

CODE OF CONDUCT FOR COUNCILLORS

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-

- perform the functions of office in good faith, honestly and in a transparent manner; and
- 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-

- leave of absence is granted in terms of an applicable law or as determined by the rules and orders of the council; or
- that councillor is required in terms of this Code to withdraw from the meeting.

5 Sanctions for non-attendance of meetings

- A municipal council may impose a fine** as determined by the standing rules and orders of the municipal council on a councillor for-
 - not attending a meeting which that councillor is required to attend in terms of item 4; or
 - failing to remain in attendance at such a meeting.
- 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.
- (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

- A councillor must-**
 - 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
 - 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.
- 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.
- 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

- 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.
- 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

- 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:
 - Shares and securities in any company;
 - membership of any close corporation;
 - interest in any trust;
 - directorships;
 - partnerships;
 - other financial interests in any business undertaking;
 - employment and remuneration;
 - interest in property;
 - pension; and
 - subsidies, grants and sponsorships by any organisation.
- Any change** in the nature or detail of the financial interests of a councillor must be declared in writing to the municipal manager annually.
- Gifts received** by a councillor above a prescribed amount must also be declared in accordance with subitem (1).
- 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-

- 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;
- persuading the council or any committee in regard to the exercise of any power, function or duty;
- making a representation to the council or any committee of the council; or
- disclosing privileged or confidential information.

11 Unauthorised disclosure of information

- 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.
- For the purpose of this item **'privileged or confidential information'** includes any information-
 - determined by the municipal council or committee to be privileged or confidential;
 - discussed in closed session by the council or committee;

- disclosure of which would violate a person's right to privacy; or
 - 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-

- interfere in the management or administration of any department of the municipal council, unless mandated by the council;
- give or purport to give any instruction to any employee of the council, except when authorised to do so;
- obstruct or attempt to obstruct the implementation of any decision of the council or a committee by an employee of the council; or
- 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

- 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-**
 - authorise an investigation of the facts and circumstances of the alleged breach;
 - give the councillor a reasonable opportunity to reply in writing regarding the alleged breach; and
 - report the matter to a meeting of the municipal council after paragraphs (a) and (b) have been complied with.
- A report** in terms of subitem (1) (c) is open to the public.
- The speaker must report the **outcome of the investigation** to the MEC for local government in the province concerned.
- 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.
- 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

- A municipal council may-**
 - investigate and make a finding on any alleged breach of a provision of this Code; or
 - establish a special committee-
 - to investigate and make a finding on any alleged breach of this Code; and
 - to make appropriate recommendations to the council.
- If the council or a special committee finds that a **councillor has breached a provision of this Code**, the council may-
 - issue a formal warning to the councillor;
 - reprimand the councillor;
 - request the MEC for local government in the province to suspend the councillor for a certain period;
 - fine the councillor; or
 - request the MEC to remove the councillor from office.
- 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.
- (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.
- 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.
- 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.
- 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.
- The Commissions Act, 1947** (Act 8 of 1947), or, where appropriate, applicable provincial legislation, may be applied to an investigation in terms of subitem (4).
- 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-
 - suspend the councillor for a period and on conditions determined by the MEC; or
 - remove the councillor from office.
- An 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 3 of 2000).

17 Application of Code to traditional leaders

- 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.
- These items must be applied to the traditional leader in the **same way** they apply to councillors.
- 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-**
 - issue a formal warning to the traditional leader; or
 - 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.
- 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.
- The Commissions Act, 1947** (Act 8 of 1947), may be applied to an investigation in terms of subitem (4).
- 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-**
 - suspend that right for a period and on conditions determined by the MEC; or
 - cancel that right.
- 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**.
- 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).