South Africa

Local Government: Municipal Structures Act, 1998

Act 117 of 1998

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South Africa

Local Government: Municipal Structures Act, 1998
Act 117 of 1998

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(English text signed by the President)

ACT

To provide for the establishment of municipalities in accordance with the requirements relating to categories and types of municipality; to establish criteria for determining the category of municipality to be established in an area; to define the types of municipality that may be established within each category; to provide for an appropriate division of functions and powers between categories of municipality; to regulate the internal systems, structures and office-bearers of municipalities; to provide for appropriate electoral systems; and to provide for matters in connection therewith.

Whereas the Constitution establishes local government as a distinctive sphere of government, interdependent, and interrelated with national and provincial spheres of government;

Whereas there is agreement on the fundamental importance of local government to democracy, development and nation-building in our country;

Whereas past policies have bequeathed a legacy of massive poverty, gross inequalities in municipal services, and disrupted spatial, social and economic environments in which our people continue to live and work;

Whereas there is fundamental agreement in our country on a vision of democratic and developmental local government, in which municipalities fulfil their constitutional obligations to ensure sustainable, effective and efficient municipal services, promote social and economic development, encourage a safe and healthy

environment by working with communities in creating environments and human settlements in which all our people can lead uplifted and dignified lives;

Whereas municipalities across our country have been involved in a protracted, difficult and challenging transition process in which great strides have been made in democratising local government; and

Whereas municipalities now need to embark on the final phase in the local government transition process to be transformed in line with the vision of democratic and developmental local government;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows;—

1. Definitions

In this Act, unless the context otherwise indicates—

"**authorised representative**", in relation to a party, means a natural person duly authorised by the party in accordance with its constitution to act on the party's behalf for purposes of performing the duties contemplated in sections 27(2) and 43(2)(d) and (e);

[definition of "authorised representative" inserted by section 1(a) of Act 3 of 2021]

"**by-election**" means an election that is held between the regular elections called in terms of section 24;

"**capacity**", in relation to a municipality, includes the administrative and financial management capacity and infrastructure that enables a municipality to collect revenue and to govern on its own initiative the local government affairs of its community;

"**category**", in relation to municipalities, means a category A, B or C municipality envisaged in section 155(1) of the Constitution;

"**Code of Conduct**" means the Code of Conduct for councillors set out in Schedule 7;

[definition of "Code of Conduct" inserted by section 1(b) of Act 3 of 2021]

"**councillor**" means a member of a municipal council;

"**declared elected**" means the publication of a notice in the *Government Gazette* reflecting the names of the councillors elected, which councillors are deemed to have been elected to the office on the date of the declaration of the results of an election by the Electoral Commission;

[definition of "declared elected" inserted by section 1(c) of Act 3 of 2021]

"**delegation**", in relation to a duty, includes an instruction to perform the duty;

"**Demarcation Act**" means the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);

"**Demarcation Board**" means the Municipal Demarcation Board established by section 2 of the Demarcation Act;

"**district council**" means the municipal council of a district municipality;

"**district management area**" *[definition of "district management area" deleted by section 1(d) of Act 3 of 2021]*

"**district municipality**" means a municipality that has municipal executive and legislative authority in an area that includes more than one municipality, and which is described in section 155(1) of the Constitution as a category C municipality;

"**election**", in relation to a district council, means the election of the councillors referred to in section 23(1)(a);

[definition of "election" substituted by section 1(e) of Act 3 of 2021]

"**Electoral Act**" the Electoral Act, 1998 (Act No. 73 of 1998);

"**Electoral Commission**" means the Electoral Commission established by section 181 of the Constitution;

“**executive committee**” means an executive committee established in terms of section 43;

“**executive mayor**” means an executive mayor elected in terms of section 55;

"**existing municipality**" includes a municipality that existed when this Act took effect;

“**integrated development plan**” means a plan aimed at the integrated development and management of a municipal area;

“**local council**” means the municipal council of a local municipality;

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

[definition of "Local Government: Municipal Finance Management Act" inserted by section 1(f) of Act 3 of 2021]

“**local municipality**” means a municipality that shares municipal executive and legislative authority in its area with a district municipality within whose area it falls, and which is described in section 155(1) of the Constitution as a category B municipality;

“**MEC for local government**” means the member of the Executive Council of a province responsible for local government in the province;

“**metro council**” means the municipal council of a metropolitan municipality;

“**metropolitan municipality**” means a municipality that has exclusive executive and legislative authority in its area, and which is described in section 155(1) of the Constitution as a category A municipality;

“**metropolitan subcouncil**” or “subcouncil” means a metropolitan subcouncil established in terms of section 62;

“**Minister**” means the national Minister responsible for local government;

“**municipal council**” or “council” means a municipal council referred to in section 157 of the Constitution;

"**municipal financial year**" means the financial year of a municipality commencing on 1 July each year and ending on 30 June of the following year;

[definition of "municipal financial year" inserted by section 3 of Act 19 of 2008]

“**municipality**” includes a municipality referred to in section 155(6) of the Constitution;

"**municipal public accounts committee**" means the committee established in terms of section 79A;

[definition of "municipal public accounts committee" inserted by section 1(g) of Act 3 of 2021]

“**organised local government in the province**” means a provincial organisation recognised in terms of section 2(1)(b) of the Organised Local Government Act, 1997 (Act No. 52 of 1997);

“**party**” means a party registered in terms of the Electoral Commission Act, 1996 (Act No. 51 of 1996);

[definition of “party” substituted by section 93 of Act 27 of 2000]

“**prescribe**” means prescribe by regulation in terms of section 92;

“**SALGA**” means the South African Local Government Association recognised in terms of section 2(1)(a) of the Organised Local Government Act, 1997 (Act No. 52 of 1997);

“**speaker**” means a councillor elected in terms of section 36 to be the chairperson of a municipal council as envisaged in section 160(1)(b) of the Constitution;

“**type**” in relation to municipalities, means a type of municipality envisaged in section 155(2) of the Constitution, and defined in Part 2 of Chapter 1 of this Act;

“**ward**” means a ward mentioned in item 2 of Schedule 1;

"**ward committee**" means a ward committee established in terms of section 73;

"**whip**" means a councillor elected in terms of section 41A to be the whip of a municipal council.

[definition of "whip" inserted by section 1(h) of Act 3 of 2021]

Chapter 1
Categories and types of municipality

Part 1 – Categories of municipality

2. Areas which must have category A municipalities

An area must have a single category A municipality if that area can reasonably be regarded as—

(a) a conurbation featuring—

(i) areas of high population density;

(ii) an intense movement of people, goods, and services;

(iii) extensive development; and

(iv) multiple business districts and industrial areas;

(b) a centre of economic activity with a complex and diverse economy;

(c) a single area for which integrated development planning is desirable; and

(d) having strong interdependent social and economic linkages between its constituent units.

3. Areas which must have municipalities of both category C and B

An area that does not comply with the criteria set out in section 2 must have municipalities of both category C and category B.

4. Application of criteria

(1) The Demarcation Board must—

(a) apply the criteria set out in section 2 and determine whether an area in terms of the criteria must have a single category A municipality or whether it must have municipalities of both category C and category B; and

(b) determine the boundaries of the area in terms of the Demarcation Act.

(2) The Demarcation Board may determine that an area must have a category A municipality only after consultation with the Minister, the MEC for local government in the province concerned and SALGA.

[section 4 substituted by section 1 of Act 58 of 1999]

5. ***

[section 5 repealed by section 2 of Act 58 of 1999]

6. ***

[section 6 amended by section 3 of Act 58 of 1999 and repealed by section 2 of Act 3 of 2021]

Part 2 – Types of municipality

7. General

The different types of municipality that may be established within each category of municipality are defined in accordance with the following systems of municipal government or combinations of those systems, as set out in sections 8, 9 and 10:

(a) Collective executive system which allows for the exercise of executive authority through an executive committee in which the executive leadership of the municipality is collectively vested.

(b) Mayoral executive system 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.

(c) *[paragraph (c) deleted by section 3 of Act 3 of 2021]*

(d) Subcouncil participatory system which allows for delegated powers to be exercised by subcouncils established for parts of the municipality.

(e) Ward participatory system which allows for matters of local concern to wards to be dealt with by committees established for wards.

8. Types of category A municipalities

There are the following types of category A municipalities:

(a) a municipality with a collective executive system;

(b) a municipality with a collective executive system combined with a subcouncil participatory system;

(c) a municipality with a collective executive system combined with a ward participatory system;

(d) a municipality with a collective executive system combined with both a subcouncil and a ward participatory system;

(e) a municipality with a mayoral executive system;

(f) a municipality with a mayoral executive system combined with a subcouncil participatory system;

(g) a municipality with a mayoral executive system combined with a ward participatory system; and

(h) a municipality with a mayoral executive system combined with both a subcouncil and a ward participatory system.

9. Types of category B municipalities

There are the following types of category B municipalities:

(a) a municipality with a collective executive system;

(b) a municipality with a collective executive system combined with a ward participatory system;

(c) a municipality with a mayoral executive system; and

(d) a municipality with a mayoral executive system combined with a ward participatory system.

[section 9 substituted by section 4 of Act 3 of 2021]

10. Types of category C municipalities

There are the following types of category C municipalities:

(a) a municipality with a collective executive system; and

(b) a municipality with a mayoral executive system;

[section 10 substituted by section 5 of Act 3 of 2021]

11. Determination of types for provinces

Provincial legislation must determine for each category of municipality the different types of municipality that may be established in that category in the province.

Chapter 2
Establishment of municipalities

12. MECs to establish municipalities

(1) The MEC for local government in a province, by notice in the *Provincial Gazette*, must establish a municipality in each municipal area which the Demarcation Board demarcates in the province in terms of the Demarcation Act.

(2) The establishment of a municipality.

(a) must be consistent with the provisions of this Act; and

(b) takes effect at the commencement of the first election of the council of that municipality.

(3) The notice establishing the municipality must set out—

(a) the category of municipality that is established;

(b) the type of municipality that is established;

(c) the boundaries of the municipal area;

(d) the name of the municipality;

(dA) in the case of a metropolitan or local municipality, the number of wards in the municipality;

[paragraph (dA) inserted by section 1(b) of Act 33 of 2000]

(e) the number of councillors as determined in terms of section 20;

(eA) in the case of a district municipality, the number of councillors, determined in terms of section 23, to—

(i) proportionally represent parties; and

(ii) be appointed by each of the local councils within the district municipality to directly represent each local municipality;

[paragraph (eA) inserted by section 93 of Act 27 of 2000 and substituted by section 6 of Act 3 of 2021]

(f) which councillors of the municipality (if any) may be designated as full-time in terms of section 18(4);

(g) *[paragraph (g) deleted by section 1(c) of Act 33 of 2000]*

(h) any provisions of this Act from which the municipality has been exempted in terms of section 91; and

(i) any other relevant detail.

[subsection (3) amended by section 1(a) of Act 33 of 2000]

(4) The MEC for local government must—

(a) at the commencement of the process to establish a municipality, give written notice of the proposed establishment to organised local government in the province and any existing municipalities that may be affected by the establishment of the municipality;

(b) before publishing a notice in terms of this section, consult—

(i) organised local government in the province; and

(ii) the existing municipalities affected by the proposed establishment; and

(c) after such consultation publish particulars of the proposed notice for public comment.

13. ***

[section 13 repealed by section 4 of Act 58 of 1999]

14. Regulation of effects of establishment of municipality on existing municipalities

(1) (a) A municipality established in terms of section 12 in a particular area, supersedes the existing municipality or municipalities to the extent that the existing municipality or municipalities fall within that area.

(b) The superseding municipality becomes the successor in law of the existing municipality subject to paragraph (c).

(c) Where a district municipality and one or more local municipalities within the area of the district municipality supersede the existing municipality or municipalities in that area, the district and local municipalities in that area become the successors in law of the existing municipality or municipalities depending on the specific assets, liabilities, rights and obligations allocated to the district and local municipalities respectively in terms of the relevant section 12 notice or notices.

[subsection (1) substituted by section 2(a) of Act 33 of 2000]

(2) If subsection (1) is applicable, the section 12 notice, or any amendment of the section 12 notice, must—

(a) provide for the disestablishment of the existing municipality or, if only part of, the existing municipality's area is affected, the disestablishment of the existing municipality in the affected area; and

(b) regulate the legal, practical and other consequences of the total or partial disestablishment of the existing municipality, including—

(i) the vacation of office by councillors of the existing municipality;

(ii) the transfer of staff from the existing municipality to the superseding municipality, or, if there is more than one superseding municipality, to any of the superseding municipalities;

(iii) the transfer of assets, liabilities, rights and obligations, and administrative and other records, from the existing municipality to the superseding municipality, or, if there is more than one superseding municipality, to any of the superseding municipalities, taking into account the interests of creditors of the existing municipality; and

(iv) the continued application of any by-laws and resolutions of the existing municipality to or in that area, and the extent of such application:

Provided that if the superseding municipality is a district or local municipality a transfer referred to in subparagraph (ii) or (iii) must be effected in a way that would enable the superseding municipality to perform the functions or exercise the powers assigned to it in terms of section 84(1) or (2).

[paragraph (b) substituted by section 2(c) of Act 33 of 2000]

[subsection (2) amended by section 2(b) of Act 33 of 2000]

(3) (a) The transfer of a staff member in terms of a section 12 notice must be—

(i) on conditions of service not less favourable than those under which that staff member served in the existing municipality; and

(ii) in accordance with the Labour Relations Act, 1995 (Act No. 66 of 1995).

(b) A section 12 notice transferring staff of an existing municipality to a superseding municipality may determine that—

(i) the staff transferred from the existing municipality to the superseding municipality form an administrative unit that functions as such until the superseding municipality has established a staff structure and has appointed staff to positions on that staff structure; and

(ii) such administrative unit functions under the control of the municipal manager or acting municipal manager of the superseding municipality.

[subsection (3) substituted by section 2(d) of Act 33 of 2000]

(4) (a) On production of a certificate by a municipality that any asset registered in a deeds registry was transferred to it in terms of a section 12 notice, a registrar of deeds must make such entries or endorsements in or on any relevant register, title deed or other document to register that asset in the name of that municipality.

(b) No duty, fee or other charge is payable for a registration in terms of paragraph (a).

(5) The MEC for local government in a province, by notice in the *Provincial Gazette*, may make provision for transitional measures to facilitate the disestablishment of an existing municipality and the establishment of a new municipality. The MEC must consult the existing municipality before publishing the notice.

15. Review and rationalisation of existing municipal by-laws

If an existing municipality is wholly or partially superseded by another municipality in terms of section 14(1), the by-laws, regulations and resolutions (including standing delegations) of the existing municipality, to the extent that they continue to apply in the area or part of the area of the superseding municipality as provided for in section 14(2)(b)(iv), must be reviewed and, where necessary, rationalised by the superseding municipality.

16 Amendment of section 12 notices

(1) The MEC for local government in a province, by notice in the *Provincial Gazette*, may amend a section 12 notice—

(a) to change the municipality from its existing type to another type;

(b) to alter the name of the municipality;

(c) subject to section 20, to alter the number of councillors, but only with effect from the next election of the municipal council;

(d) to specify which councillors of the municipality (if any) may be designated as full-time in terms of section 18(4);

(e) *[paragraph (e) deleted by section 3 of Act 33 of 2000]*

(f) to specify any provisions of this Act from which the municipality has been exempted in terms of section 91;

(g) to give effect to any change in boundaries; or

(h) to further regulate the matters mentioned in section 14 after consulting all affected municipalities.

(2) Any amendment of a section 12 notice must be consistent with the provisions of this Act.

(3) The MEC for local government must—

(a) at the commencement of the process to amend a section 12 notice, give written notice of the proposed amendment to organised local government in the province and any existing municipalities that may be affected by the amendment;

(b) before publishing the amendment notice consult—

(i) organised local government in the province; and

(ii) the existing municipalities affected by the amendment; and

(c) after such consultation publish particulars of the proposed notice for public comment.

17. Repeal, amendment or replacement of section 12 notices when boundaries are re-determined

(1) When the Demarcation Board in terms of the Demarcation Act re-determines a municipal boundary which affects the area of a municipality established in terms of section 12—

(a) the provisions of sections 12 and 14 are applicable to the extent necessary to give effect to the re-determination; and

(b) the MEC for local government in the province concerned must repeal, amend or replace the relevant section 12 notice as may be required in the circumstances.

(2) Before repealing, amending or replacing any notice in terms of subsection (1)(b), the MEC for local government-must consult the affected municipalities.

(3) Any repeal, amendment or replacement of a section 12 notice takes effect on a date mentioned in the notice, but if the number of councillors is changed section 16(1)(c) applies.

Chapter 3
Municipal councils

Part 1 – Composition, membership, operation and dissolution

18. Municipalities must have municipal councils

(1) Each municipality must have a municipal council.

(2) A municipal council must meet at least quarterly.

(3) A municipal council consists of a number of councillors determined by the MEC for local government in the province concerned by notice in the *Provincial Gazette*.

(4) A municipality has the power to designate councillors determined by the MEC for local government as full-time. An MEC's determination must be in accordance with a policy framework as may be determined by the Minister after consulting the MECs for local government.

19. Municipal objectives

(1) A municipal council must strive within its capacity to achieve the objectives set out in section 152 of the Constitution.

(2) A municipal council must annually review—

(a) the needs of the community;

(b) its priorities to meet those needs;

(c) its processes for involving the community;

(d) its organisational and delivery mechanisms for meeting the needs of the community; and

(e) its overall performance in achieving the objectives referred to in subsection (1).

(3) A municipal council must develop mechanisms to consult the community and community organisations in performing its functions and exercising its powers.

20. Determination of number of councillors

(1) The number of councillors of a municipal council—

(a) must be determined in accordance with a formula determined by the Minister by notice in the *Government Gazette*, which formula must be based on the number of voters registered on that municipality's segment of the national common voters' roll on a date determined in the notice;

[paragraph (a) substituted by section 4 of Act 33 of 2000]

(b) may not be fewer than 10 or more than 90 councillors, if it is a local or district municipality; and

[paragraph (b) substituted by section 7(a) of Act 3 of 2021]

(c) may not be more than 270 councillors, if it is a metropolitan municipality.

(2) Different formulae may be determined in terms of subsection (1)(a) for the different categories of municipalities.

(3) The MEC for local government in a province may deviate from the number of councillors determined for a municipality in terms of subsection (1) by—

(a) increasing the number of councillors if extreme distances, lack of effective communication in the municipality or other exceptional circumstances render it necessary; or

(b) decreasing the number of councillors if it is necessary to achieve the most effective size for—

(4) A deviation in terms of subsection (3) may be no more than—

(a) three of the number determined for the municipality in accordance with the subsection (1)(a) formula, if 30 or fewer councillors have been determined for the municipality in terms of the formula, provided that a council of fewer than 10 may not be decreased;

[paragraph (a) substituted by section 7(b) of Act 3 of 2021]

(b) 10 per cent of the number determined for the municipality in accordance with the subsection (1)(a) formula, if more than 30 councillors have been determined for the municipality in terms of the formula or;

[paragraph (b) substituted by section 7(c) of Act 3 of 2021]

(c) 20 per cent if the geographical area of the local municipality is greater than 20 000 square kilometres and if less than 35 councillors have been determined for the municipality in terms of the formula,

[paragraph (c) inserted by section 7(d) of Act 3 of 2021]

and any deviation in terms of paragraph (a), (b) or (c) must be done with the concurrence of the Minister.

[subsection (4) amended by section 7(d) of Act 3 of 2021]

(5) The number of councillors determined for a district municipality in terms of subsections (1) to (4) must be increased by any number of councillors required to give effect to item 15(3) of Schedule 2.

21. Qualifications for councillors

(1) Every citizen who is qualified to vote for a particular municipal council has the right—

(a) to stand as a candidate in an election for that council, except a person disqualified in terms of section 158(1)(c) of the Constitution; and

(b) if elected, to become and remain a councillor, except a person disqualified in terms of section 158(1)(a), (c), (d) or (e) of the Constitution.

(1A) A councillor who is removed from office by the MEC for local government in a province in terms of item 16(7)(b) of the Code of Conduct may not stand as a candidate in an election for any municipal council for a period of two years from the date on which such person was removed from office.

[subsection (1A) inserted by section 8 of Act 3 of 2021]

(2) The MEC for local government in a province, by notice in the *Provincial Gazette*, may exempt a person from a disqualification mentioned in section 158(1)(a) of the Constitution to be a member of the municipal council concerned, but only when there is no substantial conflict of interest or any irreconcilable conflict between the duties of the person in the capacity as described in section 158(1)(a) of the Constitution and the person's mandate or duties as a member of the municipal council: Provided that if such a person is designated as a full-time councillor in terms of section 18(4), such exemption lapses.

[subsection (2) amended by section 12 of Act 51 of 2002]

21A. Code of Conduct

The Code of Conduct applies to every member of a municipal council.

[section 21A inserted by section 9 of Act 3 of 2021]

22. Election of metropolitan and local councils

(1) The council of a metropolitan or local municipality consists of councillors elected in accordance with Schedule 1—

(a) by voters registered on that municipality's segment of the national common voters roll, to proportionally represent the parties that contested the election in that municipality; and

(b) by voters registered on that municipality's segment of the national common voters roll in the respective wards in that municipality, to directly represent the wards.

(2) The number of ward councillors in a metropolitan or local council referred to in subsection (1)(b) must be equal to 50 per cent of the number of councillors determined for the municipality in terms of section 20, If the number of councillors determined in terms of section 20 is an uneven number, the fraction must be rounded off upwards.

(3) The number of proportionally elected councillors in a metropolitan or local municipality referred to in subsection (1)(a) is determined by subtracting the number determined in terms of subsection (2) from the number of councillors determined for the municipality in terms of section 20.

(4) *[subsection (4) deleted by section 10(a) of Act 3 of 2021]*

(5) An elected councillor is deemed to assume office on the date of the declaration of the results of an election by the Electoral Commission.

[subsection (5) added by section 10(b) of Act 3 of 2021]

23. Election and appointment of district councils

(1) The council of a district municipality consists of—

(a) councillors elected in accordance with Part 1 of Schedule 2 by voters registered on that municipality's segment of the national common voters roll, to proportionally represent the parties that contested the election in that district municipality;

(b) councillors appointed in accordance with Schedule 2 by the councils of the respective local municipalities within that district municipality, to directly represent those local municipalities; and

(c) *[paragraph (c) deleted by section 11(a) of Act 3 of 2021]*

(2) The number of councillors representing local municipalities in a district council referred to in subsection (1)(b) must be—

(a) equal to 60 per cent (fractions to be disregarded) of the number of councillors determined for the municipality in terms of section 20 before any increase in terms of section 20(5), plus the increase; and

(b) allocated to the respective local councils in accordance with Part 2 of Schedule 2.

[subsection (2) substituted by section 11(b) of Act 3 of 2021]

(3) The number of proportionally elected councillors referred to in subsection (1)(a) is determined by subtracting the number determined in terms of subsection (2)(a) from the number of councillors determined for the municipality in terms of section 20, including any increase in terms of section 20(5).

(4) A local council must appoint its representatives to the district council within 14 days after the result of the election of the local council, has been declared.

(5) An elected councillor is deemed to assume office on the date of the declaration of the results of an election by the Electoral Commission.

[subsection (5) added by section 11(c) of Act 3 of 2021]

24. Term of municipal councils

(1) The term of municipal councils is five years, calculated from the day following the date set for the previous election of all municipal councils in terms of subsection (2).

[subsection (1) substituted by section 5 of Act 58 of 1999]

(2) Whenever necessary, the Minister, after consulting the Electoral Commission, must, by notice in the *Government Gazette*, call and set a date for an election of all municipal councils, which must be

held within 90 days of the date of the expiry of the term of municipal councils. The notice may be published either before or after the term of municipal councils expires in terms of subsection (1).

[section 24 amended by section 93 of Act 27 of 2000]

25. By-elections

(1) A by-election must be held if—

(a) the Electoral Commission does not declare the result of the election within the period specified in terms of the Electoral Commission Act, 1996 (Act No. 51 of 1996), unless the period is extended in terms of section 64(2) of the Local Government: Municipal Electoral Act, 2000 (Act No. 27 of 2000);

[paragraph (a) amended by section 93 of Act 27 of 2000 and substituted by section 12(a) of Act 3 of 2021]

(b) a court sets aside the election of a council, or in a ward;

[paragraph (b) amended by section 93 of Act 27 of 2000 and substituted by section 12(a) of Act 3 of 2021]

(c) a council is dissolved; or

(d) a vacancy in a ward occurs.

(2) If the election in a specific ward is the reason why the Electoral Commission does not declare the result of the election of a metro or local council, a by-election must be held in that ward only.

(2A) The municipal manager must inform the MEC for local government in the province and the Electoral Commission of a vacancy in a ward within 14 days from the date on which the vacancy occurred.

[subsection (2A) inserted by section 12(b) of Act 3 of 2021]

(3) The MEC for local government in the province, after consulting the Electoral Commission, must, by notice in the *Provincial Gazette*, call and set a date for the by-election, which must be held within 90 days of the date—

(a) of the voting day of the previous election, if subsection (1)(a) applies;

[paragraph (a) amended by section 93 of Act 27 of 2000]

(b) on which the election was set aside by the court, if subsection (1)(b) applies;

(c) on which the council was dissolved, if subsection (1)(c) applies; or

(d) on which the vacancy occurred, if subsection (1)(d) applies.

[subsection (3) amended by section 93 of Act 27 of 2000 and by section 12(c) of Act 3 of 2021]

(4) *[subsection (4) amended by section 93 of Act 27 of 2000 and deleted by section 12(d) of Act 3 of 2021]*

(5) The term of a municipal council is not interrupted by a by-election.

(6) The MEC for local government in the province may not call a by-election in terms of subsection (1) if—

(a) the next election of all municipal councils must be held within nine calendar months of the applicable dates mentioned in subsection (3); or

(b) the MEC for local government in the province in consultation with the Minister decides that the by-election must stand over until the next election of all municipal councils.

[subsection (6) substituted by section 12(e) of Act 3 of 2021]

(7) A by-election in a ward does not affect the representation of parties by councillors elected from party lists.

26. Term of office of councillors

(1) A person—

(a) is elected as a member of a municipal council for a period ending when the next council is declared elected; or

(b) is appointed as a representative of a local council to a district council for a period ending when the next local council is declared elected.

[paragraph (b) substituted by section 1 of Act 20 of 2002 and by section 9 of Act 55 of 2008]

(2) A person assumes office as a councillor when declared elected or when appointed, as the case may be.

[section 26 amended by section 9 of Constitution Tenth Amendment Act, 2003]

27. Vacation of office

(1) A councillor vacates office during a term of office if that councillor—

(a) resigns in writing;

(b) is no longer qualified to be a councillor;

(c) was elected from a party list referred to in Schedule 1 or 2 and ceases to be a member of the relevant party;

[paragraph (c) deleted by section 2 of Act 20 of 2002 and inserted by section 10(a) of Act 55 of 2008]

(d) contravenes a provision of the Code of Conduct and is removed from office in terms of the Code;

[paragraph (d) substituted by section 121 of Act 32 of 2000 and by section 13(b) of Act 3 of 2021]

(e) is a representative of a local council in a district council and ceases to be a member of the local council which appointed that councillor to the district council or is replaced in terms of Item 23 of Schedule 2 to this Act by the local council as its representative in the district council; or

[paragraph (e) substituted by section 13(c) of Act 3 of 2021]

(f) was elected to represent a ward and who—

(i) was nominated by a party as a candidate in the ward election and ceases to be a member of that party; or

(ii) was not nominated by a party as a candidate in the ward election and becomes a member of a party.

[paragraph (f) amended by section 93 of Act 27 of 2000, deleted by section 2 of Act 20 of 2002 and added by section 10(b) of Act 55 of 2008]

[subsection (1), previously unnumbered, numbered by section 13(a) of Act 3 of 2021]

(2) For purposes of this section, only an authorised representative may inform a municipal manager that a vacancy has arisen as contemplated in subsection (1)(c) and (f).

[subsection (2) added by section 13(d) of Act 3 of 2021]

28. Privileges and immunities

(1) Provincial legislation in terms of section 161 of the Constitution must provide at least—

(a) that councillors have freedom of speech in a municipal council and in its committees, subject to the relevant council's rules and orders as envisaged in section 160(6) of the Constitution; and

(b) that councillors are not liable to civil or criminal proceedings, arrest, imprisonment or damages for—

(i) anything that they have said in, produced before or submitted to the council or any of its committees; or

(ii) anything revealed as a result of anything that they have said in, produced before or submitted to the council or any of its committees.

(2) Until provincial legislation contemplated in subsection (1) has been enacted the privileges referred to in paragraphs (a) and (b) of subsection (1) will apply to all municipal councils in the province concerned.

29. Meetings of municipal councils

(1) The speaker of a municipal council decides when and where the council meets subject to section 18(2), but if a majority of the councillors requests the speaker in writing to convene a council meeting, the speaker must convene a meeting at a time set out in the request.

(1A) If the speaker or acting speaker refuses to call a meeting of the council as requested in terms of subsection (1), the municipal manager, or in the absence or refusal by the municipal manager, a person designated by the MEC for local government in the province, may call and chair the meeting.

[subsection (1A) inserted by section 14 of Act 3 of 2021]

(2) The municipal manager of a municipality or, in the absence of the municipal manager, a person designated by the MEC for local government in the province, must call the first meeting of the council of that municipality within 14 days after the council has been declared elected or, if it is a district council, after all the members to be appointed by local councils, have been appointed.

(3) *[subsection (3) added by section 3 of Act 20 of 2002 and deleted by section 11 of Act 55 of 2008]*

[section 29 amended by section 9 of Constitution Tenth Amendment Act, 2003]

29A. Public notice of meetings of municipal councils

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

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

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

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

[section 29A inserted by section 15 of Act 3 of 2021]

30. Quorums and decisions

(1) A majority of the number of councillors determined in terms of section 20 must be present at a meeting of the council when a vote is taken on any matter.

[subsection (1) substituted by section 16(a) of Act 3 of 2021]

(2) All questions concerning matters mentioned in section 160(2) of the Constitution are determined by a decision taken by a municipal council with a supporting vote of a majority of the councillors.

(3) All other questions before a municipal council are decided by a majority of the votes cast, subject to section 34.

(4) If on any question, other than a matter mentioned in section 160(2) of the Constitution, there is an equality of votes, the councillor presiding must exercise a casting vote in addition to that councillor's vote as a councillor.

[subsection (4) substituted by section 16(b) of Act 3 of 2021]

(5) Before a municipal council takes a decision on any of the following matters it must first require its executive committee or executive mayor, if it has such a committee or mayor, to submit to it a report and recommendation on the matter—

(a) any matter mentioned in section 160(2) of the Constitution:

(b) the approval of an integrated development plan for the municipality, and any amendment to that plan; and

(c) the appointment and conditions of service of the municipal manager and a head of a department of the municipality.

31. ***

[section 31 repealed by section 121 of Act 32 of 2000]

32. ***

[section 32 repealed by section 121 of Act 32 of 2000]

33. Criteria for establishment of committees

A municipality may establish a committee provided for in this Act if—

(a) the municipality is of a type that is empowered in terms of this Act to establish a committee of the desired kind;

(b) the establishment of the committee is necessary, taking into account—

(i) the extent of the functions and powers of the municipality;

(ii) the need for the delegation of those functions and powers in order to ensure efficiency and effectiveness in their performance; and

(iii) the financial and administrative resources of the municipality available to support the proposed committee; and

(c) in the case of the establishment of an executive committee, the municipality has more than nine councillors.

34. Dissolution of municipal councils

(1) A municipal council may dissolve itself at a meeting called specifically for this purpose, by adopting a resolution dissolving the council with a supporting vote of at least two thirds of the councillors.

(2) A municipal council may dissolve itself only when two years have passed since the council was last elected.

(3) The MEC for local government in a province, by notice in the *Provincial Gazette*, may dissolve a municipal council in the province if the Electoral Commission in terms of section 23(2)(a) of the Demarcation Act is of the view that a boundary determination affects the representation of voters in that council, and the remaining part of the existing term of municipal councils is more than one year;

[subsection (3) substituted by section 4(a) of Act 19 of 2008]

(4) The MEC for local government in a province may dissolve a municipal council in a province in accordance with the provisions of section 139 of the Constitution of the Republic of South Africa, 1996.

[subsection (4) substituted by section 4(b) of Act 19 of 2008]

35. Caretaker provisions

(1) If a municipal council is dissolved in terms of section section 34(4) or does not have enough members to form a quorum for a meeting, the MEC for local government in the province must appoint one or more administrators to ensure the continued functioning of the municipality until a new municipal council is elected or until the council has sufficient members for a quorum.

[subsection (1) substituted by section 13 of Act 51 of 2002 and by section 5 of Act 19 of 2008]

(2) When appointing one or more administrators the MEC for local government, by notice in the *Provincial Gazette*, must determine the functions and powers of the administrator or administrators.

Part 2 – Speakers of municipal councils

36. Election of speakers

(1) Each municipal council must have a chairperson who will be called the speaker.

(2) At its first sitting after its election, or when necessary to fill a vacancy, a municipal council must elect its speaker from among the councillors.

(3) The municipal manager of the municipality or, if the municipal manager is not available, a person designated by the MEC for local government in the province, presides over the election of a speaker.

(4) The procedure set out in Schedule 3 applies to the election of a speaker.

(5) A councilor may not hold office as whip, speaker, mayor or executive mayor at the same time.

[subsection (5) substituted by section 17 of Act 3 of 2021]

37. Functions of speakers

The speaker of a municipal council—

(a) presides at meetings of the council;

(b) performs the duties and exercises the powers delegated to the speaker in terms of section 59 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).

[paragraph (b) amended by section 14(a) of Act 51 of 2002]

(c) must ensure that the council meets at least quarterly;

(d) must maintain order during meetings;

(e) must ensure compliance in the council and council committees with the Code of Conduct;

[paragraph (e) amended by section 14(b) of Act 51 of 2002 and substituted by section 18(a) of Act 3 of 2021]

(f) must ensure that council meetings are conducted in accordance with the rules and orders of the council;

[paragraph (f) substituted by section 18(a) of Act 3 of 2021]

(g) must ensure that the legislative authority of the municipality functions effectively;

[paragraph (g) added by section 18(b) of Act 3 of 2021]

(h) is responsible for the effective oversight over the executive authority of the municipality;

[paragraph (h) added by section 18(b) of Act 3 of 2021]

(i) must ensure the effectiveness of the committees of the municipal council established in terms of section 79;

[paragraph (i) added by section 18(b) of Act 3 of 2021]

(j) is responsible for the ethics and accountability of the municipal council; and

[paragraph (j) added by section 18(b) of Act 3 of 2021]

(k) must ensure the effectiveness and functionality of ward committees and the public participation processes.

[paragraph (k) added by section 18(b) of Act 3 of 2021]

38. Term of office of speakers

The speaker of a municipal council is elected for a term ending, subject to section 39, when the next council is declared elected.

39. Vacation of office

The speaker of a municipal council vacates office during a term if that person—

(a) resigns as speaker;

(b) is removed from office; or

(c) ceases to be a councillor.

40. Removal from office

A municipal council by resolution may remove its speaker from office. Prior notice of an intention to move a motion for the removal of the speaker must be given.

41. Acting speakers

If the speaker of a municipal council is absent or not available to perform the functions of speaker, or during a vacancy, the council must elect another councillor to act as speaker.

Part 3 – Whips of municipal councils

[Part 3 inserted by section 19 of Act 3 of 2021]

41A. Election of whip

(1) Each municipal council may elect a whip for the council who is also a municipal office bearer as set out in Schedule 3.

(2) At its first sitting after its election, or when necessary to fill a vacancy, a municipal council may elect its whip from among the councillors.

(3) The speaker of the municipality presides over the election of the whip.

(4) The procedure set out in Schedule 3 applies to the election of the whip.

(5) A councillor may not hold office as whip, speaker, mayor or executive mayor at the same time.

[section 41A inserted by section 19 of Act 3 of 2021]

41B. Functions of whip

The whip of a municipal council—

(a) liaises with the different political parties to ensure representation in council and council committees;

(b) maintains sound relations between the various political parties;

(c) informs the whips of all parties on important matters on the council agenda;

(d) assists the speaker to count votes in the council meeting;

(e) facilitates the interaction between the executive and legislative oversight structures in the municipality; and

(f) resolves disputes between the speaker, mayor or executive mayor, or members of the mayoral committee.

[section 41B inserted by section 19 of Act 3 of 2021]

41C. Term of office of whip

The whip of a municipal council is elected for a term ending, subject to section 41D, when the next council is declared elected.

[section 41C inserted by section 19 of Act 3 of 2021]

41D. Vacation of office

The whip of a municipal council vacates office during a term if that person—

(a) resigns as whip;

(b) is removed from office; or

(c) ceases to be a councillor.

[section 41D inserted by section 19 of Act 3 of 2021]

41E. Removal from office

(1) A municipal council may remove, by resolution, the whip from office.

(2) Prior written notice of an intention to move a motion for the removal of the whip must be given.

[section 41E inserted by section 19 of Act 3 of 2021]

41F. Acting whips

If the whip of a municipal council is absent or not available to perform the functions of whip, or during a vacancy, the council must elect another councillor to act as whip.

[section 41F inserted by section 19 of Act 3 of 2021]

Chapter 4
Internal structures and functionaries

Part 1 – Executive committees

42. Only municipalities of certain types may establish executive committees

(1) Only municipalities of the types mentioned in sections 8(a), (b), (c) and (d), 9(a) and (b) and 10(a) may establish an executive committee.

(2) If a municipality of a type referred to in subsection (1) chooses to establish an executive committee, the provisions of this Part apply.

43. Composition of executive committees

(1) (a) If the council of a municipality establishes an executive committee, it must determine a number of councillors necessary for effective and efficient government, provided that no more than 20 per cent of the councillors (fractions to be disregarded) or 10 councillors, whichever is the least, are determined.

(b) An executive committee may not have less than three members.

[subsection (1) substituted by section 20(a) of Act 3 of 2021]

(2) The award of seats on the executive committee to political parties or political interests must be determined in the following manner—

(a) the number of seats won by a political party or political interest divided by the total number of councillors determined for that municipality in terms of section 20 and multiplied by the number of seats on the executive committee;

(b) if the calculation in paragraph (a) gives a surplus, that surplus must compete with the other similar surpluses, and be awarded to the highest surplus;

(c) if there is an equality of the surpluses, the result must be determined by lot;

(d) the political party or political interest to which seats are allocated to on the executive committee must, through an authorised representative, appoint their representatives to occupy such seats;

(e) in the event of a vacancy arising on the executive committee, the political party or political interest to which the seat was allocated to will, through an authorised representative, appoint a councillor to fill that vacancy; and

(f) nothing precludes a political party or political interest from nominating a councillor from another political party or political interest to one or more of its allocated seats.

[subsection (2) substituted by section 20(a) of Act 3 of 2021]

(3) *[subsection (3) deleted by section 20(b) of Act 3 of 2021]*

44. Functions and powers of executive committees

(1) An executive committee is—

(a) the principal committee of the council of a municipality of a type that is entitled to establish an executive committee; and

(b) the committee of a municipal council which receives reports from the committees of the council referred to in section 80, and which must forward these reports together with its recommendations to the council when it cannot dispose of the matter in terms of its delegated powers.

[paragraph (b) substituted by section 21 of Act 3 of 2021]

(2) The executive committee must—

(a) identify the needs of the municipality;

(b) review and evaluate those needs in order of priority;

(c) recommend to the municipal council strategies, programmes and services to address priority needs through the integrated development plan and estimates of revenue and expenditure, taking into account any applicable national and provincial development plans; and

(d) recommend or determine the best methods, including partnership and other approaches, to deliver those strategies, programmes and services to the maximum benefit of the community.

(3) The executive committee in performing its duties must—

(a) identify and develop criteria in terms of which progress in the implementation of the strategies, programmes and services referred to in subsection (2)(c) can be evaluated, including key performance indicators which are specific to the municipality and common to local government in general;

(b) evaluate progress against the key performance indicators;

(c) review the performance of the municipality in order to improve—

(i) the economy, efficiency and effectiveness of the municipality;

(ii) the efficiency of credit control and revenue and debt collection services; and

(iii) the implementation of the municipality's by-laws;

(d) monitor the management of the municipality's administration in accordance with the policy directions of the municipal council;

(e) oversee the provision of services to communities in the municipality in a sustainable manner;

(f) perform such duties and exercise such powers as the council may delegate to it in terms of section 32;

(g) annually report on the involvement of communities and community organisations in the affairs of the municipality; and

(h) ensure that regard is given to public views and, report on the effect of consultation on the decisions of the council.

(4) An executive committee must report to the municipal council on all decisions taken by the committee.

45. Determination of members of executive committees

[heading substituted by section 22(a) of Act 3 of 2021]

A municipal council must determine the members of its executive committee from among its members at a meeting that must be held—

(a) within 14 days after the council's election;

(b) if it is a district council, within 14 days after the last of the local councils has appointed its representatives to the district council; or

(c) within 14 days after the date with effect from which the type of the municipality has been changed from any of those mentioned in section 8(e), (f), (g) or (h), 9(c) or (d) or 10(b) to any of those mentioned in section 8(a), (b), (c) or (d), 9(a) or (b), or 10(a).

[paragraph (c) amended by section 32 of Act 3 of 2021]

[section 45 substituted by section 1 of Act 1 of 2003 and amended by section 22(b) of Act 3 of 2021]

46. Term of office of members

The members of an executive committee are determined for a term ending, subject to section 47, when—

(a) the type of the municipality has been changed from any of those mentioned in section 8(a), (b), (c) or (d), 9(a) or (b) or 10(a) to any of those mentioned in section 8(e), (f), (g) or (h), 9(c), (d) or 10(b); or

[paragraph (a) amended by section 32 of Act 3 of 2021]

(b) the next municipal council is declared elected.

[section 46 substituted by section 2 of Act 1 of 2003 and amended by section 23 of Act 3 of 2021]

47. Vacancies

(1) A member of an executive committee vacates office during a term if that member—

(a) resigns as a member of the executive committee;

(b) is removed from office as a member of the executive committee in terms of section 53; or

(c) ceases to be a councillor.

(2) The filling of a vacancy in an executive committee is subject to section 43.

48. Election of mayors

(1) The municipal council must elect a member of its executive committee as the mayor and, if the MEC for local government in the province so approves, another member of the executive committee as the deputy mayor, of the municipality.

(2) The election of a mayor and deputy mayor takes place when the executive committee is determined or when it is necessary to fill a vacancy.

[subsection (2) substituted by section 24 of Act 3 of 2021]

(3) The procedure set out in Schedule 3 applies to the election of a mayor and deputy mayor.

(4) A mayor and deputy mayor is elected for the duration of that person's term as a member of the executive committee, but vacates office during a term if that person—

(a) resigns as mayor or deputy mayor;

(b) is removed from office as a member of the executive committee in terms of section 53; or

(c) ceases to be a member of the executive committee.

(5) (a) No person may hold office as mayor or both mayor and executive mayor for more than two consecutive terms in the same council.

(b) No person may hold office as deputy mayor or both deputy mayor and deputy executive mayor for more than two consecutive terms in the same council.

(c) If a person is elected—

(i) to fill a vacancy in the office of mayor or deputy mayor, the period between that election and the next election of a mayor or deputy mayor is not regarded as a term; or

(ii) as mayor or deputy mayor where the type of the municipality has been changed from any of those mentioned in section 8(e), (f), (g) or (h), 9(c), (d), or 10(b) to any of those mentioned in section 8(a), (b), (c) or (d), 9(a) or (b) or 10(a) during the term of the municipal council concerned, the period between that election and the next election of a mayor or deputy mayor is not regarded as a term.

[subparagraph (ii) amended by section 32 of Act 3 of 2021]

[subsection (5) substituted by section 3(a) of Act 1 of 2003]

(6) A mayor whose two consecutive terms have expired as provided for in subsection (5)(a), may not immediately after the expiry be elected as deputy mayor.

[subsection (6) substituted by section 3(b) of Act 1 of 2003]

49. Functions and powers of mayors

(1) The mayor of a municipality—

(a) presides at meetings of the executive committee; and

(b) performs the duties, including any ceremonial functions, and exercises the powers delegated to the mayor by the municipal council or the executive committee.

(2) The deputy mayor 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. The mayor may delegate duties to the deputy mayor.

(3) If the mayor is absent or not available and the municipality does not have a deputy mayor, or the deputy mayor is also absent or not available—

(a) the member of the executive committee designated thereto in writing by the mayor acts as mayor; or

(b) a councillor elected by the members of the executive committee from amongst themselves acts as mayor if the mayor has not designated a member thereto or if the designated member is absent or not available.

[subsection (3) added by section 15 of Act 51 of 2002]

50. Meetings of executive committees

(1) The mayor decides when and where the executive committee meets, but if a majority of the members requests the mayor in writing to convene a committee meeting, the mayor must convene a meeting at a time set out in the request.

(2) If both the mayor and the deputy mayor are absent from a meeting, and there is a quorum, the members present must elect another member to preside at the meeting.

51. Procedures of executive committees

An executive committee, by resolution taken with a supporting vote of a majority of its members, may determine its own procedures subject to any directions and the rules and orders of the municipal council.

52. Quorum and decisions

(1) A majority of the members of an executive committee constitutes a quorum for a meeting.

(2) A question before the committee is decided if there is agreement among at least the majority of the members present at the meeting.

(3) If on any question there is an equality of votes, the member presiding must exercise a casting vote in addition to that member's vote as a member.

53. Removal from office of executive committees

(1) A municipal council may, by resolution remove from office one or more or all the members of its executive committee. Prior notice of an intention to move a motion for the removal of members must be given.

(2) If all the members of an executive committee are removed, a new determination of members must take place, and a new election of the mayor and, if the municipality has a deputy mayor, the deputy mayor, must be held in terms of sections 45 and 48, respectively.

[subsection (2) substituted by section 25 of Act 3 of 2021]

(3) The election of a member or members of an executive committee following a removal from office in terms of this section, is subject to section 43.

Part 2 – Executive mayors

54. Only municipalities of certain types may elect executive mayors

(1) Only municipalities of the types mentioned in sections 8(e), (f), (g) and (h), 9(c) and (d) and 10(b) may have an executive mayor.

(2) If a municipality of a type referred to in subsection (1) chooses to have an executive mayor, the provisions of this Part apply.

55. Election of executive mayors

(1) If a municipal council chooses to have an executive mayor it must elect an executive mayor and, if the MEC for local government in the province so approves, also an executive deputy mayor, from among its members at a meeting that must be held—

(a) within 14 days after the council's election;

(b) if itis a district council, within 14 days after the last of the local councils has appointed its representatives to the district council; or

(c) within 14 days after the date with effect from which the type of the municipality has been changed from any of those mentioned in section 8(a), (b), (c) or (d), 9(a), (b), or 10(a) to any of those mentioned in section 8(e), (f), (g) or (h), 9(c) or (d) or 10(b).

[paragraph (c) amended by section 32 of Act 3 of 2021]

[subsection (1) substituted by section 4 of Act 1 of 2003]

(2) A vacancy in the office of executive mayor or executive deputy mayor must be filled when necessary.

(3) The procedure set out in Schedule 3 applies to the election of an executive mayor and executive deputy mayor.

56. Functions and powers of executive mayors

(1) An executive mayor is entitled to receive reports from committees of the council referred to in section 80, and to forward these reports together with a recommendation to the council when the matter cannot be disposed of by the executive mayor in terms of the executive mayor's delegated powers.

[subsection (1) substituted by section 26 of Act 3 of 2021]

(2) The executive mayor must—

(a) identify the needs of the municipality;

(b) review and evaluate those needs in order of priority;

(c) recommend to the municipal council strategies, programmes and services to address priority needs through the integrated development plan, and the estimates of revenue and expenditure, taking into account any applicable national and provincial development plans; and

(d) recommend or determine the best way, including partnership and other approaches, to deliver those strategies, programmes and services to the maximum benefit of the community.

(3) The executive mayor in performing the duties of office, must—

(a) identity and develop criteria in terms of which progress in the implementation of the strategies, programmes and services referred to in subsection (2)(c) can be evaluated, including key performance indicators which are specific to the municipality and common to local government in general;

(b) evaluate progress against the key performance indicators;

(c) review the performance of the municipality in order to improve—

(i) the economy, efficiency and effectiveness of the municipality;

(ii) the efficiency of credit control and revenue and debt collection services; and

(iii) the implementation of the municipality's by-laws;

(d) monitor the management of the municipality's administration in accordance with the directions of the municipal council;

(e) oversee the provision of services to communities in the municipality in a sustainable manner;

(f) perform such duties and exercise such powers as the council may delegate to the executive mayor in terms of section 59 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

[paragraph (f) amended by section 16(a) of Act 51 of 2002]

(g) annually report on the involvement of communities and community organisations in the affairs of the municipality; and

(h) ensure that regard is given to public views and report on the effect of consultation on the decisions of the council.

(4) An executive mayor must perform a ceremonial role as the municipal council may determine.

(5) An executive mayor must report to the municipal council on all decisions taken by the executive mayor.

(6) The deputy executive mayor of a municipality exercises the powers and performs the duties of the executive mayor if the executive mayor is absent or not available or if the office of the executive mayor is vacant.

(7) If the executive mayor is absent or not available and the municipality does not have a deputy executive mayor, or the deputy executive mayor is also absent or not available, the council must designate a councillor to act as executive mayor.

[subsection (7) added by section 16(b) of Act 51 of 2002]

57. Term of office of executive mayors

(1) An executive mayor and a deputy executive mayor must be elected for a term ending, subject to sections 58 and 59, when—

(a) the type of the municipality has been changed from any of those mentioned in section 8(e), (f), (g) or (h), 9(c) or (d) or 10(b) to any of those mentioned in section 8(a), (b), (c) or (d), 9(a), (b) or 10(a); or

[paragraph (a) amended by section 32 of Act 3 of 2021]

(b) the next council is declared elected.

(2) (a) No person may hold office as executive mayor or both executive mayor and mayor for more than two consecutive terms in the same council.

(b) No person may hold office as deputy executive mayor or both deputy executive mayor and deputy mayor for more than two consecutive terms in the same council.

(c) If a person is elected—

(i) to fill a vacancy in the office of executive mayor or deputy executive mayor, the period between that election and the next election of an executive mayor or deputy executive mayor is not regarded as a term; or

(ii) as executive mayor or deputy executive mayor where the type of the municipality has been changed from any of those mentioned in section 8(a), (b), (c) or (d), 9(a), (b), or 10(a) to any of those mentioned in section 8(e), (f), (g) or (h), 9(c) or (d) or 10(b) during the term of the municipal council concerned, the period between that election

and the next election of an executive mayor or deputy executive mayor is not regarded as a term.

[subparagraph (ii) amended by section 32 of Act 3 of 2021]

(3) An executive mayor whose two consecutive terms have expired as provided for in subsection (2)(a), may not immediately after the expiry be elected as deputy executive mayor.

[section 57 substituted by section 5 of Act 1 of 2003]

58. Removal from office

A municipal council, by resolution may remove its executive mayor or deputy executive mayor from office. Prior notice of an intention to move a motion for the removal of the executive mayor or deputy executive mayor must be given.

59. Vacation of office

An executive mayor or deputy executive mayor vacates office during a term if that person—

(a) resigns as executive mayor or deputy executive mayor;

(b) is removed from office as executive mayor or deputy executive mayor; or

(c) ceases to be a councillor.

60. Mayoral committees

(1) If a municipal council has more than nine members, its executive mayor—

(a) must appoint a mayoral committee from among the councillors to assist the executive mayor;

(b) may delegate specific responsibilities to each member of the committee;

(c) may delegate any of the executive mayor's powers to the respective members; and

(d) may dismiss a member of the mayoral committee.

(2) The mayoral committee must consist of the deputy executive mayor (if any) and as many councillors as may be necessary for effective and efficient government, provided that no more than 20 per cent of the councillors or 10 councillors, whichever is the least, are appointed.

(3) Those of the executive mayor's powers and functions as may be designated by the municipal council, must be exercised and performed by the executive mayor together with the other members of the mayoral committee.

(4) The members of a mayoral committee remain in office subject to subsection (5) and section 26, for the term of the executive mayor who appointed them.

(5) If the executive mayor vacates office, the mayoral committee appointed by that executive mayor dissolves.

Part 3 – Metropolitan subcouncils

61. Only metropolitan municipalities of certain types may establish metropolitan subcouncils

(1) Only metropolitan municipalities of the types mentioned in section 8(b), (d), (f) and (h) may establish metropolitan subcouncils;

(2) If a metropolitan municipality of a type referred to in subsection (1) chooses to establish metropolitan subcouncils, the provisions of this Part apply.

62. Establishment of metropolitan subcouncils

(1) If a metropolitan municipality decides to establish metropolitan subcouncils, it must do so by passing, after a process of public consultation, a by-law which—

(a) determines the number of subcouncils to be established;

(b) determines for each subcouncil an area within the municipality consisting of a cluster of adjoining wards;

(c) establishes in each area a subcouncil under a distinct name;

(cA) *[paragraph (cA) inserted by section 4 of Act 20 of 2002 and deleted by section 12 of Act 55 of 2008]*

(d) provides an equitable financial framework in terms of which the subcouncils must function; and

(e) regulates any other relevant matters.

(2) When clustering wards to determine a metropolitan subcouncil area, the municipal council must—

(a) apply the criteria set out in sections 24 and 25 of the Demarcation Act in so far as they can be applied; and

(b) consult the Demarcation Board.

63. Composition

(1) Each metropolitan subcouncil consists of—

(a) the councillors representing the wards included in the subcouncil area; and

(b) an additional number of councillors allocated in terms of Part 1 of Schedule 4.

[subsection (1) substituted by section 13(a) of Act 55 of 2008]

(1A) *[subsection (1A) deleted by section 13(b) of Act 55 of 2008]*

(2) The councillors referred to in subsection (1)(b) must—

(a) consist of councillors elected to the metro council from party lists in accordance with Part 3 of Schedule 1; and

(b) be appointed to the metropolitan subcouncil—

(i) in accordance with Part 1 of Schedule 4.

[subsection (2) substituted by section 13(c) of Act 55 of 2008]

(3) Item 3 of the Code of Conduct does not apply to the speaker, executive mayor, a member of the mayoral committee or a member of the executive committee, as the case may be, in respect of meetings of a metropolitan subcouncil of which such an office bearer is a member.

[subsection (3) substituted by section 27 of Act 3 of 2021]

[section 63 substituted by section 5 of Act 20 of 2002 and amended by section 9 of Constitution Tenth Amendment Act, 2003]

64. Functions and powers

(1) A metropolitan subcouncil—

(a) has such duties and powers as the metro council may delegate to it in terms of section 32; and

(b) may make recommendations to the metro council on any matter affecting its area.

(2) A metropolitan subcouncil may advise the metro council on what duties and powers should be delegated to it.

65. Chairpersons

A metropolitan subcouncil must elect one of its members to be the chairperson of that subcouncil.

66. Term of office of members

(1) The section 63(1)(b) members of a metropolitan subcouncil are appointed for a term ending, subject to section 67, when the next metro council is declared elected.

[section 66 substituted by section 6 of Act 20 of 2002, amended by section 9 of Constitution Tenth Amendment Act, 2003 and substituted by section 14 of Act 55 of 2008]

67. Vacancies

A section 63(1)(b) member vacates office during a term if that person—

(a) resigns as a member of the metropolitan subcouncil; or

(b) ceases to be a councillor.

68. Meetings

(1) The chairperson of a metropolitan subcouncil, subject to any directions of the metro council, decides when and where the subcouncil meets, but if a majority of the members requests the chairperson in writing to convene a meeting of the subcouncil, the chairperson must convene a meeting at a time mentioned in the request.

(2) The chairperson of a metropolitan subcouncil presides at meetings of that subcouncil, but if the chairperson is absent from a meeting and a quorum is present the members present must elect another member to preside at that meeting.

69. Procedures of metropolitan subcouncils

A metropolitan subcouncil, with a supporting vote of a majority of its members, may determine its own procedures, subject to any directions of the metro council.

70. Quorum and decisions

(1) A majority of the members of a metropolitan subcouncil constitutes a quorum for a meeting of that subcouncil.

(2) A question before a subcouncil is decided if there is agreement among at least the majority of the members present at the meeting.

(3) If on any question there is an equality of votes, the member presiding must exercise a casting vote in addition to that member's vote as a member.

71. Committees

A metropolitan subcouncil may appoint committees, including a management committee, from among its members to assist it in the performance of its duties and the exercise of its powers.

Part 4 – Ward committees

72. Only metropolitan and local municipalities of certain types may have ward committees

(1) Only metropolitan and local municipalities of the types mentioned in sections 8(c), (d), (g) and (h) and 9(b) and (d) may have ward committees.

[subsection (1) amended by section 32 of Act 3 of 2021]

(2) If a metropolitan or local municipality of a type referred to in subsection (1) chooses to establish ward committees, the provisions of this Part apply.

(3) The object of a ward committee is to enhance participatory democracy in Iwai government.

73. Establishment of ward committees

(1) A metropolitan or local council must establish a ward committee for each ward in the municipality within 120 days after the election of the municipal council, in accordance with section 22.

[subsection (1) substituted by section 6(a) of Act 19 of 2008 and by section 28(a) of Act 3 of 2021]

(1A) (a) If a metropolitan or local council is unable to establish a ward committee or ward committees in accordance with subsection (1), the speaker must, prior to the expiry of the 120 days after the elections, in writing and on good cause shown, request the MEC, responsible for local government in the province concerned, for an extension.

(b) The MEC must respond to the request referred to in subsection (1)(a) within 14 days of receipt detailing the reasons for granting or refusing the extension.

[subsection (1A) inserted by section 28(b) of Act 3 of 2021]

(2) A ward committee consists of—

(a) the councillor representing that ward in the council, who must also be the chairperson of the committee; and

(b) not more than 10 other persons.

(3) A metro or local council must make rules regulating—

(a) the procedure to elect the subsection (2)(b) members of a ward committee, taking into account the need—

(i) for women to be equitably represented in a ward committee; and

(ii) for a diversity of interests in the ward to be represented.

(b) the circumstances under which those members must vacate office; and

(c) the frequency of meetings of ward committees.

(4) A metro or local council may make administrative arrangements to enable ward committees to perform their functions and exercise their powers effectively.

(5) (a) Out of pocket expenses referred to in paragraph (c) must be paid from the budget of the municipality in question.

(b) A metro or local council must develop a policy and determine criteria for and calculation of the out of pocket expenses referred to in paragraph (c) based on a provincial framework determined by the MEC subject to paragraph (e).

(c) A metro or local council may make arrangements for the payment of out of pocket expenses to members of ward committees in respect of participation by ward committee members in the activities of the ward committees.

(d) A municipal council may allocate funds and resources to enable ward committees to perform their functions, exercise their powers and undertake development in their wards within the framework of the law.

(e) The Minister must determine a national framework including criteria for the calculation of the out of pocket expenses referred to in paragraph (b).

[subsection (5) added by section 6(b) of Act 19 of 2008]

74. Functions and powers of ward committees

A ward committee—

(a) may make recommendations on any matter affecting its ward—

(i) to the ward councillor; or

(ii) through the ward councillor, to the metro or local council, the executive committee, the executive mayor or the relevant metropolitan subcouncil; and

(b) has such duties and powers as the metro or local council may delegate to it in terms of section 59 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).

[paragraph (b) substituted by section 7 of Act 19 of 2008]

75. Term of office of members

(1) The section 73(2)(b) members of a ward committee are elected for a term that corresponds with the term referred to in section 24 of this Act.

(2) The Minister may by notice in the *Government Gazette* prescribe regulations for the implementation of subsection (1).

[section 75 substituted by section 8 of Act 19 of 2008]

76. Vacancies

If a vacancy occurs among the section 73(2)(b) members of a ward committee, the vacancy must be filled in accordance with a procedure determined by the metro or local council.

77. Remuneration

No remuneration is payable to the section 73(2)(b) members of a ward committee.

78. Dissolution of ward committees

A metro or local council may dissolve a ward committee if the committee fails to fulfil its object.

Part 5 – Other committees of municipal councils

79. Establishment

(1) A municipal council may—

(a) establish one or more committees necessary for the effective and efficient performance of any of its functions or the exercise of any of its powers;

(b) appoint the members of such a committee from among its members; and

(c) dissolve a committee at any time.

(2) The municipal council—

(a) must determine the functions of a committee;

(b) may delegate duties and powers to it in terms of section 32;

(c) must appoint the chairperson;

(d) may authorise a committee to co-opt advisory members who are not members of the council within the limits determined by the council;

(e) may remove a member of a committee at any time; and

(f) may determine a committee's procedure.

79A. Establishment of municipal public accounts committee

(1) A municipal council must establish a committee called the municipal public accounts committee.

(2) The mayor or executive mayor, deputy mayor or executive deputy mayor, any member of the executive committee, any member of the mayoral committee, speaker, whip and municipal officials are not allowed to be members of the municipal public accounts committee.

(3) The municipal council must determine the functions of the municipal public accounts committee, which must include the following:

(a) review the Auditor-General's reports and comments of the management committee and the audit committee and make recommendations to the municipal council;

(b) review internal audit reports together with comments from the management committee and the audit committee and make recommendations to the municipal council;

(c) initiate and develop the oversight report on annual reports contemplated in section 129 of the Local Government: Municipal Finance Management Act;

(d) attend to and make recommendations to the municipal council on any matter referred to it by the municipal council, executive committee, a committee of the council, a member of this committee, a councillor and the municipal manager; and

(e) on its own initiative, subject to the direction of the municipal council, investigate and report to the municipal council on any matter affecting the municipality.

(4) Reports of the municipal public accounts committee must be submitted to the speaker who must table such reports in the next meeting of the municipal council.

(5) (a) For the purposes of this section "audit committee" means the audit committee envisaged in section 166 of the Local Government Municipal: Finance Management Act.

(b) Each municipality and each municipal entity must establish an audit committee in accordance with that section.

[section 79A inserted by section 29 of Act 3 of 2021]

80. Committees to assist executive committee or executive mayor

(1) If a municipal council has an executive committee or executive mayor, it may appoint in terms of section 79, committees of councillors to assist the executive committee or executive mayor.

(2) Such committees may not in number exceed the number of members of the executive committee or mayoral committee.

(3) The executive committee or executive mayor—

(a) appoints a chairperson for each committee from the executive committee or mayoral committee;

(b) may delegate any powers and duties of the executive committee or executive mayor to the committee;

(c) is not divested of the responsibility concerning the exercise of the power or the performance of the duty; and

(d) may vary or revoke any decision taken by a committee, subject to any vested rights.

(4) Such a committee must report to the executive committee or executive mayor in accordance with the directions of the executive committee or executive mayor.

Part 6 – Participation of traditional leaders

81. Participation of traditional and Khoi-San leaders in municipal councils

(1) In this section, unless the context indicates otherwise—

(a) "**branch**" means a branch of a Khoi-San community recognised as such in terms of section 5(5) of the TKLA;

(b) "**Khoi-San council**" means a Khoi-San council established for a recognised Khoi-San community in accordance with the provisions of section 18 of the TKLA;

(c) "**TKLA**" means the Traditional and Khoi-San Leadership Act, 2019;

(d) "**local house**" means a local house of traditional and Khoi-San leaders as contemplated in section 50 of the TKLA;

(e) "**MEC**" means the member of the Executive Council responsible for local government matters in a particular province;

(f) "**participating leader**" means the chairperson of a local house, the member or members elected by such local house as contemplated in subsection (2)(a) and (b), and the person or persons nominated as contemplated in subsection (2)(c);

(g) "**traditional council**" means a traditional council established for a recognised traditional community in accordance with the provisions of section 16 of the TKLA;

(h) "**traditional sub-council**" means a traditional sub-council as contemplated in section 17 of the TKLA.

(2) (a) Where a local house has been established for the area of jurisdiction of a local or metropolitan municipality, the chairperson of such local house and two other members

elected by such local house may participate in the proceedings of the council of such local or metropolitan municipality.

(b) Where a local house has been established for the area of jurisdiction of a district municipality—

(i) the chairperson of the local house and two members elected by such local house may participate in the proceedings of the council of that district municipality; and

(ii) the local house may, in respect of each local municipality falling within the area of jurisdiction of the district municipality, elect at least one but not more than two members to participate in the proceedings of the councils of such local municipalities: Provided that the chairperson and members of the local house contemplated in subparagraph (i) may not be considered for the purposes of this subparagraph: Provided further that the person or persons to be elected for the purposes of this subparagraph must be residing within the area of jurisdiction of such local municipality.

(c) Where there are no local houses within the areas of jurisdiction of any local, district or metropolitan municipality, but there are traditional councils and Khoi-San councils—

(i) the MEC must hold a consultative meeting with all the recognised senior traditional leaders and recognised senior Khoi-San leaders falling within the area of jurisdiction of the particular municipality; and

(ii) the senior traditional leaders and senior Khoi-San leaders present at such meeting must, from amongst themselves—

(aa) nominate one person in respect of each such municipality to participate in the proceedings of that municipality; and

(bb) nominate one person in respect of each such municipality who will fill any vacancy of the position of participating leader which may occur:

Provided that if consensus cannot be reached on the participating leader or the person to fill a vacancy, the leaders must vote for nominated candidates in any manner deemed appropriate by the MEC.

(d) At least a third of the total number of members elected or nominated in terms of paragraph (a), (b) or (c) must be women.

(e) The chairperson of a local house must, within two weeks from the date of any election contemplated in paragraph (a) or (b), provide the MEC with the full names and surname, identity number and contact details of himself or herself and all elected persons.

(f) The MEC must, in respect of each chairperson and elected or nominated person as contemplated in this subsection, submit to the relevant local, district or metropolitan municipality the information contemplated in paragraph (e).

(g) The election and nomination of participating leaders as contemplated in paragraphs (a), (b) and (c) must commence at least one month prior to the date of election of a municipal council and must be completed prior to such date: Provided that the MEC may determine a longer period which may not be longer than one month after the date of election of the specific municipal council.

(3) (a) A person may not be a participating leader if he or she—

(i) is under the age of 18;

(ii) is not a South African citizen;

(iii) is not a recognised senior traditional leader or recognised senior Khoi-San leader as provided for in the TKLA;

(iv) has been convicted of an offence and is sentenced to imprisonment for more than 12 months without the option of a fine;

(v) is impaired to the extent that he or she cannot participate in the proceedings of the municipal council;

(vi) is an unrehabilitated insolvent or has entered into a compromise with his or her creditors;

(vii) is of unsound mind and has been so declared by a competent court;

(viii) is an elected councillor of a municipal council;

(ix) is a member of a provincial legislature;

(x) is a member of the National Assembly;

(xi) is a permanent delegate in the National Council of Provinces; or

(xii) is a full-time member of any house of traditional and Khoi-San leaders.

(b) A participating leader may no longer participate in the proceedings of a municipal council if —

(i) any of the circumstances referred to in subparagraphs (ii) to (xii) of paragraph (a) becomes applicable to such participating leader; or

(ii) he or she tenders his or her resignation as participating leader.

(c) A participating leader may not be elected or nominated for participation in the councils of more than one category of municipality.

(d) The death of a participating leader or any of the circumstances referred to in paragraph (b) will result in a vacancy of the position of participating leader which vacancy must be filled in accordance with the provisions of subsection (2)(a), (b) or (c), as the case may be, and subject to subsection (2)(d), (e) and (f).

(4) A participating leader may participate in the proceedings of the local, district or metropolitan municipality, as the case may be, and—

(a) must perform such official or ceremonial duties as the municipal council may request him or her to do;

(b) must attend and participate in any meeting of the municipal council and may, subject to the rules and orders of the municipal council, submit motions, make proposals and ask questions: Provided that the non-attendance or non-participation of any participating leader will have no effect on any municipal council proceedings;

(c) must attend and participate in any meetings of a committee of the relevant municipal council to which such leader has been co-opted in terms of section 79(2)(d) of this Act;

(d) is subject to the appropriate provisions of the Code of Conduct contained in Schedule 1 to the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), and the standing rules and orders of the relevant municipality;

(e) is not entitled to vote in any meeting of the municipal council or council committee and cannot be included for the purpose of establishing a quorum in the municipal council or council committee; and

(f) may address the municipal council on—

(i) any matter directly or indirectly affecting traditional or Khoi-San leadership or the relevant traditional or Khoi-San council or community; or

(ii) any other matter involving traditional or Khoi-San communities in the area of jurisdiction of the relevant municipal council.

(5) A participating leader—

(a) When participating in the proceedings of a municipal council, a traditional leader is subject to the appropriate provisions of the Code of Conduct set out in Schedule 7.

[paragraph (a) substituted by section 30 of Act 3 of 2021]

(b) may not serve consecutive terms: Provided that if there are no other recognised senior traditional leaders or recognised senior Khoi-San leaders available to be considered for election or nomination as contemplated in subsection (2) when a new municipal council is elected, a participating leader who has previously been elected or nominated may serve consecutive terms;

(c) may not request any other person to participate in the proceedings of a municipal council on his or her behalf.

(6) A participating leader must, within three weeks from the date of a municipal council meeting, prepare a report on all matters affecting the relevant traditional and Khoi-San communities, as discussed and decided on by such municipal council, and submit the report to the local house and traditional and Khoi-San councils falling within the area of jurisdiction of such municipality: Provided that where more than one participating leader participate in the proceedings of any municipal council, such leaders must within two weeks from the date of a municipal council meeting, meet to prepare the report referred to in this subsection.

(7) A committee of a municipal council as referred to in subsection (4)(c), may invite any recognised traditional leader or any recognised Khoi-San leader other than a participating leader, to address such committee on any matter affecting the relevant traditional or Khoi-San community or communities.

(8) A participating leader must act in an impartial manner and must—

(a) support municipal councils in the identification of the specific needs of the traditional and Khoi-San communities falling within the area of the municipality;

(b) facilitate the involvement of the traditional and Khoi-San communities in the development or amendment of the integrated development plan of the relevant municipality;

(c) support the relevant municipality in promoting integrated local economic development and planning;

(d) facilitate the participation of the relevant traditional and Khoi-San communities in any affairs of the municipality that requires or allows for public participation, including the affairs of ward committees;

(e) make recommendations and propose appropriate interventions in respect of service delivery within the defined areas of jurisdiction of the relevant traditional councils;

(f) participate in the development of policy and by-laws at a municipal level;

(g) participate in relevant development programmes of the municipality;

(h) promote the ideals of co-operative governance, integrated development planning, sustainable development and service delivery;

(i) promote indigenous knowledge systems;

(j) participate and ensure the participation of traditional and Khoi-San communities in any environmental programmes of the municipality;

(k) alert the municipality to any current or threatening hazard or calamity which affects or may affect the municipal area;

(l) support the relevant municipality with the implementation of the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013), as far as that Act makes provision for the involvement of traditional leadership or structures,

and may advise the relevant municipal council on matters concerning the heritage, language, customs and traditions of the relevant traditional and Khoi-San communities.

(9) The councillors of a municipal council and the participating leaders must—

(a) recognise and respect each other's status and roles within the affairs of the municipality;

(b) recognise and respect the local sphere of government as a distinctive, interdependent and interrelated sphere of government as contemplated in the Constitution; and

(c) co-operate with one another in mutual trust and good faith by—

(i) fostering sound working relations with one another; and

(ii) assisting and supporting one another in the execution of their roles and responsibilities.

(10) (a) In the event of any breach of, or non-compliance with, the applicable provisions of the Code of Conduct contained in Schedule 1 to the Local Government: Municipal Systems Act, 2000, by any participating leader, the municipal council concerned must forthwith inform the—

(i) relevant provincial house of traditional and Khoi-San leaders, if any such house has been established;

(ii) local houses of traditional and Khoi-San leaders within the area of the municipality, if any such houses have been established; and

(iii) traditional councils and Khoi-San councils within the area of the municipality,

of the nature of the alleged breach.

(b) Any alleged breach of, or non-compliance with, the applicable provisions of the Code of Conduct referred to in paragraph (a), must be dealt with in accordance with the provisions of item 15 of that Code of Conduct.

(c) The findings of any investigation contemplated in item 15 of the Code of Conduct and any sanctions imposed under that item, must be conveyed by the municipal council or MEC, as the case may be, to—

(i) the relevant participating leader;

(ii) the responsible MEC in the case of investigations conducted by the municipal council or a special committee as contemplated in item 14(1) of Schedule 1 to the Local Government: Municipal Systems Act, 2000;

(iii) the municipal council in the case of investigations conducted by a person or committee appointed by the MEC as contemplated in item 15(4) of Schedule 1 to the Local Government: Municipal Systems Act, 2000; and

(iv) the houses and councils referred to in paragraph (a).

(d) Notwithstanding the provisions of paragraph (a), a participating leader remains subject to the Code of Conduct contained in the Schedule to the TKLA, and any provincial code of conduct provided for in provincial legislation relating to traditional and Khoi-San leadership.

(11) The MEC—

(a) must, through any means deemed appropriate, monitor the implementation of this section in the province and make recommendations on such implementation to any relevant house

of traditional and Khoi-San leaders, all relevant municipalities and all relevant participating leaders; and

(b) may delegate any of his or her powers referred to in this section, except the power to determine a longer period as contemplated in subsection (2)(g), to the Director-General of the department responsible for traditional and Khoi-San matters in the particular province, or to any official of such department.

(12) A Premier may by notice in the *Provincial Gazette* make regulations on any matter that is necessary for the proper implementation of this section: Provided that such regulations may not be inconsistent with the provisions of this section.

(13) (a) A participating leader may, from the budget of the relevant municipal council, be reimbursed for any out of pocket expenses: Provided that for the purposes of this section "out of pocket expenses" means actual and necessary expenses incurred by a participating leader in respect of own transport, public transport and parking, which expenses must be related to a meeting or event arranged by a municipal council or a committee of such council, or any ceremonial or official duties which such participating leader has been requested to attend to by the municipal council.

(b) Out of pocket expenses must be authorised by the municipality prior to the meeting or event referred to in paragraph (a).

(c) Out of pocket expenses do not include any salaries, allowances or benefits as contemplated in the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998), or resources as contemplated in the Independent Commission for the Remuneration of Public Office-Bearers Act, 1997 (Act No. 92 of 1997).

(d) To ensure uniformity across provinces, the Minister may, after consultation with the Premiers and by notice in the *Gazette*, make regulations on out of pocket expenses.

[section 81 amended by section 121 of Act 32 of 2000, by section 5 of Act 33 of 2000, by section 18(b) of Act 51 of 2002 and substituted by section 7(1) of Act 3 of 2019]

Part 7 – Municipal managers

82. ***

[section 82 amended by section 121 of Act 32 of 2000, repealed by section 15 of Act 7 of 2011 and by section 15(b) of Act 3 of 2022]

Chapter 5
Functions and powers of municipalities

83. General

(1) A municipality has the functions and powers assigned to it in terms of sections 156 and 229 of the Constitution.

(2) The functions and powers referred to in subsection (1) must be divided in the case of a district municipality and the local municipalities within the area of the district municipality, as set out in this Chapter.

(3) A district municipality must seek to achieve the integrated, sustainable and equitable social and economic development of its area as a whole by—

(a) ensuring integrated development planning for the district as a whole;

(b) promoting bulk infrastructural development and services for the district as a whole;

(c) building the capacity of local municipalities in its area to perform their functions and exercise their powers where such capacity is lacking; and

(d) promoting the equitable distribution of resources between the local municipalities in its area to ensure appropriate levels of municipal services within the area.

84. Division of functions and powers between district and local municipalities

(1) A district municipality has the following functions and powers:

(a) Integrated development planning for the district municipality as a whole, including a framework for integrated development plans of all municipalities in the area of the district municipality.

(b) Potable water supply systems.

(c) Bulk supply of electricity, which includes for the purposes of such supply, the transmission, distribution and, where applicable, the generation of electricity.

(d) Domestic waste-water and sewage disposal systems.

(e) Solid waste disposal sites, in so far as it relates to—

(i) the determination of a waste disposal strategy;

(ii) the regulation of waste disposal;

(iii) the establishment, operation and control of waste disposal sites, bulk waste transfer facilities and waste disposal facilities for more than one local municipality in the district.

(f) Municipal roads which form an integral part of a road transport system for the area of the district municipality as a whole.

(g) Regulation of passenger transport services.

(h) Municipal airports serving the area of the district municipality as a whole.

(i) Municipal health services.

(j) Fire fighting services serving the area of the district municipality as a whole, which includes —

(i) planning, co-ordination and regulation of fire services;

(ii) specialised fire fighting services such as mountain, veld and chemical fire services;

(iii) co-ordination of the standardisation of infrastructure, vehicles, equipment and procedures;

(iv) training of fire officers.

(k) The establishment, conduct and control of fresh produce markets and abattoirs serving the area of a major proportion of the municipalities in the district.

(l) The establishment, conduct and control of cemeteries and crematoria serving the area of a major proportion of municipalities in the district.

(m) Promotion of local tourism for the area of the district municipality.

(n) Municipal public works relating to any of the above functions or any other functions assigned to the district municipality.

(o) The receipt, allocation and, if applicable, the distribution of grants made to the district municipality.

(p) The imposition and collection of taxes, levies and duties as related to the above functions or as may be assigned to the district municipality in terms of national legislation.

[subsection (1) substituted by section 6(a) of Act 33 of 2000]

(2) A local municipality has the functions and powers referred to in section 83(1), excluding those functions and powers vested in terms of subsection (1) of this section in the district municipality in whose area it falls.

(3) (a) The Minister may, by notice in the *Government Gazette*, and after consultation with the Cabinet member responsible for the functional area in question, and after consulting the MEC for local government in the province and, if applicable, subject to national legislation, authorise a local municipality to perform a function or exercise a power mentioned in subsection (1)(b), (c), (d) or (i) in its area or any aspect of such function or power.

(b) The Minister must in the notice referred to in paragraph (a) regulate the legal, practical and other consequences of the authorisation, which may include—

(i) the transfer of staff;

(ii) the transfer of staff; the transfer of assets, liabilities, rights and obligations, and administrative and other records; and

(iii) the continued application of any by-laws and resolutions in the area of the municipalities concerned and the extent of such application.

(c) The Minister may—

(i) amend a notice issued in terms of paragraph (a); and

(ii) regulate the legal, practical and other consequences of such amendment.

[paragraph (c) substituted by section 19(b) of Act 51 of 2002]

(d) Whenever the Minister revokes an authorisation envisaged by paragraph (a), the Minister must in the notice revoking that authorisation regulate the legal, practical and other consequences of the revocation, which may include—

(i) the transfer of staff;

(ii) the transfer of assets, liabilities, rights, obligations and administrative and other records; and

(iii) the continued application of any by-laws and resolutions in the area of the municipalities in question and the extent of such application.

[paragraph (d) added by section 19(c) of Act 51 of 2002]

(e) The Minister must comply with the consultation requirements as set out in paragraph (a) when a power referred to in paragraph (c) or (d) is to be exercised.

[paragraph (e) added by section 19(c) of Act 51 of 2002]

[subsection (3) substituted by section 6(b) of Act 33 of 2000]

(4) (a) Subject to paragraph (c), any authorisation, amendment of an authorisation or revocation of an authorisation under subsection (3) takes effect on the commencement date of the municipal financial year following the date of publication of the notice effecting such authorisation or amendment or revocation.

(b) The Minister must inform the Minister responsible for finance of his or her intention to publish a notice contemplated in paragraph (a) at least six months before the notice is to take effect in terms of that paragraph.

(c) Paragraph (a) does not apply if any authorisation, amendment of an authorisation or revocation of an authorisation under subsection (3) is to coincide with an election of the council of an affected municipality.

[subsection (4) added by section 9 of Act 19 of 2008]

85. Adjustment of division of functions and powers between district and local municipalities

(1) The MEC for local government in a province may, subject to the other provisions of this section, adjust the division of functions and powers between a district and a local municipality as set out in section 84(1) or (2), by allocating, within a prescribed policy framework, any of those functions or powers vested—

(a) in the local municipality, to the district municipality; or

(b) in the district municipality (excluding a function or power referred to in section 84(1) (a), (b), (c), (d), (i), (o) or (p), to the local municipality.

[paragraph (b) substituted by section 7(a) of Act 33 of 2000]

(2) An MEC may allocate a function or power in terms of subsection (1) only if—

(a) the municipality in which the function or power is vested lacks the capacity to perform that function or exercise that power; and

(b) the MEC has consulted the Demarcation Board and considered its assessment of the capacity of the municipality concerned.

(3) Subsection (2)(b) does not apply if the Demarcation Board omits to comply with subsection (4) within a reasonable period.

(4) The Demarcation Board must—

(a) consider the capacity of a district or local municipality to perform the functions and exercise the powers vested in the municipality in terms of section 84(1) or (2) when—

(i) determining or redetermining the boundaries of the district and the local municipalities; or

(ii) requested in terms of subsection (2)(b) by the MEC for local government in the province concerned to do so; and

(b) convey its assessment in writing to the relevant MEC.

(5) If an MEC disagrees with the Demarcation Board on the capacity of the district or local municipality and adjusts the division of functions and powers between the district and local municipality, or refuses to adjust the division, contrary to the assessment of the Demarcation Board, the MEC must furnish reasons to the relevant municipalities and the Minister before finalising an adjustment in terms of subsection (1).

(6) Any adjustment of the division of functions and powers by way of an allocation in terms of subsection (1) or reallocation in terms of subsection (9) must be reflected in the notices referred to in section 12 which establish the municipalities concerned. Where applicable the legal, practical and other consequences of the allocation or reallocation must be regulated, including—

(a) the transfer of staff;

(b) the transfer of assets, liabilities and administrative and other records; and

(c) the continued application of any by-laws, regulations and resolutions in the area or the municipalities concerned and the extent of such application.

(7) The Minister may by notice in the *Government Gazette* and after consulting the MEC for local government and the municipalities concerned—

(a) vary or withdraw any allocation of a function or power in terms of subsection (1) or reallocation of a function or power in terms of subsection (9); or

(b) adjust the division of functions and powers between a district and local municipality if the MEC has refused to make an adjustment in accordance with the assessment of the Demarcation Board.

(8) The MEC must amend the relevant section 12 notices to give effect to any variation or withdrawal of any allocation or reallocation in terms of subsection (7).

(9) (a) If a function or power has been allocated in terms of subsection (1) the MEC for local government in the province must regularly review the capacity of the relevant municipality and reallocate that function or power to that municipality when that municipality acquires the capacity to perform that function or exercise that power.

(b) A reallocation in terms of paragraph (a) must be made with the concurrence of the receiving municipality or, in the absence of such concurrence, after having consulted the Demarcation Board.

(9A) (a) Subject to paragraph (c), any adjustment of the division of functions and powers under this section takes effect on the commencement date of the municipal financial year following the date of publication of the notice effecting such adjustment.

(b) The MEC or Minister, as the case may be, must inform the national Minister responsible for finance of his or her intention to publish a notice contemplated in paragraph (a) at least four months before the notice is to take effect in terms of that paragraph.

(c) Paragraph (a) does not apply if any adjustment of the division of powers and functions under this section is to coincide with an election of the council of an affected municipality.

(d) The Minister of Finance may, in exceptional cases, including those referred to in section 87 of Municipal Structures Act, 1998 (Act No 117 of 1998), decide on a different or shorter period than the period referred to in paragraph (a) and (b).

[subsection (9A) inserted by section 10 of Act 19 of 2008]

(10) This section does not apply before the date of the first elections of municipal councils in terms of this Act.

[subsection (10) added by section 7(b) of Act 33 of 2000]

86. Resolution of disputes concerning performance of functions or exercise of powers

If a dispute arises between a district and a local municipality concerning the performance of a function or the exercise of a power, the MEC for local government in the province, after consulting them, may, by notice in the *Provincial Gazette*, resolve the dispute by defining their respective roles in the performance of that function or in the exercise of that power.

[section 86 substituted by section 8 of Act 33 of 2000]

87. Temporary allocation of functions and powers

(1) If the provision of basic services by a district or local municipality collapses or ts likely to collapse because of that municipality's lack of capacity or for any other reason, the MEC for local government in the province may, after written notice to the district or local municipality and with immediate effect, allocate any functions and powers necessary to restore or maintain those basic services, to a local municipality which falls within that district municipality or to the district municipality in whose area that local municipality falls, as the case may be.

(2) The district or local municipality may lodge a written objection against the allocation to the Minister, who may confirm, vary or withdraw the allocation after having consulted the Demarcation Board.

(3) If the district or local municipality does not lodge a written objection against the allocation to the Minister within 14 days of the date of the notice referred to in subsection (1), the municipality is regarded as having consented to the allocation.

(4) The MEC for local government must reallocate that function or power to the original municipality when that municipality is in a position to resume the provision of those basic services.

88. Co-operation between district and local municipalities

(1) A district municipality and the local municipalities within the area of that district municipality must co-operate with one another by assisting and supporting each other.

(2) (a) A district municipality on request by a local municipality within its area may provide financial, technical and administrative support services to that local municipality to the extent that that district municipality has the capacity to provide those support services.

(b) A Local municipality on request of a district municipality in whose area that local municipality falls may provide financial, technical and administrative support services to that district municipality to the extent that that local municipality has the capacity to provide those support services.

(c) A local municipality may provide financial, technical or administrative support services to another local municipality within the area of the same district municipality to the extent that it has the capacity to provide those support services, if the district municipality or that local municipality so requests.

(3) The MEC for local government in a province must assist a district municipality to provide support services to a local municipality.

89. ***

[section 89 repealed by section 31 of Act 3 of 2021]

Chapter 6
Miscellaneous matters

90. ***

[section 90 repealed by section 3 of Act 23 of 2005]

91. Exemptions from certain provisions of this Act

(1) The MEC for local government in a province, within a policy framework as may be determined by the Minister, and by notice in the *Provincial Gazette*, may exempt a municipality in the province from any of the provisions of sections 36 (3) or (4), 38, 39, 45 to 47, 48(2), (3) or (4), 50 to 53, 58, 65 to 71, 75 and 76.

[subsection (1) substituted by section 10 of Act 33 of 2000]

(2) A municipality exempted from a provision of this Act in terms of subsection (1) may pass its own legislation with regard to the matter dealt with in the exempted provision.

92. Regulations

The Minister may make regulations not inconsistent with this Act prescribing—

(a) any matter that may or must be prescribed in terms of this Act; and

(b) any matter that may facilitate the application of this Act.

93. Application of this Act and transitional arrangements

(1) The provisions of this Act will only apply in respect of a municipality from the date contemplated in section 12, but this does not preclude the application of any provision of this Act for a purpose related to the demarcation of a municipal boundary, the establishment of a municipality or an election of a council.

(2) If any conflict relating to the matters dealt with in this Act arises between this Act and the provisions of any other law, except the Constitution and Chapter 2 of the Local Government Municipal Structures Amendment Act, 2000, the provisions of this Act prevail.

[subsection (2) substituted by section 11(a) of Act 33 of 2000]

(3) The first term of all municipal councils after the enactment of this Act expires on 31 October 2000.

[subsection (3) substituted by section 11(b) of Act 33 of 2000]

(4) Despite anything to the contrary in any other law and as from the date on which a municipal council has been declared elected as contemplated in item 26(1)(a) of Schedule 6 to the Constitution—

(a) section 10G of the Local Government Transition Act, 1993 (Act No. 209 of 1993), read with the necessary changes, apply to such a municipality; and

(b) any regulation made under section 12 of the Local Government Transition Act, 1993 (Act No. 209 of 1993), and which relates to section 10G of that Act, read with the necessary changes, apply to such a municipality.

[subsection (4) added by section 11(c) of Act 33 of 2000]

(5) For purposes of subsection (4)—

(a) any reference in section 10G of the Local Government Transition Act, 1993 (Act No. 209 of 1993), or a regulation referred to in subsection (4)(b), to—

(i) "chairperson of the council" must be construed as a reference to the speaker of the council;

(ii) "chief executive officer" must be construed as a reference to the municipal manager appointed in terms of section 82;

(iii) "local council", "metropolitan council", "metropolitan local council" and "rural council" must be construed as a reference to a municipal council;

(iv) "MEC" must be construed as a reference to the member of the Executive Council of a province responsible for local government;

(v) "MEC responsible for Finance" must be construed as a reference to the member of the Executive Council of a province responsible for finances in the province; and

(vi) "remaining area" and "areas of jurisdiction of representative councils" must be construed as a reference to a district management area; and

(b) section 10G of the Local Government Transition Act, 1993 (Act No. 209 of 1993), must be regarded as having been amended by the insertion of the following subsection after subsection (6):

[subsection (5) added by section 11(c) of Act 33 of 2000]

(6A) (a) Despite anything to the contrary in any other law, a municipality must value property for purposes of imposing rates on property in accordance with generally recognised valuation practices, methods and standards.

(b) For purposes of paragraph (a)—

(i) physical inspection of the property to be valued, is optional; and

(ii) in lieu of valuation by a valuer, or in addition thereto, comparative, analytical and other systems or techniques may be used, including—

(aa) aerial photography;

(bb) information technology;

(cc) computer applications and software; and

(dd) computer assisted mass appraisal systems or techniques.

[subsection (6A) added by section 11(c) of Act 33 of 2000]

(6) *[subsection (6) added by section 11(c) of Act 33 of 2000 and deleted by section 59(1) of Act 9 of 2006]*

(7) Despite Proclamation No. 148 of 8 December 1993 (Province of the Cape of Good Hope *Gazette* 4833 of 22 December 1993) and section 38 of the Property Valuation Ordinance, 1993 (Cape), the said Ordinance is deemed to have come into force—

(a) for the purposes of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), immediately before the commencement of that Constitution; and

(b) for all other purposes, on 1 July 1994.

[subsection (7) added by section 21 of Act 51 of 2002]

(8) (a) With effect from 5 December 2000 and subject to paragraph (b), any reference in a law referred to in item 2 of Schedule 6 to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), to a municipal council, municipality, local authority or another applicable designation of a local government structure, must be construed as a reference to a municipal council or a municipality established in terms of this Act, as the case may be.

(b) Paragraph (a) only applies to a law referred to in item 2 of Schedule 6 to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), in so far as such a law is still applicable or becomes applicable to a municipal council or a municipality, as the case may be, at the time the Local Government Laws Amendment Act, 2002, comes into effect.

[subsection (8) added by section 21 of Act 51 of 2002]

(9) Until the legislation envisaged in section 229(2)(b) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), is enacted, a municipality may use the valuations appearing on a provisional valuation roll or an additional valuation roll when imposing property rates.

[subsection (9) added by section 21 of Act 51 of 2002]

(10) Subsections (7), (8) and (9) apply to matters that are the subject of pending litigation.

[subsection (10) added by section 21 of Act 51 of 2002]

93A. ***

[section 93A inserted by section 7 of Act 20 of 2002, amended by section 9 of Constitution Tenth Amendment Act, 2003 and repealed by section 15 of Act 55 of 2008]

93B. ***

[section 93B inserted by section 7 of Act 20 of 2002, amended by section 9 of Constitution Tenth Amendment Act, 2003 and repealed by section 15 of Act 55 of 2008]

94. Amendment of section 5 of Act 51 of 1996

Section 5 of the Electoral Commission Act, 1996 (Act No. 51 of 1996), is hereby amended by the deletion is subsection (1) of paragraph (m).

95. Short title

This Act is called the Local Government: Municipal Structures Act, 1998, and takes effect, subject to section 93, on a date determined by the President by proclamation in the *Gazette*.

Schedule 1

Electoral system for metro and local councils

1. **Definitions**

In this Schedule, unless the context otherwise indicates—

"**chief electoral officer**" means the chief electoral officer appointed in terms of section 12(1) of the Electoral Commission Act, 1996 (Act No. 51 of 1996), and includes a person designated by the chief electoral officer for the purposes of this Schedule;

"**election**" means an election called in terms of section 24, and, where appropriate, also a by-election called in terms of section 25;

"**independent ward councillor**" means a councillor who was not nominated by a party as a candidate in a ward election;

[definition of "independent ward councillor" substituted by section 93 of Act 27 of 2000]

"**nomination day**" means the day determined in terms of the Electoral Act for the announcement of the nominated candidates and parties for a municipal election;

"**ward candidate representing a party**" means a ward candidate who was nominated by a party as a candidate in a ward election.

[definition of "ward candidate representing a party" substituted by section 93 of Act 27 of 2000]

Part 1 – General

2. **Delimitation of wards**

The Demarcation Board after consultation with the Electoral Commission, for purposes of an election, must delimit all metropolitan municipalities and all local municipalities that must have wards, into wards.

3. **Number of wards**

The number of wards in a metropolitan or local municipality must be equal to the number of ward councillors determined for the municipality in terms of section 22(2).

4. **Delimitation criteria**

The Demarcation Board after consulting the Electoral Commission must delimit a municipality into wards, each having approximately the same number of voters, taking into account the following criteria:

(a) The number of registered voters in each ward, may not vary by more than fifteen per cent from the norm, where the norm is determined by dividing the total number of registered voters on the municipality's segment of the national common voters roll by the number of wards in the municipality.

(b) The need to avoid as far as possible the fragmentation of communities.

(c) The object of a ward committee as set out in section 72(3) which is to enhance participatory democracy in local government.

(d) The availability and location of a suitable place or places for voting and counting if appropriate, taking into consideration—

(i) communication and accessibility;

(ii) density of population;

(iii) topography and physical characteristics; and

(iv) the number of voters that are entitled to vote within the required time-frame.

(e) The safety and security of voters and election material.

(f) Identifiable ward boundaries.

5. **Publication of delimitation**

(1) The Demarcation Board must publish its delimitation of wards for a municipality in the *Provincial Gazette*.

(2) Any person aggrieved by a delimitation may within 14 days of publication submit objections in writing to the Demarcation Board, and the Board must—

(a) consider those objections; and

(b) confirm, vary or withdraw its determination.

6. **Electoral system for metro and local councils with wards**

A metro council, and a local council having wards, must be elected as follows:

(a) A number of councillors equal to the number of wards in the municipality must be directly elected in accordance with Part 2 of this Schedule to represent the wards in the Council; and

(b) the rest of the councillors must be elected from party lists in accordance with Part 3 of this Schedule to represent parties proportionally in the council.

7. **Electoral system for local councils without wards**

If a local council has no wards, all the councillors must be elected from party lists in accordance with Part 3 of this Schedule to represent parties proportionally in the council.

Part 2 – Ward elections

8. **Number of votes**

(1) In an election of a councillor for a ward each voter has one vote only, and a voter may vote for one candidate only,

(2) In each ward the candidate who receives the most votes is the elected councillor for that ward. In the event of two or more candidates receiving an equal number of votes, the result will be determined by lot.

8A. **Uncontested ward elections**

If only one candidate is duly nominated in a ward, an election is not held in that ward and the uncontested ward candidate is deemed to have been elected—

(a) in the case of an election called in terms of section 24(2), with effect from the date set for the election; or

(b) in the case of a by-election, with effect from the date stated in the time table for the by-election as the final date on which nominations for the by-election may be submitted.

[item 8A inserted by section 22 of Act 51 of 2002]

Part 3 – Proportional representation elections

9. **Number of votes**

(1) In an election for a metro council, or for a local council that has wards, each voter has two votes, and may vote for—

(a) not more than one ward candidate; and

(b) not more than one party.

(2) In an election for a local council that has no wards, each voter has one vote only, and may vote for one party only.

10. **Submission of lists of candidates**

(1) A list of candidates may be submitted only by a party.

[item 10 amended by section 93 of Act 27 of 2000, substituted by section 8 of Act 20 of 2002,amended by section 9 of Constitution Tenth Amendment Act, 2003 and substituted by section 16 of Act 55 of 2008]

11. **Party lists**

(1) The number of candidates on a list submitted by a party may not exceed double the number of seats in the metro or local council to be filled from party lists.

(2) The candidates' names must appear on the list in the order of the party's preference, commencing with the first in order of preference and ending with the last.

(3) Every party must seek to ensure that fifty per cent of the candidates on the party list are women and that women and men candidates are evenly distributed through the list.

12. **Quota**

(1) The quota of votes for a seat in the metro or local council, must be determined in accordance with the following formula (fractions to be disregarded):

$$\frac{A}{B-C} + 1$$

Where—

A represents the total number of valid votes cast for all parties, consisting of those cast on the party vote and those cast for ward candidates representing parties;

B represents, the number of seats in the metro or local council; and

C represents the number of independent ward councillors elected in the election.

(2) If a ward candidate representing a party is elected unopposed, a vote cast by a voter registered in that ward for the party of which that candidate is a representative must for the purpose of factor A be counted as two votes.

13. **Allocating seats**

(1) (a) The total number of valid votes cast for each party on the party vote and for the ward candidates representing the party must be divided by the quota of votes for a seat. The result is the total number of seats to which each party is entitled before any adjustment in terms of subitem (3).

(b) If a ward candidate representing a party is elected unopposed, a vote cast by a voter registered in that ward for the party of which that candidate is a representative must for the purpose of paragraph (a) be counted as two votes.

(2) (a) If the calculation in subitem (1) yields a surplus not absorbed by the seats awarded to a party, that surplus must compete with similar surpluses accruing to any other party or parties, and any undistributed seat or seats must be awarded to the party or parties concerned in sequence of the highest surplus.

(b) If the surplus for two or more parties is equal the seat must be awarded to the party that obtained the highest number of valid votes.

(3) (a) In an election for a metro council or fora local council that has wards, the Electoral Commission must deduct from the total number of seats to which each party is entitled in terms of subitem (1) and (2), the number of ward candidates representing that party who were declared elected.

(b) The result is the number of seats which the party is entitled to fill from its list of party candidates.

(4) If no party is awarded a seat in terms of subitem (1), the votes for each party, read with subitem (1) (b), must be treated in accordance with subitem (2) as if they are surpluses.

(5) The Electoral Commission must determine which party candidates are elected by selecting from the party's list, in accordance with the party's order of preference on the list, the number of candidates that is equal to the number of seats to which the party is entitled, beginning with the first candidate on the list and ending with the lowest ranking candidate.

[item 13 amended by section 23 of Act 51 of 2002]

14. **Uncontested elections**

(1) If only one party submitted a list, an election according to proportional representation must not be held for the metro or local council.

(2) The number of seats to which the party is entitled is the total number of seats on the council to be filled by proportional representation.

(3) The chief electoral officer must determine which party candidates are elected by selecting from the party's list, according to the party's order of preference on the list, the number of candidates that is equal to the number of seats to which the party is entitled.

15. **Procedure if no party applications**

(1) If no party submitted a list, a by-election must be held within 90 days of nomination day and the MEC for local government must, after consultation with the Commission, determine the date of the election.

[subitem (1) substituted by section 93 of Act 27 of 2000]

(2) If no party applies for registration or every application is rejected for the by-election—

(a) the municipal manager must notify the chief electoral officer within 24 hours;

(b) the chief electoral officer within seven days must determine the date for a further election which must be held within 90 days; and

(c) the vacancies must remain unfilled until such time as they are filled by way of election.

[Please note: section 93 of Act 27 of 2000 purports to amend subparagraph (2), but no amendment was made.]

(3) Section 25 applies to a by-election in terms of this item, to the extent that that section can be applied.

[Please note: section 93 of Act 27 of 2000 purports to amend subparagraph (3), but no amendment was made.]

16. **Excessive seats**

(1) If, through the election of ward candidates, a party listed on the part of the ballot paper for parties has obtained a number of seats that is equal to, or greater than the total number of seats in the council to which it is entitled under item 13, that party must not be allocated any seats from its list of party candidates.

(2) The seats of ward candidates are not affected.

(3) A new quota of votes for a seat must be determined in accordance with the following formula (fractions to be disregarded):

$$\frac{A - B}{C - (D + E)} + 1$$

Where—

A represents the total number of valid votes cast for all parties, consisting of those cast on the party vote and those cast for ward candidates representing parties;

B represents the total number of votes cast for the party with excessive seats, both on the party vote and for ward candidates representing parties;

C represents the number of seats in the council;

D represents the number of seats awarded to the party with excessive seats; and

E represents the number of independent ward councillors elected.

[subitem (3) added by section 33(a) of Act 3 of 2021]

(4) (a) The total number of valid votes cast for each party, both on the party vote and for ward candidates representing the party, excluding the party that has excessive number of seats, must be divided by the quota of votes for a seat. The result is the total number of seats to which each party is entitled.

(b) If the calculation in paragraph (a) yields a surplus not absorbed by the seats awarded to a party, that surplus must compete with similar surpluses accruing to any other party or parties and any undistributed seat or seats must be awarded to the party or parties concerned in sequence of the highest surplus.

(c) If the surplus for two or more parties is equal, the seat must be awarded to the party that received the highest number of valid votes.

[subitem (4) added by section 33(a) of Act 3 of 2021]

(5) If a ward candidate representing a party is elected unopposed, a vote cast by a voter registered in that ward for the party of which that candidate is a representative must, for the purpose of factors A and B and subitem (4), be counted as two votes.

[subitem (5) added by section 33(a) of Act 3 of 2021]

(6) In an election for a council that has wards, the Electoral Commission must deduct from the total number of seats to which each party is entitled in terms of subitem (4), the number of ward candidates representing the party who were declared elected.

[subitem (6) added by section 33(a) of Act 3 of 2021]

(7) If no party is awarded a seat in terms of subitem (4)(a), the votes for each party must be treated in accordance with subitem (4)(b) as if they are surpluses.

[subitem (7) added by section 33(a) of Act 3 of 2021]

(8) The Electoral Commission must determine in the manner provided in item 13(5), which party candidates are elected.

[subitem (8) added by section 33(a) of Act 3 of 2021]

(9) If a party is entitled to an additional number of seats in terms of subitem (4) and its list of candidates does not contain a sufficient number of candidates after having applied item 17(1), the party concerned forfeits, subject to subitem (1), the unfilled seats and the process provided in this item must be repeated until all seats have been filled or until all listed candidates have been allocated to a vacant seat.

[subitem (9) added by section 33(a) of Act 3 of 2021]

17. **Insufficient party lists**

(1) If a party list contains fewer candidates than the party is entitled to, the Electoral Commission must in writing immediately notify the party of the exact shortfall and request the party to deliver within two days of the notice a list supplemented by the name or names of one or more eligible candidates.

[subitem (1) substituted by section 33(b) of Act 3 of 2021]

(2) Immediately upon receipt of the list referred to in subitem (1), the Electoral Commission must allocate the number of representatives, in the order of preference on the fist, to which the party is entitled.

(3) (a) Subject to paragraph (b)—

(i) if the party concerned has ceased to exist, the seat or seats must remain unfilled;

(ii) if the party concerned does not deliver a supplemented list, the seat or seats remain unfilled until it delivers a list; or

(iii) if the party concerned delivers a supplemented list containing fewer names than the number of seats to be filled from that list, the seat or seats remain unfilled to the extent of the shortfall until it delivers a further list.

(b) Where seats are unfilled in terms of paragraph (a), and the vacancies render a quorum for the municipal council impossible, the party concerned forfeits the unfilled seats, and the seats must be filled within 14 days in accordance with subitems (4) to (10).

(4) If a party forfeits seats, a new quota of votes for a seat must be determined in accordance with the following formula (fractions to be disregarded):

$$\frac{A-B}{C-(D+E)} + 1$$

Where—

A represents the total number of valid votes cast for all parties, consisting of those cast on the party vote and those cast for ward candidates representing parties;

B represents the total number of valid votes cast for the party that has forfeited seats, both on the party vote and for ward candidates representing the party;

C represents the number of seats in the council;

D represents the number of seats awarded to the forfeiting party; and

E represents the number of independent ward councillors elected in the election.

(5) (a) The total number of valid votes cast for each party, both on the party vote and for ward candidates representing the party, excluding the party that has forfeited seats, must be divided by the quota of votes for a seat. The result is the total number of seats to which each party is entitled.

(b) If the calculation in paragraph (a) yields a surplus not absorbed by the seats awarded to a party, that surplus must compete with similar surpluses accruing to any other party or parties, and any undistributed seat or seats must be awarded to the party or parties concerned in sequence of the highest surplus.

(c) If the surplus for two or more parties is equal, the seat must be awarded to the party that received the highest number of valid votes.

(6) If a ward candidate representing a party is elected unopposed, a vote cast by a voter registered in that ward for the party of which that candidate is a representative must for the purpose of factors A and B and subitem (5) be counted as two votes.

(7) In an election for a council that has wards, the Electoral Commission must deduct from the total number of seats to which each party is entitled in terms of subitem (5), the number of ward candidates representing the party who were declared elected.

(8) If no party is awarded a seat in terms of subitem (5)(a) the votes for each party must be treated in accordance with subitem (5)(b) as if they are surpluses.

(9) The Electoral Commission must determine in the manner provided in item 13(5) which party candidates are elected.

(10) If a party is entitled to an additional number of seats in terms of subitem (5) and its list of candidates does not contain a sufficient number of candidates, the party concerned forfeits, subject

to subitem (1), the unfilled seats and the process provided in this item must be repeated until all seats have been filled or until all listed candidates have been allocated to a vacant seat.

[item 17 amended by section 24 of Act 51 of 2002]

17A. **Multiple seats**

(1) If a candidate is assigned to more than one seat, the parties or independent ward candidates must, within two days after being informed by the chief electoral officer, indicate to the Electoral Commission which seat such candidate should be designated to.

(2) If a party or independent ward candidate fails to indicate to the chief electoral officer which seat such candidate should be designated, such candidate's name must be deleted from the lists.

(3) If a ward seat allocation is deleted it shall lead to the holding of a by-election.

[item 17A inserted by section 33(c) of Act 3 of 2021]

18. **Filling of vacancies**

(1) (a) If a councillor elected from a party list ceases to hold office, the chief electoral officer must, subject to item 20, declare in writing the person whose name is at the top of the applicable party list to be elected in the vacancy.

[subitem (a), previosuly unnumbered, numbered by section 25 of Act 51 of 2002]

(b) Whenever a councillor referred to in paragraph (a) ceases to hold office, the municipal manager concerned must within 14 days after the councillor has ceased to hold office, inform the chief electoral officer accordingly.

[subitem (b) added by section 25 of Act 51 of 2002 and substituted by section 33(d) of Act 3 of 2021]

(c) If the municipal manager of the municipality concerned does not inform the chief electoral officer of the vacancy referred to in paragraph (a), the MEC for local government in the province, must inform the chief electoral officer of the vacancy within 14 days where the municipal manager does not.

[subitem (c) added by section 33(e) of Act 3 of 2021]

(2) Where a party list has become exhausted, item 17, adjusted as may contextually be necessary, applies to the supplementation of the list, and if the party fails to supplement its list, or if the party has ceased to exist, the vacancy must remain unfilled.

Part 4 – Filling and amending party lists

19. **Causes of vacancies on lists**

A person who is a candidate on a party list ceases to be a candidate and a vacancy arises in the list when the party withdraws the person's name by written notice to the chief electoral officer, or when that person —

(a) assumes office as a councillor;

(b) resigns from the list by written notice to the chief electoral officer;

(c) becomes ineligible to be a candidate;

(d) is disqualified or removed from the list in terms of any legislation;

(e) ceases to be a member of the party for which that person was listed as a party candidate; or

(f) ceases to be ordinarily resident in the municipality to which the list relates.

20. **Filling vacancies and changing the order**

(1) (a) A party may not supplement or change its list from the date of the closure of nomination of candidates for an election until a day after the date of the first council meeting.

(b) (i) Subject to paragraph (a), a party may supplement or change its list, provided that if a councillor elected according to a party list ceases to hold office, the party concerned may supplement or change its list by not later than 21 days after the councillor has ceased to hold office.

(ii) The vacancy must be filled as soon as the party in question has supplemented, changed or increased its list, but not later than 14 days after the expiry of the 21-day period.

[subitem (1) substituted by section 26 of Act 51 of 2002 and by section 33(f) of Act 3 of 2021]

(2) If a party supplements, changes or increases its list in terms of subitem (1) it must provide the chief electoral officer with an amended list.

Schedule 2

Electoral system for district councils

1. **Definitions**

In this Schedule, unless the context otherwise indicates—

"**chief electoral officer**" means the chief electoral officer appointed in terms of section 12(1) of the Electoral Commission Act, 1996 (Act No, 51 of 1996), and includes a person designated by the chief electoral officer for the purposes of this Schedule;

"**election**" means an election called in terms of section 24, and, where appropriate, also a by-election called in terms of section 25;

"**independent ward councillor**" means a councillor who was not nominated by a party as a candidate in a ward election;

[definition of "independent ward councillor" inserted by section 27(b) of Act 51 of 2002]

"**nomination day**" means the day determined in terms of the Electoral Act for the announcement of the nominated candidates and parties for an election.

Part 1 – Proportional elections

2. **Electoral system for party representatives**

The councillors of a district council that in terms of section 23 must be elected in accordance with this Part, must be elected from party lists to proportionally represent parties in the council.

[item 2 substituted by section 34(a) of Act 3 of 2021]

3. **Number of votes**

In an election for a district council, each voter registered in the area of a local municipality within the district municipality has one vote, and may vote for one party only.

[item 3 substituted by section 34(b) of Act 3 of 2021]

4. **Submission of lists of candidates**

(1) A list of candidates may be submitted only by a party.

[item 4 amended by section 93 of Act 27 of 2000, substituted by section 9 of Act 20 of 2002, amended by section 9 of Constitution Tenth Amendment Act, 2003 and substituted by section 17 of Act 55 of 2008]

5. **Party lists**

(1) The number of candidates on a party list submitted by a party may not exceed double the number of seats in the district council allocated, as the case may be, for the election of councillors referred to in section 23(1)(a).

[subitem (1) substituted by section 34(c) of Act 3 of 2021]

(2) The candidates' names must appear on the list in the order of the party's preference, commencing with the first in order of preference and ending with the last.

(3) Every party must seek to ensure that fifty per cent of the candidates on the party list are women and that women and men candidates are evenly distributed through the list.

6. **Quota**

The quota of votes for a seat in a district council must be determined in accordance with the following formula (fractions to be disregarded):

$$\frac{A}{B} + 1$$

Where—

A represents the total number of valid votes cast for all parties; and

B represents the number of seats in the district council allocated in terms of section 23(1)(a).

[item 6 substituted by section 34(d) of Act 3 of 2021]

7 **Allocating seats**

(1) The total number of valid votes cast for each party must be divided by the quota of votes for a seat. The result is the total number of seats to which each party is entitled.

(2) (a) If the calculation in subitem (1) yields a surplus not absorbed by the seats awarded to a party, that surplus must compete with similar surpluses accruing to any other party or parties, and any undistributed seat or seats must be awarded to the party or parties concerned in sequence of the highest surplus.

(b) If the surplus for two or more parties is equal the seat must be awarded to the party that obtained the highest number of valid votes.

(3) If no party is awarded a seat in terms of subitem (1), the votes for each party must be treated in accordance with subitem (2) as if they are surpluses.

(4) The chief electoral officer must determine which party candidates are elected by selecting from the party's list, in accordance with the party's order of preference on the list, the number of candidates that is equal to the number of seats to which the party is entitled, beginning with the first candidate on the list and ending with the lowest ranking candidate.

8. **Uncontested elections**

(1) If only one party submitted a list, an election must not be held for the district council concerned.

[subitem (1) substituted by section 34(e) of Act 3 of 2021]

(2) The number of seats to which the party is entitled is the total number of seats on the council to be filled by the election concerned.

(3) The chief electoral officer must determine which party candidates are elected by selecting from the party's list, according to the party's order of preference on the list, the number of candidates that is equal to the number of seats to which the party is entitled.

9. **Procedure if no party applications**

(1) If no party submitted a list, a by-election must be held within 90 days of nomination day and the MEC for local government must, after consultation with the Commission, determine the date of the election.

[subitem (1) substituted by section 93 of Act 27 of 2000]

(2) If no party applies for registration or every application is rejected for the by-election—

(a) the municipal manager must notify the chief electoral officer within 24 hours;

(b) the chief electoral officer within seven days must determine the date for a further election which must be held within 90 days; and

(c) the vacancies must remain unfilled until such time as they are filled by way of election.

[Please note: section 93 of Act 27 of 2000 purports to amend subparagraph (2), but no amendment was made.]

(3) Section 25 applies to a by-election in terms of this item, to the extent that that section can be applied.

[Please note: section 93 of Act 27 of 2000 purports to amend subparagraph (3), but no amendment was made.]

10. **Insufficient party lists**

(1) If a party list contains fewer candidates than the party is entitled to, the chief electoral officer must in writing immediately notify the party of the exact shortfall and request the party to deliver within two days of the notice a list supplemented by the name or names of one or more eligible candidates.

[subitem (1) substituted by section 34(f) of Act 3 of 2021]

(2) Immediately upon receipt of the list referred to in subitem (1), the chief electoral officer must allocate the number of representatives, in the order of preference on the list, to which the party' is entitled.

(3) (a) Subject to paragraph (b)—

(i) if the party concerned has ceased to exist, the seat or seats must remain unfilled;

(ii) if the party concerned does not deliver a supplemented list, the seat or seats remain unfilled until it delivers a list; or

(iii) if the party concerned delivers a supplemented fist containing fewer names than the number of seats to be filled from that list, the seat or seats remain unfilled to the extent of the shortfall until it delivers a further fist.

(b) Where seats are unfilled in terms of paragraph (a), and the vacancies render a quorum for the municipal council impossible, the party concerned forfeits the unfilled seats, and the seats must be filled within 14 days in accordance with subitems (4) to (8).

(4) If a party forfeits seats, a new quota of votes for a seat must be determined in accordance with the following formula (fractions to be disregarded):

$$\frac{A-B}{C-D}+1$$

Where—

A represents the total number of valid votes cast for all parties;

B represents the total number of valid votes cast for the party that has forfeited seats;

C represents the number of seats in the council to be filled in the election; and

D represents the number of seats awarded to the forfeiting party.

(5) (a) The total number of valid votes cast for each party, excluding the party that has forfeited seats, must be divided by the quota of votes for a seat. The result is the total number of seats to which each party is entitled.

(b) If the calculation in paragraph (a) yields a surplus not absorbed by the seats awarded to a party, that surplus must compete with similar surpluses accruing to any other party or parties, and any undistributed seat or seats must be awarded to the party or parties concerned in sequence of the highest surplus.

(c) If the surplus for two or more parties is equal, the seat must be awarded to the party that received the highest number of valid votes.

(6) If no party is awarded a seat in terms of subitem (5)(a) the votes for each party must be treated in accordance with subitem (5)(b) as if they are surpluses.

(7) The chief electoral officer must determine in the manner provided in item 8(3) which party candidates are elected.

(8) If a party is entitled to an additional number of seats in terms of subitem (5) and its list of candidates does not contain a sufficient number of candidates, the party concerned, subject to subitem (1), forfeits the unfilled seats and the process provided in this item must be repeated until all seats have been filled or until all listed candidates have been allocated to a vacant seat.

10A. **Multiple seats**

If a candidate is assigned to more than one seat, item 17A of Schedule 1, adjusted as may be contextually necessary, applies.

[item 10A inserted by section 34(g) of Act 3 of 2021]

11. **Filling of vacancies**

(1) If a councillor elected from a party list ceases to hold office, the chief electoral officer must, subject to item 13, declare in writing the person whose name is on the top of the applicable party list to be elected in the vacancy.

(2) (a) Where a party list has become exhausted, item 10, adjusted as may contextually be necessary, applies to the supplementation of the list, and if the party fails to supplement its list, or if the party has ceased to exist, the vacancy must remain unfilled.

[subitem (a), previously unnumbered, numbered by section 29 of Act 51 of 2002]

(b) Whenever a councillor referred to in paragraph (a) ceases to hold office, the municipal manager concerned must within seven days after the councillor has ceased to hold office, inform the chief electoral officer thereof.

[subitem (b) added by section 29 of Act 51 of 2002]

12. **Causes of vacancies on lists**

A person who is a candidate on a party list ceases to be a candidate and a vacancy arises in the list when the party withdraws the person's name by written notice to the chief electoral officer or when that person —

(a) assumes office as a councillor;

(b) resigns from the list by written notice to the chief electoral officer;

(c) becomes ineligible to be a candidate;

(d) is disqualified or removed from the list in terms of any legislation;

(e) ceases to be a member of the party for which that person was listed as a party candidate; or

(f) ceases to be ordinarily resident in the municipality to which the list relates.

13. **Filling vacancies and changing the order**

(1) (a) A party may not supplement or change its list from the date of the closure of the nomination of candidates for an election until a day after the date of the first council meeting.

(b) (i) Subject to the provisions of paragraph (a), a party may supplement or increase its list, provided that if a councillor elected according to a party list, ceases to hold office, the party concerned may supplement or increase its list by not later than 21 days after the councillor has ceased to hold office.

(ii) The vacancy must be filled as soon as the party in question has supplemented, changed or increased its list, but not later than 14 days after the expiry of the 21-day period.

[subitem (1) substituted by section 30 of Act 51 of 2002 and by section 34(h) of Act 3 of 2021]

(2) If a party supplements, changes or increases its list in terms of subitem (1) it must provide the chief electoral officer with an amended list.

Part 2 – Allocation and election of representatives of local councils to district councils

[heading substituted by section 34(i) of Act 3 of 2021]

14. **Manner of election**

The section 23(2) members of a district council must be appointed by the councils of the local municipalities in the area of the district council from among their members.

[item 14 substituted by section 34(j) of Act 3 of 2021]

15. **Award of seats on district councils**

(1) The quota of registered voters that a local council must have in order to be entitled to a seat on a district council must be determined in accordance with the following formula (fractions to be disregarded)—

$$\frac{A}{B} + 1$$

Where—

A represents the total number of voters registered on the district council's segment of the national common voters' roll; and

B represents the number of seats on the district council determined in terms of section 23(2)(a) for representatives of the local councils but disregarding any increase in terms of section 20(5).

(2) Each local municipality in the area of a district municipality is entitled to a number of seats on the district council determined by dividing the total number of voters registered on the segment of the national common voters' roll for that local municipality by the quota of votes for a seat on the district council determined in accordance with subitem (1).

(3) If the calculation in subitem (2) gives a figure that is a fraction of the figure 1, the council must be awarded one seat and must not participate in any further calculation or award.

(4) If the calculation in subitem (2) yields a surplus, that surplus must compete with similar surpluses of any other council, and any seat or seats not awarded in terms of subitems (2) and (3) must be awarded in sequence of the highest surplus.

[item 15 substituted by section 34(k) of Act 3 of 2021]

16. **Electing local councils representatives to district councils**

(1) The chief electoral officer must manage the election of representatives of a local council to the district council.

(2) If a local council has been awarded one seat—

(a) any councillor may nominate a candidate;

(b) each councillor has one vote; and

(c) the candidate who receives the most votes is elected.

(3) If the council has been awarded more than one seat, the council must elect that number of members according to proportional representation as set out in items 17 to 22.

17. **Candidates lists**

(1) Every party or independent ward councillor may submit a candidates' list containing the names of councillors, accompanied by a written acceptance by each listed candidate.

[subitem (1) substituted by section 31(a) of Act 51 of 2002]

(2) A party or independent ward councillor may not submit more than one list.

[subitem (2) substituted by section 31(b) of Act 51 of 2002]

(3) The candidates' names must appear on the list in order of preference, starting with the first in order of preference and ending with the last.

(4) The name of a councillor may appear on one list only.

(5) Every party or independent ward councillor must seek to ensure that fifty per cent of the candidates on the candidates list are women and that women and men candidates are evenly distributed through the list.

[subitem (5) amended by section 31(c) of Act 51 of 2002]

18. **Number of votes**

Each councillor casts one vote for one fist only.

19. **Determining the quota**

In a local council, the quota of votes for a seat to the district council must be determined in accordance with the following formula (fractions to be disregarded)—

$$\frac{A}{B} + 1$$

Where—

A represents the number of members of the local council; and

B represents the number of seats that the local council has been awarded on the district council in accordance with item 15.

20. **Allocating seats**

(1) The number of votes cast in favour of each list must be divided by the quota of votes for a seat and the result is the number of seats allocated to that list.

(2) (a) If the calculation in subitem (1) gives a surplus, that surplus must compete with other similar surpluses of any other lists, and any seat or seats not allocated under subitem (1) must be awarded in sequence of the highest surplus.

[subitem (a), previously unnumbered, numbered by section 32 of Act 51 of 2002]

(b) If the surplus on one list is equal to the surplus on any other list, the seat or seats must be awarded in sequence of the highest number of votes cast for those lists.

[subitem (b) added by section 32 of Act 51 of 2002]

21. **Selecting names from the list**

The chief electoral officer, in accordance with the order of preference on a list, must select the number of candidates from the list that is equal to the number of seats allocated to that list.

22. **Insufficient lists**

In the case of a list containing fewer names than the number of seats allocated to that list, the corresponding provisions of item 10 must be applied to the extent that that item can be applied.

23. **Filling of vacancies of district councils**

[heading substituted by section 34(l) of Act 3 of 2021]

If a councillor elected from a candidates' list ceases to hold office or the list has become exhausted, the corresponding provisions of item 11 must be applied to the extent that that item can be applied.

24. ***

[item 24 repealed by section 34(m) of Act 3 of 2021]

Schedule 3

Election of municipal office-bearers

1. **Application**

The procedure set out in this Schedule applies whenever a municipal council meets to elect a speaker, an executive mayor, a deputy executive mayor, a whip, a mayor or a deputy mayor.

[item 1 substituted by section 35 of Act 3 of 2021]

2. **Nominations**

The person presiding at a meeting to which this Schedule applies must call for the nomination of candidates at the meeting.

3. **Formal requirements**

   (1) A nomination must be made on the form determined by the municipal manager.

   (2) The form on which a nomination is made must be signed by two members of the municipal council.

   (3) A person who is nominated must indicate acceptance of the nomination by signing either the nomination form or any other form of written confirmation.

4. **Announcement of names of candidates**

   At a meeting to which this Schedule applies, the person presiding must announce the names of the persons who have been nominated as candidates, but may not permit any debate.

5. **Single candidate**

   If only one candidate is nominated, the person presiding must declare that candidate elected.

6. **Election procedure**

   If more than one candidate is nominated—

   (a) a vote must be taken at the meeting by secret ballot;

   (b) each councillor present at the meeting may cast one vote; and

   (c) the person presiding must declare elected the candidate who receives a majority of the votes.

7. **Elimination procedure**

   (1) If no candidate receives a majority of the votes, the candidate who receives the lowest number of votes must be eliminated and a further vote taken on the remaining candidates in accordance with item 6. This procedure must be repeated until a candidate receives a majority of the votes.

   (2) When applying subitem (1), if two or more candidates each have the lowest number of votes, a separate vote must be taken on those candidates, and repeated as often as may be necessary to determine which candidate is to be eliminated.

8. **Further meetings**

   (1) If only two candidates are nominated, or if only two candidates remain after an elimination procedure has been applied, and those two candidates receive the same number of votes, a further meeting must be held within seven days at a time determined by the person presiding.

   (2) If a further meeting is held in terms of subitem (1), the procedure prescribed in this Schedule must be applied at that meeting as if it were the first meeting for the election in question.

   (3) If at the further meeting held in terms of subitem (1) only two candidates are nominated, or if only two candidates remain after an elimination procedure has been applied, and those two candidates receive the same number of votes, the person presiding at such meeting must determine by lot who of the two candidates will hold the office for which the election has taken place.

   [subitem (3) added by section 34 of Act 51 of 2002]

Schedule 4

[schedule 4 substituted by section 10 of Act 20 of 2002]

Part 1 – Method of allocating councillors elected from party lists to metropolitan subcouncils

1. **Allocating seats to parties**

(1) The seats in the section 63(1)(b) component of a metropolitan subcouncil are allocated to each party in accordance with the following formula (fractions to be disregarded)—

$$\frac{A}{B} \times C$$

Where—

A represents the total number of valid votes cast for each party on the party vote in the area of the metropolitan subcouncil;

B represents the total number of valid votes cast for each party on the party vote in the area of the metro council; and

C represents the total number of seats allocated to each party in the metro council in accordance with Part 3 of Schedule 1.

(2) If all the seats held by councillors elected to the metro council from party lists in accordance with Part 3 of Schedule 1 have not been allocated in terms of subitem (1), the remaining number of seats are allocated to the parties represented in the metro council in accordance with the following formula:

A — B = C

Where—

A represents the total number of seats allocated to a party in the metro council in accordance with Part 3 of Schedule 1;

B represents the total number of seats allocated to a party in terms of subitem (1); and

C represents a positive number.

(3) (a) The number of seats allocated to a party in terms of subitem (2) are distributed amongst the metropolitan subcouncils in sequence of the highest fractions obtained by that party for the respective subcouncils during the calculations in terms of subitem (1).

(b) If the fraction for two or more subcouncils is equal, and the number of seats still to be distributed are less than the number of subcouncils to which the equal fractions apply, the party must elect to which of those subcouncils such seats are to be distributed.

Part 2 – Principles of allocating councillors elected from party lists to metropolitan subcouncils

2. **Principles of allocating seats to parties**

The seats in the section 63(1)(b) component of a metropolitan subcouncil must be allocated to parties represented in the metro council in a manner that will allow parties and interests reflected in the metro council to be fairly represented in the metropolitan subcouncil in a manner consistent with democracy, taking into account the parties and interests reflected in the section 63(1)(a) component of that metropolitan subcouncil.

Part 3 – General principles

3. **Designation of councillors for metropolitan subcouncils**

   Each party represented in a metro council must designate from among the councillors not representing wards, its representatives to each metropolitan subcouncil in the municipality with regard to which seats were allocated to it in accordance with Part 1 or the principles set out in item 2.

4. **Councillors to serve on one metropolitan subcouncil only**

   No councillor may serve on more than one metropolitan subcouncil.

5. **Vacancies**

   Parties must fill vacancies as they occur.

Schedule 5

[Schedule 5 repealed by section 121 of Act 32 of 2000]

Schedule 6

[Schedule 6 repealed by section 7(2) of Act 3 of 2019]

Schedule 7

Code of conduct for Councillors

[Schedule 7 added by section 36 of Act 3 of 2021]

Preamble

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

1. **Definitions**

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

2. **General conduct of councillors**

   A councillor must—

   (a) perform the functions of office in good faith, honestly and in a transparent manner; and

   (b) at all times act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised.

3. **Voting at meetings**

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

4. **Attendance at meetings**

A councillor must attend each meeting of the municipal council and of a committee of which that councillor is a member, except when—

(a) leave of absence is granted in terms of an applicable law or as determined by the rules and orders of the council; or

(b) that councillor is required in terms of this Code to withdraw from the meeting.

5. **Sanctions for non-attendance of meetings**

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

(a) not attending a meeting which that councillor is required to attend in terms of item 4; or

(b) failing to remain in attendance at such a meeting.

(2) A councillor who is absent from three or more consecutive meetings of a municipal council, or from three or more consecutive meetings of a committee, which that councillor is required to attend in terms of item 4, must be removed from office as a councillor.

(3) (a) Proceedings for the imposition of a fine or the removal of a councillor must be conducted in accordance with a uniform standing procedure which each municipal council must adopt for the purposes of this item.

(b) The uniform standing procedure must comply with the rules of natural justice.

6. **Disclosure of interests**

(1) A councillor must—

(a) disclose to the municipal council, or to any committee of which that councillor is a member, any direct or indirect personal or private business interest that that councillor, or any spouse, partner or business associate of that councillor may have in any matter before the council or the committee; and

(b) withdraw from the proceedings of the council or committee when that matter is considered by the council or committee, unless the council or committee decides that the councillor's direct or indirect interest in the matter is trivial or irrelevant.

(2) A councillor who, or whose spouse, partner, business associate or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the municipality, must disclose full particulars of the benefit of which the councillor is aware at the first meeting of the municipal council.

(3) This section does not apply to an interest or benefit which a councillor, or a spouse, partner, business associate or close family member, has or acquires in common with other residents of the municipality.

7. **Personal gain**

(1) A councillor may not use the position or privileges of a councillor, or confidential information obtained as a councillor, for private gain or to improperly benefit another person.

(2) No councillor may be a party to or beneficiary under a contract for the provision of goods or services to any municipality or any municipal entity established by a municipality.

8. **Declaration of interests**

(1) When elected or appointed, a councillor must within 60 days declare in writing to the municipal manager the following financial interests held by that councillor:

(a) Shares and securities in any company;

(b) membership of any close corporation;

(c) interest in any trust;

(d) directorships;

(e) partnerships;

(f) other financial interests in any business undertaking;

(g) employment and remuneration;

(h) interest in property;

(i) pension; and

(j) subsidies, grants and sponsorships by any organisation.

(2) Any change in the nature or detail of the financial interests of a councillor must be declared in writing to the municipal manager annually.

(3) Gifts received by a councillor above a prescribed amount must also be declared in accordance with subitem (1).

(4) The municipal council must determine which of the financial interests referred in subitem (1) must be made public having regard to the need for confidentiality and the public interest for disclosure.

9. **Full-time councillors**

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

10. **Rewards, gifts and favours**

A councillor may not request, solicit or accept any reward, gift or favour for—

(a) voting or not voting in a particular manner on any matter before the municipal council or before a committee of which that councillor is a member;

(b) persuading the council or any committee in regard to the exercise of any power, function or duty;

(c) making a representation to the council or any committee of the council; or

(d) disclosing privileged or confidential information.

11. **Unauthorised disclosure of information**

(1) A councillor may not, without the permission of the municipal council or a committee, disclose any privileged or confidential information of the council or committee to any unauthorised person.

(2) For the purpose of this item "privileged or confidential information" includes any information—

(a) determined by the municipal council or committee to be privileged or confidential;

(b) discussed in closed session by the council or committee;

(c) disclosure of which would violate a person’s right to privacy; or

(d) declared to be privileged, confidential or secret in terms of law.

(3) This item does not derogate from the right of any person to access to information in terms of national legislation.

12. **Interference in administration**

A councillor may not, except as provided by law—

(a) interfere in the management or administration of any department of the municipal council, unless mandated by the council;

(b) give or purport to give any instruction to any employee of the council, except when authorised to do so;

(c) obstruct or attempt to obstruct the implementation of any decision of the council or a committee by an employee of the council; or

(d) encourage or participate in any conduct which would cause or contribute to maladministration in the council.

13. **Municipal property**

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

14. **Councillor in arrears**

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

15. **Breaches of Code**

(1) If the speaker of a municipal council, on reasonable suspicion, is of the opinion that a provision of this Code has been breached, the speaker must—

(a) authorise an investigation of the facts and circumstances of the alleged breach;

(b) give the councillor a reasonable opportunity to reply in writing regarding the alleged breach; and

(c) report the matter to a meeting of the municipal council after paragraphs (a) and (b) have been complied with.

(2) A report in terms of subitem (1)(c) is open to the public.

(3) The speaker must report the outcome of the investigation to the MEC for local government in the province concerned.

(4) The speaker must ensure that each councillor, when taking office, is given a copy of this Code and that a copy of the Code is available in every room or place where the council meets.

(5) If the speaker of council is the alleged perpetrator, or the speaker refuses to authorise an investigation, the council must establish a special committee, as contemplated in Item 16(1)(b), to investigate and make a finding on any alleged breach of this Code.

16. **Investigation of breach**

(1) A municipal council may—

(a) investigate and make a finding on any alleged breach of a provision of this Code; or

(b) establish a special committee—

(i) to investigate and make a finding on any alleged breach of this Code; and

(ii) to make appropriate recommendations to the council.

(2) If the council or a special committee finds that a councillor has breached a provision of this Code, the council may—

(a) issue a formal warning to the councillor;

(b) reprimand the councillor;

(c) request the MEC for local government in the province to suspend the councillor for a certain period;

(d) fine the councillor; or

(e) request the MEC to remove the councillor from office.

(3) The speaker must inform the MEC for local government in the province concerned within 14 days of the finding and sanction decided on by the council.

(4) (a) Any councillor who has been warned, reprimanded or fined in terms of paragraph (a), (b) or (d) of subitem (2) may within 14 days of having been notified of the decision of council appeal to the MEC for local government in writing setting out the reasons on which the appeal is based.

(b) A copy of the appeal must be provided to the council by the MEC.

(c) The council may within 14 days of receipt of the appeal referred to in paragraph (b) make any representation pertaining to the appeal to the MEC for local government in writing.

(d) The MEC for local government may, after having considered the appeal, confirm, set aside or vary the decision of the council and inform the councillor and the council of the outcome of the appeal.

(5) The MEC for local government may appoint a person or a committee to investigate any alleged breach of a provision of this Code and to make a recommendation as to the appropriate sanction in terms of subitem (2) if a municipal council does not conduct an investigation contemplated in subitem (1) and the MEC for local government considers it necessary

(6) The Commissions Act, 1947 (Act No. 8 of 1947), or, where appropriate, applicable provincial legislation, may be applied to an investigation in terms of subitem (4).

(7) If the MEC is of the opinion that the councillor has breached a provision of this Code, and that such contravention warrants a suspension or removal from office, the MEC may—

(a) suspend the councillor for a period and on conditions determined by the MEC; or

(b) remove the councillor from office.

(8) Any investigation in terms of this item and any action by the MEC in terms of subitem (7) must be in accordance with section 3 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

17. **Application of Code to traditional leaders**

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

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

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

(a) issue a formal warning to the traditional leader; or

(b) request the MEC for local government in the province to suspend or cancel the traditional leader's right to participate in the proceedings of the council.

(4) The MEC for local government may appoint a person or a committee to investigate any alleged breach of a provision of this Code and to make a recommendation on whether the right of the traditional leader to participate in the proceedings of the municipal council should be suspended or cancelled.

(5) The Commissions Act, 1947 (Act No. 8 of 1947), may be applied to an investigation in terms of subitem (4).

(6) If the MEC is of the opinion that the traditional leader has breached a provision of this Code, and that such breach warrants a suspension or cancellation of the traditional leader's right to participate in the council's proceedings, the MEC may—

(a) suspend that right for a period and on conditions determined by the MEC; or

(b) cancel that right.

(7) Any investigation in terms of this item and any action by the MEC in terms of subitem (6) must be in accordance with the rules of natural justice.

(8) The suspension or cancellation of a traditional leader's right to participate in the proceedings of a council does not affect that traditional leader's right to address the council in terms of section 81(3).