

CODE OF CONDUCT FOR COUNCILLORS

[Schedule 7 added by s. 36 of Act 3 of 2021 (wef 1 November 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.