled and considered during a council meeting with the express prior permission of the speaker.

38. Minutes of meetings and summary of evidence at hearings

- (1) The municipal manager must keep, or cause to be kept, minutes of the proceedings of every council and committee meeting.
- (2) The minutes of a meeting must reflect at least:
 - (a) the nature of the meeting, its venue and commencing time;
 - (b) the names of the councillors attending;
 - (c) the names of the councillors absent with or without leave;
 - (d) the exact times councillors withdrew from and returned to the meeting and the matter then under discussion;
 - (e) the names of the councillors voting respectively for and against any matter resolved at a meeting in respect of which a division is called on the decision so adopted;
 - (f) the name of any councillor who requested that his or her vote against any particular decision be recorded in the minutes;
 - (g) any adjournment of the meeting;
 - (h) any declaration of a personal or pecuniary interest by a councillor;
 - (i) any advice by the municipal manager regarding possible unauthorized expenditure or resolutions beyond the authority of the municipality;
 - (j) the resolutions adopted;
 - (k) the closing time of the meeting.

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- (3) Where the council, the mayoral committee or a section 79 – committee acting under delegated power, refuses an application from any person for a licence, consent or approval in terms of any law or refuses to support an application by any person for such a licence, consent or approval in terms of any law, the reasons for the council or the committee's refusal shall be recorded in the minutes of the meeting concerned.
- (4) The minutes of a meeting must be delivered to councillors with the notice of the ensuing meeting or prior to delivery of such a notice.
- (5) Minutes delivered in terms of sub-rule (4) are deemed read with a view to their approval and confirmation.
- (6) No proposal or question regarding minutes or progress with matters contained therein, except a proposal relating to the accuracy of the minutes, may be allowed.
- (7) The minutes of a meeting must, if in order, be approved by way of confirmatory resolution at the next ordinary meeting of the council or committee of the council, as the case may be.
- (8) Where minutes of a previous meeting of the council or committee of the council are amended at a meeting referred to in sub-rule (7) due to inaccuracy, then the amending council or committee resolution shall be quoted in full in the amending resolution.
- (9) The chairperson of the meeting must sign the minutes upon confirmation thereof. If the minutes are recorded on loose leaf sheets, each sheet must be signed.
- (10) The minutes relating to any matter which had been discussed and resolved in closed session, must be clearly separated from the minutes of that part of the meeting that had been conducted in public.
- (11) Any councillor or other person speaking at a meeting may request that his or her speech not be recorded. Upon receipt of such a request, the municipal manager must cease such a recording or cause such recording to cease.
- (12) The municipal manager must make, or cause to be made, a summary of the proceedings and evidence given at a public hearing and submit same to the first ordinary meeting of the mayoral committee held after the hearing in question.

39. Declaration of personal and pecuniary interest

- (1) A councillor wishing to declare a personal or pecuniary interest in terms of item 5 of the code of conduct in any matter before a meeting, must do so when the chairperson indicates that the relevant item in the agenda is ready for debate but before any debate on such item takes place.

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- (2) No councillor may speak for more than five minutes on the question whether or not his or her interest in any matter before a meeting is so trivial or remote or irrelevant as to render a conflict of interests unlikely.
- (3) Any declaration by a councillor in terms of this rule must be recorded in the minutes of the meeting.
- 40. Order of business at the first council meeting after a general election of councillors**

The order of business at the first meeting of a council after a general election of councillors, shall be as follows:

- (a) Opening;
- (b) Applications for leave of absence;
- (c) Election of speaker;
- (d) Motion of congratulations by the municipal manager;
- (e) Motions of congratulations by councillors;
- (f) Acceptance speech by the speaker;
- (g) Confirmation of type of municipality;
- (h) Election of mayor;
- (i) Election of deputy mayor, if any;
- (j) Designation of offices to be held by full-time councillors;
- (k) Appointment of members of section 79 –committees;
- (l) Election of representatives in the district municipality;
- (m) Election of representative in SALGA's executive committee, if applicable;
- (n) Review of language policy;
- (o) Review of delegated powers'
- (p) Closure.

41. Order of business at ordinary council meetings

- (1) The order of business at an ordinary council meeting subsequent to the first meeting, shall be as follows:
- (a) Opening;
- (b) Applications for leave of absence;
- (c) Official announcements by the speaker;

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- (d) Reports of the speaker in terms of rules 10 (1) and 90 (4);
 - (e) Applications and appeals from councillors in terms of rules 9 (1), 75 and 80;
 - (f) Reports received by the speaker;
 - (g) Motions of sympathy and congratulations by the speaker;
 - (h) Motions of sympathy and congratulations by other councillors;
 - (i) Deputations and interviews;
 - (j) Disclosure of interest;
 - (k) Minutes of the previous meeting;
 - (l) Questions of which notice were given;
 - (m) Report by mayor;
 - (n) Report on implementation of council resolutions;
 - (o) Reports of decisions taken under delegated powers;
 - (p) Motions;
 - (q) Urgent report by mayor;
 - (r) Urgent report by municipal manager;
 - (s) Closure.
- (2) The chief whip may, at any time during the proceedings of the council move, as a motion of course, that any item appearing on the agenda shall have precedence and may briefly state the reasons for such motion. If such motion is seconded, it shall be put to the vote forthwith without discussion, and if carried, such item shall have precedence accordingly.

42. Order of business at meetings of the mayoral committee

The order of business at an ordinary meeting of the mayoral committee shall be as follows:

- (a) Opening;
- (b) Applications for leave of absence;
- (c) Official announcements;
- (d) Motions of sympathy and congratulations;
- (e) Disclosure of interests;
- (f) Minutes of the previous meeting;
- (g) Questions of which notice has been given;

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- (h) Matters deferred from the previous meeting;
- (i) Reports by section -79 committees;
- (j) Report of the municipal manager;
- (k) Reports of departmental managers;
- (l) Deputations and interviews;
- (m) Closure.

43. Order of business at section 79 - committee meeting

The order of business at an ordinary meeting of a section 79 -committee shall be as follows:

- (a) Opening;
- (b) Applications for leave of absence;
- (c) Official announcements;
- (d) Motions of sympathy and congratulations;
- (e) Disclosure of interests;
- (f) Minutes of the previous meeting;
- (g) Questions of which notice has been given;
- (h) Matters deferred from the previous meeting;
- (i) Report of the municipal manager;
- (j) Reports of departmental managers;
- (k) Deputations and interviews;
- (l) Closure.

44. Quorum and decision making

- (1) A majority of the members of the council or a committee must be present before a decision on any matter before them may be adopted.
- (2) No decision may be adopted unless the council or a committee has sufficient information before it to take an informed decision. Unless a compelling reason exists for a verbal report, such information must be contained in a written report.
- (3) Where a verbal report is submitted to the council or a committee, the minutes of such meeting shall record the contents of such report in detail.

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45. Voting at council and committee meetings

- (1) Except in the case of the mayoral committee, voting at a council or committee meeting shall be by show of hands, unless a councillor requests a secret ballot on any question or when a secret ballot must be held in terms of any applicable law. When such a request is received, the provisions of rule 47 shall apply to such ballot.
- (2) After the chairperson has declared the result of a vote, a councillor may demand that his or her vote against the decision be recorded or that a division on voting take place as envisaged in rule 46.
- (3) The fact that a councillor has requested that his or her vote be recorded against a decision shall be recorded in the minutes of the meeting.
- (4) An entry of the declaration of the result of a vote in the minutes of a meeting is conclusive evidence of that result.
- (5) Any question before the mayoral committee shall be decided if there is agreement among at least the majority of the members present at the meeting and, in the absence of such agreement, by the mayor provided that, in the event of agreement not being reached between the members present at a meeting and the mayor in respect of a matter which the council has delegated for resolution by the mayor in conjunction with the members of the mayoral committee, such matter shall be referred to the council for a decision.
- (6) The provisions of sub-rules (2) to (4) shall not apply in respect of meetings of the mayoral committee.

46. Calling a division

- (1) When a division is called in terms of rule 45 (2), all entrances to the venue of the meeting must be closed and no councillor may leave or enter such venue after the entrances have been so closed until the result of the division is declared.
- (2) Immediately after the closure of the entrances to the venue, the chairperson of the meeting must repeat the motion or proposal, put the motion or proposal to the vote and ensure that the municipal manager records the vote of each councillor either in favour of or against such proposal or motion individually on a division form to be provided by the municipal manager for this purpose.
- (3) The chairperson must declare the result of the vote after all the councillors have been polled in the manner provided in sub-rule (2).
- (4) When a division is called, every councillor must vote for or against the proposal or motion in respect of which the division has been called.

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- (5) The result of the vote must be recorded in the minutes of the meeting and such record will be conclusive evidence of the result in question.
- (6) This rule shall not apply in respect of the mayoral committee.

47. Voting by secret ballot

- (1) A request in terms of rule 44(1) that a secret ballot be held in respect of any motion or proposal is carried if it is seconded.
- (2) The municipal manager must ensure that a sufficient supply of ballot papers that substantially comply with the following design, is available at each meeting:

Mark vote by means of X	
for the proposal	
against the proposal	

- (3) Immediately after the request that a secret ballot be held has been seconded, the municipal manager must give each councillor present at the meeting a ballot paper. All ballot papers issued to councillors shall be of the same size and colour.
- (4) Upon receipt of a ballot paper, a councillor must indicate his or her vote by clearly marking thereon with an X whether or not he or she is for or against the proposal concerned whereupon he or she must fold the ballot paper in half and hand it to the municipal manager.
- (5) When all the councillors present and voting have handed their ballot papers to the municipal manager, he or she must determine the result of the ballot and inform the chairperson thereof.
- (6) The fact that a secret ballot had been held must be recorded in the minutes of the meeting concerned.
- (7) All used ballot papers must be destroyed upon conclusion of the meeting.
- (8) An entry of the declaration of the result of a vote in the minutes of a meeting is conclusive evidence of the result.
- (9) This rule shall not apply in respect of the mayoral committee.
- (10) This rule does not affect the application of item 6 of schedule 3 to the Structures Act in circumstances where the council meets to elect a speaker or a mayor and more than one candidate has been nominated for such office in which event voting shall take place by secret ballot in a manner provided in such item.

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48. Equality of votes

- (1) Unless a specific majority had been prescribed by law in respect of any matter or when a secret ballot is conducted or when expressly stated otherwise in these by-laws, the chairperson of a meeting may, in addition to his or her deliberative vote, cast a casting vote where there is an equality of votes on any question before a meeting.
- (2) Should there be an equality of votes after a division has been called or a secret ballot has been conducted and the speaker, in the case of a meeting of the council, refuses to use his or her casting vote, the matter must be referred back to the mayoral committee for reconsideration.
- (3) In all cases other than those mentioned in sub-rule (2) where there is an equality of votes and the speaker, in the case of a meeting of the council, refuses to use his or her casting vote, the matter must be referred back to the mayoral committee for reconsideration.
- (4) If there is an equality of votes in the case of a meeting of a section 79 –committee and the chairperson thereof refuses to use his or her casting vote, the matter must be referred to the mayoral committee for consideration without a recommendation.
- (5) This rule shall not apply in respect of the mayoral committee.

49. Voting by lot

- (1) When any matter is, in terms of any law applicable to the municipality or any by-laws adopted by the municipality, required to be determined by lot, the speaker or the chairperson, as the case may be, shall ensure that-
 - (a) the names of all persons -
 - (i) between whom a selection is required to be made; or
 - (ii) to whom differing periods of office are required to be allocated; or
 - (b) a reference to the alternative or alternatives between which a choice is required to be made-

as the case may be, are written on pieces of paper of equal size and similar shape and colour.

- (2) The pieces of paper contemplated in sub-rule (1) shall be displayed to every person who is present at the place where the lot is being conducted and who is desirous of inspecting such pieces of paper. A person appointed by the speaker or chairperson, as the case may be, to conduct such lot shall, thereafter, fold

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- every piece of paper in such a manner that the names or reference thereon are not visible and shall place every such piece of paper in an empty container.
- (3) Unless otherwise provided in a by-law of the municipality, the speaker or chairperson, as the case may be, shall appoint an impartial person to draw from the container referred to in sub-rule (2) such number of pieces of paper as may be necessary to determine the matter in respect of which the lot is being conducted.
- (4) The person referred to in sub-rule (2) shall, thereupon, shake the container in such a manner as thoroughly to mix the pieces of paper therein and shall hold the container in such a position that the person appointed in terms of sub-rule (3) is unable to see the pieces of paper in such container.
- (5) The person appointed in terms of sub-rule (2) shall, thereafter, draw as many pieces of paper from the container as may be necessary to determine the matter in respect of which the lot is being conducted and shall, without unfolding any piece of paper so drawn from the container, hand such piece or pieces of paper to the person referred to in sub-rule (3).
- (6) The person referred to in sub-rule (3) shall, after the necessary number of pieces of paper have been drawn from the container, unfold each piece of paper handed to him or her in terms of sub-rule (5), read out the name or words written thereon and display every such piece of paper to every person who is present at the place where the lot is being conducted and who is desirous of inspecting any such piece of paper.
- (7) In the case contemplated by-
- (a) Sub-rule 1 (a), the person or persons whose name or names are drawn or selected shall serve for the longer of the differing periods, as the case may be; and
- (b) Sub-rule 1 (b), the alternative or alternatives drawn shall be deemed to be the relevant decision of the council or committee concerned.

50. Closing of meetings

- (1) Recognizing the need for transparency and open and accountable government, the council and mayoral committee may, with due regard to any provisions to the contrary in these by-laws or any other law, resolve to close any part of a meeting to the public and the media.
- (2) A resolution in terms of sub-rule (1) may be made only -
- (a) if a proposal in that regard had been made and is carried in terms of these by-laws; and

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- (b) if the matter in respect of which the proposal has been made is a matter which concerns debating, considering or making public-
 - (i) a trade secret or confidential commercial information of any supplier of the municipality or any person offering to become a supplier of the municipality;
 - (ii) personal and private information of any councillor or an employee of the municipality;
 - (iii) the price the municipality may offer for the purchase of land and buildings;
 - (iv) the intention of the municipality to purchase land and buildings;
 - (v) any strategy to be used in defence of or in initiation of litigation against or by the municipality;
 - (vi) disciplinary proceedings against an employee of the municipality; or
 - (vii) any matter that may not be publicly disclosed in terms of a law including these by-laws; or
 - (c) to approve the minutes of any part of a previous meeting held in closed session.
- (3) Notwithstanding anything to the contrary in these by-laws, the council and mayoral committee may not exclude the public and media from a council meeting at which the under-mentioned matters are being considered or are to be resolved:
- (a) a draft by-law being tabled in the council;
 - (b) a budget being tabled in the council;
 - (c) the municipality's draft integrated development plan or any amendment to such plan;
 - (d) the municipality's draft performance management system or any amendment of or to such system;
 - (e) a decision to enter into a service delivery agreement in terms of section 76(b) of the Systems Act;
 - (f) a rates policy in terms of section 3 of the Property Rates Act; and
 - (g) any other matter which is prescribed by regulation.

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- (4) The proceedings of a section 79 -committee shall be held in closed session and it shall not be competent for such committee to hold a meeting which is open to the public or the media.

51. Procedure for closing meetings

- (1) A councillor may, with due regard to the provisions of rules 81 to 84, when an item in the agenda is put to order or at any time during the debate on an item, propose that the matter be further dealt with in closed session.
- (2) No seconder is required for a proposal in terms of sub-rule (1).
- (3) Despite anything to the contrary in these by-laws, only the introducer of the motion may speak on the proposal for a period not exceeding five minutes and must, during his or her submission, state the reasons for the proposal.
- (4) The chairperson must, if he or she does not reject a proposal referred to in sub-rule (1), subject same to the vote immediately after the introducer has spoken.
- (5) If the proposal is carried, the chairperson must determine when the matter concerned must be debated.
- (6) When the council resolves to close a part of a meeting and subject to any determination by the chairperson in terms of sub-rule (5), all members of the public and media and municipal employees present at the meeting, except the municipal manager and such employees as the chairperson may require to remain, must leave the meeting and may not return thereto for the duration of the closed proceedings.
- (7) Notwithstanding sub-rule (6), it will be competent for the speaker and mayor, as the case may be, to request the municipal manager to leave a meeting of the council or mayoral committee when any matter directly concerning the municipal manager in his capacity as such is about to be debated.

52. Rules governing closed meetings

- (1) When a meeting is closed in terms of rule 51, the provisions of these by-laws apply to that meeting.
- (2) If a proposal in terms of rule 51 is carried, the further debate on the matter, whether in closed session or in public, is deemed a continuation of the preceding debate on the matter.
- (3) At the conclusion of a closed debate, the meeting automatically reverts to a meeting in public and the chairperson shall make a ruling in this regard.

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53. Opening a closed meeting

- (1) A councillor or member of the mayoral committee may, at any time during a closed meeting of the council or mayoral committee, propose that the meeting proceed in public.
- (2) No seconder is required for a proposal in terms of sub-rule (1).
- (3) Despite anything to the contrary in these by-laws, only the introducer of the motion may speak on the proposal for a period not exceeding five minutes and must, during his or her submission, state the reasons for such proposal.
- (4) The chairperson, if he or she does not reject the proposal referred to in sub-rule (1), must subject same to the vote immediately after the introducer has spoken.
- (5) If the proposal is carried, the meeting immediately resumes in public and the chairperson shall rule accordingly.

54. Supply of information to the media

- (1) The municipal manager may make confirmed minutes (excluding any part of such minutes with regard to a matter dealt with in terms of rule 50 (2)(b)) and official agendas containing reports on matters to be dealt with by the council and mayoral committee in open session, available to any interested person or registered newspaper at such fee as the council may determine and, failing such determination, free of charge.
- (2) The municipal manager may, and if so instructed by the council or the mayor, must, make the confirmed minutes (excluding any part of such minutes regarding a matter dealt with in terms of rule 50 (2)(b)) and official agendas containing matters to be considered by the council or mayoral committee in open session, available in the reference section of a public library in the municipal area.
- (3) The speaker and mayor may, with due regard to the provisions of the code of conduct, confidentiality requirements and the powers delegated to him or her, hold media conferences and briefings and issue media statements.
- (4) The municipal manager may, in respect of any matter included in the official agenda of a meeting of the council to be held in open session or the confirmed minutes of a meeting of the council held in open session, issue media statements and convene media conferences and briefings provided that, before doing so, the municipal manager shall advise the speaker and mayor of his or her intention to do so.
- (5) A departmental manager may, in consultation with the municipal manager, issue media statements and call media conferences in respect of any matter administratively dealt with by his or her department.

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CHAPTER 3
DEPUTATIONS, PETITIONS, OBJECTIONS,
REPRESENTATIONS AND QUESTIONS

55. Deputations

- (1) Any person or body of persons (hereinafter referred to as the “deputation”) who or which wishes to obtain an interview with the council or a committee of the council, must lodge a written application for such interview with the municipal manager. The application must state the representations the deputation wishes to make and also the name of the leader of such deputation.
- (2) The municipal manager must submit the application to the -
- (a) speaker in the case of an application for an interview with the council;
 - (b) chairperson, in the case of an application for an interview with a committee-
- who may grant or refuse the application or request such additional information from the applicant as they may deem necessary before considering same.
- (3) Whenever the speaker or chairperson, as the case may be -
- (i) grants an interview, he or she must determine the date, time and venue for the interview and the size of the deputation that may attend the interview; or
 - (ii) refuses an application, he or she must inform the municipal manager thereof and supply reasons for such decision.
- (4) The municipal manager must inform the applicant or the leader of the deputation of a decision in terms of sub-rule (3).
- (5) If the subject matter of an application in terms of sub-rule (1) falls within the terms of reference of a committee, the speaker may direct that the chairperson of the relevant committee consider the application.
- (6) If a committee conducts an interview and it does not have the delegated power to dispose of the matter or matters raised by the applicant or deputation, as the case may be, the committee must submit its report and recommendations to the council.
- (7) During an interview, only the leader of the deputation may address the meeting except when a councillor asks a question whereupon any member of the deputation may respond thereto.

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- (8) The applicant or members of a deputation, as the case may be, must withdraw from the meeting after the interview has been completed and may not be present in such meeting when the council or committee concerned considers the matter or matters raised by the applicant or deputation.
- (9) Unless otherwise provided in these by-laws, any matter raised by an applicant or deputation shall be dealt with by the council or a committee in accordance with the normal administrative and decision-making processes of the council or responsible committee, as the case may be.

56. Petitions

- (1) A councillor must submit a petition received by him or her to the speaker.
- (2) The municipal manager must inform the speaker of any petition he or she receives.
- (3) Any petition in terms of sub-rules (1) or (2) and any petition received by the speaker him or herself must be referred to the mayor who may, in turn, refer such matter to the section -79 committee or committees which has or have the authority to consider the matter or matters raised therein.
- (4) If the committee or committees to which the petition has been referred does not or do not have the power to dispose of the matter or matters raised therein, the committee or committees concerned must submit its or their report and recommendations to the mayoral committee.

57. Attendance of council meeting by the Auditor-General

- (1) Whenever the audit report is included in the agenda for a council meeting, the municipal manager must, in writing, invite the Auditor-General, the provincial treasury and the department responsible for local government to that meeting.
- (2) Despite any provisions in these by-laws to the contrary, the speaker may change the order of business at a meeting referred to in sub-rule (1) to allow the Auditor-General to address the council and to enable councillors to ask questions with regard to the audit report and audit findings.

58. Objections and representations

- (1) Whenever the municipality invites public comment, representations or objections with regard to any proposal initiated by or before the council or in respect of a draft resolution the council has adopted, the municipal manager must designate a staff member who will be responsible for the receipt of such comment, representations or objections.

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- (2) The staff member designated in terms of sub-rule (1) must, within seven days after the closing date for comments, representations or objections, make a summary of the comments, representations and comments that were received (if any) and submit same to the relevant departmental manager.
- (3) The departmental manager must consider the summary and submit it, together with his or her report and recommendations to the municipal manager who must refer it, together with his or her comments, to the responsible committee.
- (4) The responsible committee must consider the aforesaid summary and report and recommendations and submit the matter to the mayoral committee together with its recommendations.
- (5) The council shall consider the submission received from the mayoral committee at its first meeting ensuing the date of submission.
- (6) The municipal manager shall, in a manner provided in these by-laws, make public the resolution adopted by the council in respect of any matter referred to in sub-rule (1).

59. Questions of which notice had been given

- (1) A councillor may, at any time, submit to the municipal manager a written question he or she intends to ask during a meeting of the council or a committee of which he or she is a member, provided that such question must be submitted to the municipal manager at least ten working days before the meeting where the question will be asked. A councillor may also request the municipal manager to assist him or her to formulate the relevant question.
- (2) The municipal manager must immediately upon receipt of a question in terms of sub-rule (1), provide a copy thereof to the responsible departmental manager and instruct him or her to prepare a reply to the question. The municipal manager may also direct a departmental manager to which he or she has sent the question to consult with any other departmental manager before he or she prepares the reply.
- (3) Provided the question had been received at least ten working days before the scheduled date of the meeting where it will be asked, the municipal manager must ensure that the question and the answer thereto is included in the agenda for the meeting concerned.

60. Questions during meetings

- (1) A councillor may, at a meeting of the council or a committee of which he or she is a member, ask a question regarding a matter arising from or pertaining to an item contained in the agenda.

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- (2) The chairperson of the meeting may allow the question if, in his or her opinion, it affects the interests of the residents within the municipal area and may respond to it or direct another councillor to respond to it.
- (3) If the answer to the question is unclear to the councillor who asked it, he or she may ask for, and is entitled to, an explanation of the answer.
- (4) If the question is answered, the councillor who asked the question may request, and is entitled, to a written reply within fourteen days from the date of the meeting. Such a written reply must be included in the minutes of the meeting where the question was asked.
- (5) The chairperson of the meeting where the question is asked may, with the concurrence of the councillor who asked the question, reply at the first ordinary meeting of the council or the committee next ensuing, as the case may be.
- (6) A question may only be asked during a meeting to solicit factual information and may not deal with matters of policy except the implementation of policy, nor seek to solicit an opinion or include or amount to a statement of fact.

CHAPTER 4 **MOTIONS**

61. Motion must be in written form

- (1) A councillor may place a matter on the agenda of a committee of which he or she is a member or of the council, subject to sub-rule (8), by submitting a motion in a manner provided in this rule to the municipal manager.
- (2) Every motion must be relevant to the administration of or conditions in the municipality or must deal with a matter in respect of which the council has jurisdiction.
- (3) Every motion must be in writing and be signed and dated by the councillor submitting it.
- (4) A motion must be submitted to the municipal manager at least working 10 days before the meeting at which it will be introduced.
- (5) The municipal manager must keep a register in which all motions received from councillors must be recorded. Motions must be dated upon receipt and be numbered consecutively.
- (6) Motions must be included in the agenda for the meeting at which they will be considered in the order in which they were received. A motion amending another motion must, however, be entered in the agenda immediately after the latter

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motion, irrespective of the date it was received, provided that such date shall not be less than 10 days before the meeting at which it will be introduced.

- (7) Every motion submitted by a councillor in terms of this rule shall be seconded before it may be considered at a meeting of the committee or council to which it was submitted, as the case may be and, in the event of it not being seconded, it shall fall away, provided that this sub-rule shall not prevent the councillor concerned from submitting the same motion to a subsequent meeting of the council or committee concerned, as the case may be.
- (8) Notwithstanding sub-rule (6), the speaker may, after consultation with the mayor, authorize the consideration at a council meeting of a motion in respect of which 10 working days prior notice was not given, subject to sub-rule (9), in circumstances where the subject matter of such motion is of an urgent nature and in the interests of the municipality.
- (9) A motion submitted by a councillor may only be considered by the council without it first being considered by the responsible committee with the approval of the mayor and chairperson of such committee and provided that such chairperson and the mayor are of the opinion that the subject matter of such motion is of an urgent nature and that it is in the interests of the municipality for the motion to be considered without delay.

62. Limitation and consideration of motions

- (1) With due regard for the provisions of sub-rule (4), a motion in terms of rule 61 must be included in the agenda for the first ordinary meeting next ensuing of the council or the committee concerned.
- (2) Only one motion of a councillor may be considered at a meeting.
- (3) If the introducer of a motion is absent during the meeting when the motion is put to the order, it is deferred to the ensuing ordinary meeting of the committee or council, as the case may be.
- (4) Any motion which contemplates the repeal or amendment of a resolution taken during the preceding three months or has the same purport as a motion that was rejected during the preceding three months', may not be included in the agenda, unless it has been signed by at least three councillors in addition to its introducer.
- (5) A motion may only be considered by the council or mayoral committee, as the case may be, if it is duly seconded.

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63. Withdrawal and amendment of motions

- (1) With due regard for any provisions to the contrary in these by-laws, the introducer of a motion may, at any time before the motion is put to the order at a meeting, withdraw it. A withdrawn motion lapses without further discussion.
- (2) The introducer of a motion may, during a meeting where the motion is considered, request permission to amend the motion, which permission must either be granted or denied without discussion.

64. Right of introducer of motion to speak and reply

The introducer of a motion in terms of rule 61 has the right, if the motion had not been rejected or withdrawn, to introduce the motion and to reply.

65. Motion or proposal regarding the budget

- (1) In applying this rule, the council shall strictly observe and comply with the applicable provisions of the Finance Management Act (in this rule referred to as "the Act") and the municipal budget and reporting regulations and this rule shall not substitute or alter such provisions.
- (2) The mayor must introduce the draft budget or a revised draft budget or a draft adjustments budget (in this rule the "draft budget") at a council meeting which may not be closed to the public and the media and of which, despite the provisions of rule 6 (1), at least 7 working days prior notice has been given.
- (3) The mayor must, in addition to or supplementary to any information required in terms of the Finance Management Act and the municipal budget and reporting regulations, address the following matters when he or she introduces the draft budget:
 - (a) the expected financial performance of the municipality for the financial year during which the draft budget is tabled and the reasons for such performance;
 - (b) an evaluation of the municipality's budget-related policies as defined in the municipal budget and reporting regulations, related procedures and the implementation thereof;
 - (c) any proposed strategies, plans and programmes to improve the financial performance of the municipality during the next financial year or the remainder of the current financial year in the case of a revised draft budget or draft adjustments budget;

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- (d) the procedure, with specific reference to community participation and consultation with different constituencies, which had been followed in compiling the draft budget;
 - (e) the impact that such participation and consultation and public hearings had on the draft budget;
 - (f) the priority needs in the community that will be addressed in the draft budget and how they were determined and quantified;
 - (g) the factors, expectations and assumptions that influenced the compilation of the draft budget;
 - (h) key ratios of expected income from different sources of revenue to overall expected income and main expenditure groups to expected expenditure, differentiating between capital and operating expenditure;
 - (i) proposals regarding borrowing, if any, and the likely impact of borrowing on rates, taxes, tariffs and charges;
 - (j) the extent to which the draft budget gives effect to the municipality's integrated development plan;
 - (k) proposals regarding increases in rates, taxes, tariffs and charges;
 - (l) any other relevant matter.
- (4) A proposal that will cause an increase in expected revenue or a decrease in expected expenditure may not be put to the vote until the debate on the draft budget has ended. When the debate has ended and the mayor has replied to any proposals made during such debate, such proposals shall be put to the vote in the order they were made.
- (5) A proposal that will cause an increase in expected revenue or a decrease in expected expenditure amends the draft budget when it is carried.
- (6) A proposal that will cause a decrease in expected revenue does not amend the budget until and unless a corresponding saving in expenditure is proposed and carried. If such proposal is not forthcoming, the meeting shall adjourn in terms of rule 33.
- (7) A proposal that will cause an increase in expected expenditure does not amend the draft budget until and unless an increase in rates, tariffs, charges or taxes that will cover the expected increase in expenditure is proposed and carried. If such proposal is not forthcoming, the meeting shall adjourn in terms of rule 33.

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- (8) If the amount saved or earned in terms of a proposal referred to in sub-rule (6) or (7) is insufficient to cover the expected shortfall, the draft budget is not amended but is referred back to the mayor acting in conjunction with the mayoral committee for reconsideration and the meeting adjourns in terms of rule 33.
- (9) At the continuation meeting in terms of rule 34, any proposals contemplated in sub-rule (6) or (7) and the comment of mayor thereon must be debated.
- (10) The speaker must put each proposal referred to in sub-rule (8) to the vote when the debate in terms of sub-rule (9) has ended. Should any such proposal be carried, the draft budget is amended accordingly.
- (11) If no proposal as referred to in sub-rule (4) is made or immediately after the debate referred to in sub-rule (10) has ended, the speaker must put the amended draft budget to the vote as a whole. If the amended draft budget is adopted, the budget is approved.
- (12) In approving the budget, the council must adopt resolutions dealing with the following matters:
- (a) approval of the annual budget of the municipality, and specifically appropriating the amounts for the different votes and for single-year and multi-year capital expenditures;
 - (b) noting the consolidated annual budget in instances where the municipality has municipal entities;
 - (c) the approval of all rates, taxes and tariffs for services provided by the municipality;
 - (d) the approval of measurable performance objectives for the annual budget for each year of the medium term revenue and expenditure framework;
 - (e) the approval of the transfer of funds to a separate bank account for purposes contemplated in section 12 of the Act; and
 - (f) the approval of all budget-related policies referred to in sub-rule (3)(b) or amendments to such policies.

66. Motion or proposal regarding legislation

- (1) A motion or proposal before the council affecting the adoption, repeal, drafting or amendment of municipal by-laws and any other legislation affecting the municipality must, before the council considers it, be referred to the mayoral committee for consideration and the submission of a report including recommendations thereon.

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- (2) No by-laws may be passed by the council unless all councillors have been given reasonable notice thereof and the proposed by-laws have been published for public comment in a manner contemplated in these by-laws and any other applicable law.

67. Eligible proposals

- (1) With due regard to the applicable provisions of rule 14, only the following proposals may be made during the discussion of any motion, proposal or matter contained in an agenda, namely:
- (a) that the motion or proposal be amended;
 - (b) that the matter be referred back to the mayoral committee for further consideration;
 - (c) that consideration of the matter be deferred;
 - (d) that the debate be suspended;
 - (e) that the matter be put to the vote;
 - (f) that the meeting continue to the next matter.
- (2) Any proposal in terms of sub-rule (1) may only be subjected to the vote if it has been properly seconded.

68. Amendment of motion or proposal

- (1) A proposal that a motion or proposal (hereafter the "original motion") be amended, may only be made by a councillor during his or her speech on the original motion.
- (2) No councillor may make more than one proposal for the amendment of the same original motion.
- (3) A proposal in terms of sub-rule (1) must be relevant to the original motion and the chairperson must clearly repeat it to the meeting before it is put to the vote.
- (4) With due regard to sub-rule (5), more than one amendment of an original motion may be introduced. Every amendment introduced must be put to the vote at the close of the debate.
- (5) If a proposal in terms of sub-rule (1) has been made, no other proposal may be made until its introducer has addressed the meeting. The councillor who made the proposal may address the meeting for five minutes on his or her proposal, but he or she has no right of reply. The seconder may not address the meeting on the proposal.

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- (6) The introducer of the original motion may, when a proposal in sub-rule (1) has been made and its introducer has spoken in terms of sub-rule (5), address the meeting on that proposal without detracting from his or her right to reply should that proposal be rejected. If a proposal in terms of sub-rule (1) is rejected, a vote must be taken on the original motion without any further discussion.
- (7) If more than one amendment to an original motion has been introduced, such amendments must be put to the vote in the order that they were made. If any amendment is carried, the amended motion or proposal takes the place of the original motion and becomes the motion or proposal in respect of which any further proposed amendments must be put to the vote.

69. Referring the matter back

- (1) A proposal that a motion or proposal (hereafter the "original motion") be referred back may only be made by a councillor during his or her speech on the original motion.
- (2) A proposal in terms of sub-rule (1) may only be made during a council meeting in the case of a recommendation by the mayoral committee. A proposal in terms of sub-rule (1) may only be made during a mayoral committee meeting in the case of a recommendation by a section 79 -committee.
- (3) If a proposal in terms of sub-rule (1) has been made, no other proposal may be made until its introducer has addressed the meeting. The councillor who made the proposal may address the meeting for five minutes on his or her proposal, but he or she has no right of reply. The seconder may not address the meeting on the proposal.
- (4) The introducer of the original motion may, when a proposal in sub-rule (1) has been made and after its introducer has spoken in terms of sub-rule (3), address the meeting on that proposal without detracting from his or her right to reply should that proposal be rejected. If a proposal in terms of sub-rule (1) is rejected, a vote must be taken on the original motion without any further discussion.
- (5) A proposal in terms of sub-rule (1) may not be put to the vote until the mayor has addressed the meeting. If such proposal is carried, the debate on the recommendation must end and the meeting proceeds to the next matter.

70. Deferring consideration of the matter

- (1) A councillor who did not participate in the debate on a motion or proposal (hereafter the "original motion") may, at the end of a speech on the original motion, propose that the matter be deferred.

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- (2) The councillor who made the proposal in terms of sub-rule (1) may address the meeting for five minutes on his or her proposal, but he or she has no right of reply. The seconder may not address the meeting on the proposal
- (3) A proposal similar to the proposal in terms of sub-rule (1) may not be made within half an hour after the first proposal was defeated in respect of the same original motion.
- (4) The introducer of the original motion may, when a proposal in sub-rule (1) has been made and its introducer has spoken in terms of sub-rule (2), address the meeting on that proposal without detracting from his or her right to reply should that proposal be rejected. If a proposal in terms of sub-rule (1) is rejected, a vote must be taken on the original motion without any further discussion.
- (5) If the proposal in terms of sub-rule (1) concerns a recommendation of the mayoral committee, the matter must, if that proposal is carried, be included in the next report of this committee. If the proposal in terms of sub-rule (1) concerns a recommendation of a section 79 -committee, the matter must, if that proposal is carried, be included in the next report of the committee concerned to the mayoral committee. If the proposal in terms of sub-rule (1) concerns any other matter, such matter must be included in the agenda of the first ordinary council meeting next ensuing.

71. Suspending a debate

- (1) A councillor who did not participate in the debate on a motion or proposal (hereafter the "original motion") may, at the end of a speech on the original motion, propose that the debate be suspended, provided that no councillor may, during any meeting, move or second more than one proposal that a debate be suspended.
- (2) The councillor who made the proposal in terms of sub-rule (1) may address the meeting for five minutes on his or her proposal, but he or she has no right of reply. The seconder may not address the meeting on the proposal
- (3) A proposal similar to the proposal in terms of sub-rule (1) may not be made within half an hour after the first proposal was defeated in respect of the same original motion.
- (4) The introducer of the original motion may, when a proposal in sub-rule (1) has been made and after its introducer has spoken in terms of sub-rule (2), address the meeting on that proposal without detracting from his or her right to reply should that proposal be rejected. If a proposal in terms of sub-rule (1) is rejected, a vote must be taken on the original motion without any further discussion.

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- (5) A proposal in terms of sub-rule (1) must be rejected if the council or committee, as the case may be, is required by law to pass a resolution on the matter on or before a particular date.
- (6) If a proposal in terms of sub-rule (1) is carried, the meeting must deal with the next item on the agenda. The item, in respect of which the debate has been suspended, must be placed first on the list of motions in the next agenda of the council or committee concerned, as the case may be.
- (7) At the resumption of a suspended debate, the introducer of the suspension motion must address the meeting first.

72. Putting the matter to the vote

- (1) A councillor who did not participate in the debate on a motion or proposal (hereafter the "original motion") may, at the end of a speech on the original motion, propose that the matter be put to the vote.
- (2) The councillor who made the proposal in terms of sub-rule (1) may address the meeting for five minutes on his or her proposal, but he or she has no right of reply. The seconder may not address the meeting on the proposal.
- (3) A proposal similar to the proposal in terms of sub-rule (1) may not be made within half an hour after the first proposal was defeated in respect of the same original motion.
- (4) The introducer of the original motion may, when a proposal in sub-rule (1) has been made and its introducer has spoken in terms of sub-rule (2), address the meeting on that proposal without detracting from his or her right to reply in the event of the proposal being rejected. If a proposal in terms of sub-rule (1) is rejected, a vote must be taken on the original motion without any further discussion.
- (5) The introducer of the original motion has the right to reply before the matter is put to the vote.

73. Proceeding to the next business

- (1) A councillor who did not participate in the debate on a motion or proposal (hereafter the "original motion") may, at the end of a speech about the original motion, propose that the meeting proceed to the next business.
- (2) The councillor who made the proposal in terms of sub-rule (1) may address the meeting for five minutes on his or her proposal, but he or she has no right of reply. The seconder may not address the meeting on the proposal.

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- (3) A proposal similar to the proposal in terms of sub-rule (1) may not be made within half an hour after the first proposal was defeated in respect of the same original motion.
- (4) The introducer of the original motion may, when a proposal in sub-rule (1) has been made and its introducer has spoken in terms of sub-rule (2), address the meeting on that proposal without detracting from his or her right to reply should that proposal be rejected. If a proposal in terms of sub-rule (1) is rejected, a vote must be taken on the original motion or proposal without any further discussion.
- (5) A proposal in terms of sub-rule (1) must be rejected if the council or committee, as the case may be, is required by law to pass a resolution on the matter on or before a particular date.
- (6) If the proposal in terms of sub-rule (1) is carried, the matter under discussion lapses without further discussion.

CHAPTER 5**COUNCILLOR'S DECLARATION OF FINANCIAL INTEREST, RESIGNATION AND DESIGNATION AS FULL-TIME COUNCILLORS****74. Applications to obtain a financial interest in council business**

- (1) A councillor must lodge a written application with the municipal manager to obtain the council's consent in terms of item 6(2) of the code of conduct.
- (2) The municipal manager must submit an application in terms of sub-rule (1) to the council at its next ensuing meeting.
- (3) A councillor who submits an application in terms of sub-rule (1) may not be present during the consideration of his or her application by the council.
- (4) The council may not close its meeting whilst it considers an application in terms of sub-rule (1).
- (5) The council may grant or refuse an application received in terms of sub-rule (1) and may impose such conditions as it considers necessary if it approves such application.
- (6) In considering whether or not to grant consent in terms of the sub-rule (5), the council shall take into account the fact whether or not the applicant councillor's interest in a matter is direct or indirect, trivial or irrelevant.
- (7) Whenever the council refuses an application in terms of sub-rule (1), it must state the reasons for its refusal and such reasons must be recorded in the minutes of the meeting.

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75. Disclosure of declared interests

- (1) The municipal manager must compile a register of the financial interests of councillors declared in terms of item 7(1) of the code of conduct.
- (2) As soon as the municipal manager has compiled the register referred to in sub-rule (1), he or she must submit it to the council.
- (3) The council must, on receipt of the register in terms of sub-rule (2), during a closed meeting, determine which of the declared financial interests must be made public having regard for the need for confidentiality and the need for public disclosure.
- (4) A councillor who has declared an interest that is recorded in the register may not be present during the consideration of the matter.
- (5) In the event of the council not having a quorum after the withdrawal of councillors in terms of sub-rule (4), the council shall appoint an ad-hoc committee with delegated power to make the determination referred to in sub-rule (3).
- (6) Any interest declared in terms of this rule that has not been made public, is confidential.

76. Resignation of councillors and vacancies in offices

- (1) A councillor may, by written notice signed by him or her and delivered to the municipal manager, resign as councillor or from any office he or she holds.
- (2) A councillor may resign from office at any time during a council or committee meeting by making a declaration to the council or committee concerned in that regard, provided that he or she must, within 24 hours after such a declaration, resign in writing. A declaration in terms of this sub-rule may not be withdrawn.
- (3) If the resignation is that of the speaker, the council must, as soon as the resignation of the speaker in terms of sub-rule (2) had been reduced to writing, signed and given to the municipal manager, take steps, in accordance with these by-laws, to elect a new speaker.
- (4) A resignation in terms of sub-rule (1) or (3) may not be withdrawn and takes effect upon receipt thereof by the municipal manager.
- (5) The municipal manager must immediately upon receipt of a resignation of a councillor or when a vacancy arises in the council in any other manner, report it to the speaker, except when the resignation or vacancy is that of the speaker, in which case such report shall be made to the council.

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- (6) The municipal manager must also ensure that any resignation or a report on any vacancy arising in another manner is contained in the agenda for the next ordinary council meeting after the vacancy arose.
- (7) The council must, at the meeting where a vacancy in an office of the council is reported and, except in the case of the speaker, elect from amongst the councillors, a successor for the councillor who caused the vacancy. A councillor elected to an office in terms of this sub-rule serves for the unexpired term of his or her predecessor's term of office.
- (8) This rule does not affect the application of any law regulating the election of councillors and/or the holding of by-elections.

77. Designation of full-time councillors

Before the council considers designating any councillors in offices identified by the MEC as offices to be filled by full-time councillors, it must consider a report from the municipal manager regarding the filling of such offices, provided that the municipal manager must submit such a report at the first meeting of the council after a general election of councillors and provided further that only the offices of speaker, executive mayor, members of the mayoral committee and the chief whip may be filled by full-time councillors if so authorized by the MEC.

78. Report of the municipal manager with regard to full-time councillors

- (1) A report in terms of rule 77, must deal with:
 - (a) the extent of the powers and functions of the municipality;
 - (b) the need to delegate those powers and functions to promote efficiency and effectiveness in their performance to full-time councillors;
 - (c) proposed powers that could be delegated by the executive mayor to full-time councillors responsible for specified portfolios established in accordance with the powers and functions of the municipality;
 - (d) the reasons not to delegate any such power or function to a staff member of the municipality;
 - (e) the available financial and administrative resources of the municipality to support the work of full-time councillors, including the availability or cost of establishing and maintaining suitable office facilities, office equipment and secretarial assistance;
 - (f) the need for the economical, efficient and effective use of resources;

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- (g) the burden the workload of full-time councillors may put on the incumbents;
 - (h) the need for co-ordination of decision-making;
 - (i) the need for the regular availability of councillors to interview the public and visitors to the municipality;
 - (j) the need for close political supervision over and accountability for the administration;
 - (k) the likely improvement or deterioration of the relationship between the council and its administration as a result of the designation of full-time councillors;
 - (l) the need to establish and maintain sound relationships between office-bearers in the different spheres of government;
 - (m) the likely effect delegated powers may have on the enthusiasm and interest of councillors who are not full-time councillors;
 - (n) the functions full-time councillors must perform;
 - (o) the likely improvement or deterioration in the quality and speed of decision-making if an office is not a full-time office;
 - (p) and any other relevant matter.
- (2) The report must contain recommendations with regard to:
- (a) the working hours of full-time councillors as contemplated in rule 79 (1);
 - (b) arrangements with regard to the provision of office facilities and equipment and secretarial support to full-time councillors and a proposed budget for such facilities and services where they are inadequate;
 - (c) the powers that may be delegated to each full-time councillor;
 - (d) the format, frequency and framework for reports on the activities of full-time councillors and the exercise of their delegated powers within the context of mayoral executive system of local government;
 - (e) the specification and clarification of the roles and responsibilities of full-time councillors, the municipal manager and departmental managers of the municipality, with due regard for the statutory duties and responsibilities of the municipal manager; and

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(f) any other relevant matter.

(3) The designation of a councillor as a full-time councillor does not establish an employment relationship between the municipality and the councillor concerned.

79. Applications by full-time councillors to undertake other paid work

(1) The council must, when it designates an office to be filled by a full-time councillor, determine the working hours applicable to the holder of such office, provided that such working hours shall take cognizance of such councillor's duties and the need for flexibility.

(2) A councillor who is designated as a full-time councillor may apply for the council's permission to undertake other paid work (in this rule "private work").

(3) An application by a full-time councillor to undertake private work must be lodged in writing with the municipal manager and must state the following:

(a) the nature of the private work such councillor wishes to undertake;

(b) an estimation of the demands such work will make on the time and availability of such councillor; and

(c) where such work will be performed.

(4) The council may grant or refuse an application for private work, provided that:

(a) permission to perform private work may not be unreasonably refused; and

(b) when the council refuses an application, it must state the reasons for its refusal.

(5) The meeting at which an application by a councillor to undertake private work is considered, may not be closed to the public and the media.

(6) The applicant councillor may not be present at a meeting during the discussion and consideration of his or her application, provided that the speaker may, during such meeting, request the councillor concerned to supply such additional information as the council may require in connection with the application. Whenever such a request is made to the relevant councillor, he or she may be recalled to the meeting in order to supply the required information orally after which he or she should withdraw from the meeting.

(7) The council may, notwithstanding sub-rule (6), before it considers the application by the applicant councillor, request that additional information with regard to the intended work as may be necessary for the proper consideration of the application, be submitted in writing by the councillor concerned.

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- (8) The granting of permission to a full-time councillor to undertake private work shall be valid for a period of twelve months only provided that this sub-rule shall not prevent the relevant councillor from submitting a new application to continue with his or her private work for a further period of twelve months after the expiry of the initial period.
- (9) Any permission granted to a full-time councillor to undertake private work shall be subject to the under-mentioned conditions:
- (a) private work may only be undertaken outside the working hours contemplated in sub-rule (1);
 - (b) private work may not negatively influence the performance of the relevant councillor as a councillor nor intrude upon his or her official functions and duties;
 - (c) no appointments or other arrangements in connection with private work may be made or conducted by the councillor concerned during the working hours contemplated in sub-rule (1);
 - (d) the councillor concerned may not use the council's equipment, employees, facilities or material for his or her private work;
 - (e) the council's postal address, telephone and fax numbers and electronic mail address may not be used in connection with the private work of the relevant councillor;
 - (f) private work may not result in the relevant councillor contravening or disobeying the provisions of the code of conduct;
 - (g) the relevant councillor may not use his or her position as a councillor to recruit private clients; and
 - (h) any such other conditions as the council may determine.
- (10) Any permission in terms of this rule does not exempt the councillor concerned from complying with the code of conduct neither is such permission a defence against any allegation of a breach of the code.
- (11) An application for private work must be refused if, in the opinion of the council, there may exist, or there is likely to arise, a conflict of interest between the relevant councillor's duties as a councillor and those associated with his or her private work.
- (12) The council may, by notice to the councillor concerned, withdraw its permission enabling such councillor to perform private work if there was a material breach of the conditions stipulated in sub-rule (9) or if a conflict of interest arises as

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contemplated in sub-rule (10). Such a notice must contain the reasons for the withdrawal and must contain details of the breaches of the conditions that occurred.

- (13) Before the council issues a notice in terms of sub-rule (12) it must allow the councillor concerned an opportunity to state his or her case in defence of the allegations against him or her.
- (14) Any refusal of an application or a withdrawal of permission already granted is final and binding on the councillor concerned.
- (15) An application that has been refused may only be reconsidered after expiry of a period of six months from the date of the resolution refusing such application, provided the councillor concerned submits a new application for such permission. A new application for permission to undertake private work may, however, not be considered within six months after permission to perform such work had been withdrawn in terms of sub-rule (12).

80. Leave of full-time councillors

- (1) A full-time councillor (including the speaker) is, subject to any applicable law, entitled to:
- (a) 21 working days vacational leave with full remuneration after every completed year of service as a full-time councillor. 15 consecutive days vacational leave must be taken within six months after the end of each such year;
 - (b) 10 working days sick leave with full remuneration during every completed year he or she occupied a full-time office, provided that the council may, in its discretion, grant more sick leave to such a councillor; and
 - (c) such other leave with or without remuneration as the council may decide.
- (2) A full-time councillor may not encash vacational leave to his or her credit.
- (3) A full-time councillor must apply for leave of absence for any period that he or she will not be or has not been available in the municipality during the working hours referred to in rule 79 (1).
- (4) An application for leave of absence in terms of sub-rule (1) must be in writing on the prescribed form and must be submitted to the municipal manager.
- (5) The municipal manager must submit an application in terms of sub-rule (4) to the council for consideration at the first opportunity. In the case of a member of the mayoral committee, such application shall be accompanied by a recommendation from the mayor.

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- (6) The council must approve an application for leave submitted in terms of sub-rule (1) provided that, in respect of an application for urgent sick leave submitted by a full-time councillor other than the speaker, such application may be approved by the speaker and be subsequently submitted to the council for confirmation. An application for urgent sick leave submitted by the speaker may be approved by the municipal manager and be subsequently submitted to the council for confirmation.
- (7) In respect of any application for sick leave by a full-time councillor, including the speaker, the council shall be entitled to seek and receive such medical reports as it may deem necessary to substantiate such application.
- (8) If the council approves an application for leave by the speaker or mayor, it must, for the period of the absence of the speaker or mayor, as the case may be, in accordance with schedule 3 to the Structures Act, elect an acting speaker and also an acting mayor. An acting mayor shall be elected from the members of the mayoral committee, provided that, in the event of the council having elected a deputy mayor when so authorized, such deputy mayor shall ipso facto act as acting mayor. The acting speaker or acting mayor elected in terms of this sub-rule shall not be entitled to the payment of any acting allowance or increased remuneration arising from such election.
- (9) Leave to the credit of a full-time councillor when he or she vacates office, may not be encashed nor be paid out.

CHAPTER 6**REMOVAL OF OFFICE-BEARERS AND MEMBERS OF COMMITTEES FROM OFFICE****81. Removal of speaker**

- (1) A councillor (hereafter called "the initiator") may by written motion, which must be supported by at least three other councillors, move that the speaker be removed from office. Such a motion must be submitted to the municipal manager and may not be sent by electronic mail, telex or telegram. If such motion is transmitted by facsimile, the original thereof must be delivered to the municipal manager within seven days from transmission.
- (2) The motion must contain sufficient reasons to substantiate the proposal contained therein.
- (3) A motion in terms of sub-rule (1) may, despite the provisions of rule 63, not be withdrawn.
- (4) The municipal manager must, upon receipt of a motion in terms of sub-rule (1), forthwith send a copy thereof to the speaker.

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- (5) Unless the speaker resigns upon receipt of a motion in terms of sub-rule (1), he or she must forthwith upon receipt thereof determine the date, time and venue for a special council meeting in terms of rule 4. The date of such a special meeting may not be less than fourteen and not more than twenty-one days from the date the speaker received a copy of the motion concerned from the municipal manager.
- (6) Despite the provisions of rule 6 (1), at least seven days notice of a meeting in terms of sub-rule (5) must be given to every councillor.
- (7) If the speaker resigns from office at any time before a meeting in terms of sub-rule (5) takes place, the motion lapses and the meeting does not proceed.
- (8) The meeting may not be closed to the public nor the media before a vote has been taken on a motion submitted in terms of sub-rule (1).
- (9) The municipal manager presides over the proceedings on a motion submitted in terms of sub-rule (1) but he or she may not vote thereon.
- (10) The speaker has the right and must be allowed the opportunity during the proceedings to:

 - (a) respond to every allegation made in the motion and during the proceedings;
 - (b) call witnesses and to cross-examine any witnesses called by the initiator; and
 - (c) submit documents and examine any documents submitted by the initiator, provided that, if the speaker has refused or failed to attend the meeting, the council may, in its sole discretion, continue with the proceedings. A proposal to proceed in the absence of the speaker is carried if a majority of the councillors of the municipality vote in favour of it.
- (11) With due regard to the provisions of rules 27 and 28, the municipal manager must put the motion to the vote after the debate thereon has ended.
- (12) If the speaker, at any time during the proceedings, but before the motion is put to the vote, makes a declaration in terms of rule 76 (2), the proceedings shall discontinue immediately, the motion shall lapse and the council shall proceed to elect an acting speaker.
- (13) If the motion is carried, the speaker shall be removed from office with immediate effect and the council shall proceed to elect an acting speaker.
- (14) If the motion is defeated, no motion forwarding the same allegations may be submitted within the ensuing three months unless the council directs otherwise.

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- (15) The acting speaker referred to in sub-rules (12) and (13) shall be elected in accordance with rule 19 of these by-laws read with schedule 3 to the Structures Act.
- (16) The municipal manager shall, as soon as possible, after the removal of the speaker in terms of this rule, arrange for the election of a new speaker in terms of rule 19 of these by-laws.

82. Removal from office of the mayor

- (1) A councillor (hereafter called "the initiator") may by written motion, which must be seconded by at least three other councillors, move that the mayor be removed from office. Such a motion must be submitted to the municipal manager and may not be sent by electronic mail, telex or telegram. If such motion is transmitted by facsimile, the original must be delivered to the municipal manager within seven days.
- (2) The motion must contain sufficient reasons to substantiate the proposal contained therein.
- (3) A motion in terms of sub-rule (1) may, despite the provisions of rule 63, not be withdrawn.
- (4) The municipal manager must, upon receipt of a motion in terms of sub-rule (1), forthwith send a copy to the speaker and the mayor.
- (5) The speaker must, for the purpose of considering the said motion, forthwith upon receipt of same, determine the date, time and venue for a special council meeting in terms of rule 4. The date of such a special meeting may not be less than fourteen and not more than twenty-one days from the date the speaker received a copy of the motion concerned from the municipal manager.
- (6) Despite the provisions of rule 6 (1), at least seven days notice of a meeting in terms of sub-rule (5) must be given.
- (7) If the mayor resigns from office at any time before a meeting in terms of sub-rule (5) takes place, the motion lapses and the meeting does not take place. Upon the resignation of the mayor in terms of this sub-rule, the members of the mayoral committee are deemed to have resigned from the same date.
- (8) The meeting referred to in sub-rule (5) may not be closed for the public or the media before a vote had been taken on the matter.
- (9) The speaker presides over the proceedings on a motion in terms of sub-rule (1) but he or she does not have a casting vote.
- (10) The mayor has the right and must be allowed the opportunity during the proceedings to-

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- (a) respond to every allegation made in the motion and during the debate;
- (b) call witnesses and to cross-examine any witnesses called by the initiator; and
- (c) submit documents and to examine any documents submitted by the initiator,

provided that, if the mayor refuses or fails to attend the meeting, the council may, in its sole discretion, continue with the proceedings. A proposal to proceed in the absence of the mayor is carried if a majority of the councillors of the municipality votes in favour of it.

- (11) With due regard for the provisions of rules 27 and 28, the speaker must put the motion to the vote after the debate on the motion has ended.
 - (12) If the mayor at any time during the debate but before the motion is put to the vote, makes a declaration in terms of rule 76 (2), the debate is discontinued immediately, the motion lapses and the council proceeds to elect a new mayor despite any provisions to the contrary in these by-laws. When such a declaration is made, the members of the mayoral committee are deemed to have resigned as such members.
 - (13) If the motion is carried, the mayor is removed from office with immediate effect and the council proceeds to elect a new mayor. The mayoral committee shall be deemed to have been removed from office upon the removal of the mayor in terms of this sub-rule.
 - (14) A councillor elected as mayor in terms of sub-rule (12) or (13) serves, subject to the right of the council to remove him or her from office, for the unexpired term of his or her predecessor's term of office.
 - (15) If the motion is defeated, no motion containing the same allegations may be submitted within the next three months unless the council directs otherwise.
 - (16) The election of a new mayor in terms of this rule, shall take place in accordance with the procedures contained in Schedule 3 to the Structures Act.
- 83. Removal from office of chairperson of section 79-committee and members of mayoral committee**
- (1) A councillor (hereafter called "the initiator") may, by written motion, which must be seconded by at least three other councillors, move that a member of the mayoral committee:
 - (a) who is the chairperson of a section 79-committee be removed as chairperson of the committee concerned; or

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- (b) be removed as a member of the mayoral committee.
- (2) A motion in terms of sub-rule (1) must be submitted to the municipal manager and may not be sent by electronic mail, telex or telegram. If such motion is transmitted by facsimile, the original must be delivered to the municipal manager within seven days.
- (3) The motion referred to in sub-rule (1) must contain sufficient reasons to substantiate the proposal contained therein.
- (4) A motion in terms of sub-rule (1) may, despite the provisions of rule 63, not be withdrawn.
- (5) The municipal manager must, upon receipt of a motion in terms of sub-rule (1), forthwith send a copy thereof to the mayor and the councillor concerned.
- (6) The mayor may, upon receipt of the motion referred to in sub-rule (1) determine, in terms of rule 6, the date, time and venue for a special mayoral committee meeting for the purpose of considering such motion.
- (7) The date of such a special mayoral committee meeting may not be less than fourteen and not more than twenty-one days from the date the mayor received a copy of the relevant motion from the municipal manager.
- (8) Despite the provisions of rule 6 (1) at least seven days notice of a meeting in terms of sub-rule (6) must be given.
- (9) If the councillor concerned resigns from office at any time before a meeting in terms of sub-rule (6) takes place, the motion lapses and the meeting does not proceed.
- (10) The meeting may not be closed for the public or the media before a vote had been taken on the matter.
- (11) The mayor presides over the proceedings on a motion in terms of sub-rule (1) but he or she does not have a casting vote.
- (12) The councillor concerned has the right and must be allowed the opportunity during the proceedings to-
- (a) respond to every allegation made in the motion and during the debate;
 - (b) call witnesses and to cross-examine any witnesses called by the initiator; and
 - (c) submit documents and examine any documents submitted by the initiator, provided that if the councillor concerned refuses or fails to attend the meeting, the mayor may, in his or her sole discretion, continue with the proceedings.

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- (13) After the debate has ended, the executive mayor must put the motion to the vote.
- (14) If the councillor concerned at any time during the debate but before the motion is put to the vote make a declaration in terms of rule 76 (2), the debate is discontinued immediately and the motion lapses.
- (15) If the motion is carried, the mayor must remove the councillor concerned from office with immediate effect. The mayor may fill a vacancy arising in terms of sub-rule (9) or (14) of this sub-rule.
- (16) A councillor appointed to the mayoral committee following the resignation or removal of a councillor in terms of this rule serves, subject to the right of the mayor to remove him or her from office in terms of these by-laws, for the unexpired term of office of his or her predecessor.
- (17) If the motion is defeated, no motion forwarding the same allegations may be submitted within the next three months unless the mayor directs otherwise.
- (18) This rule shall not prevent the mayor, on his or her own initiative, from removing any member of the mayoral committee from office for just cause including non- or poor performance, subject to the mayor, prior to deciding to remove such councillor from office advising the councillor concerned in writing of the allegations against him or her; and affording such councillor an opportunity to -
- (a) respond to every allegation made against him or her; and
 - (b) to call witnesses and to cross-examine any witnesses called by the mayor; and
 - (c) to submit documents and to examine any documents submitted by the mayor to substantiate the allegation against him or her, provided that if the councillor concerned does not respond to any opportunity granted to him or her in terms of this sub-rule, the mayor may remove such member from office without any further enquiry.

84. Removal of members of section 79 – committees

- (1) A councillor (hereafter called "the initiator") may, by written motion, which must be supported by at least three other councillors, move that all the members or one or more members of a section 79 -committee, (hereafter referred to as "the committee") be removed as members of such a committee. Such a motion must be submitted to the municipal manager and may not be sent by electronic mail, telex or telegram. If such motion is transmitted by facsimile, the original thereof must be delivered to the municipal manager within seven days from transmission.

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- (2)** If the motion is not submitted in respect of all the members of a committee, it must state the name(s) of the member(s) who must be removed.
- (3)** The motion must contain sufficient reasons to substantiate the proposal or proposals contained therein. If the motion is submitted in respect of two or more members of a committee, it must contain reasons in support of the motion in respect of each member separately.
- (4)** A motion in terms of sub-rule (1) may, despite the provisions of rule 63, not be withdrawn.
- (5)** The municipal manager must, upon receipt of a motion in terms of sub-rule (1), forthwith send a copy thereof to the speaker and the member or members of the committee referred to therein.
- (6)** The speaker must forthwith upon receipt of the motion, determine the date, time and venue for a special council meeting in terms of rule 4. The date of such a special meeting may not be less than fourteen and not more than twenty-one days from the date the speaker receives a copy of the motion from the municipal manager.
- (7)** At least seven days notice of a meeting in terms of sub-rule (6) must be given, despite the provisions of rule 6 (1).
- (8)** If all the members of a committee or a member or members named in the motion resign from office at any time before a meeting in terms of sub-rule (6) takes place, the motion lapses and the meeting does not proceed. If one or more, but not all, of the members of the committee or any member, but not all, named in the motion resign at any time before a meeting in terms of sub-rule (6) takes place, the motion lapses insofar as they are concerned but the meeting proceeds in respect of any member who did not resign.
- (9)** The meeting referred to in sub-rule (6) may not be closed to the public nor the media before a vote had been taken on the matter.
- (10)** The speaker presides over the proceedings on a motion in terms of sub-rule (1) but he or she does not have a casting vote if there is an equality of votes.
- (11)** The member(s) in respect of whom the proceedings take place, have the right and must be allowed the opportunity during the proceedings to separately -
 - (a)** respond to every allegation made in the motion and during the debate;
 - (b)** call witnesses and to cross-examine any witnesses called by the initiator; and

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- (c) submit documents and examine any document submitted by the initiator, provided that if any of the members of the committee in respect of whom the motion had been submitted refuse or fail to attend the meeting, the council may, in its sole discretion, continue with the proceedings. A proposal to proceed in the absence of any affected councillor is carried if a majority of the councillors of the municipality vote in favour thereof.
- (12) After the debate has ended, the speaker must put the motion to the vote. The motion is put to the vote separately in respect of each of the members to which it relates.
- (13) If any member to whom a motion in terms of sub-rule (1) relates at any time during the debate but before the motion is put to the vote, makes a declaration in terms of rule 76 (2), the debate is discontinued immediately in respect of him or her and the motion lapses in respect of him or her.
- (14) Every member in respect of whom the motion is carried is removed from office with immediate effect.
- (15) As soon as the proceedings have been concluded, the council shall proceed to appoint new members to fill the vacancies in the committee arising from the application of this rule.
- (16) A member appointed as a member of the committee in terms of sub-rule (15) serves, subject to the council's right to remove him or her from office as a member of the committee, for the unexpired term of office of his or her predecessor.
- (17) If the motion is defeated, no motion naming a member in respect of whom it had been defeated and containing the same allegations, may be submitted within the ensuing three months unless the council directs otherwise.

CHAPTER 7
LANGUAGE POLICY OF THE MUNICIPALITY

85. Determination of language policy

The council must, at its first meeting, after a general election for councillors review the language policy of the municipality in terms of rule 88 and, where such policy does not exist, instruct the municipal manager to develop a draft policy and submit it to the council for consideration.

86. Differentiation between languages for different purposes

The council may determine that one or more languages be used -

- (a) for the purposes of local government in the municipality;

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- (b) for internal written communications relating to the operations of the municipality;
- (c) for the preparation of agendas for, and minutes of, meetings;
- (d) during debates in council and committee meetings;
- (e) during public meetings of voters, constituency meetings and public hearings;
- (f) for written communication with persons communicating with the municipality, including the language or languages used for billing the municipality's debtors;
- (g) for public announcements and courtesy and official notices of the municipality;
- (h) for the promulgation of its by-laws;
- (i) for the compilation of the municipal code in terms of section 19 of the Systems Act; and
- (j) on forms used or issued by the municipality.

87. Factors to be taken into account

When the council determines a language policy it must take the following factors into account:

- (a) The need to take practical and positive steps to elevate the status and advance the use of indigenous languages that are official languages in terms of section 6 (1) of the Constitution.
- (b) Language usage and preferences of the residents within the municipal area.
- (c) The practicability and expense of choosing any particular language or languages.
- (d) The right of an employee accused of misconduct to state his or her case during a disciplinary enquiry in a language of his or her choice and to have the proceedings at such enquiry translated to such language.
- (e) The dominant languages used by newspapers circulating in the municipal area.
- (f) The right of everyone to use the language of their choice.
- (g) The economical, efficient and effective use of resources.

88. Review of language policy

- (1) The council may, at any time, review and amend its language policy, having due regard for the factors referred to in rule 87.

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- (2) The council must review its language policy upon receipt of a written request signed by at least one-third of the councillors requiring such a review.
- (3) A request in terms of sub-rule (2) must state the reasons for such request and must contain proposals for any amendment to the existing language policy, taking into account the factors referred to in rule 87.
- (4) A request in terms of sub-rule (2) must be submitted to the municipal manager.
- (5) The municipal manager must submit a copy of the request to the speaker and must ensure that the request is contained in the agenda for the first ordinary council meeting next ensuing.
- (6) The speaker must submit a written report and recommendations about the request to the municipal manager, who must include it in the agenda for the meeting referred to in sub-rule (5).

CHAPTER 8
APPLICATION OF THE CODE OF CONDUCT

89. Investigating suspected breaches of the code

- (1) Whenever a written or oral allegation is made to the municipal manager or he or she has a reasonable reason to believe that a councillor has contravened or failed to comply with any provision of the code of conduct (in this rule referred to as the "code"), he or she must report such allegation in writing to the speaker. If such an allegation is made to a departmental manager, he or she must report same to the municipal manager.
- (2) Upon receipt of a report in terms of sub-rule (1) and when the speaker has reason to believe that a provision of the code had been breached, he or she must-
 - (a) investigate the facts and circumstances of the case; and
 - (b) give the councillor concerned a reasonable period, which may not exceed fourteen days, within which to respond in writing to the alleged breach.
- (3) When performing an investigation in terms of sub-rule (2), the speaker may examine any official records and documents of the municipality and interview any person.
- (4) As soon as the speaker has completed the investigation referred to in sub-rule (3), he or she must submit -
 - (a) a written report, which must include his or her finding and a recommendation; and

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- (b) the response of the councillor, if any -
to the municipal manager for inclusion in the agenda of the first ordinary council meeting next ensuing.
- (5) The municipal manager must immediately deliver a copy of the report referred to in sub-rule (4) to the councillor concerned.
- (6) If the councillor concerned fails to respond to the allegation within fourteen days after being invited by the speaker to do so in terms of sub-rule (2), the speaker may submit his or her report to the council without such comment.
- (7) The speaker makes a finding on a preponderance of probabilities.
- (8) If the speaker finds that the councillor concerned has breached the code, he or she must recommend that:
- (a) the council apply to the MEC to suspend such councillor for a specified period of time; or
- (b) the council apply to the MEC to remove such councillor as a councillor of the municipality;
- (c) that such councillor be fined a specified amount; or
- (d) that a warning valid for a specified period of time, which period shall also be recommended by the speaker, be issued to such councillor.
- (9) Nobody may victimize or threaten any person who gave evidence in an investigation in terms of this rule.
- 90. Consideration of the speaker's report by the council**
- (1) The speaker must vacate the chair during any council meeting when a report in terms of rule 89 (4) is put to order.
- (2) Whenever the speaker vacates the chair in terms of sub-rule (1), the municipal manager must preside over the debate on the report.
- (3) The proceedings in terms of sub-rule (2) may not be closed to the public and the media.
- (4) After the speaker has introduced his or her report, the municipal manager must afford the councillor concerned the opportunity to formally reply to the allegations, finding and recommendation by the speaker.

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- (5) As soon as the councillor concerned has spoken, the matter is debated by the council in terms of these by-laws.
- (6) Despite any provisions to the contrary in these by-laws, the councillor concerned has a right to -
- (a) reply to all the allegations made during the debate and before the speaker replies;
 - (b) examine any documents submitted by the speaker or any other councillor and submit documents and other evidence in his or her defence; and
 - (c) call witnesses and cross-examine any witness called by the speaker.
- (7) With due regard to the provisions of rules 27 and 28, the speaker must, after the debate has ended, reply and propose -
- (a) that his or her report, finding and recommendation be accepted; or
 - (b) that his or her report and finding and a different recommendation be accepted; or
 - (c) that the council elect a committee to further investigate the matter.
- (8) A proposal in terms of sub-rule (7) need not be seconded.
- (9) After the proposal in terms of sub-rule (7) has been made, the municipal manager must put the proposal to the vote.
- (10) If the proposal in terms of sub-rule (7) is -
- (a) defeated, the matter is discontinued; or
 - (b) carried, the municipal manager must forthwith implement the resolution.
- (11) The municipal manager shall ensure that the councillor concerned is provided with a copy of the minutes of the meeting held in terms of this rule.
- 91. Implementing the result of the vote**
- (1) If a proposal in terms of rule 90 (7) (a) or (b) is carried and a fine is imposed, the municipal manager must deduct the amount of such fine from the first next payment of the municipality due to the councillor concerned unless such councillor has paid the fine in cash before payment is due to him or her.

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- (2) If a proposal in terms of rule 90 (7) (a) or (b) is made and carried that the relevant councillor must be suspended or be removed as a councillor, the municipal manager must forthwith make such an application to the MEC.
- (3) If the MEC, on application by the council, suspends the relevant councillor, he or she is, despite any rule to the contrary, deemed to have been absent with leave from any meeting he or she would have been required to attend had he or she not been so suspended.

92. Investigating the matter further

- (1) The council must immediately appoint from amongst its members an investigation committee of not less than three and not more than five councillors and appoint the chairperson of the committee if -
 - (a) a proposal in terms of rule 90 (7)(c) is carried; or
 - (b) the speaker reported in terms of rule 89 (4) that he found that the allegation could not be substantiated and evidence was given during the meeting referred to in rule 90 that the allegation may be true despite the speaker's finding, provided that the speaker may not serve as a member of such committee.
- (2) An investigation committee must be constituted in such a way that parties and interests reflected in the council are fairly represented therein.
- (3) The investigation committee must conclude its investigation not later than twenty-one days after its appointment.
- (4) When performing an investigation in terms of sub-rule (3), the investigation committee may examine any official records and documents of the municipality and interview any person. The investigating committee must also consider the minutes of the meeting referred to in rule 90 during its investigation.
- (5) The accused councillor is entitled to make written submissions to the investigating committee, but the committee is not obliged to request the councillor's written comments on the allegations. The investigating committee must take account of the written response of the accused councillor made in terms of rule 89 (2) and any other submission made by him or her in terms thereof.
- (6) The municipal manager must provide such reasonable administrative support as the investigating committee may require.
- (7) As soon as the investigating committee has completed its investigation, it must submit a written report, including its finding and any submission in terms of sub-rule (6), to the municipal manager for inclusion in the agenda of the first ordinary

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council meeting next ensuing. The municipal manager must immediately deliver a copy of the report to the councillor concerned.

- (8) The investigating committee makes a finding on a preponderance of probabilities.
- (9) If the investigating committee finds that the councillor concerned has breached the code, it may recommend -
- (a) that the speaker's finding and recommendation in terms of rule 89 (8) be confirmed; or
 - (b) that the speaker's finding be confirmed and make a different recommendation.
- (11) If the investigating committee recommends that -
- (a) the council apply to the MEC to suspend the councillor concerned for a period, it must make a recommendation as to the period of suspension;
 - (b) a fine should be imposed on the councillor concerned, it must make a recommendation as to the amount of such fine; or
 - (c) a warning should be issued to the relevant councillor, it must make a recommendation as to the period during which the warning should apply.
- (12) Nobody may victimize or threaten any person who gave evidence in an investigation in terms of this rule.

93. Consideration of further report by the council

- (1) The provisions of rule 90 apply, with the necessary changes, to the consideration of a report of an investigating committee, provided that any reference in that rule to the speaker must be construed as a reference to the chairperson of the investigating committee.
- (2) The committee dissolves upon conclusion of the debate on its report at the council meeting.

94. Effect of appeal on a resolution

- (1) If the relevant councillor appeals against the finding or the penalty imposed by the council or against both such finding and penalty imposed by the council under rule 90 before the municipal manager has taken steps to recover any such fine from the councillor concerned, the municipal manager must defer implementation of the council resolution until the result of the appeal is known.

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- (2) If the councillor concerned appeals before the municipal manager could submit an application to the MEC in terms of rule 91 (2), the municipal manager must defer the implementation of the council resolution until the result of the appeal is known.

95. Breaches of these rules and orders and legislation relating to privileges and immunities

Any alleged breach of the provisions of these by-laws for which a specific procedure and penalty have not been prescribed or of legislation regulating the privileges and immunities of councillors, must be dealt with in accordance with the provisions of rules 89 to 92.

CHAPTER 9
DISSOLUTION OF THE COUNCIL

96. Conditions for dissolution

- (1) The council may, at any time after two years have lapsed since it was elected, consider the dissolution of the council.
- (2) The council must consider the dissolution of the council if two years have lapsed after it has been elected -
- (a) upon receipt of a petition proposing the dissolution signed by not less than 500 voters; or
 - (b) upon receipt of a recommendation proposing the dissolution from the speaker; or
 - (c) when so directed by resolution of a public meeting of voters in terms of rule 170; or
 - (d) upon receipt of a motion proposing the dissolution from a councillor signed by at least one-third of the councillors in addition to the introducer of the motion; or
 - (e) when section 139 of the Constitution is invoked in respect of the municipality.

97. Procedure for considering the dissolution of the council

- (1) Whenever any of the circumstances referred to in rule 96 (2) arise, the speaker must determine the date, time and venue of a special council meeting in terms of rule 4. The date of such a special meeting may not be less than fourteen and not more than twenty-one days from the date the petition was delivered,

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recommendation was made, resolution was taken, motion was submitted or instruction received referred to in rule 96 (2), as the case may be.

- (2) At least seven days notice of a meeting in terms of sub-rule (1) must be given, despite the provisions of rule 6 (1).
- (3) A meeting in terms of sub-rule (1) may not be closed to the public and the media.
- (4) Despite any provisions to the contrary in these by-laws, the municipal manager presides over the debate of the petition, recommendation, resolution or motion, as the case may be.
- (5) With due regard for the provisions of rules 27 and 28, the municipal manager must subject the petition, recommendation, resolution or motion, as the case may be, to a secret ballot in terms of rule 47 despite the provisions of rule 45, when the debate has ended.
- (6) The proposal is carried if two-thirds of the councillors of the municipality vote in favour thereof.
- (7) The council is dissolved and all councillors vacate their seats immediately if the proposal is carried.

CHAPTER 10
EXECUTIVE MAYOR AND COMMITTEES

Part 1: Executive Mayor

98. Making the decision to establish the office of executive mayor

- (1) In this part, the executive mayor is referred to as the mayor.
- (2) Subject to sub-rule (4), the council must, at its first meeting after a general election of councillors, and immediately after it elected the speaker, consider whether or not to elect a mayor.
- (3) The council takes a decision in terms of sub-rule (1) only after it considered a report of the municipal manager in terms of rule 99.
- (4) The meeting referred to in sub-rule (1) shall take place no later than 14 days after the election of the council.

99. Report of the municipal manager about an executive mayor

- (1) The municipal manager in preparing a report contemplated in rule 98 (2) must consider the need for a mayor, taking into account-

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- (a) the extent of the powers and functions of the municipality;
 - (b) the need to delegate those powers and functions to promote efficiency and effectiveness in their performance to a mayor;
 - (c) the reasons not to delegate any such power or function to an employee of the municipality;
 - (d) the available financial and administrative resources of the municipality to support the work of a mayor, including the preparation of agendas and minutes of the mayoral committee;
 - (e) the availability or provision of office facilities, office equipment and secretarial support for the mayor;
 - (f) the need for the economical, efficient and effective use of resources;
 - (g) the burden the workload may put on the mayor;
 - (h) the need for coordination of decision-making;
 - (i) the likely effect delegated powers may have on the enthusiasm and interest of councillors who are not appointed as members of the mayoral committee; and
 - (j) the likely improvement or deterioration in the quality and speed of decision making if a mayor is elected.
- (2) The report must contain recommendations with regard to-
- (a) the powers that may be delegated to the mayor;
 - (b) the powers that may be performed or exercised by the mayor together with other members of the mayoral committee;
 - (c) the format, frequency and framework for reports on the activities of the mayor and the exercise of his or her delegated powers;
 - (d) the specification and clarification of the role and responsibility of the mayor on the one hand and the municipal manager and departmental heads of the municipality on the other, with due regard to the statutory duties and responsibilities of the municipal manager; and
 - (e) any other relevant matter.

100. Considering the municipal manager's report

- (1) If, after consideration of the report of the municipal manager in terms of rule 99, the council decides to establish the office of mayor, the council must-

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- (a) determine the powers it delegates to the mayor (if any);
 - (b) determine what powers and functions as may be designated by the municipal council, must be exercised and performed by the mayor together with the other members of the mayoral committee.
 - (c) subject to rule 40 and sub-rules (2) and (3), elect the mayor in terms of Schedule 3 to the Structures Act;
 - (d) prescribe how often the mayoral committee must meet;
 - (e) prescribe the format, frequency and framework for reports on the activities of the mayor and the exercise of his or her delegated powers; and
 - (f) specify and clarify the role and responsibility of the mayor on the one hand and the municipal manager and departmental heads of the municipality on the other, with due regard to the statutory duties and responsibilities of the municipal manager.
- (2) No councillor may hold office as mayor for more than two consecutive terms.
- (3) If a councillor is elected to fill a vacancy in the office of mayor, the period between that election and the next election of a mayor is not regarded as a term.
- (4) If the council decides, after consideration of the municipal manager's report, not to establish an office of mayor-
- (a) the matter may not be considered again during the next three months; and
 - (b) the council operates as a municipality with a plenary executive system.
- 101. Deputy Executive Mayor**
- (1) In this rule, the Deputy Executive Mayor is referred to as the deputy mayor.
- (2) Whenever the council contemplates applying to the MEC for approval to elect a deputy mayor in terms of section 55 (1) of the Structures Act, it must obtain and consider a report of the municipal manager.
- (3) The municipal manager in preparing a report contemplated in sub-rule (2) must consider the need for a deputy mayor taking into account-
- (a) the extent of the powers and functions of the municipality;
 - (b) the need to delegate those powers and functions to promote efficiency and effectiveness in their performance to a deputy mayor;
 - (c) the reasons not to delegate any such power or function to the mayor or

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- an employee of the municipality, as the case may be;
- (d) the available financial and administrative resources of the municipality to support the work of a deputy mayor, including the provision and maintenance of appropriate office facilities, office equipment and secretarial support;
 - (e) the need for the economical, efficient and effective use of resources;
 - (f) the workload of a deputy mayor;
 - (g) the need for co-ordination of decision-making;
 - (h) the likely effect delegated powers may have on the enthusiasm and interest of councillors who are not elected to the mayoral committee; and
 - (i) the likely improvement or deterioration in the quality and speed of decision-making if a deputy mayor is elected.
- (3) The report referred to in sub-rule (2) must contain recommendations with regard to-
- (a) the format, frequency and framework for reports on the activities of the deputy mayor and the exercise of his or her delegated powers;
 - (b) the specification and clarification of the role and responsibility of the mayor, the deputy mayor and members of the mayoral committee, as the case may be, on the one hand and the municipal manager and departmental heads of the municipality on the other, with due regard to the statutory duties and responsibilities of the municipal manager; and
 - (c) any other relevant matter.
- (4) The council may not consider or apply for permission to elect a deputy mayor, if the council-
- (a) has not designated the office of the mayor as an office to be filled by a full-time councillor; or
 - (b) the council, having designated the office of the mayor as an office to be filled by a full-time councillor, has granted permission to the mayor to undertake other paid work.
- (5) Where the council intends filling an approved office of deputy mayor, such deputy mayor -
- (a) shall be elected in accordance with the procedures contained in schedule 3 to the Structures Act immediately after the mayor has been elected;

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- (b) exercises the powers and performs the duties of the mayor if the mayor is absent or not available or if the office of the mayor is vacant;
- (c) shall ipso facto be a member of the mayoral committee.

Part 2: Mayoral Committee**102. Establishment of mayoral committee**

- (1) The mayor must establish a mayoral committee with due regard for the following factors-
 - (a) the extent of the powers and functions of the municipality;
 - (b) the need to delegate those powers and functions to promote efficiency and effectiveness in their performance;
 - (c) the reasons not to delegate any such power or function to an existing committee (if any) or the deputy mayor (if any) or an employee of the municipality;
 - (d) the available financial and administrative resources of the municipality to support the work of the committee, including the preparation of agendas and minutes of the committee;
 - (e) the need for the economical, efficient and effective use of resources;
 - (f) the burden the workload of the proposed committee may put on its members;
 - (g) the need for coordination of decision-making at the level of the council and its structures;
 - (h) possible measures to reduce the cross referral of matters between committees of the council, including the amendment of the terms of reference of one or more other committees; and
 - (i) the likely improvement or deterioration in the quality and speed of decision-making if the committee is established.
- (2) After the mayor has considered the factors referred to in sub-rule (1), he or she must-
 - (a) determine the size of the committee provided that the committee must consist of the deputy mayor (if any) and as many councillors as may be necessary for effective and efficient government, provided further that no more than 20 per cent of the councillors of the municipality or 10 councillors, whichever is the least, may be appointed.

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- (b) determine the powers he or she delegates to the members of the committee (if any); and
 - (c) appoint the members of the committee.
 - (d) allocate portfolios to members of the committee.
- (3) After the mayor has appointed the members of the committee, he or she must inform the council of the names of the committee members at the first ordinary council meeting after their appointment.

103. Term of a committee and filling of vacancies

- (1) The members of the mayoral committee are appointed, subject to sub-rule (2) for a term ending when the next municipal council is declared elected.
- (2) A member of the committee vacates office during the term of the council if that member-
- (a) resigns as a member of the committee;
 - (b) is removed from office as a member of the committee in terms of rule 82;
 - (c) ceases to be a councillor.
- (3) The mayor must, at the earliest opportunity after a vacancy has occurred on the mayoral committee, appoint another councillor to serve thereon for the unexpired term of his or her predecessor's term of office.

104. Quorum and decision-making

- (1) A majority of the members of the mayoral committee must be present before a decision on any matter may be taken.
- (2) A question before the mayoral committee is decided if there is agreement among at least the majority of the members present at a meeting.
- (3) If on any question there is an equality of votes, the executive mayor may, subject to sub-rule 45 (5) exercise a casting vote in addition to his or her deliberative vote.

Part 3: Section 79-committees**105. Report of the municipal manager before the establishment of section 79 - committees**

- (1) The council must, before it establishes and elects the members of section 79 - committees (in this part "committees"), consider a report from the municipal manager regarding the proposed committees.

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- (2) The municipal manager in preparing a report contemplated in sub-rule (1) must consider the need for the proposed committees, taking into account:
- (a) the extent of the powers and functions of the municipality;
 - (b) the need to delegate those powers and functions to promote efficiency and effectiveness in their performance;
 - (c) the reasons not to delegate any such power or function to an existing committee, if any, or a staff member of the municipality;
 - (d) the available financial and administrative resources of the municipality to support the work of the committee, including the preparation of agendas and minutes of the committee;
 - (e) the need for the economical, efficient and effective use of resources;
 - (f) the burden the workload of the proposed committee may put on its members;
 - (g) the need for coordination of decision-making at the level of the council and its structures;
 - (h) possible measures to reduce the cross referral of matters between committees, including the amendment of the terms of reference of one or more other committees; and
 - (i) the likely improvement or deterioration in the quality and speed of decision-making if the committee is established.
- (3) The report of the municipal manager must contain recommendations with regard to the matters listed in sub-rule (2), despite any recommendation that he or she may make that a committee or committees not be established.

106. Consideration of the municipal manager's report

- (1) After the council has considered the municipal manager's report and decides to establish section 79 - committees, it must -
- (a) determine the number of committees it will establish provided that such committees may not in number exceed the number of members of the mayoral committee;
 - (b) determine the name of the committees;
 - (c) determine the terms of reference of the said committees;
 - (d) appoint the members of each committee.

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- (2) The mayor must appoint a chairperson for each committee referred to in sub-rule (1) from the members of the mayoral committee.

107. Delegation of powers to committees

- (1) The mayor may delegate any powers vested in him or her to a section 79 – committee.
- (2) Despite sub-rule (1), the mayor is not divested of the responsibility concerning the exercise of the power or the performance of the duty delegated to a section 79 - committee in terms of sub-rule (1).
- (3) Nothing in this rule precludes the mayor from varying or revoking any decision taken by the committee concerned in terms of sub-rule (1), subject to the protection of any vested rights arising from any such decision.

108. Reporting by committees

A section 79 - committee must report to the mayoral committee in accordance with the directions of the mayor.

109. Term of office of a committee and filling of vacancies

- (1) The members of a committee are elected, subject to sub-rule (2), for a term ending when the next municipal council is declared elected.
- (2) A member of the committee vacates office during the term of the council if that member -
- (a) resigns as a member of the committee;
 - (b) is removed from office as a member of the committee in terms of rule 84;
 - (c) ceases to be a councillor.
- (3) The council must, at the earliest opportunity after a vacancy has occurred, appoint another person to serve as member of a committee for the unexpired term of any predecessor member's term of office.

Part 4: Advisory committees**110. Establishment and disestablishment of advisory committees**

- (1) The council may, in terms of this part, at any time, establish an advisory committee comprising of appointed persons who are not councillors or staff members of the municipality to advise it on any matter within the council's competence.

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- (2) When appointing the members of an advisory committee in terms of sub-rule (1), the council shall take gender representivity into account.
- (3) The council may, at any time, disestablish an advisory committee established in terms of sub-rule (1).
- (4) The council must, before it establishes and appoints the members of an advisory committee consider a report from the municipal manager in terms of rule 111 regarding the proposed committee.

111. Report of the municipal manager about a proposed advisory committee

- (1) The municipal manager in preparing a report contemplated in rule 110 (4) must consider the need for the proposed committee, taking into account -
 - (a) the extent of the powers and functions of the municipality;
 - (b) the need to have professional advice when performing those powers and functions to promote efficiency and effectiveness;
 - (c) the reasons why the advice needed cannot be provided by the staff members of the municipality or its other providers, including consultants;
 - (d) the available financial and administrative resources of the municipality to support the work of an advisory committee, including the preparation of agendas and minutes of the committee;
 - (e) the need for the economical, efficient and effective use of resources;
 - (f) the burden the workload of the proposed committee may put on its members;
 - (g) the need for co-ordination of decision-making at the level of the council and its structures;
 - (h) possible measures to reduce the cross referral of matters between committees, including the amendment of the terms of reference of one or more other committees; and
 - (i) the likely improvement or deterioration in the quality and speed of decision-making if the committee is established.
- (2) The report of the municipal manager must contain recommendations with regard to the matters listed in sub-rule (1) despite any recommendation that he or she may make that the proposed committee not be established.

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112. Consideration of the municipal manager's report

After the council has considered the municipal manager's report and decided to establish an advisory committee, it must -

- (a) determine the size of the committee;
- (b) determine the terms of reference of the committee;
- (c) determine the advice it requires from the committee;
- (d) nominate the members of the committee;
- (e) appoint from amongst those members the chairperson of the committee;
- (f) prescribe how often the committee must meet;
- (g) prescribe how often the committee must submit a report to the council on its mandate;
- (h) determine the term of the committee; and
- (i) determine the remuneration (if any) of any person for serving in the committee and the conditions of such remuneration, provided that the council may decide that only the travelling cost, at tariffs determined by the council, and reasonable out of pocket expenses of such person in connection with his or her membership of the committee may be paid.

113. Term of office of members

The members of an advisory committee are appointed for a period determined by the council, subject to rule 112.

114. Vacancies

- (1) A member of an advisory committee vacates office during a term if that member -
 - (a) resigns as a member of the committee; or
 - (b) is removed by the council from office as a member of such committee.
- (2) The filling of a vacancy in an advisory committee is subject to rule 112 (a).

115. Quorum and decisions

- (1) A majority of the members of an advisory committee constitutes a quorum for a meeting.
- (3) A question before the committee is decided if there is agreement amongst at least the majority of the members present at the meeting.

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Part 5 : Oversight Committee**116. Establishment**

The council recognizes that:

- (a) the Finance Management Act assigns specific oversight responsibilities to the council with regard to the Annual Report and the preparation of an Oversight Report.
- (b) the oversight role of council is an important component of financial reform and it is achieved through the separation of the roles and responsibilities between the council, the Executive (Mayor and Mayoral Committee) and the administration. Good governance, effective accountability and oversight can only be achieved if there is a clear distinction between the functions performed by these different role players and structures.
- (c) non-executive councillors are required to maintain oversight over the performance of specific statutory responsibilities and delegated powers that have either been allocated to or granted to the political office bearers and structures of the municipality by means of delegation in terms the applicable provisions of the Municipal Structures Act, 1998, the Municipal Systems Act, 2000 or the Finance Management Act, 2003. In exchange for the powers which the council has been bestowed upon the Executive, the council retains a monitoring and oversight role thereby ensuring that there is transparent accountability for the performance or non-performance of the municipality as a local government entity.
- (d) the Finance Management Act vests in council specific powers of approval and oversight, namely in respect of the:
 - (i) approval of budgets;
 - (ii) approval of budget-related policies as defined in the Act;
 - (iii) the review of the Annual Report; and
 - (iv) the adoption of the Oversight Report.
- (e) given the processes required by council to effectively undertake its oversight role as set out above, an "Oversight Committee" shall be established by the council as an appropriate mechanism through which it may fulfill its oversight responsibilities.

117. Primary role of Oversight Committee

The Committee's primarily role shall be as follows:

- (a) to consider the Annual Report of the Council;

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- (b) to receive input from various role players with regard thereto; and
- (c) to prepare a draft Oversight Report for consideration by Council.

118. Functions

The Committee shall:

- (a) undertake a review and analysis of the Annual Report.
- (b) invite, receive and consider inputs from councillors and portfolio committees on the Annual Report;
- (c) consider written comments received on the Annual Report through the public consultation process provided in these by-laws;
- (d) conduct public hearing(s) to allow the local community or any organs of state to make representations with regard to the Annual Report;
- (e) receive and consider the views and comments of the councils' Audit Committee on the annual financial statements and the performance report;
- (f) prepare the draft Oversight Report, taking into consideration the views and inputs of the public, representative(s) of the Auditor-General, organs of state, the aforesaid Audit Committee, councillors and portfolio committees;
- (g) ensure that the Oversight Report complies with applicable statutory directives, instructions or requests received from or made by National Treasury and, in particular, to ensure compliance with the contents of Circular No. 32 issued by National Treasury on 15 March 2006;
- (h) recommend to the council the adoption of resolutions adopting or amending the draft Oversight Report either in full or in part and with such reservations and observations as may be deemed necessary or desirable to ensure compliance with any statutory directives, instructions or requests received from or made by National Treasury.

119. Composition

- (1) The committee shall be composed of the following members:
 - (a) Four PR Councillors;
 - (b) Two members from the local community nominated through a transparent appointment process.
- (2) The council shall annually review the composition of the committee.

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- (3) The procedures contained in these by-laws shall generally apply in respect of the convening of (including the giving of notice) and conduct of meetings of the Committee.
- (4) Due to the separation of roles and responsibilities between council and the Executive (mayor and mayoral committee), no member of the mayoral committee may be a member of the Committee.
- (5) No municipal staff member may be a member of the committee.

120. Chairperson

The chairperson of the committee shall be appointed by the council.

121. Authority and power

The committee is delegated the responsibility, on behalf of the council, to conduct meetings and to hold public hearings in order to receive and hear public submissions on the Annual Report.

122. Meeting schedule

- (1) The Annual Report must be tabled in a meeting of the council by the 31st January of each year and the oversight Report must be adopted within two months from the date in which the Annual Report is so tabled,
- (2) During the two month intervening period referred to in sub-rule (1), the committee shall meet in order to fulfill its mandate and make appropriate recommendations for consideration by the Council.

Part 6: Budget Steering Committee**123. Establishment of Budget Steering Committee**

- (1) In conformity with section 53 of the Finance Management Act, the mayor must -
 - (a) provide general political guidance over the budget process and the priorities that must guide the preparation of the municipal budget;
 - (b) co-ordinate the annual revision of the integrated development plan in terms of section 34 of the Systems Act, the preparation of the annual budget and determine how the integrated development plan is to be taken into account or revised for the purposes of the budget; and
 - (c) take all reasonable steps to ensure -

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- (i) that the municipality approves its annual budget before the start of the budget year;
 - (ii) that the municipality's service delivery and budget implementation plan is approved by him or her within 28 days after the approval of the budget; and
 - (iii) that the annual performance agreements as required in terms of section 57 (1) (b) of the Systems Act for the municipal manager and all senior managers -
 - (aa) comply with this Act in order to promote sound financial management;
 - (bb) are linked to the measurable performance objectives approved with the budget and to the service delivery and budget implementation plan; and
 - (cc) are concluded in accordance with section 57 (2) of the Systems Act.
- (2) The mayor must promptly report to the council and the MEC, any delay in the tabling of an annual budget, the approval of the service delivery and budget implementation plan or the signing of the annual performance agreements referred to in sub-rule (1)(c)(iii).
- (3) The mayor must ensure -
- (a) that the revenue and expenditure projections for each month and the service delivery targets and performance indicators for each quarter, as set out in the service delivery and budget implementation plan, are made public no later than 14 days after the approval of the service delivery and budget implementation plan; and
 - (b) that the performance agreements of the municipal manager, senior managers and any other categories of officials as may be prescribed in terms of the Finance Management Act are made public no later than 14 days after the approval of the municipality's service delivery and budget implementation plan and that copies of such performance agreements are submitted to the council and the MEC.
- (4) For the purpose of providing technical assistance to the mayor in discharging his or her duties in terms of sub-rules (1) to (3), the mayor must establish a budget steering committee comprising at least the following persons:

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- (a) the member of the mayoral committee (if any) responsible for financial matters;
- (b) the municipal manager;
- (c) the chief financial officer;
- (d) the senior managers responsible for at least the three largest votes in the municipality;
- (e) the manager responsible for budgeting;
- (f) the manager responsible for planning; and
- (g) any technical experts on infrastructure.

Part 7: Ad hoc committees**124. Establishment and disestablishment of ad hoc committees**

- (1) The council or a committee may, at any time, establish an ad hoc committee to deal with or advise it with regard to a particular matter.
- (2) An ad hoc committee ceases to exist when -
 - (a) it furnishes its final report to the council or committee which established it; or
 - (b) the council or committee that established it, disestablishes it.

125. Terms of reference of ad hoc committees

The council or committee that establishes an ad hoc committee must determine its terms of reference when it establishes it.

126. Removal from office of members of ad hoc committees

The council or committee that establishes an ad hoc committee may, at any time, remove one or more of the members from the committee.

Part 8 : Audit Committee**127. Establishment of audit committee**

- (1) The council must establish an audit committee provided that this rule and the rules relating to such committee in these by-laws shall not apply in the instance where the council utilizes the services of the audit committee of the district municipality for purposes of its own audit.

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- (2) The council must appoint the members of the audit committee on a contractual basis following a transparent recruitment process not later than the second ordinary council meeting after a general election of councillors.
- (3) An audit committee must consist of at least three persons with appropriate experience of whom the majority may not be in the employ of the municipality;
- (4) The audit committee shall appoint one of its members who is not in the employ of the municipality as chairperson of the committee.
- (5) The municipal manager, chief financial officer, the head of the internal audit unit and such other staff members as may be nominated by the municipal manager shall be ex officio members of the aforesaid audit committee with no voting rights.
- (6) No councillor may be a member of the audit committee.

128. Status of audit committee

An audit committee established in terms of rule 127 shall be an independent advisory body.

129. Functions of audit committee

- (1) The audit committee must advise the council, the political office-bearers, the municipal manager as accounting officer and the management staff of the municipality on matters relating to -
 - (i) internal financial control and internal audits;
 - (ii) risk management;
 - (iii) accounting policies;
 - (iv) the adequacy, reliability and accuracy of financial reporting and information;
 - (v) performance management;
 - (vi) effective governance;
 - (vii) compliance with the Finance Management Act, the annual Division of Revenue Act and any other applicable legislation;
 - (viii) performance evaluation; and
 - (ix) any other issues referred to it by any authorized functionary of the municipality.

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- (2) The audit committee must review the annual financial statements of the municipality in order to provide the council with an authoritative and credible view of the financial position of the municipality, its efficiency and effectiveness and its overall level of compliance with the Finance Management Act, the annual Division of Revenue Act and any other applicable legislation.
- (3) The audit committee must respond to the council on any issues raised by the Auditor-General in an audit report.
- (4) The audit committee must carry out such investigations into the financial affairs of the municipality as the council may request.
- (5) The audit committee must, furthermore, perform such other functions as may be prescribed in terms of any applicable law.

130. Meetings of the audit committee

- (1) The audit committee shall meet at least four times per year, with authority to convene additional meetings as circumstances may require.
- (2) The committee must hold a meeting prior to the release of the annual financial statements and should consider the report of the Auditor-General.

131. Reports

- (1) The Audit Committee shall submit a report to the municipal manager after each meeting.
- (2) The municipal manager shall submit the report referred to in sub-rule (1) together with his or her comments thereon to the mayor, who, in turn shall submit same, together with his or her comments to the section 79 –committee responsible for finance.
- (3) The committee responsible for finance shall consider the report referred to in sub-rule (2) and submit it together with its comments and recommendations to the meeting of the mayoral committee next ensuing.
- (4) The municipal manager shall ensure that the report of the mayoral committee in terms of sub-rule (3) is submitted to the council for consideration in open session.
- (5) The municipal manager must convey to the audit committee the resolutions adopted by the council in response to its report and also the remedial action, if any, authorized by the council in order address matters that should be addressed by the management of the municipality.
- (6) The report referred to in sub-rule (1) shall include at least a report on the performance of the municipality on a half-yearly basis.

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132. Powers of audit committee

The audit committee may, to the extent necessary for the efficient and effective performance of its functions and achievement of its objects-

- (a) access and inspect any records, documents and information held otherwise by the municipality or an employee of the municipality;
- (b) access and inspect any premises on which or from where the activities of the municipality are performed;
- (c) conduct interviews with the council or any committee thereof and summon any employee of the municipality to appear before it and interview him or her;
- (d) investigate or cause to be investigated by any employee of the municipality, after consultation with the municipal manager, any matter;
- (e) ensure that effective accounting policies, systems and reporting are implemented and applied; and
- (f) facilitate improvement of the standard of financial reporting.

133. Facilitating the audit committee's work

- (1) The municipal manager and every other employee of the municipality must-
 - (a) assist the audit committee in the performance of its functions;
 - (b) produce any book, record or other information required by the audit committee, the custody and control of which had been entrusted to him or her; and
 - (c) appear before the audit committee when summonsed to do so and answer any question or enquiry of the committee truthfully and to the best of his or her knowledge.
- (2) The municipal manager may, after consultation with the relevant departmental manager, direct any employee to assist or appear before the audit committee.

Part 9 : Rules Committee**134. Establishment of Rules Committee**

- (1) The Council shall establish a Rules Committee comprising:
 - (a) the speaker;

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- (b) the mayor;
 - (c) the member of the mayoral committee responsible for administration;
 - (d) the chairperson of any committee the council may determine;
 - (e) the whip of each political party represented on the council;
 - (f) an attorney or advocate who is on the council's panel, as may be required by the committee from time to time; and/or
 - (g) a legal officer in the municipal service as may be required by the committee from time to time.
- (2) The speaker shall be the chairperson of the Rules Committee.
- (3) The committee shall have the following functions and powers:
- (a) to develop, formulate and adopt policy concerning the exclusive business of the council including its proceedings, procedures, rules, orders and practices;
 - (b) to monitor and oversee the implementation of policy on all matters referred to in paragraph (a) of this sub-rule;
 - (c) to make recommendations to the council on any matter falling within the functions and powers of the committee;
 - (d) to lay down guidelines, issue directives, and formulate policy regarding any matter referred to in this sub-rule;
 - (e) to appoint sub-committees to assist it with the performance of any of its functions or the exercise of any of its powers; and
 - (f) to perform any other functions assigned to it by legislation, the provisions of these by-laws and/or the resolutions of the council.
- (4) The committee may deal with a matter falling within its functions and powers -
- (a) on its own initiative; or
 - (b) when referred to it for consideration and report by -
 - (i) the council; or
 - (ii) the speaker; or
 - (iii) the mayor

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- (5) The responsibility for oversight relating to the implementation of policy determined by the committee and the control and management of all matters relating to the political administration of the council vests in the speaker subject to legislative provisions, the decisions of the committee and the applicable resolutions of the council.
- (6) The municipal manager may appoint officials to assist the committee with the performance of its functions.
- (7) A question before the committee is decided when there is a quorum present and there is agreement on such question among the majority of the members of the committee.
- (8) The recommendations of the committee shall be submitted for consideration of the council in a separate report by the speaker

Part 10: Ward committees**135. Making the decision to establish ward committees**

- (1) The council must, not later than twelve months after its election, decide whether to establish a ward committee system provided that if the municipality, in terms of its establishment notice, is a type that must establish ward committees, compliance with this part, is peremptory.
- (2) For the purpose of making the decision in terms of sub-rule (1), if applicable, the municipal manager must submit a report to the council containing the information referred to in sub-rule (3).
- (3) The municipal manager in preparing a report contemplated in sub-rule (2) must consider the need for ward committees, taking into account-
 - (a) the extent of the area and powers and functions of the municipality;
 - (b) the need to empower the residents and community organizations within the municipality to participate in decision-making that affects them;
 - (c) the need to improve access by disadvantaged persons to decision-making systems;
 - (d) the efficacy of other methods of promoting public participation in local government matters used in and by the municipality;
 - (e) the need to improve communication between the municipality and the residents and community organizations in the municipal area;

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- (f) the need to foster transparency and improve accountability of the municipality;
 - (g) the need for the municipality to consult the residents and community organizations within its area about the level, quality and coverage of services;
 - (h) the need to improve responsiveness in the municipality;
 - (i) the available financial and administrative resources of the municipality to support the work of ward committees, including the preparation of agendas and minutes of such committees;
 - (j) the administrative support that the municipality can provide and the capacity-building role that it can play;
 - (k) the need for the economical, efficient and effective use of resources; and
 - (l) the likely improvement or deterioration in the quality, speed and legitimacy of decision-making if ward committees are established.
- (4) The municipal manager must submit his or her report to the mayoral committee.
- (5) The mayoral committee must consider the report and recommendations of the municipal manager and submit it, together with its own comment and recommendations, to the council.

136. Consideration of the municipal manager's report

- (1) After the council has considered the municipal manager's report and the comment and recommendations of the mayoral committee, it must decide whether or not to adopt a ward committee system. If the council adopts the system, it must determine the size of every ward committee provided that a ward committee may not exceed ten members.
- (2) The responsible ward councillor shall, notwithstanding any provision in these by-laws to the contrary, be responsible for the management of the ward committee established for his or her ward and shall chair all meetings of such committee and, for purposes of this part, such councillor shall be referred to as the "chairperson".

137. Object and objectives of ward committees

- (1) The object of the ward committee system is to enhance participatory democracy in local government.

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- (2) A ward committee is an advisory body without any executive powers, is independent and represents the interests of residents of its ward.
- (3) A ward committee must strive to-
- (a) express the needs and concerns of the residents within the ward it represents;
 - (b) identify development priorities in its ward;
 - (c) establish dialogue with the council, through the ward councillor, to ensure that the municipality-
 - (i) responds to the needs and concerns of residents within its ward;
 - (ii) involves the residents in its ward in identifying and prioritizing needs;
 - (iii) identifies resources in its ward for meeting needs;
 - (iv) promotes accountability to the residents of its ward; and
 - (v) assists residents in its ward to access municipal services;
 - (d) monitor municipal programmes and services in its ward; and
 - (e) promote friendly and cooperative relations between the residents in its ward, the municipality and community organizations.

138. Membership of ward committees

A Ward Committee consists of the councillor representing the ward in the municipal council, who must also be the chairperson of the committee, and not more than 10 other persons.

139. Membership criteria

A person only qualifies to be elected to a ward committee if he or she:

- (a) is a registered voter in a ward of the municipality and his or her name appears on the voters roll segment in respect of that ward;
- (b) is elected by his/her interest group to serve on the committee;
- (c) is not indebted to the municipality for rates and service charges for a period longer than three (3) months, unless he/she can prove that arrangements for the settlement of the outstanding account have been made;

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- (d) is not an employee of the municipality;
- (e) has not been convicted after February 1997 of an offence for which he/she was sentenced to imprisonment without the option of a fine for a period of not less than 12 months; and
- (f) is not a person of unsound mind who has been declared so by a competent court.

140. Role of PR councillors

- (1) The speaker shall, in consultation with the whips of different political parties in the council, deploy proportional representative councillors to ward committees.
- (2) Proportional representative councillors shall serve on ward committees in an ex-officio capacity.
- (3) Proportional representative councillors shall assist and complement the work of ward councillors.
- (4) Proportional representative councillors shall participate in the deliberations of ward committees but shall not have the right to vote on any matter before a committee.
- (5) A ward councillor may, with the consent of the speaker, delegate in writing to a proportional representative councillor, his or her responsibilities to chair a ward committee meeting during his or her absence on leave of absence granted in terms of these by-laws.

141. Functions and powers of ward committees

- (1) A ward committee may make recommendations on any matter affecting its ward to the ward councillor or through the ward councillor, to the council or the mayoral committee provided that any report received from a ward councillor or ward committee in terms of this sub-rule shall first be considered by the responsible section 79 -committee.
- (2) Ward committees shall have the following functions:
 - (a) To serve as official specialized participatory structures in the municipality;
 - (b) To create formal unbiased communication channels as well as co-operative partnerships between the community and the council by:
 - (i) advising and making recommendations to their ward councillors on matters and policy affecting their wards;

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- (ii) assisting ward councillors in identifying challenges and needs of residents;
 - (iii) disseminating information in their wards concerning municipal affairs such as the budget, integrated development planning, the performance management system (PMS), service delivery options and municipal properties;
 - (iv) receiving queries and complaints from residents concerning municipal service delivery, communicating same to the council and providing feedback to the community on the council's response;
 - (v) ensuring constructive and harmonious interaction between the municipality and community through the use and co-ordination of ward residents' meetings and other community development forums; and
 - (vi) interacting with other forums and organizations on matters affecting their wards.
- (c) To serve as mobilizing agents for community action within their wards by:
- (i) attending to all matters that affect and benefit the community;
 - (ii) acting in the best interest of the community;
 - (iii) ensuring the active participation of the community in:
 - (a) service payment campaigns;
 - (b) the integrated development planning process;
 - (c) the municipality's budgetary process;
 - (d) decisions about the provision of municipal services; and
 - (e) decisions about by-laws,
 - (iv) Delimitating and chairing zonal meetings.
- (3) Ward committees may, in furtherance of their functions and powers and subject to the availability of finance, where required -
- (a) organize ward campaigns, competitions and celebrations to promote pride in and the cleanliness and elegance of their wards and the municipality;
 - (b) supply to residents, information of municipal services in their wards and events regarding their wards or the municipality generally;

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- (c) promote the conservation and development of cultural, natural and historical heritage within their wards;
 - (d) perform such functions and exercise such powers as the council may delegate to them;
 - (e) organize constituency meetings in their wards;
 - (f) establish sub-committees of residents of their wards to investigate and make recommendations to them regarding any matter relevant to the objectives of ward committees;
 - (g) establish sub-committees of persons representing any readily identifiable group of residents in the ward, whether they are organized or not, that share common economic or social interests or conditions;
 - (h) organise in their wards and lodge petitions to support or oppose any resolution taken or about to be taken by the council or any other public body that will affect their wards;
 - (i) respond to any invitation of the municipality or another public body to comment on, make representations concerning or object to any resolution the council or that other body must take or has taken;
 - (j) attend and participate in any public hearings through delegations appointed by them;
 - (k) delegate one or more of their members to attend council or committee meetings;
 - (l) file complaints on any matter within the authority of the municipality with the appropriate department or the municipal manager;
 - (m) apply to the council to delegate any function or power of the municipality in respect of their ward to them;
 - (n) cooperate with any other ward committees within the municipal area;
 - (o) invite the municipal manager or a departmental manager of the municipality or any office-bearer of the municipality to attend any of their meetings; and
 - (p) engage with the municipal manager or departmental managers of the municipality about a particular matter regarding their wards.
- (4) No executive powers may be delegated to ward committees.

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- (5) A ward committee may express dissatisfaction in writing to the speaker on the non-performance of a ward councillor.
- (6) Ward committees may, subject to available capacity and resources, conduct annual satisfaction surveys in order to assist them in the execution of their functions and powers. These satisfaction surveys should be administered in the wards by ward committee members under the supervision of the ward councillors and with the administrative support of the municipality.

142. Determination of interests to be represented in ward committees

- (1) The members of ward committees must be elected in a manner which takes into account the need for women and a diversity of interests in the ward to be represented thereon.
- (2) Gender equity may be pursued by ensuring that there is an even spread of men and women on a ward committee.
- (3) A diversity of interests may be pursued by ensuring the inclusion of as many as possible of the following interest groups on a ward committee:
 - (a) Youth;
 - (b) Women;
 - (c) Religious groupings;
 - (d) Sports and culture;
 - (e) Health and welfare;
 - (f) Business;
 - (g) Environment;
 - (h) Education;
 - (i) Senior citizens;
 - (j) Community safety forums;
 - (k) Community based organisations;
 - (l) Ratepayers'/civic associations;
 - (m) Traditional leaders;
 - (n) Agricultural associations;
 - (o) Informal traders' associations;
 - (p) People living with disabilities;
 - (q) Farm workers;

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- (r) Employment;
- (s) Tourism; and
- (t) Unions.

143. Election of members of a ward committee

- (1) The council shall preliminarily identify the key performance areas of each ward as well as the interest groups most suited to the purpose of addressing such areas.
- (2) The council shall, thereafter, invite the identified interest groups to state their interest in and concern with any of the key performance areas referred to in sub-rule (1).
- (3) The council shall, with due regard to the submissions made in terms of sub-rule (2), determine the groups that have a demonstrable interest in any of the determined key performance areas and represent residents of a ward.
- (4) The council shall, thereafter, cluster the interest groups referred to in sub-rule (3) into clusters not exceeding ten. The clusters so created will be represented on a ward committee for a particular ward and the representatives of each cluster will fill the seats on the committee concerned.
- (5) A ward must, at the first constituency meeting in terms of rule 171 and, thereafter, as often as it is necessary, elect the members of the ward committee.
- (6) The notice for a meeting in terms of sub-rule (1) must-
 - (a) state that a ward committee will be elected at that meeting;
 - (b) call for written nominations of candidates from the clusters of groups determined in terms of sub-rule (3);
 - (c) specify the address in that ward where nomination forms will be available and the hours during which such forms would be available at that address.
- (7) Each nomination form shall be signed by the candidate and at least two other voters registered in the relevant ward and be delivered in a sealed envelope at the specified time and specified address.
- (8) The municipal manager must design a nomination form and make a sufficient supply thereof available to every councillor representing a ward not later than the date of the publication of the notice of a constituency meeting referred to in sub-rule (4).
- (9) At the constituency meeting for a ward, the chairperson must open and read out the name of every person that was nominated per cluster and verify that he or

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she represents the approved cluster and that the seconders that signed such person's nomination are voters registered in that ward.

- (10) The chairperson must reject any nomination that does not comply with these by-laws.
- (11) The chairperson may select, from amongst the persons present at the meeting, one or more persons who have not been nominated as candidates for the election to assist him or her with the counting of the votes.
- (12) As soon as all the nominations have been verified, the chairperson must read out the name of each candidate per cluster in alphabetical order.
- (13) Every voter registered in the ward concerned has one vote in respect of every seat on the ward committee.
- (14) After the chairperson has called the name of a candidate in terms of sub-rule (13), the voters registered in that ward and who are present at the meeting, shall cast their vote by show of hands in respect of that name. The chairperson must ensure that the number of votes in favour of every candidate is recorded.
- (15) After the vote had been conducted in respect of every candidate, the chairperson must determine the result and announce the names of those persons who have received the most votes per cluster in descending order until the number of seats on the ward committee have been filled.

144. Determination of time, date and venue of meetings

- (1) The chairperson, after consultation with the councillor referred to in rule 140, determines the date, time and venue of ward committee meetings, provided that:
 - (a) a ward committee must meet in the ward concerned; and
 - (b) a ward committee meeting may not be held on the same day as a council or mayoral committee meeting.
- (2) The provisions of rule 2 (3) are applicable to the determination of the venue of a ward committee meeting.
- (3) The chairperson must, if a majority of the members of the ward committee requests him or her in writing to convene a special ward committee meeting, convene such a meeting on a date set out in the request and at a time and venue determined by him or her.

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145. Frequency of meetings

A ward committee must meet as often as is necessary but at least four times during any year.

146. Meetings are open to the public and the media

The meetings of a ward committee are open to the residents of that ward, the public and the media.

147. Conduct of members of ward committees

The provisions of the code of conduct and rule 22 are, as far as it can be applied, applicable to the members of a ward committee.

148. Notice of meetings

- (1) The chairperson must give notice of every ward committee meeting to every ward committee member, provided that where a ward committee has designated a secretary in terms of rule 150 (2), the secretary must give such notice.
- (2) Notice in terms of sub-rule (1) must be given at least seventy-two hours before the meeting.

149. Quorum and decision-making

- (1) A majority of the members of a ward committee constitute a quorum.
- (2) A question before a ward committee is decided if there is agreement among the majority of the members present at a meeting.
- (3) If, on any question before a ward committee, there is an equality of votes, the chairperson has a casting vote.

150. Minutes of meetings

- (1) The chairperson must ensure that minutes of meetings of a ward committee are kept.
- (2) A ward committee may, for the purpose of sub-rule (1), designate one of its members as the secretary of the committee.

151. Resolutions and recommendations of ward committees

- (1) The resolutions and recommendation of ward committees on matters affecting their wards must be conveyed to the municipal manager in writing by the chairpersons of these committees.

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(2) Every resolution and recommendation of a ward committee shall be dealt with by the municipal manager in accordance with the normal administrative processes and procedures of the municipality including the submission of reports to the responsible section -79 committees.

(3) The municipal manager shall, in writing, advise every chairperson of a ward committee of the response of the municipality on every resolution and recommendation made or submitted in terms of sub-rule (1).

152. Ward committee members must attend constituency and committee meetings

(1) A member of a ward committee must attend every constituency and ward committee meeting of that ward, unless he or she has submitted to the chairperson, an application for leave of absence before the commencement of such meetings.

(2) The chairperson shall place every application for leave of absence received in terms of sub-rule (1) before the ward committee for consideration.

(3) A ward committee may remove a member of the committee if he or she had been absent-

(a) without leave of absence, from three or more consecutive ward committee meetings; or

(b) with leave of absence, from six or more consecutive ward committee meetings.

(4) Before removing a member of a ward committee in terms of sub-rule (3), the ward committee shall afford the member concerned an opportunity to make submissions and be heard, if so required by him or her, on his or her contemplated removal.

(5) The chairperson shall report every removal of a member of a ward committee in terms of this rule to the speaker.

153. Term of office of ward committees

(1) Subject to sub-rule (2) a ward committee member is elected and serves as a member for a period of two years.

(2) A member of a ward committee vacates office if he or she-

(a) is removed from the committee in terms of rule 152;

(b) resigns as member;

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- (c) ceases to be registered as a voter in that ward; or
 - (d) if the ward committee is dissolved in terms of rule 154; or
 - (e) is removed from the committee at any time during a vote at a constituency meeting for that ward.
- (3) A vacancy occurring in terms of sub-rule (2)(a) to (c) is filled at the first constituency meeting for that ward next ensuing. A vacancy in terms of sub-rule (2)(e) is filled at the meeting where the member was removed.
- (4) A casual vacancy arising in a ward committee is filled in the accordance with the procedure contained in rule 143, provided that in the case of a vacancy in terms of sub-rule (2)(e), nominations are called and made at the meeting where the vacancy occurs.
- (5) A person elected in terms of sub-rule (4) to fill a casual vacancy in a ward committee serves for the unexpired term of office of his or her predecessor.

154. Dissolution of ward committees

- (1) A ward committee may be dissolved by resolution taken by the majority of the voters registered in that ward present at a constituency meeting.
- (2) A ward committee may dissolve itself by resolution of the majority of the members of a ward committee during a ward committee meeting.
- (3) Whenever the council is of the opinion that a ward committee is not achieving its objects or fails to meet on three consecutive occasions, the council may dissolve such committee. Before adopting a resolution on the dissolution of the committee, the council must give the committee concerned an opportunity to respond to any allegation in writing.

155. Monitoring of ward committees

- (1) The speaker must, as often as is necessary, but at least once a year, call a meeting of all the chairpersons of ward committees.
- (2) At a meeting in terms of sub-rule (1), the ward committee chairpersons must evaluate the performance of all ward committees and make appropriate recommendations relating to the improvement of performance to the council.

156. Facilitation of ward committee's work

The council may, in its own discretion, provide administrative and logistical assistance to ward committees and may further, for this purpose, provide funds on its annual budget.

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157. Rules and procedures for ward committees

This part must be read in conjunction with any other rules and procedures relating ward committees which the council may, by resolution, adopt or any statutory enactments in this regard and, in the event of a conflict, such other rules and procedures determined by the council or the rules and procedures contained in applicable statutory enactments shall have precedence and be applied by the council.

CHAPTER 11
REPORTS**158. Reports of the mayor**

- (1) The mayor must submit a report on his or her decisions taken under delegated power and recommendations on those matters reserved for consideration and resolution by the council, at every ordinary council meeting.
- (2) Unless a report by the mayor is submitted to the council for information only, the report of the mayor on any matter must contain a recommendation.
- (3) All matters considered by the mayoral committee shall be deemed to have been considered by the mayor in his or her capacity as such and shall be tabled at a meeting of the council under the name of the mayor.

159. Reports of section -79 committees

- (1) A section 79-committee must submit a report on its decisions and recommendations on the matters considered by it to the mayoral committee.
- (2) Unless a matter is submitted to the mayoral committee for information only, the report of a committee on any matter must contain a recommendation.

160. Delivery of reports of committees

- (1) The municipal manager must include a report in terms of rule 159 from a section 79 -committee in the agenda for the first meeting of the mayoral committee following the date of the meeting of the section 79 –committee concerned.
- (2) Every report of the mayor shall be included in the agenda of the council for its next ensuing meeting.

161. Submission of report by executive mayor and committee reports

- (1) The report of the mayor is submitted for the consideration of the council by the mayor proposing: "I propose that the report be considered".

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- (2) The report of a section 79 –committee is submitted to the mayoral committee by the chairperson of such committee (or a councillor designated by him or her) proposing “I propose that the report be considered”.
- (3) A proposal in terms of sub-rules (1) and (2)-
- (a) may not be discussed; and
 - (b) is deemed seconded once made.

162. Considering a report

- (1) When a report in terms of rule 161 is considered, the speaker or mayor, as the case may be, must-
- (a) put the matters contained in that report not disposed of by the mayoral or section 79 - committee, as the case may be, in terms of its delegated or statutory powers, one after the other; and
 - (b) thereafter, put the matters disposed of by the mayoral committee or section 79 -committee concerned, as the case may be, in terms of its delegated or statutory powers, one after the other.
 - (c) a report in terms of sub-rule (b) shall clearly indicate which matters the mayor has considered in conjunction with the members of the mayoral committee in terms of powers delegated to the mayor by the council.
- (2) The speaker or mayor, as the case may be, may alter the sequence of the matters dealt with in a committee report at his or her own discretion.
- (3) The section of a report referred to in sub-rule (1)(b) is considered in terms of rule 168.
- (4) The report and recommendation of the mayor or section 79 -committee, as the case may be, on a matter is deemed proposed and seconded.
- (5) When a recommendation referred to in sub-rule (4) is adopted, it becomes a council resolution.
- (6) During the consideration of a matter in terms of sub-rule (4) -
- (a) the mayor or chairperson of the committee or a member of the committee designated by him or her, as the case may be, may speak for 10 minutes on any matter contained in such report despite any other provisions to the contrary in these by-laws; and

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- (b) a councillor may demand that his or her opposition to a recommendation and resolution be recorded in the minutes.
- (7) The mayor or chairperson of the committee concerned, as the case may be, may, at any time during the debate on a matter-
- (a) request that such matter be withdrawn and referred back to the mayoral committee or relevant section 79 -committee, as the case may be, for further consideration; or
 - (b) with the permission of the other members of the committee present at the meeting in the case of the mayoral committee or a section 79-committee, amend a recommendation contained in such report.
- (8) Permission in terms of sub-rule (8) must be granted or denied without discussion.
- (9) A matter that is withdrawn in terms of sub-rule (7)(a) lapse without further discussion.
- (10) The mayor or chairperson of the committee, as the case may be, may conclude the debate on the matter, provided that the chairperson of a committee may designate another councillor who is a member of the committee to conclude such debate.

163. Reports on the state of the budget

- (1) Subject to sub-rules (3) and (4), the municipal manager must not later than the first ordinary council meeting after-
- (a) 30 September;
 - (b) 31 December;
 - (c) 31 March; or
 - (d) 30 June -
- of every year submit at such meeting for consideration a report on the state of the budget for that financial year.
- (2) The report in terms of sub-rule (1) must contain the particulars referred to in section 71 of the Finance Management Act and must be in the format prescribed under that Act. Despite any prescripts in terms of that Act, the report must contain a written statement of-
- (a) the total amount owed to and received by the municipality in respect of rates, rent, charges for water, electricity, solid waste removal and sanitation, at the end of each month covered by such report with regard to

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- every part of the municipal area as may be determined by the council, identifying the ten biggest debtors;
- (b) the total amount of grants, fiscal transfers and subsidies, including any ad hoc allocations, received from the national or the provincial government or the district municipality during the period covered by the report and the allocation thereof compared to the amount claimed or allocated, as the case may be;
 - (c) the income owed to and received by the municipality from any other source not mentioned in paragraphs (a) and (b);
 - (d) the number of debtors invoices issued by the municipality and the number actually paid during every month covered by the report;
 - (e) the total amount of income from rates during every month covered by such report expressed as a percentage of the expected income from rates for each such month;
 - (f) the total amount due by the municipality to its creditors during each month covered by the report, including a statement of the ten biggest creditors, the creditors outstanding for more than thirty days and the amount paid to each creditor and the reasons for any difference between the amount owed and the amount paid;
 - (g) the cashbook balance at the end of each month covered by the report and the reason for any trend that may occur during the period;
 - (h) progress made with the implementation of every project or programme indicated in the capital budget and the reasons for underperformance;
 - (i) the balance of every fund created by the council and a statement of payments made from and income accruing to each such fund during the period covered by the report;
 - (j) the balance of every external and internal loan, including any overdraft facility extended by the municipality's bank, raised by the municipality, the remaining term of each such loan and the purpose thereof;
 - (k) every investment made by or on behalf of the council, including the institution where the investment was made, the date when such investment had been made, the term of such investment and the interest rate on such investment; and
 - (l) the staff complement of every department within the administration, including an indication of the number of posts vacant on the permanent and temporary establishment, the period for which they had been vacant,

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the grading of each such vacancy and a full explanation of the need for each such post.

- (3) A report in terms of sub-rule (2) must be submitted to the section 79 -committee responsible for finance and budgeting which must timeously submit such report together with its comments and recommendations to the mayoral committee for consideration.
- (4) The mayoral committee shall consider the report referred to in sub-rule (3) and submit same together with its comments and recommendations including proposed remedial measures to the council for consideration in terms of sub-rule (1).

164. Report on unauthorised, irregular and fruitless and wasteful expenditure

- (1) The municipal manager must, when the council, a committee or functionary contemplates adopting a resolution or authorizing action that may result in unauthorized, irregular, fruitless and wasteful expenditure as defined in the Finance Management Act, advise the council, the committee or functionary concerned of the reasons why such expenditure, if incurred, may be regarded as unauthorized, irregular, fruitless and wasteful expenditure.
- (2) Any advice of the municipal manager given during a meeting of the council or a committee in terms of sub-rule (1) must be recorded in the minutes of that meeting. If the advice is given not during a meeting of the council or a committee, the municipal manager must confirm his or her advice in writing in a letter addressed to the functionary concerned at the earliest possible opportunity.
- (3) Whenever it is brought to the attention of the municipal manager that a decision has already been taken that has resulted in unauthorized, irregular, fruitless and wasteful expenditure, the municipal manager must refer that decision, together with his or her report thereon to the council, the committee, the functionary or departmental head who took the resolution.
- (4) A report in terms of sub-rule (3) must-
 - (a) state the amount of the unauthorized expenditure;
 - (b) the steps that had been taken to recover or rectify the unauthorized expenditure;
 - (c) an explanation for the unauthorized expenditure;
 - (d) the identity of the beneficiary of and the person responsible for incurring the unauthorized expenditure; and
 - (e) the steps that had been taken to prevent a recurrence of the event.

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- (5) The municipal manager must take disciplinary action against any employee who has been responsible for incurring unauthorized expenditure, provided that, where an employee alleges that such expenditure had been incurred on the instruction of that employee's departmental head or supervisor, disciplinary action must also be taken against the departmental head or supervisor concerned.
- (6) This rule shall not be interpreted as preventing the council from authorizing expenditure which would otherwise be unauthorized in an adjustments budget or writing off such expenditure as irrecoverable, provided that such expenditure is certified by the council to be irrecoverable following an investigation into such expenditure by an ad hoc committee specifically appointed by the council for this purpose.
- (7) This rule shall, furthermore, not be interpreted as preventing the council from writing off as irrecoverable, expenditure which would otherwise be irregular or fruitless and wasteful expenditure provided that such expenditure is certified by the council to be irrecoverable following an investigation into such expenditure by an ad hoc committee specifically appointed by the council for this purpose.
- (8) The committee undertaking an investigation in terms of sub-rules (6) and (7) must consider-
- (a) the measures already undertaken to recover such expenditure;
 - (b) the cost of the measures already undertaken to recover such expenditure;
 - (c) the estimated cost and likely benefit of further measures that can be taken to recover such expenditure; and
 - (d) submit a motivation explaining its recommendation to the mayor who shall cause such motivation, together with his her comments thereon, to be placed before the council for a final decision.
- (9) The municipal manager must provide such information the committee referred to in sub-rules (6) and (7) may require for the purpose of conducting a proper investigation.
- 165. Report on inability to comply with reporting requirements or any other duty**
- (1) The municipal manager must report immediately to the mayor if he or she is unable to comply with any of his or her reporting requirements or any duty in terms of -
- (a) any legislation, including these by-laws; or
 - (b) his or her contract of employment.

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- (2) A report in terms of sub-rule (1) must state the reasons for the municipal manager's inability.
- (3) Whenever the reasons for the inability of the municipal manager arises from inadequate guidance, instruction, training or counselling, the report must state the extent to which such guidance, instruction, training or counselling falls short of being adequate.
- (4) Whenever the reasons for the inability arises from a lack of co-operation from any departmental manager or other staff member of the municipality, the municipal manager must make appropriate recommendations so as to prevent a reoccurrence of the situation in future.
- (5) The mayor shall submit the report submitted by the municipal manager in terms of this rule together with his or her comments and recommendations to a meeting of the council held in closed session.
- (6) The council shall consider the report referred to in sub-rule (5) and authorize such remedial action as may be deemed necessary to assist the municipal manager in complying his or her statutory or contractual duties and responsibilities.
- (7) This rule shall not be interpreted as a procedural requirement to be followed by the council before it takes disciplinary action against the municipal manager in terms of his or her employment or performance contract with the council nor shall it be regarded as an extension of any applicable legislation relating to the conditions of service of the municipal manager.

166. Reporting about performance

- (1) The municipal manager must not later than 31 January in each year submit a report to the mayoral committee on the implementation and results of the municipality's performance management system.
- (2) The report in terms of sub-rule (1) must, in addition to any matters prescribed in terms of the Systems Act, state -
 - (a) the development objectives of the municipality and the performance indicators and targets determined in respect of each of them;
 - (b) how progress was measured and the indicators applied;
 - (c) the extent to which each of the performance targets has been achieved;
 - (d) the reasons for every difference between any performance target and the actual achievement thereof;
 - (e) recommendations for the improvement of performance where underperformance against any performance target has been identified;

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- (f) recommendations for the increase in performance targets where such targets have been achieved;
 - (g) recommendations for the change of any performance indicator or development objective;
 - (h) any other relevant matter.
- (3) The mayoral committee shall consider the report referred to in sub-rule (1) and submit it, together with its comments and recommendations to the council for further consideration and the adoption of such resolutions as may be necessary to improve the performance of the municipality.

CHAPTER 12
DELEGATED POWERS

167. Reporting on exercise of delegated powers

- (1) A committee, functionary or staff member to whom a power has been delegated must report to the delegating authority on all decisions taken by them in terms of delegated powers.
- (2) A report in terms of sub-rule (1) must be submitted-
 - (a) by the mayor to the council together with his or her report in terms of rule 158;
 - (b) by the municipal manager to the mayoral committee within fourteen days of the end of each month; and
 - (c) by a departmental manager to the municipal manager within fourteen days of the end of each month.
- (3) A report in terms of-
 - (a) sub-rule (2)(b) must be incorporated into the report of the mayor to the council in terms of rule 158; and
 - (b) sub-rule (2)(c) must be incorporated into the report of the municipal manager in terms of sub-rule (2)(b).

168. Review of decisions under delegated powers

- (1) The speaker or mayor, as the case may be, must, after a report in terms of rule 162 (1)(a) has been disposed of, put the matters disposed of by a committee, in terms of its delegated or statutory powers, one after the other.

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- (2)** The speaker or mayor, as the case may be, may alter the sequence of the matters dealt with in a report in terms of sub-rule (1) at his or her own discretion.
- (3)** During the consideration of a matter in terms of sub-rule (1) -
 - (a)** the mayor or chairperson of a section 79 -committee (or a member of the committee designated by him or her), may speak for 10 minutes on any matter contained in such report;
 - (b)** a councillor may request that his or her opposition to a resolution contained in such report be recorded in the minutes.
- (4)** Sub-rule (3)(b) shall not apply in respect of the consideration of a matter by the mayoral committee.
- (5)** The council may or must, at the request in writing of at least one quarter of the councillors, review any decision taken by the speaker, the mayoral committee, any other functionary (excepting a section 79 –committee) or staff member of the municipality in consequence of a delegation or instruction and either confirm, vary or revoke that decision.
- (6)** When the council adopts a resolution in terms of sub-rule (5), the municipal manager shall prepare a detailed report on the matter in respect of which the decision to be reviewed was adopted and submit same to the council for consideration at its next meeting ensuing.
- (7)** The council shall, after consideration of the report of the municipal manager referred to in sub-rule (6) either confirm, vary or revoke the relevant decision of the speaker, mayoral committee, other functionary (excepting a section 79 – committee) or staff member provided that any resolution to vary or revoke the decision then under review shall not affect any rights that may have accrued to any person as a result thereof.
- (8)** The mayor may vary or revoke any decision taken by a section 79 - committee, subject to any vested rights that may have accrued to any person as a result thereof.
- (9)** The council or mayor, as the case may be, may, as part of the review process, afford the speaker, other political office bearer, chairperson of a committee or a staff member an opportunity to speak on the matter which gave rise to the decision under review or provide such information or explanations as may be necessary to substantiate the decision under review.
- (10)** Any review of a decision in terms of this rule shall not affect the right of any person affected by a decision taken by a political structure, political office bearer or staff member in terms of a delegated or sub-delegated power or duty to lodge

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an appeal against such decision in terms of section 62 of the Systems Act or in an appropriate court of law.

169. Review of delegated powers

- (1) The municipal manager must, at the first ordinary council meeting after a general election of councillors, and thereafter as often as the council so requires, submit a report on the delegated powers of the municipality to the council.
- (2) A report by the municipal manager in terms of sub-rule (1) must contain recommendations on any changes to the existing delegations which he or she may consider necessary.
- (3) The council may, after consideration of the report referred to in sub-rule (1), review any delegation authorized by it in terms of section 59(1) of the Systems Act.

CHAPTER 13**GENERAL PROVISIONS RELATING TO PUBLIC HEARINGS,
PUBLIC MEETINGS OF VOTERS AND CONSTITUENCY MEETINGS****170. Public meetings of voters**

- (1) The speaker must-
 - (a) when so requested by petition signed by at least 250 voters; or
 - (b) in terms of a council resolution -

convene a public meeting of voters to discuss and decide a matter affecting the interests of the residents within the municipal area, provided that when the signatories on a request referred to in paragraph (a) are all from the same ward, the speaker may -

 - (i) convene a public meeting of voters in that ward only; or
 - (ii) direct the councillor for the ward concerned to convene a public meeting of voters in such a ward.
- (2) As soon as the speaker or the councillor contemplated in sub-rule (1)(b)(ii) has determined the date, time and venue of a public meeting of voters, he or she must inform the municipal manager thereof.
- (3) The municipal manager must give public notice of a meeting convened in terms of this rule in a manner envisaged in rule 173, provided that the date determined for such public meeting may not be less than fourteen days after the date of publication of a notice in terms of the said rule 173.

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- (4) A request or resolution to convene a public meeting of voters must set out the matter to be dealt with at that meeting. No business other than that specified in the notice convening a public meeting of voters may be dealt with at such a meeting.
- (5) Should the speaker fail to convene a public meeting of voters in terms of sub-rule (1)(a) or (b), the municipal manager must convene the meeting concerned and may also determine the date, time and venue of such meeting.

171. Constituency meetings

- (1) A councillor representing a ward must:
- (a) in compliance with the schedule referred to in sub-rule (2) but at least once during every three month period; or
 - (b) when so directed by the speaker; or
 - (c) upon receipt of a written request signed by not less than 50 voters in his or her ward -

convene a meeting of residents in the ward he or she represents at a time, date and venue determined by him or her, provided that at least fourteen days notice of such meeting shall be given as envisaged in rule 173 and the venue of such meeting must be at a place within the ward concerned.

- (2) Councillors representing wards must, within thirty days after they have been declared elected and, thereafter, as often as necessary, at a meeting called by the speaker, determine a schedule of dates for constituency meetings during the ensuing twelve month period, provided that no such meeting may take place on a date scheduled for council and committee meetings in terms of rule 3 or 4.
- (3) A councillor referred to in sub-rule (1) must, after every constituency meeting held in terms of this rule, submit a written report regarding such meeting to the speaker, mayor and municipal manager.
- (4) The municipal manager shall process every report received by him or her in terms of sub-rule (3) in accordance with the normal administrative processes of the municipality and shall, at regular intervals, provide the ward councillor concerned with a progress report on those matters contained in the aforesaid report which require action by the municipality.
- (5) Should a councillor fail-
- (a) to hold a constituency meeting in terms of sub-rule (1); or
 - (b) to submit a report in terms of sub-rule (3) -

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the provisions of items 13 and 14 of the code of conduct must be applied in respect of that councillor.

- (6) The speaker must supply a copy of a schedule in terms of sub-rule (2) to the municipal manager.
- (7) The councillor concerned must inform the municipal manager of every meeting to be held in terms of sub-rule (1)(b) or (c).

172. Public hearings

- (1) The council must, before it adopts a resolution relating to:
 - (a) the adoption or amendment of its annual budget;
 - (b) the adoption or amendment of its integrated development plan;
 - (c) the adoption or amendment of its performance management system;
 - (d) the quality, level and range of services provided;
 - (e) an appropriate mechanism for providing municipal services;
 - (f) the adoption of a tariff, credit control, debt collection and indigent support policy;
 - (g) the confirmation of a language policy in terms of rule , or
 - (h) adopts a rates policy in terms of section 3 of the Property Rates Act convene one or more public hearings.
- (2) Despite the provisions of sub-rule (1), the council through the speaker and the mayor may, at any time, convene a public hearing on any matter affecting the interest of the residents within the municipal area.
- (3) Whenever a public hearing is to be convened, the speaker or mayor, as the case may be, must determine the date, time and venue of such hearing. If more than one public hearing is to be held at different venues in the municipal area or with different constituencies or with different constituencies at different venues, the speaker or mayor, as the case may be, convening the hearing must determine a schedule of hearings setting out the different venues and dates for those hearings.
- (4) No public hearing may be convened on the same day as a council or mayoral committee meeting.
- (5) As soon as the date, time and venue of a public hearing or a schedule of dates, time and venues for hearings had been determined, the speaker or mayor, as the case may be, must inform the municipal manager thereof.

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- (6) The council or mayor, as the case may be, must determine the subject matter of the public hearing and may identify the constituencies that must be specifically invited to attend or to make representations at such hearing and supply their particulars to the municipal manager. Any person so invited must be invited in writing and attends and participates in the hearing at his or her own cost.
- 173. Notice of public meetings of voters, constituency meetings and public hearings**
- (1) The municipal manager must, with due regard to sub-rules (3) and (4) after receipt of the particulars of a meeting referred to in rule 170 (2), 171 (1)(b) or (c), 172 (3) or 172 (5) by notice in the press and by notice placed on the municipal notice boards, convene the meeting or hearing concerned at the time, date and venue determined for such meeting or hearing and send a copy of such notice to every councillor and departmental manager.
- (2) A notice in terms of sub-rule (1) must state the purpose of the meeting or hearing.
- (3) The municipal manager must, not later than fourteen days before the date of a constituency meeting contained in a schedule referred to in rule 171 (2), confirm the date and venue with the councillor concerned and give notice in a newspaper of such meeting.
- (4) The municipal manager must, with due regard for the provisions of rule 172 (5), give notice in a newspaper of the date, time and venue of a public hearing at least fourteen days before the hearing takes place and supply a copy thereof to each councillor and departmental manager.
- (5) A councillor and departmental manager to whom notice had been given in terms of sub-rule (1) or (4) is, until such date, venue or time is changed and notice of such change has been given, required to attend the meeting or hearing stipulated in the notice without further notice.

CHAPTER 14
GENERAL PROVISIONS AND REPEAL OF BY-LAWS

- 174. Every councillor to be in possession of a copy of these by-laws**
- (1) The municipal manager shall supply a copy of these by-laws to every councillor upon his or her election as a councillor of the municipality.
- (2) A councillor shall acknowledge receipt of these by-laws and shall undertake in writing to bind him or herself to the provisions contained therein, including the code.

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175. Penalties

- (1) Any person including a councillor who contravenes a provision of these by-laws shall be guilty of an offence and be liable on conviction to a fine or imprisonment for a period of six months or to such imprisonment without the option of a fine or to both such fine and such imprisonment.
- (2) In the event of person referred to in sub-rule (1) being a councillor, the council shall, in addition, take disciplinary action against him or her in terms of the applicable provisions of the code.

176. Repeal of By-Laws

The By-Law Relating to the Procedure and the Maintenance of Order at Meetings of the Municipality of Makana contained in Provincial Notice No. 26 of 2003 dated 25 February 2003 is repealed from the date of publication of these by-laws.