

Amendment of section 1 of Act 117 of 1998, as amended by section 93 of Act 27 of 2000 and section 3 of Act 19 of 2008

1. Section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the insertion before the definition of “by-election” of the following definition: 5
 “**‘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);” 10
- (b) by the insertion after the definition of “category” of the following definition: 10
 “**‘Code of Conduct’** means the Code of Conduct for councillors set out in Schedule 7;”
- (c) by the insertion after the definition of “councillor” of the following definition: 15
 “**‘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;” 20
- (d) by the deletion of the definition of “district management area”; 20
- (e) by the substitution for the definition of “election” of the following definition: 20
 “**‘election’**, in relation to a district council, means the election of the councillors referred to in section 23(1)(a) [and (c)];”
- (f) by the insertion after the definition of “local council” of the following definition: 25
 “**‘Local Government: Municipal Finance Management Act’** means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);”
- (g) by the insertion after the definition of “municipality” of the following definition: 30
 “**‘municipal public accounts committee’** means the committee established in terms of section 79A;” and
- (h) by the insertion after the definition of “ward committee” of the following definition: 35
 “**‘whip’** means a councillor elected in terms of section 41A to be the whip of a municipal council;”.

Repeal of section 6 of Act 117 of 1998, as amended by section 3 of Act 58 of 1999

2. Section 6 of the principal Act is hereby repealed.

Amendment of section 7 of Act 117 of 1998 40

3. Section 7 of the principal Act is hereby amended by the deletion of paragraph (c).

Substitution of section 9 of Act 117 of 1998

4. The following section is hereby substituted for section 9 of the principal Act:

“Types of category B municipalities

9. There are the following types of category B municipalities: 45
- (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[; 50
- (e) a municipality with a plenary executive system; and
- (f) a municipality with a plenary executive system combined with a ward participatory system].”.

Substitution of section 10 of Act 117 of 1998

5. The following section is hereby substituted for section 10 of the principal Act:

“Types of category C municipalities

10. There are the following types of category C municipalities:

- (a) a municipality with a collective executive system; and 5
- (b) a municipality with a mayoral executive system; and
- (c) **a municipality with a plenary executive system**.”

Amendment of section 12 of Act 117 of 1998, as amended by section 93 of Act 27 of 2000 and section 1 of Act 33 of 2000

6. Section 12 of the principal Act is hereby amended by the substitution in 10
subsection (3) for paragraph (eA) of the following paragraph:

- “(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 15
municipality to directly represent each local municipality; **and**
 - (iii) **proportionally represent parties from each district manage-
ment area within that district municipality;**”

Amendment of section 20 of Act 117 of 1998, as amended by section 4 of Act 33 of 2000 20

7. Section 20 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (b) of the following
paragraph: 25
“(b) may not be fewer than **[three]** 10 or more than 90 councillors, if
it is a local or district municipality; and”;
- (b) by the substitution in subsection (4) for paragraph (a) of the following
paragraph: 30
“(a) three of the number determined for the municipality in accord-
ance with the subsection (1) (a) formula, if 30 or fewer
councillors have been determined for the municipality in terms 30
of the formula, provided that a council of fewer than **[seven]** 10
may not be decreased; **[or]**”;
- (c) by the substitution in subsection (4) for paragraph (b) of the following
paragraph: 35
“(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”;
- (d) by the insertion in subsection (4) after paragraph (b) of the following
paragraph: 40
“(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, 45
and any deviation in terms of paragraph (a), (b) or (c) must be done with
the concurrence of the Minister.”

Amendment of section 21 of Act 117 of 1998, as amended by section 12 of Act 51 of 2002

8. Section 21 of the principal Act is hereby amended by the insertion after subsection 50
(1) of the following subsection:

- “(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.”

Insertion of section 21A in Act 117 of 1998

9. The following section is hereby inserted in the principal Act after section 21:

“Code of Conduct

21A. The Code of Conduct applies to every member of a municipal council.” 5

Amendment of section 22 of Act 117 of 1998

10. Section 22 of the principal Act is hereby amended—

(a) by the deletion of subsection (4); and

(b) by the addition of the following subsection:

“(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.” 10

Amendment of section 23 of Act 117 of 1998

11. Section 23 of the principal Act is hereby amended—

(a) by the deletion in subsection (1) of paragraph (c); 15

(b) by the substitution for subsection (2) of the following subsection:

“(2) The number of councillors representing local municipalities [and district management areas] in a district council referred to in subsection (1)(b) [and (c)] 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 20

(b) allocated to the respective local councils [and district management areas] in accordance with Part 2 of Schedule 2.”; and

(c) by the addition of the following subsection: 25

“(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.”

Amendment of section 25 of Act 117 of 1998, as amended by section 93 of Act 27 of 2000 30

12. Section 25 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively:

“(a) the Electoral Commission does not declare the result of the election [of a municipal council, or in a district management area, or in a ward,] 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); 35

(b) a court sets aside the election of a council, [or in a district management area,] or in a ward;”;

(b) by the insertion after subsection (2) of the following subsection:

“(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.”; 45

(c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“The [municipal manager of the municipality concerned] MEC for local government in the province, after consulting the Electoral Commission, must, by notice in [a local newspaper] the Provincial 50

Gazette, call and set a date for the by-election, which must be held within 90 days of the date—”;

- (d) by the deletion of subsection (4); and
- (e) by the substitution for subsection (6) of the following subsection: 5
- “(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.”. 10

Amendment of section 27 of Act 117 of 1998, as amended by section 93 of Act 27 of 2000, section 121 of Act 32 of 2000, section 2 of Act 20 of 2002 and section 10 of Act 55 of 2008 15

13. Section 27 of the principal Act is hereby amended—
- (a) by the insertion of the number (1) preceding the following words: 20
- “(1) A councillor vacates office during a term of office if that councillor—”;
- (b) by the substitution for paragraph (d) of the following paragraph: 25
- “(d) contravenes a provision of the Code of Conduct [for Councillors set out in Schedule 1 of the Local Government: Municipal Systems Act, 2000,] and is removed from office in terms of the Code;”;
- (c) by the substitution for paragraph (e) of the following paragraph: 30
- “(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”;
- (d) by the addition of the following subsection: 35
- “(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).”.

Amendment of section 29 of Act 117 of 1998, as amended by section 3 of Act 20 of 2002, section 9 of Act 2 of 2003 and section 11 of Act 55 of 2008 35

14. Section 29 of the principal Act is hereby amended by the insertion of the following subsection after subsection (1): 40
- “(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.”.

Insertion of section 29A in Act 117 of 1998

15. The following section is hereby inserted in the principal Act after section 29: 45
- “**Public notice of meetings of municipal councils** 45
- 29A.** 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; 50
- (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.”.

Amendment of section 30 of Act 117 of 1998

16. Section 30 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 “(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.”; and 5
- (b) by the substitution for subsection (4) of the following subsection:
 “(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.” 10

Amendment of section 36 of Act 117 of 1998

17. Section 36 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

- “(5) A councillor may not hold office as whip, speaker, mayor or executive mayor at the same time[, but in a municipality of a type mentioned in section 9(e) or (f) or 10(c) the speaker must be called the mayor].” 15

Amendment of section 37 of Act 117 of 1998, as amended by section 14 of Act 51 of 2002

18. Section 37 of the principal Act is hereby amended— 20

- (a) by the substitution for paragraphs (e) and (f) of the following paragraphs, respectively:
 “(e) must ensure compliance in the council and council committees with the Code of Conduct [set out in Schedule 1 to the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)]; [and] 25
 (f) must ensure that council meetings are conducted in accordance with the rules and orders of the council[.]”; and
- (b) by the addition of the following paragraphs:
 “(g) must ensure that the legislative authority of the municipality functions effectively; 30
 (h) is responsible for the effective oversight over the executive authority of the municipality;
 (i) must ensure the effectiveness of the committees of the municipal council established in terms of section 79; 35
 (j) is responsible for the ethics and accountability of the municipal council; and
 (k) must ensure the effectiveness and functionality of ward committees and the public participation processes.” 40

Insertion of sections 41A, 41B, 41C, 41D, 41E and 41F in Act 117 of 1998 40

19. The following sections are hereby inserted in the principal Act after section 41:

“Part 3**Whips of municipal councils****Election of whip**

- 41A.** (1) Each municipal council may elect a whip for the council who is also a municipal office bearer as set out in Schedule 3. 45
 (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. 50

(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.

Functions of whip

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41B. 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.

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Term of office of whip

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

Vacation of office

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41D. 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.

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Removal from office

41E. (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.

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Acting whips

41F. 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.”

Amendment of section 43 of Act 117 of 1998

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20. Section 43 of the principal Act is hereby amended—

- (a) by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) (a) If the council of a municipality establishes an executive committee, it must **[elect]** 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.

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

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

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- (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;

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- (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; 5
- (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 10
- (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.”; and 15
- (b) by the deletion of subsection (3).

Amendment of section 44 of Act 117 of 1998

21. Section 44 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

- “(b) the committee of a municipal council which receives reports from the [other] 20 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.”.

Amendment of section 45 of Act 117 of 1998 as substituted by section 1 of Act 1 of 2003 25

22. Section 45 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading: 30
“[Election] Determination of members of executive committees”;
and
- (b) by the substitution for the words preceding paragraph (a) of the following 30 words:
“A municipal council must [elect] determine the members of its executive committee from among its members at a meeting that must be held—”.

Amendment of section 46 of Act 117 of 1998 as substituted by section 1 of Act 1 of 2003 35

23. Section 46 of the principal Act is hereby amended by the substitution in section 46 for the words preceding paragraph (a) of the following words:

- “The members of an executive committee are [elected] determined for a term ending, subject to section 47, when—”. 40

Amendment of section 48 of Act 117 of 1998 as amended by Act 1 of 2003

24. Section 48 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) The election of a mayor and deputy mayor takes place when the executive committee is [elected] determined or when it is necessary to fill a vacancy.”. 45

Amendment of section 53 of Act 117 of 1998

25. Section 53 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

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

Amendment of section 56 of Act 117 of 1998, as amended by section 16 of Act 51 of 2002 5

26. Section 56 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) An executive mayor is entitled to receive reports from committees of the **[municipal]** council referred to in section 80, and to forward these reports together 10 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.”.

Amendment of section 63 of Act 117 of 1998

27. Section 63 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection: 15

“(3) Item 3 of the Code of Conduct **[for Councillors set out in Schedule 1 to the Local Government Municipal Systems Act, 2000,]** 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.”. 20

Amendment of section 73 of Act 117 of 1998, as amended by section 6 of Act 19 of 2008

28. Section 73 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) A metropolitan or local council must establish a ward committee 25 for each ward in the municipality within 120 days after the election of the municipal council, in accordance with section 22.”; and

(b) by the insertion after subsection (1) of the following subsection:

“(1A) (a) If a metropolitan or local council is unable to establish a ward committee or ward committees in accordance with subsection (1), 30 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 35 refusing the extension.”.

Insertion of section 79A in Act 117 of 1998

29. The following section is hereby inserted in the principal Act after section 79:

“Establishment of municipal public accounts committee

79A. (1) A municipal council must establish a committee called the 40 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. 45

(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 50 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; 5
- (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 10
- (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. 15
- (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.” 20

Amendment of section 81 of Act 117 of 1998, as amended by section 121 of Act 32 of 2000, section 5 of Act 33 of 2000 and section 18 of Act 51 of 2002

30. Section 81 of the principal Act is hereby amended by the substitution in subsection (5) for paragraph (a) of the following paragraph: 25

“(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 [1 of the Local Government: Municipal Systems Act, 2000] 7.”.

Repeal of section 89 of Act 117 of 1998

31. Section 89 of the principal Act is hereby repealed. 30

General amendment

32. Reference to sections “9(e) and (f) and 10(c)” in sections 45(c), 46(a), 48(5)(c)(ii), 55(1)(c), 57(1)(a), 57(2)(c)(ii) and 72(1) of the principal Act is hereby deleted.

Amendment of Schedule 1 to Act 117 of 1998, as amended by section 93 of Act 27 of 2000, sections 22, 23, 24, 25 and 26 of Act 51 of 2002 and section 9 of Act 2 of 2003 35

33. Schedule 1 to the principal Act is hereby amended—

(a) by the addition in item 16 of the following subitems:

“(3) A new quota of votes for a seat must be determined in accordance with the following formula (fractions to be disregarded): 40

$$\frac{A - B}{C - (D + E)} + 1$$

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; 45
- 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; 50
- 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.

- (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. 5
- (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. 10
- (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.
- (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. 15
- (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. 20
- (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.
- (8) The Electoral Commission must determine in the manner provided in item 13(5), which party candidates are elected. 25
- (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.”; 30
- (b) by the substitution in item 17 for subitem (1) of the following subitem:
 “(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.”; 35
- (c) by the insertion of the following item after item 17:
- “Multiple seats**
- 17A.** (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. 40
- (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. 45
- (3) If a ward seat allocation is deleted it shall lead to the holding of a by-election.”;
- (d) by the substitution in item 18(1) for paragraph (b) of the following paragraph:
 “(b) Whenever a councillor referred to in paragraph (a) ceases to hold office, the municipal manager concerned must within ~~seven~~ 14 days after the councillor has ceased to hold office, inform the chief electoral officer accordingly.”; 50
- (e) by the addition of the following paragraph in item 18(1):
 “(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 55

- electoral officer of the vacancy within 14 days where the municipal manager does not.”; and
- (f) by the substitution in item 20 for subitem (1) of the following subitem:
- “(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. 5
- (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. 10
- (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.”.

Amendment of Schedule 2 of Act 117 of 1998, as amended by section 93 of Act 27 of 2000, section 9 of Act 20 of 2002, section 27 of Act 51 of 2002, section 29 of Act 51 of 2002, section 30 of Act 51 of 2002, section 31 of Act 51 of 2002, section 9 of Act 2 of 2003 and section 17 of Act 55 of 2008 15

34. (1) Schedule 2 to the principal Act is hereby amended—

(a) by the substitution for item 2 of the following item:

“**Electoral system for party representatives** 20

2. The councillors of a district council that in terms of section 23 must be elected in accordance with this Part, must be elected [as follows:

(a) **a number of councillors determined for the municipality in terms of section 23(3) must be elected from party lists to proportionally represent parties in the council; and** 25

(b) **a number of councillors allocated in terms of section 23(2)(b) to any district management areas in the municipality must be elected from party lists to proportionally represent parties in those areas] from party lists to proportionally represent parties in the council.”;**

(b) by the substitution for item 3 of the following item: 30

“**Number of votes**

3. In an election for a district council, [—

(a)] each voter registered in the area of a local municipality within the district municipality has one vote, and may vote for one party only; **and** 35

(b) **each voter registered in a district management area within the district municipality has two votes, and may vote for—**

(i) **not more than one party that submitted a list for the district council; and**

(ii) **not more than one party that submitted a list for the district management area].”;** 40

(c) by the substitution in item 5 for subitem (1) of the following subitem:

“(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 [— 45

(a)] referred to in section 23(1)(a); **or**

(b) **to represent a district management area in the district council].”;**

(d) by the substitution for item 6 of the following item:

“Quota

6. The quota of votes for a seat in a district council **[or for a seat in a district council as a representative of a district management area,]** 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 10

B represents **[, as the case may be, either—**

(a)] the number of seats in the district council allocated in terms of section 23(1)(a); **or**

(b) the number of seats allocated to a district management area in the district council].”; 15

(e) by the substitution in item 8 for subitem (1) of the following subitem:

“(1) If only one party submitted a list, an election must not be held for the district council **[or in the district management area]** concerned.”;

(f) by the substitution in item (10) for subitem (1) of the following subitem:

“(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.”; 20

(g) by the insertion of the following item after item 10: 25

“Multiple seats

10A. If a candidate is assigned to more than one seat, item 17A of Schedule 1, adjusted as may be contextually necessary, applies.”;

(h) by the substitution in item 13 for subitem (1) of the following subitem:

“(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. 30

(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. 35

(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.”; 40

(i) by the substitution for the heading of Part 2 of the following heading:

“Part 2

Allocation and election of representatives of local councils [and district management areas] to district councils”;

(j) by the substitution for item 14 of the following item: 45

“Manner of election

14. The section 23(2) members of a district council must be [—

(a)] appointed by the councils of the local municipalities in the area of the district council from among their members **;** **and**

(b) if there is a district management area in the district municipality, elected in accordance with Part 1 of this Schedule to represent that area on the district council].”; 50

(k) by the substitution for item 15 of the following item:

“Award of seats on district councils

15. (1) The quota of registered voters that a local council [**or a district management area**] 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)— 5

$$\frac{A}{B} + 1$$

Where—

A represents the total number of voters registered on the district council’s segment of the national common [**voters roll**] voters’ roll; and 10

B represents the number of seats on the district council determined in terms of section 23(2)(a) for representatives of the local councils [**and district management areas**] but disregarding any increase in terms of section 20(5). 15

(2) Each local municipality [**and each district management area**] 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 [**or district management area**] by the quota of votes for a seat on the district council determined in accordance with subitem (1). 20

(3) If the calculation in subitem (2) gives a figure that is a fraction of the figure 1, the council [**or district management area,**] must be awarded one seat and must not participate in any further calculation or award. 25

(4) If the calculation in subitem (2) yields a surplus, that surplus must compete with similar surpluses of any other council [**or district management area**], and any seat or seats not awarded in terms of subitems (2) and (3) must be awarded in sequence of the highest surplus.”; 30

(l) by the substitution for the heading of item 23 of the following heading: 30
“**Filling of vacancies of district councils**”; and

(m) by the repeal of item 24.

Amendment of Schedule 3 to Act 117 of 1998, as amended by section 34 of Act 51 of 2002

35. Schedule 3 to the principal Act is hereby amended by the substitution for item (1) of the following item: 35

“Application

1. 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.”. 40

Addition of Schedule 7 to Act 117 of 1998

36. The following Schedule is hereby added to the principal Act:

“SCHEDULE 7**CODE OF CONDUCT FOR COUNCILLORS****PREAMBLE** 45

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 50

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. 5

Definitions

1. In this Schedule ‘partner’ means a person who permanently lives with another person in a manner as if married.

General conduct of councillors 10

2. 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. 15

Voting at meetings

3. 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. 20

Attendance at meetings

4. A councillor must attend each meeting of the municipal council and of a committee of which that councillor is a member, except when— 25

- (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.

Sanctions for non-attendance of meetings

5. (1) A municipal council may impose a fine as determined by the standing rules and orders of the municipal council on a councillor for— 30

- (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. 35

(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. 40

(b) The uniform standing procedure must comply with the rules of natural justice.

Disclosure of interests

6. (1) A councillor must— 45

- (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 50

(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.

Personal gain

7. (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.

Declaration of interests

8. (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.

Full-time councillors

9. 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.

Rewards, gifts and favours

10. 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.

Unauthorised disclosure of information

11. (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. 5
 (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; 10
 (b) discussed in closed session by the council or committee; 10
 (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.

Interference in administration 15

12. 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; 20
 (b) give or purport to give any instruction to any employee of the council, except when authorised to do so; 20
 (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.

Municipal property 25

13. 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.

Councillor in arrears

14. A councillor may not be in arrears to the municipality for rates and service charges for a period longer than three months. 30

Breaches of Code

15. (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— 35
 (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. 40
 (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. 45

(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.

Investigation of breach

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16. (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.

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(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;

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(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.

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(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.

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(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.

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(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.

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(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).

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(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—

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(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).

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Application of Code to traditional leaders

17. (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.

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(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. 5
- (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. 10
- (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— 15
- (a) suspend that right for a period and on conditions determined by the MEC; or 20
 - (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).". 25

Repeal of laws

37. Section 19, section 54 and Schedule 1 to the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), are hereby repealed.

Transitional arrangements 30

38. A municipality with a plenary executive system immediately before the commencement of this Act, will continue to exist as a municipality with a plenary executive system until the date of the first local government election after commencement of this Act.

Short title and commencement 35

39. This Act is called the Local Government: Municipal Structures Amendment Act, 2021, and comes into operation on a date to be determined by the President by proclamation in the *Gazette*.