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GOVERNMENT GAZETTE

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THE PRESIDENCY

No. 1187. 20 November 2000

It is hereby notified that the Acting President has assented to the following Act which is hereby published for general information:—

No. 32 of 2000: Local Government: Municipal Systems Act, 2000.

DIE PRESIDENSIE

No. 1187. 20 November 2000

Hierby word bekend gemaak dat die Waarnemende President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 32 van 2000: Wet op Plaaslike Regering: Munisipale Stelsels, 2000.

(English text signed by the Acting President.)
(Assented 1014 November 2000.)

ACT

To provide for the core principles, mechanisms **and processes that are necessary to enable municipalities to move progressively towards the social and economic upliftment of local communities, and ensure universal access to essential services that are affordable to all; to define the legal nature of a municipality as including the local community within the municipal area, working in partnership with the municipality's political and administrative structures; to provide for the manner in which municipal powers and functions are exercised and performed; to provide for community participation; to establish a simple and enabling framework for the core processes of planning, performance management, resource mobilisation and organisational change which underpin the notion of developmental local government; to provide a framework for local public administration and human resource development; to empower the poor and ensure that municipalities put in place service tariffs and credit control policies that take their needs into account by providing a framework for the provision of services, service delivery agreements and municipal service districts; to provide for credit control and debt collection; to establish a framework for support,, monitoring and standard setting by other spheres of government in order to progressively build local government into an efficient, frontline development agency capable of integrating the activities of all spheres of government for the overall social and economic upliftment of communities in harmony with their local natural environment; to provide for legal matters pertaining to local government; and to provide for matters incidental thereto.**

PREAMBLE

Whereas the system of local government under apartheid failed dismally to meet the basic needs of the majority of South Africans;

Whereas the Constitution of our non-racial democracy enjoins local government not just to seek to provide services to all our people but to be fundamentally developmental in orientation;

Whereas there is a need to set out the core principles, mechanisms and processes that give meaning to developmental local government and to empower municipalities to move progressively towards the social and economic upliftment of communities and the provision of basic services to all our people, and specifically the poor and the disadvantaged;

Whereas a fundamental aspect of the new local government system is the active engagement of communities in the affairs of municipalities of which they are an integral part, and in particular in planning, service delivery and performance management;

Whereas the new system of local government requires an efficient, effective and transparent local public administration that conforms to constitutional principles;

Whereas there is a need to ensure financially and economically viable municipalities;

Whereas there is a need to create a more harmonious relationship between municipal councils, municipal administrations and the local communities through the acknowledgement of reciprocal rights and duties;

Whereas there is a need to develop a strong system of local government capable of exercising the functions and powers assigned to it; and

Whereas this Act is an integral part of a suite of legislation that gives effect to the new system of local government;

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

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CHAPTER 1

INTERPRETATION

Definitions

1. In this Act, unless inconsistent with the context—

"basic municipal services" means a municipal service that is necessary m ensure an acceptable and reasonable quality of life and, if not provided, would endanger public health or safety or the environment;

"by-law" means legislation passed by the council of a municipality binding in the municipality on the persons to whom it applies;

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

"citizen" means a citizen of the Republic as envisaged in section 3 of the Constitution:

"Code of Conduct", in relation to—

(a) a councillor, means [he Code of Conduct set out in Schedule 1; and

(b) a staff member of a municipality, means the Code of Conduct set out in Schedule 2;

"councillor" means a member of a municipal council;

"delegating authority"—

(a) in relation to a delegation of a power or duty by a municipal council, means the municipal council; or

(b) in relation to a subdelegation of a power or duty by another political structure, or by a political office bearer, councillor or staff member of a municipality, means that political structure, political office bearer, councillor or staff member;

"delegation", in relation to a duty, includes an instruction to perform the duty, and **"delegate"** has a corresponding meaning;

"development" means sustainable development. and includes integrated social, economic, environmental, spatial, infrastructural, institutional, organisational and human resources upliftment of a community aimed at—

(a) improving the quality of life of its members with specific reference to the poor and other disadvantaged sections of the community; and

(b) ensuring that development serves present and future generations;

"district municipality" means a category C municipality envisaged in section 155(1)*(c)* of the Constitution;

"environmentally sustainable", in relation to the provision of a municipal service, means the provision of a municipal service in a manner aimed at ensuring that—

(a) the risk of harm to the environment and to human health and safety is minimised to the extent reasonably possible under the circumstances;

(b) the potential benefits to the environment and to human health and safety are maximised to the extent reasonably possible under the circumstances: and

(c) legislation intended to protect the environment and human health and safety is complied with;

"executive authority", in relation to a municipality, means the municipality's executive authority envisaged in section 156 of the Constitution. read with section 11 of this Act:

"financially sustainable", in relation to the provision of a municipal service, means the provision of a municipal service in a manner aimed at ensuring that the financing of that service from internal and external sources, including budgeted income, grants and subsidies for the service, is sufficient [o cover the costs of—

(a) the initial capital expenditure required for the service;

(b) operating the service; and

(c) maintaining, repairing and replacing the physical assets used in the provision of' the service;

"integrated development plan" means a plan envisaged in section 25;

"labour legislation" includes collective agreements in terms of tbe Labour Relations Act. 1995 (Act No. 66 of 1995);

"local community" or **"community"**, in relation to a municipality. means that body of persons comprising—

(a) the residents of the municipality;

(b) tbe ratepayers of the municipality:

(c) any civic organisations and non-governmental, private sector or labour organisations or bodies which are involved in local affairs within the municipality: and

(d) visitors and other people residing outside the municipality who, because of their presence in the municipality. make use of services or facilities provided by the municipality,

and includes, more specifically, the poor and other disadvantaged sections of such body of persons;

"local municipality'" means a category B municipality envisaged in section 155(1)*(b)* of the Constitution:

"MEC" means a member of a provincial Executive Council;

"MEC for local government" means the MEC responsible for local government in a province;

"Minister" means the national Minister responsible for local government;

"municipal council" or "council" means a municipal council referred to in section 157(1) of the Constitution;

"municipal entity" means—

(a) a company, co-operative, trust, fund or any other corporate entity established in terms of any applicable national or provincial legislation and which operates under the ownership control of one or more municipalities. and includes, in the case of a company under' such ownership control, any subsidiary of (hat company; or

(b) a service utility;

"municipality". when referred to as—

(a) an entity. means a municipality as described in section 2; and

(b) a geographic area, means a municipal area determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);

"municipal manager" means a person appointed in terms of section 82 of the Municipal Structures Act;

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

"national organ of state" means an organ of state functioning within the national sphere of government;

"organised local government" means an organisation recognised in terms of section 2 (1) of the Organised Local Government Act, 1997 (Act No. 52 of 1997). to represent local government nationally or provincially;

"organ of state" means an organ of state as defined in section **239** of the Constitution;

"ownership control", in relation to a company. co-operative, trust, fund or any other corporate entity established in terms of any applicable national or provincial legislation, means the ability to exercise any of the following powers to govern the financial and operating policies of the entity in order to obtain benefits from its activities:

(a) To appoint or remove at least the majority of the board of directors or equivalent governing body:

(b) to appoint or remove that entity's chief executive officer:

(c) to cast at least the majority of the votes at meetings of the board of directors or equivalent governing body: or

(d) to control at least the majority of the voting rights at a general meeting in the case of a company, co-operative or other body having members:

"political office bearer" means the speaker. executive mayor. mayor, deputy mayor or a member of the executive committee as referred to in the Municipal Structures Act;

"political structure". in relation to a municipality, means the council of the municipality or any committee or other collective structure of a municipality elected, designated or appointed in terms of a specific provision of the Municipal Structures Act:

"prescribe" means prescribe by regulation or guidelines in terms of section 120, and **"prescribed" has a** corresponding meaning;

"Provincial *Gazette"* means the official gazette of the province concerned:

"provincial organ of state" means an organ of state functioning within the provincial sphere of government;

"ratepayer", in relation to a municipality. means a person who is liable to the municipality for the payment of—

(a) rates on property in the municipality:

(b) any other tax, duty or levy imposed by the municipality; or

(c) fees for services provided either by the municipality or in terms of a service delivery agreement;

"resident", in relation to a municipality, means a person who is ordinarily resident in the municipality;

"service authority" means the power of a municipality to regulate the provision of a municipal service by a service provider;

"service delivery agreement" means an agreement between a municipality and an institution or person mentioned in section 76*(b)* in terms of which a municipal service is provided by that institution or person, either for its own account or on behalf of the municipality;

"service provider" means a person or institution or any combination of persons and institutions which provide a municipal service;

"service utility" means a municipal entity established in terms of section 82(I)(c);

"staff', in relation to a municipality, means the employees of the municipality, including the municipal manager;

"this Act" includes any regulations made in terms of section 120;

"type", in relation to municipalities, means a type of municipality envisaged in section 155(2) of the Constitution, and defined in Pm-t 2 of Chapter 1 of the Municipal Structures Act.

CHAPTER 2

LEGAL NATURE AND RIGHTS AND DUTIES OF MUNICIPALITIES

Legal nature

2. A municipality—

(a) is an organ of state within the local sphere of government exercising legislative and executive authority within an area determined in terms of the Local Government: Municipal Demarcation Act, 1998;

(b) consists of—

(i) the political structures and administration of the municipality; and

(ii) the community of the municipality;

(c) functions in its area in accordance with the political, statutory and other relationships between its political structures, political office bearers and administration and its community; and

(d) has a separate legal personality which excludes liability on the part of its community for the actions of the municipality.

Co-operative government

3. (1) Municipalities must exercise their executive and legislative authority within the constitutional system of co-operative government envisaged in section 41 of the Constitution.

(2) The national and provincial spheres of government must, within the constitutional system of co-operative government envisaged in section 41 of [he Constitution, exercise their executive and legislative authority in a manner that does not compromise or impede a municipality's ability or right to exercise its executive and legislative authority.

(3) For the purpose of effective co-operative government, organised local government must seek to—

(a) develop common approaches for local government as a distinct sphere of government;

(b) enhance co-operation. mutual assistance and sharing of resources among municipalities;

(c) find solutions for problems relating to local government generally: and

(d) facilitate compliance with the principles of co-operative government and intergovernmental relations.

Rights and duties of municipal councils

4. (1) The council of a municipality has the right to—
(a) govern on its own initiative the local government affairs of the local community;
(b) exercise the municipality 's executive and legislative authority, and to do so without improper interference; and
(c) finance the affairs of the municipality by—
(i) charging fees for services; and
(ii) imposing surcharges on fees, rates on property and, to the extent authorised by national legislation. other taxes, levies and duties.

(2) The council of a municipality, within the municipality's financial and administrative capacity and having regard to practical considerations, has the duty to—
(a) exercise the municipality's executive and legislative authority and use the resources of the municipality in the best interests of the local community;
(1?) provide, without favour or prejudice, democratic and accountable government;
(c) encourage the involvement of the local community;
(d) strive to ensure that municipal services are provided to the local community in a financially and environmentally sustainable manner;
(e) consult the local community about—
(i) the level, quality, range and impact of municipal services provided by the municipality, either directly or through another service provider: and
(ii) the available options for service delivery:
(f) give members of the local community equitable access to the municipal services to which they are entitled:
(g) promote and undertake development in the municipality;
(h) promote gender equity in the exercise of the municipality's executive and legislative authority;
(i) promote a safe and healthy environment in the municipality: and
(j) contribute, together with other organs of state, to the progressive realisation of the fundamental rights contained in sections 24, 25, 26, 27 and 29 of' the Constitution.

(3) A municipality must in the exercise of its executive and legislative authority respect the rights of citizens and those of other persons protected by the Bill of Rights.

Rights and duties of members of local community

5. (1) Members of the local community have the right—
(a) through mechanisms and in accordance with processes and procedures provided for in terms of this Act or other applicable legislation to—
(i) contribute to the decision-making processes of the municipality: and
(ii) submit written or oral recommendations, representations and complaints to the municipal council or to another political structure or a political office bearer or the administration of the municipality;
(b) to prompt responses to their written or oral communications, including complaints, to the municipal council or to another political structure or a political office bearer or the administration of the municipality;
(c) to be informed of decisions of the municipal council, or another political structure or any political office bearer of the municipality, affecting their rights, property and reasonable expectations;
(d) to regular disclosure of the state of affairs of the municipality. including its finances;
(e) to demand that the proceedings of the municipal council and those of its committees must be—
(i) open to the public, subject to section 20:
(ii) conducted impartially and without prejudice; and
(iii) untainted by personal self-interest;

(f) to the use and enjoyment of public facilities: and
(g) to have access to municipal services which the municipality provides, provided the duties set out in subsection (2)(b) are complied with.

(2) Members of the local community have the duty—
(a) when exercising their rights, to observe the mechanisms, processes and procedures of the municipality;
(b) where applicable, and subject to section 97(1)(c), to pay promptly service fees, surcharges on fees, rates on property and other taxes, levies and duties imposed by the municipality:
(c) to respect the municipal rights of other members of the local community;
(d) to allow municipal officials reasonable access to their property for the performance of municipal functions; and
(e) to comply with by-laws of the municipality applicable to them.

Duties of municipal administrations

6. (1) A municipality's administration is governed by the democratic values and principles embodied in section 195(1) of the Constitution.

(2) The administration of a municipality must—
(a) be responsive to the needs of the local community;
(b) facilitate a culture of public service and accountability amongst staff;
(c) take measures to prevent corruption;
(d) establish clear relationships, and facilitate co-operation and communication. between it anti the local community;
(e) give members of the local community full and accurate information about the level and standard of municipal services they are entitled to receive; and
(f) inform the local community how the municipality is managed, of the costs involved and the persons in charge.

Exercise of rights and performance of duties

7. The rights and duties of municipal councils and of the members of the local community, and the duties of the administrations of municipalities, as set out in sections 4, 5 and 6, are subject to the Constitution, the other provisions of this Act and other applicable legislation.

CHAPTER 3

MUNICIPAL FUNCTIONS AND POWERS

General empowerment

8. (1) A municipality has all the functions and powers conferred by or assigned to it in terms of the Constitution, and must exercise them subject to Chapter 5 of the Municipal Structures Act.

(2) A municipality has the right to do anything reasonably necessary for, or incidental to, the effective performance of its functions and [he exercise of its powers.

Assignments initiated by the executive to municipalities generally

9.(1) A Cabinet member or Deputy Minister initiating the assignment of a function or a power by way of national legislation to municipalities generally must. before the draft legislation providing for the assignment is introduced in Parliament—
t consult the Minister, the national Minister of Finance and organised local government representing local government nationally:
(b) consider any assessment by the Financial and Fiscal Commission in terms of subsection (4): and

(c) publish the draft legislation in terms of section 154(2) of the Constitution.

(2) An MEC initiating the assignment of a function or a power by way of provincial legislation to municipalities in the province generally must, before the draft legislation providing for the assignment is introduced in the relevant provincial legislature—

(a) consult the MEC responsible for finance in the province, the MEC for local government in the province and organised local government representing local government in the province;

(b) consider any assessment by the Financial and Fiscal Commission in terms of subsection (4); and

(c) publish the draft legislation in terms of section 154 (2) of the Constitution.

(3) The Cabinet member, Deputy Minister or MEC initiating the national or provincial legislation referred to in subsections (1) and (2), must take appropriate steps to ensure sufficient funding, and capacity building initiatives as may be needed, for the performance of the assigned function or power by the municipalities concerned if—

(a) the assignment imposes a duty on the municipalities concerned;

(b) that duty falls outside the functional areas listed in Part B of Schedule 4 or Part B of Schedule 5 to the Constitution or is not incidental to any of those functional areas; and

(c) the performance of that duty has financial implications for the municipalities concerned.

(4) The Cabinet member, Deputy Minister or MEC initiating the national or provincial legislation referred to in subsections (1) and (2), must request the Financial and Fiscal Commission to make an assessment of the financial implications of the legislation.

Assignments initiated by the executive to specific municipalities

10. (1) A Cabinet member initiating the assignment of a function or a power to any specific municipality—

(a) by way of national legislation, must consult the Minister before the draft legislation providing for the assignment is introduced in Parliament: or

(b) by way of an agreement in terms of section 99 of the Constitution, must consult the Minister before the agreement is concluded.

(2) An MEC initiating the assignment of a function or a power to any specific municipality—

(a) by way of provincial legislation, must consult the MEC for local government in the province before the draft legislation providing for the assignment is introduced in the relevant provincial legislature; or

(b) by way of an agreement in terms of section 126 of the Constitution, must consult the Minister before the agreement is concluded.

(3) The Cabinet member or MEC initiating the legislation or agreement referred to in subsections (1) and (2), respectively, must take appropriate steps to ensure sufficient funding, and capacity building initiatives as may be needed, for the performance of the assigned function or power by the municipality concerned if—

(a) the assignment of the function or power imposes a duty on the municipality concerned;

(b) that duty falls outside the functional areas listed in Part B of Schedule 4 or Part B of Schedule 5 to the Constitution or is not incidental to any of those functional areas; and

(c) the performance of that duty has financial implications for the municipality concerned.

Executive and legislative authority

11. (1) The executive and legislative authority of a municipality is exercised by the council of the municipality, and the council takes all the decisions of the municipality subject to section 59.

(2) A municipality may exercise executive and legislative authority within its boundaries only, but may, by written agreement with another municipality and subject to Chapter 5 of the Municipal Structures Act and other applicable national legislation, exercise executive authority in the area of that other municipality.

(3) A municipality exercises its legislative or executive authority by—

(a) developing and adopting policies, plans, strategies and programmed, including setting targets for delivery;

(b) promoting and undertaking development:

(c) establishing and maintaining an administration;

(d) administering and regulating its internal affairs and the local government affairs of the local community;

(e) implementing applicable national and provincial legislation and its by-laws;

(f) providing municipal services to the local community. *or* appointing appropriate service providers in accordance with the criteria and process set out in section 78;

(g) monitoring and, where appropriate, regulating municipal services where those services are provided by service providers other than the municipality;

(h) preparing, approving and implementing its budgets;

(i) imposing and recovering rates, taxes. levies, duties, service fees and surcharges on fees, including setting and implementing tariff, rates and tax and debt collection policies;

(j) monitoring the impact and effectiveness of any services, policies, programmed *or* plans;

(k) establishing and implementing performance management systems:

(l) promoting a safe and healthy environment;

(m) passing by-laws and taking decisions on any of the above-mentioned matters; and

(n) doing anything else within its legislative and executive competence.

(4) A decision taken by a municipal council or any other political structure of the municipality must be recorded in writing.

Legislative procedures

12. (1) Only a member or committee of a municipal council may introduce a draft by-law in the council.

(2) A by-law must be made by a decision taken by a municipal council—

(a) in accordance with the rules and orders of the council; and

(b) with a supporting vote of a majority of its members.

(3) No by-law may be passed by a municipal council unless—

(a) all the members of the council have been given reasonable notice; and

(b) the proposed by-law has been published for public comment in a manner that allows the public an opportunity to make representations with regard to the proposed by-law.

(4) Subsections (1) to (3) also apply when a municipal council incorporates by reference, as by-laws, provisions of—

(a) legislation passed by another legislative organ of state: or

(b) standard draft by-laws made in terms of section 14.

Publication of by-laws

13. A by-law passed by a municipal council—

(a) must be published promptly in the *Provincial Gazette*, and. when feasible, also in a local newspaper or in any other practical way to bring the contents of the by-law to the attention of the local community: and

(b) takes effect when published or on a future date determined in or in terms of the by-law.

Standard draft by-laws

14. (1) *(a)* The Minister, at the request of organised local government representing local government nationally, or after consulting the MECS for local government and organised local government, may by notice in the *Gazette*—

(i) make standard draft by-laws concerning any matter, including standard draft rules and orders referred to in section 160(6) of the Constitution, for which municipal councils may make by-laws; and

(ii) amend any standard draft by-laws made in terms of subparagraph (i).

(b) Before making any standard draft by-laws or amendment in terms of paragraph *(a)*, the Minister must—

(i) publish the proposed standard draft by-laws or amendment in the *Gazette* for public comment; and

(ii) consult the Cabinet member concerned if those standard draft by-laws or amendment affect that Cabinet member's area of responsibility.

(2) *(a)* An MEC for local government, on request by organised local government representing local government in the province, or after consulting the Minister and organised local government, may by notice in the *Provincial Gazette*—

(i) make standard draft by-laws concerning any matter for which municipal councils in the province may make by-laws; and

(ii) amend any standard draft by-laws made in terms of subparagraph (i).

(b) Before making any standard draft by-laws or amendment in terms of paragraph *(a)*, the MEC must—

(i) publish the proposed standard draft by-laws or amendment in the *Provincial Gazette* for public comment: and

(ii) consult the MEC concerned if those standard draft by-laws or amendment affect that MEC'S area of responsibility.

(3) *(a)* A standard draft by-law or an amendment of a standard draft by-law is applicable in a municipality only if, and to the extent and subject to any modifications and qualifications, adopted by the council of that municipality.

(b) The repeal of a standard draft by-law after it has been adopted by a municipality does not affect the continuation of that by-law in that municipality.

(4) If a municipal council intends to adopt a standard draft by-law with or without any modifications or qualifications, it must follow the procedure set out in section 12 (3) end, after adoption, publish the by-law in accordance with section 13.

Municipal code

15. (1) A municipality must compile and maintain in bound or loose-leaf form, and when feasible also in electronic format, a compilation of all its by-laws, including any provisions incorporated by reference as by-laws of the municipality.

(2) This compilation, to be known as the municipal code, must be—

(a) constantly updated and annotated; and

(b) kept at the municipality's head office as the municipality's official record of all applicable by-laws.

(3) The municipality, at the request of a member of the public, must provide that person with a copy of or an extract from its municipal code against payment of a reasonable fee determined by the municipal council.

CHAPTER 4

COMMUNITY PARTICIPATION

Development of culture of community participation

16. (1) A municipality must develop a culture of municipal governance that complements formal representative government with a system of participatory governance, and must for this purpose—

(a) encourage, and create conditions for, the local community to participate in the affairs of the municipality, including in—

(i) the preparation. implementation and review of its integrated development plan in terms of Chapter 5;

(ii) the establishment, impiernentation and review of its performance management system in terms of Chapter 6:

(iii) the monitoring and review of its performance, including the outcomes and impact of such performance:

(iv) the preparation of its budget; and

(v) strategic decisions relating to the provision of municipal services in terms of Chapter 8;

(b) contribute to building the capacity of—

(i) the local community [o enable it to participate in the affairs of the municipality; and

(ii) councillors and staff to foster community participation; and

(c) use its resources, and annually allocate funds in its budget, as may be appropriate for the purpose of implementing paragraphs *(a)* and *(b)*.

(2) Subsection (1) must not be interpreted as permitting interference with a municipal council's right to govern and to exercise the executive and legislative authority of the municipality.

Mechanisms, processes and procedures for community participation

17. (1) Participation by the local community in the affairs of the municipality must take place through—

(a) political structures for participation in terms of the Municipal Structures Act;

(b) the mechanisms, processes and procedures for participation in municipal governance established in terms of this Act;

(c) other appropriate mechanisms, processes and procedures established by the municipality;

(d) councillors; and

(e) generally applying the provisions for participation as provided for in this Act.

(2) A municipality must establish appropriate mechanisms, processes and procedures to enable the local community to participate in the affairs of the municipality, and must for this purpose provide for—

(a) the receipt, processing and consideration of petitions and complaints lodged by members of the local community;

(b) notification and public comment procedures, when appropriate:

(c) public meetings and hearings by the municipal council and other political structures and political office bearers of the municipality, when appropriate;

(d) consultative sessions with locally recognised community organisations and, where appropriate, traditional authorities; and

(e) report-back to the local community.

(3) When establishing mechanisms, processes and procedures in terms of subsection (2) the municipality must take into account the special needs of—

(a) people who cannot reed or write;

(b) people with disabilities:

(c) women: and

(d) other disadvantaged groups.

(4) A municipal council may establish one or more advisory committees consisting of persons who are not councillors to advise the council on any matter within the council's competence. When appointing the members of such a committee, gender represent% ity must be taken into account.

Communication of information concerning community participation

18. (1) A municipality must communicate to its community information concerning—

(a) the available mechanisms, processes and procedures to encourage and facilitate community participation;

(b) the matters with regard to which community participation is encouraged;

(c) the rights and duties of members of the local community; and

(d) municipal governance, management and development.

(2) When communicating the information mentioned in subsection (1), a municipality must take into account—

(a) language preferences and usage in the municipality; and

(b) the special needs of people who cannot read or write.

Public notice of meetings of municipal councils

19. The municipal manager of a municipality must give notice to the public, in a manner deter-mined by the municipal council, of the time, date and venue of every—

(a) ordinary meeting of the council; and

(b) special or urgent meeting of the council, except when time constraints make this impossible.

Admission of public to meetings

20. (1) Meetings of a municipal council and those of its committees are open to the public, including the media, and the council or such committee may not exclude the public, including the media, from a meeting, except when—

(a) it is reasonable to do so having regard to the nature of the business being transacted; and

(b) a by-law or a resolution of the council specifying the circumstances in which the council or such committee may close a meeting and which complies with paragraph *(a)*. authorises the council or such committee to close the meeting to the public.

(2) A municipal council, or a committee of the council, may not exclude the public. including the media, when considering or voting on any of the following matters:

(a) A draft by-law tabled in the council;

(b) a budget tabled in the council;

(c) the municipality's draft integrated development plan, or any amendment of the plan, tabled in the council;

(d) the municipality's draft performance management system, or any amendment of the system, tabled in the council;

(e) the decision to enter into a service delivery agreement referred to in section 76*(b)*; or

(f) any other matter prescribed by regulation.

(3) An executive committee mentioned in section 42 of the Municipal Structures Act and a mayoral committee mentioned in section 60 of that Act may, subject to subsection (1)*(a)*, close any or all of its meetings to the public, including the media.

(4) A municipal council—

(a) within the financial and administrative capacity of the municipality, must provide space for the public in the chambers and places where the council and its committees meet: and

(b) may take reasonable steps to regulate public access to, and public conduct at. meetings of the council and its committees.

Communications to local community

21. (1) When anything must be notified by a municipality through the media to the local community in terms of this Act or any other applicable legislation, it must be done—

(a) in the local newspaper or newspapers of its area;

(b) in a newspaper or newspapers circulating in its area and determined by the council as a newspaper of record; or

(c) by means of radio broadcasts covering the area of the municipality.

(2) Any such notification must be in the official languages determined by the council, having regard to language preferences and usage within its area.

(3) A copy of every notice that must be published in the *Provincial Gazette* or the media in terns of this Act or any other applicable legislation, must be displayed at the municipal offices.

(4) When the municipality invites the local community to submit written comments or representations on any matter before the council, it must be stated in the invitation that any person who cannot write may come during office hours to a place where a staff member of the municipality named in the invitation. will assist that person to transcribe that person's comments or representations.

(5) (a) When a municipality requires a form to be completed by a member of the local community, a staff member of the municipality must give reasonable assistance to persons who cannot read or write, to enable such persons to understand and complete the form.

(b) If the form relates to the payment of money to the municipality or to the provision of any service, the assistance must include an explanation of its terms and conditions.

Regulations and guidelines

22. (1) The Minister may in terms of section 120 make regulations or issue guidelines concerning—

(a) minimum standards for municipalities, including minimum standards relating to funding, when implementing the provisions of this Chapter; and

(b) any matter that may facilitate—

(i) the participation of the local community in the affairs of the municipality; or

(ii) the application of this Chapter.

(2) When making regulations or issuing guidelines in terms of section 120 to provide for or to regulate the matters mentioned in subsection (1) of this section, the Minister must—

(a) take into account the capacity of municipalities to comply with those matters; and

(b) differentiate between different kinds of municipalities according to their respective capacities.

(3) The Minister, by notice in the *Gazette*, may phase in the application of the provisions of this Chapter which place a financial or administrative burden on municipalities.

(4) A notice in terms of subsection (3) may—

(a) determine different dates on which different provisions of this Chapter become applicable to municipalities;

(b) apply to all municipalities generally;

(c) differentiate between different kinds of municipalities which may. for the purpose of the phasing in of the relevant provisions, be defined in the notice in relation to categories or types of municipalities or in any other way: or

(d) apply to a specific kind of municipality only, as defined in the notice.

CHAPTER 5

INTEGRATED DEVELOPMENT PLANNING

Part 1: General

Municipal planning to be developmentally oriented

23. (1) A municipality must undertake developmentally-oriented planning so as to ensure that it—

(a) strives to achieve the objects of local government set out in section 152 of the Constitution;

(b) gives effect to its developmental duties as required by section 153 of the Constitution; and

(c) together with other organs of state contribute to the progressive realisation of the fundamental rights contained in sections 24, 25, 26, 27 and 29 of the Constitution.

(2) Subsection (I) must be read with Chapter I of the Development Facilitation Act, 1995 (Act No, 67 of 1995),

Municipal planning in co-operative government

24. (1) The planning undertaken by a municipality must be aligned with, and complement, the development plans and strategies of other affected municipalities and other organs of state so as to give effect to the principles of co-operative government contained in section 41 of the Constitution.

(2) Municipalities must participate in national and provincial development programmed as required in section 153(b) of the Constitution.

(,3) If municipalities are required to comply with planning requirements in terms of national or provincial legislation, the responsible organs of state must—

(a) align the implementation of that legislation with the provisions of this Chapter; and

(b) in such implementation—

(i) consult with the affected municipality; and

(ii) take reasonable steps to assist the municipality to meet the time limit mentioned in section 25 and the other requirements of this Chapter applicable to its integrated development plan.

(4) An organ of state initiating national or provincial legislation requiring municipalities to comply with planning requirements, must consult with organised local government before the legislation is introduced in Parliament or a provincial legislature, or, in the case of subordinate legislation, before that legislation is enacted.

Adoption of integrated development plans

25. (1) Each municipal council must, within a prescribed period after the start of its elected term, adopt a single, inclusive and strategic plan for the development of the municipality which—

(a) links, integrates and co-ordinates plans and takes into account proposals for the development of the municipality:

(b) aligns the resources and capacity of the municipality with the implementation of the plan;

(c) forms the policy framework and general basis on which annual budgetsmust be based;

(d) complies with the provisions of this Chapter; and

(e) is compatible with national and provincial development plansand planning requirements binding on the municipality in terms of legislation.

(2) An integrated development plan adopted by a municipal council in terms of subsection (1) may be amended in terms of section 34 and remain> in force until an integrated development plan is adopted by the next elected council.

(3) *(a)* A newly elected municipal council may, within the prescribed period referred to in subsection (1), adopt the integrated development plan of its predecessor, but before taking a decision it must comply with section 29(l)(b)(i), *(c)* and *(d)*.

(b) A newly elected municipal council that adopts the integrated development plan of its predecessor with amendments, must effect the amendments in accordance with the process referred to in section 34(b).

(4) A municipality must, within 14 days of the adoption of its integrated development plan in terms of subsection (1) or (3)—

(a) give notice to the public—

(i) of the adoption of the plan; and

(ii) that copies of or extracts from the plan are available for public inspection at specified places; and

(b) publicise a summary of the plan.

Part 2: Contents of integrated development plans

Core components of integrated development plans

26. An integrated development plan must reflect—

(a) the municipal council's vision for the long term development of the municipality with special emphasis on the municipality's most critical development and internal transformation needs:

(b) an assessment of the existing level of development in the municipality, which must include an identification of communities which do not have access to basic municipal services;

(c) the council's development priorities and objectives for its elected term, including its local economic development aims and its internal transformation needs;

(d) the council's development strategies which must be aligned with any national or provincial sectoral plans and planning requirements binding on the municipality in terms of legislation;

(e) a spatial development framework which must include the provision of basic guidelines for a land use management system for the municipality;

(f) the council's operational strategies;

(g) applicable disaster management plans;

(h) a financial plan, which must include a budget projection for at least the next three years; and

(i) the key performance indicators and performance targets determined in terms of section 41.

Part 3: Process for planning, drafting, adopting and review of integrated development plans

Framework for integrated development planning

27. (1) Each district municipality, within a prescribed period after the start of its elected term and after following a consultative process with the local municipalities within its area, must adopt a framework for integrated development planning in the area as a whole.

(2) A framework referred to in subsection (1) binds both the district municipality and the local municipalities in the area of the district municipality, and must at least—

(a) identify the plans and planning requirements binding in terms of national and provincial legislation on the district municipality and the local municipalities or on any specific municipality;

(b) identify the matters to be included in the integrated development plans of the district municipality and the local municipalities that require alignment;

(c) specify the principles to be applied and co-ordinate the approach to be adopted in respect of those matters: and

(d) determine procedures—

(i) for consultation between the district municipality and the local municipalities during the process of drafting their respective integrated development plans; and

(ii) to effect essential amendments to the framework.

Adoption of process

28. (1) Each municipal council, within a prescribed period after the start of its elected term, must adopt a process set out in writing to guide the planning, drafting, adoption and review of its integrated development plan.

(2) The municipality must through appropriate mechanisms, processes and procedures established in terms of Chapter4, consult the local community before adopting the process.

(3) A municipality must give notice to the local community of particulars of the process it intends to follow.

Process to be followed

29. (1) The process followed by a municipality to draft its integrated development plan, including its consideration and adoption of the draft plan, must—

(a) be in accordance with a predetermined programme specifying timeframes for the different steps;

(b) through appropriate mechanisms, processes and procedures established in terms of Chapter 4, allow for—

(i) the local community to be consulted on its development needs and priorities;

(ii) the local community to participate in the drafting of the integrated development plan; and

(iii) organs of state, including traditional authorities. and other role players to be identified and consulted on the drafting of the integrated development plan;

(c) provide for the identification of all plans and planning requirements binding on the municipality in terms of national and provincial legislation; and

(d) be consistent with any other matters that may be prescribed by regulation.

(2) A district municipality must—

(a) plan integrated development for the area of the district municipality as a whole but in close consultation with the local municipalities in that area:

(b) align its integrated development plan with the framework adopted in terms of section 27; and

(c) draft its integrated development plan, taking into account the integrated development processes of, and proposals submitted to it by the local municipalities in that area.

(3) A local municipality must—

(a) align its integrated development plan with the framework adopted in terms of section 27; and

(b) draft its integrated development plan, taking into account the integrated development processes of. and proposals submitted to it by the district municipality.

Management of drafting process

30. The executive committee or executive mayor of a municipality or, if the municipality does not have an executive committee or executive mayor. a committee of councillors appointed by the municipal council. must, in accordance with section 29—

(a) manage the drafting of the municipality's integrated development plan:

(b) assign responsibilities in this regard to the municipal manager: and

(c) submit the draft plan to tbe municipal council for adoption by the council.

Provincial monitoring and support

31. The MEC for local government in the province may, subject to any other law regulating provincial supervision of local government—

t(a) monitor the process followed by a municipality in terms of section 29;

(b) assist a municipality with the planning. drafting, adoption and review of its integrated development plan;

(c) facilitate the co-ordination and alignment of—

(i) integrated development plans of different municipalities, including those of a district municipality and the local municipalities within its area; and

(ii) the integrated development plan of a municipality with the plans, strategies and programmes of national and provincial organs Of state;

(d) take any appropriate steps to resolve disputes or differences in connection with the planning, drafting, adoption or review of an integrated development plan between—

(i) a municipality and the local community; and

(ii) different municipalities.

Copy of integrated development plan to be submitted to MEC for local government

32. (1) *(a)* The municipal manager of a municipality must submit a copy of the integrated development plan as adopted by the council of the municipality. and any subsequent amendment to the plan, to the MEC for local government in the province within 10 days of the adoption or amendment of the plan.

(b) The copy of the integrated development plan to be submitted in terms of paragraph *(a)* must be accompanied by—

(i) a summary of the process referred to in section 29 (l);

(ii) a statement that the process has been complied with, together with any explanations that may be necessary to amplify the statement; and

(iii) in the case of a district and a local municipality, a copy of the framework adopted in terms of section 27.

(2) The MEC for local government in the province may, within 30 days of receiving a copy of an integrated development plan or an amendment to the plan, or within such reasonable longer period as may be approved by the Minister, request the relevant municipal council—

(a) to adjust the plan or the amendment in accordance with the MEC's proposals. if the plan or amendment—

(i) does not comply with a requirement of this Act; or

(ii) is in conflict with or is not aligned with or negates any of the development plans and strategies of other affected municipalities or organs of state; or

(b) to comply with the process referred to in section 29. or with a specific provision of this Act relating to the process of drafting or amending integrated development plans if the municipality has failed to comply with that process or provision, and to adjust the plan or the amendment if that becomes necessary after such compliance.

(3) A municipal council must consider the MEC's proposals, and within 30 days of receiving the MEC'S request must—

(a) if it agrees with those proposals, adjust its integrated development plan Or amendment in accordance with the MEC" s request: or

(b) if it disagrees with the proposals. object to the MEC's request and furnish the MEC with reasons in writing why it disagrees.

(4) On receipt of an objection in terms of subsection (3)*(b)* the MEC may refer the municipality's objection to an *ad hoc* committee referred to in section 33 for decision by the committee. If the MEC decides to refer an objection to an *ad hoc* committee, the objection must be referred within 21 cloys of receipt of the objection.

Ad hoc **committees**

33. (1) Whenever necessary, the MEC for local government in a province must appoint an *ad hoc* committee consisting of members representing local government, the provincial government and the national government to decide on an objection by a municipality in terms of section 32(3)(b).

(2) The MEC appoints the members of an *ad hoc* committee representing—

(a) local government, with the concurrence of the municipality which lodged the objection and any other municipality involved in the dispute;

(b) the provincial government, with the concurrence of the provincial organ or organs of state involved in the dispute or in whose functional area the dispute is located; and

(c) the national government, with the concurrence of the national organ or organs of state involved in the dispute or in whose functional area the dispute is located.

(3) An objection referred to an *ad hoc* committee must be dealt with in accordance with procedures prescribed by regulation.

(4) A matter before an *ad hoc* committee is decided if at [east two spheres of government agree on the matter.

(5) If the *ad hoc* committee rejects the municipality's objection. the municipality must, within 30 days of the date on which the committee has taken the decision and informed the municipality, comply with the MEC'S request.

Annual review and amendment of integrated development plan

34. A municipal council—

(a) must review its integrated development plan—

(i) annually in accordance with an assessment of its performance measurements in terms of section 4 i; and

(ii) [o the extent that changing circumstances so demand; and

(b) may amend its integrated development plan in accordance with a prescribed process.

Part 4: Miscellaneous

Status of integrated development plan

35. (1) An integrated development plan adopted by the council of a municipality—

(a) is the principal strategic planning instrument which guides and informs all planning and development, and all decisions with regard to planning, management and development, in the municipality;

(b) binds the municipality in the exercise of its executive authority, except to the extent of any inconsistency between a municipality's integrated development plan and national or provincial legislation, in which case such legislation prevails; and

(c) binds all other persons to the extent that those parts of the integrated development plan that impose duties or affect the rights of those persons have been passed as a by-law.

(2) A spatial development framework contained in an integrated development plan prevails over a plan as defined in section 1 of the Physical Planning Act. 1991 (Act No. 125 of 1991).

Municipality to give effect to integrated development plan

36. A municipality must give effect to its integrated development plan and conduct its affairs in a manner which is consistent with its integrated development plan.

Regulations and guidelines

37. (1) The Minister may for the purposes of this Chapter make regulations or issue guidelines in terms of section 120 to provide for or to regulate the following matters:

(a) incentives to ensure that municipalities adopt their integrated development plans within the applicable prescribed period. and comply with the provisions

Of this Act concerning the planning. drafting, adoption and review of those plans;

(b) the detail of integrated development plans taking into account the requirements of other applicable national legislation;

(c) criteria municipalities must take into account when planning, drafting, adopting or reviewing their integrated development plans;

(d) the detail of the process for the planning, drafting, adoption and review of integrated development plans;

(e) a process for the amendment of integrated development plans;

(f) the manner in which an objection must be referred to an *ad hoc* committee envisaged in section **33;**

(s) the manner in which written evidence or documents must be submitted to an *ad hoc* committee;

(h) the proceedings of an *ad hoc* committee: and

(i) any other matter that may facilitate—

(i) integrated development planning and the drafting of integrated development plans; or

(ii) the application of this Chapter. '

(2) When making regulations or issuing guidelines in terms of section 120 to provide for or to regulate the matters mentioned in subsection (1)*(b),* (c), *(d)* and *(e)* of this section, the Minister must—

(a) take into account the capacity of municipalities to comply with those matters; and

(b) differentiate between different kinds of municipalities according to their respective capacities.

(3) The Minister, by notice in the *Gazette*, may phase in the application of the provisions of this Chapter which place a financial or administrative burden on municipalities.

(4) A notice in terms of subsection (3) may—

(a) determine different dates on which different provisions of this Chapter becomes applicable to municipalities;

(b) apply to all municipalities generally;

(c) differentiate between different kinds of municipalities which may, for the purpose of the phasing in of the relevant provisions, be defined in the notice in relation to categories or types of municipalities or in any other way: or

(d) apply to a specific kind of municipality only, as defined in the notice.

CHAPTER 6

PERFORMANCE MANAGEMENT

Establishment of performance management system

38. A municipality must—

(a) establish a performance management system that is—

(i) commensurate with its resources;

(ii) best suited to its circumstances; and

(iii) in line with the priorities, objectives. indicators and targets contained in its integrated development plan;

(b) promote a culture of performance management among its political structures. political office bearers and councillors and in its administration; and

(c) administer its affairs in an economical, effective, efficient and accountable manner.

Development of performance management system

39. The executive committee or executive mayor of a municipality or, it' the municipality does not have an executive committee or executive mayor, a committee of council lors appointed by the municipal council must—

(a) manage the development of the municipality's performance management system:

(b) assign responsibilities in this regard to the municipal manager, and

(c) submit the proposed system to the municipal council for adoption

Monitoring and review of performance management system

40. A municipality must establish mechanisms to monitor and review its performance management system.

Core components

41. (1) A municipality must in terms of its performance management system and in accordance with any regulations and guidelines that may be prescribed—

(a) set appropriate key performance indicators as a yardstick for measuring performance, including outcomes and impact. with regard to the municipality's development priorities and objectives set out in its integrated development plan;

(b) set measurable performance targets with regard to each of those development priorities and objectives;

(c) with regard to each of those development priorities and objectives and against the key performance indicators and targets set in terms of paragraphs *(a)* and (b) -

(i) monitor performance; and

(ii) measure and review performance at least once per year;

(d) take steps to improve performance with regard to those development priorities and objectives where performance targets are not met: and

(e) establish a process of regular reporting to—

(i) the council, other political structures, political office bearers and staff of the municipality; and

(ii) the public and appropriate organs of state.

(2) The system applied by a municipality in compliance with subsection (1)*(c)* must be devised in such a way that it may serve as an early warning indicator of under-performance.

Community involvement

42. A municipality, through appropriate mechanisms, processes and procedures established in terms of Chapter 4, must involve the local community in the development. implementation and review of the municipality's performance. management system. and, in particular, allow the community to participate in the setting of appropriate key performance indicators and performance targets for the municipality.

General key performance indicators

43. (1) The Minister, after consultation with the MECs for local government and organised local government representing local government nationally. may—

(a) by regulation prescribe general key performance indicators that are appropriate and that can be applied to local government generally; and

(b) when necessary, review and adjust those general key performance indicators.

(2) Key performance indicators set by a municipality must include any general key performance indicators prescribed in terms of subsection (1), to the extent that these indicators are applicable to the municipality concerned.

Notification of key performance indicators and performance targets

44. A municipality, in a manner determined by its council, must make known, both internally and to the general public, the key performance indicators and performance targets set by it for purposes of its performance management system.

Audit of performance measurements

45. The results of performance measurements in terms of section 41(1)*(c)* must be audited-

(a) as part of the municipality's internal auditing processes: and

(b) annually by the Auditor-General.

Annual reports

46. (1) A municipality must prepare for each financial year an annual report consisting of—

(a) a performance report reflecting—

(i) the municipality's, and any service provider's, performance during that financial year, also in comparison with targets of and with performance in the previous financial year;

(ii) the development and service delivery priorities and the performance targets set by the municipality for the following financial year; and

(iii) measures that were or are to be taken to improve performance;

(b) the financial statements for that financial year prepared in accordance with the standards of generally recognised accounting practise referred to in section 89 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

(c) an audit report on the financial statements and the report on the audit performed in terms of section 45*(b)*; and

(d) any other reporting requirements in terms of other applicable legislation.

(2) A municipality must table its annual report within one month of receiving the audit report referred to in subsection (1)(c).

(3) *(a)* The municipal manager must—

(i) by prior notice in the media, inform the local community of the meeting or meetings of the council at which the municipality's annual report is tabled or discussed, which meetings must be open to the public;

(ii) give written notice of such meetings to the Auditor-General and the MEC for local government in the province;

(iii) submit copies of the minutes of those meetings to the Auditor-General and the MEC for local government in the province;

(b) Representatives of the Auditor-General and the MEC for local government in the province are entitled to attend and to speak at such meetings, and the municipal manager must be available to respond to questions related to the annual report.

(4) The municipality must adopt its annual report, and within 14 days—

(a) make copies of the report accessible to the public, interested organisations and the media, free of charge or at a reasonable price; and

(b) submit a copy of the report to—

(i) the MEC for local government in the province;

(ii) the Auditor-General; and

(iii) such other institutions as may be prescribed by regulation,

Reports by MEC

47. (1) The MEC for local government must annually compile and submit to the provincial legislatures and the Minister a consolidated report on the performance of municipalities in the province.

(2) The report must—

(a) identify municipalities that under-performed during the year;

(b) propose remedial action to be taken; and

(c) be published in the *Provincial Gazette.*

(3) The MEC for local government must submit a copy of the report to the National Council of Provinces.

Reports by Minister

48. (1) The Minister must annually compile and submit to Parliament and the MECS for local government a consolidated report of local government performance in terms of general key performance indicators.

(2) The report must be published in the *Gazette.*

Regulations and guidelines

49. (1) The Minister may for the purposes of this Chapter make regulations or issue guidelines in terms of section 120 to provide for or regulate—

(a) incentives to ensure that municipalities establish their performance management systems within the applicable prescribed period, and comply with the provisions of this Act concerning performance management systems;

(b) the setting of key performance indicators by a municipality with regard to its development objectives:

(c) the identification of appropriate general key performance indicators that can be applied to municipalities generally and that reflect the object and intent of section 23;

(d) the regular review by a municipality of its key performance indicators;

(e) the setting of' a framework for performance targets by municipalities consistent with their development priorities, objectives and strategies set out in their integrated development plans;

(f) mechanisms, systems and processes for the monitoring and measurement of performance by a municipality with regard to its development objectives;

(g) the internal auditing of performance measurements;

(h) the assessment of those performance measurements by a municipality;

(i) the assessment of progress by a municipality with the implementation of its integrated development plan;

(j) the improvement of performance;

(k) any other matter that may facilitate—

(i) the implementation by municipalities of an efficient and effective system of performance management; or

(ii) the application of this Chapter.

(2) When making regulations or issuing guidelines in terms of section 120 to provide for or to regulate the matters mentioned in subsection (1) of this section, the Minister must—

(a) take into account the capacity of municipalities to comply with those matters; and

(b) differentiate between different kinds of municipalities according to their respective capacities.

(3) The Minister, by notice in the *Gazette*, may phase in the application of the provisions of this Chapter which place a financial or administrative burden on municipalities.

(4) A notice in terms of subsection (3) may—

(a) determine different dates on which different provisions of this Chapter becomes applicable to municipalities;

(b) apply to all municipalities generally;

(c) differentiate between different kinds of municipalities which may, for the purpose of the phasing in of the relevant provisions, be defined in the notice in relation to categories or types of municipalities or in any other way; or

(d) apply to a specific kind of municipality only. as defined in the notice.

CHAPTER 7

LOCAL PUBLIC ADMINISTRATION AND HUMAN RESOURCES

Part 1: Basic principles

Basic values and principles governing local public administration

50. (1) Local public administration is governed by the democratic values and principles embodied in section 195 (1) of the Constitution.

(2) In administering its affairs, a municipality must strive to achieve the objects of

local government set out in section 15'2 (1) of the Constitution, and comply with the duties set out in sections 4(2) and 6.

Organisation of administration

51. A municipality must within its administrative and financial capacity establish and organise its administration in a manner that would enable the municipality to-

(a) be responsive to the needs of the local community;
(b) facilitate a culture of public service and accountability amongst its staff;
(c) be performance orientated and focussed on the objects of local government set out in section 152 of the Constitution and its developmental duties as required by section 153 of the Constitution;
(d) ensure that its political structures, political office bearers and managers and other staff members align their roles and responsibilities with the priorities and objectives set out in the municipality's integrated development plan;
(e) establish clear relationships, and facilitate co-operation, co-ordination and communication, between—
(i) its political structures and political office bearers and its administration;
(ii) its political structures, political office bearers and administration and the local community;
(f) organise its political structures, political office bearers and administration in a flexible way in order to respond to changing priorities and circumstances;
(g) perform its functions—
(i) through operationally effective and appropriate administrative units and mechanisms. including departments and other functional or business units; and
(ii) when necessary, on a decentralised basis:
(h) assign clear responsibilities for the management and co-ordination of these administrative units and mechanisms;
(i) hold the municipal manager accountable for the overall performance of the administration;
(j) maximise efficiency of communication and decision-making within the administration;
(k) delegate responsibility to the most effective level within the administration:
(l) involve staff in management decisions as far as is practicable: and
(m) provide an equitable, fair, open and non-discriminatory working environment.

Inconsistency with applicable labour legislation

52. In the event of any inconsistency between a provision of this Chapter, including the Code of Conduct referred to in section 69, or a regulation made for the purposes of this Chapter, and any applicable labour legislation. the labour legislation prevails.

Part 2: Political strictures, political office bearers and roles

Roles and responsibilities

53. (1) A municipality must, within the framework of andin accordance with relevant provisions of the Municipal Structures Act, this Act and other applicable legislation. define the specific role and area of responsibility of each political structure and political office bearer of the municipality and of the municipal manager.

(2) The respective roles and areas of responsibility of each political structure and political office bearer and of the municipal manager must—

(a) be defined in precise terms by way of separate terms of' reference, in writing, for each political structure or political office bearer and the municipal manager; and

(b) be acknowledged and given effect to in the rules, procedures, instructions, policy statements and other written instruments of the municipality.

(3) instruments defining, acknowledging or giving effect to the roles and areas of responsibility of these political structures and political office bearers and the municipal manager must be appropriate to the category and type in which the municipality falls.

(4) Terms of reference mentioned in subsection (2)(a) may include the delegation of powers and duties to the relevant political structure or political office bearer or the municipal manager in terms of section 59.

(5) When defining the respective roles and areas of responsibility of each political structure and political office bearer and of the municipal manager, the municipality must determine—

(a) the relationships among those political structures and political office bearers and the municipal manager, and the manner in which they must interact;

(b) appropriate lines of accountability and reporting for those political structures and political office bearers and the municipal manager;

(c) mechanisms, processes and procedures for minimising cross-referrals and unnecessary overlapping of responsibilities between those political structures and political office bearers and the municipal manager;

(d) mechanisms, processes and procedures for resolving disputes between those political structures and political office hewers and the municipal manager; and

(e) mechanisms, processes and procedures for interaction, between—

(i) those political structures and political office bearers and the municipal manager and other staff members of the municipality; and

(ii) councillors and the municipal manager and other staff members of the municipality.

(6) If a municipality has a decentralised regional administration in any part of its area, the municipality must determine mechanisms, processes and procedures for interaction between the regional management of the municipality and—

(a) the ward councillor or other councillor responsible for that part of the municipality's area:

(b) any subcouncil or ward committee, where applicable, in that part of the municipality's area; and

(c) the local community in that part of the municipality's area.

Code of Conduct for councillors

54. The Code of Conduct contained in Schedule 1 applies to every member of a municipal council.

Municipal managers

55. (1) As head of administration the municipal manager of a municipality is, subject to the policy directions of the municipal council, responsible and accountable for—

(a) the formation and development of an economical. effective, efficient and accountable administration—

(i) equipped to carry out the task of implementing the municipality's integrated development plan in accordance with Chapter 5:

(ii) operating in accordance with the municipality's performance management system in accordance with Chapter 6; and

(iii) responsive to the needs of the local community to participate in the affairs of the municipality;

(b) the management of the municipality's administration in accordance with this Act and other legislation applicable to the municipality:

(c) the implementation of the municipality's integrated development plan, and the monitoring of progress with implementation of the plan:

(d) the management of the provision of services to the local community in a sustainable and equitable manner;
(e) the appointment of staff other than those referred to in section 56(a), subject to the Employment Equity Act, 1998 (Act No. 55 of 1998);
(f) the management, effective utilisation and training of staff;
(g) the maintenance of discipline of staff;
(h) the promotion of sound labour relations and compliance by the municipality with applicable labour legislation;
(i) advising the political structures and political office bearers of the municipality;
(j) managing communications between the municipality's administration and its political structures and political office bearers:
(k) carrying out the decisions of the political structures and political office bearers of the municipality;
(l) the administration and implementation of the municipality's by-laws and other legislation;
(m) the exercise of' any powers and the performance of any duties delegated by the municipal council, or sub-delegated by other delegating authorities of the municipality, to the municipal manager in terms of section 59:
(n) facilitating participation by the local community in the affairs of the municipality;
(o) developing and maintaining a system whereby community satisfaction with municipal services is assessed;
(p) the implementation of national and provincial legislation applicable to the municipality; and
(q) the performance of any other function that may be assigned by the municipal council.

(2) As accounting officer of the municipality the municipal manager is responsible and accountable for—
(a) all income and expenditure of the municipality;
(b) all assets and the discharge of all liabilities of the municipality; and
(c) proper and diligent compliance with applicable municipal finance management legislation.

Appointment of managers directly accountable to municipal managers

56. (a) A municipal council, after consultation with the municipal manager, appoints a manager directly accountable to the municipal manager.

(b) A person appointed as a manager in terms of paragraph (a), must have the relevant skills and expertise to perform the duties associated with the post in question. taking into account the protection or advancement of persons or categories of persons disadvantaged by unfair discrimination.

Employment contracts for municipal managers and managers directly accountable to municipal managers

57. (1) A person to be appointed as the municipal manager of a municipality, and a person to be appointed as a manager directly accountable to the municipal manager, may be appointed to that position only—
(a) in terms of a written employment contract with the municipality complying with the provisions of this section; and
(b) subject to a separate performance agreement concluded annually as provided for in subsection (2).

(2) The performance agreement referred to in subsection (1)(b) must—
(a) be concluded within a reasonable time after a person has been appointed as the municipal manager or as a manager directly accountable to the municipal manager. and thereafter. within one month after the beginning of the financial year of the municipality;
(b) in the case of the municipal manager, be entered into with the municipality as represented by the mayor or executive mayor. as the case may be; and

(c) in the case of a manager directly accountable to the municipal manager, be entered into with the municipal manager.

(3) The employment contract referred to in subsection (1)*(a)* must include, subject to applicable labour legislation, details of duties, remuneration, benefits and other terms and conditions of employment,

(4) The performance agreement referred to in subsection (l)(b) must include—

(a) performance objectives and targets that must be met, and the time frames within which those performance objectives and targets must be met;

(b) standards and procedures for evaluating performance and intervals for evaluation; and

(c) the consequences of substandard performance.

(5) The performance objectives and targets referred to in subsection (4)*(a)* must be practical, measurable and based on the key performance indicators set out from time to time in the municipality's integrated development plan.

(6) The employment contract for a municipal manager must—

(a) be for a fixed term of employment not exceeding a period ending two years after the election of the next council of the municipality;

(b) include a provision for cancellation of the contract. in the case of non-compliance with the employment contract or, where applicable, the performance agreement;

(c) stipulate the terms of the renewal of the employment contract, but only by agreement between the parties; and

(d) reflect the values and principles referred to in section 50, the Code of Conduct set out in Schedule 2, and the management standards and practices contained in section 51.

(7) A municipality may extend the application of subsection (6) to any manager directly accountable to the municipal manager.

Remuneration of municipal managers and managers directly accountable to municipal managers

58. A municipality must, on or before 31 October of each year, publish in the media the salary scales and benefits applicable to posts of the municipal manager at-d every manager that is directly accountable to the municipal manager.

Part 3: Delegation system

Delegations

59. (1) A municipal council must develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances, and, in accordance with that system, may—

(a) delegate appropriate powers, excluding a power *mentioned* in section 160(2) of the Constitution and the power to set tariffs, to decide to enter into a service delivery agreement in terms of section 76*(b)* and to approve or amend the municipality's integrated development plan, to any of the municipality's other political structures, political office bearers, councillors, or staff members:

(b) instruct any such political structure. political office bearer, councillor, or staff member to perform any of the municipality's duties: and

(c) withdraw any delegation or instruction.

(2) A delegation or instruction in terms of subsection (1)—

(a) must not conflict with the Constitution, this Act or the Municipal Structures Act;

(b) must be in writing:

(c) is subject to any limitations, conditions and directions the municipal *council* may impose:

(d) may include the power to sub-delegate a delegated power;

(e) does not divest the council of the responsibility concerning the exercise of the power or the performance of the duty; and

(f) must be reviewed when a new council is elected or, if it is a district council, elected and appointed.

(3) The municipal council—

'(a) m accordance with procedures in its rules and orders, may, or at the request in writing of at least one quarter of the councillors, must, review any decision taken by such a political structure, political office bearer, councillor or staff member in consequence of a delegation or instruction, and either confirm, vary or revoke the decision subject to any rights that may have accrued to a person; and

(b) may require its executive committee or executive mayor to review any decision taken by such a political structure, political office bearer, councillor or staff member in consequence of a delegation or instruction.

Certain delegations restricted to executive committees or executive mayors

60. (1) The following powers may, within a policy framework determined by the municipal council, be delegated to an executive committee or executive mayor only:

(a) decisions to expropriate immovable property or rights in or to immovable property; and

(b) the determination or alteration of the remuneration, benefits or other conditions of service of the municipal manager or managers directly responsible to the municipal manager.

(2) The council may only delegate to an executive committee or executive mayor or chief financial officer decisions to make investments on behalf of the municipality within a policy framework determined by the Minister of Finance.

Referral of matters to delegating authorities for decision

61. A political structure, political office bearer, councillor or staff member of a municipality to whom a delegating authority has delegated or sub-delegated a power to dispose of matters falling within the area of responsibility of that political structure. political office bearer, councillor or staff member may, or must if instructed to do so by the relevant delegating authority, refer a matter before the political structure, political office bearer, councillor or staff member to the relevant delegating authority for a decision.

Appeals

62. (1) A person whose rights are affected by a decision taken by a political structure, political office bearer, councillor or staff member of a municipality in terms of a power or duty delegated or sub-delegated by a delegating authority to the political structure, political office bearer, councillor or staff member, may appeal against that decision by giving written notice of the appeal and reasons to the municipal manager within 21 days of the date of the notification of the decision.

(2) The municipal manager must promptly submit the appeal to the appropriate appeal authority mentioned in subsection (4).

(3) The appeal authority must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

(4) When the appeal is against a decision taken by—

(a) a staff member other than the municipal manager, the municipal manager is the appeal authority;

(b) the municipal manager, the executive committee or executive mayor is the appeal authority, or, if the municipality does not have an executive committee or executive mayor, the council of the municipality is the appeal authority: or

(c) a politics! structure or political office bearer, or a councillor—

(i) the municipal council is the appeal authority where the council comprises less than 15 councillors; or

(ii) a committee of councillors who were not involved in the decision and appointed by the municipal council for this purpose is the appeal authority where the council comprises more than 14 Council lors.

(5) An appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable period.

Duty to report to delegating authorities

63. A political structure, political office bearer, councillor or staff member of a municipality to whom a delegating authority has delegated or sub-delegated a power or duty, must report to the delegating authority at such intervals as the delegating authority may require, on decisions taken in terms of that delegated or sub- delegated power or duty since the last report.

Withdrawal, amendment or lapsing of delegation or **subdelegation**

64. The withdrawal, amendment or lapsing of a delegation or subdelegation does not invalidate anything done as a consequence of a decision taken in terms of that delegation or sub-delegation.

Review of delegations

65. (1) Whenever it becomes necessary in terms of section 59(2)*(f)* to review a municipality's delegations, the municipal manager must submit to the council—

(a) a report on the existing delegations issued in terms of section 59 by the council and other delegating authorities of the municipality; and

(b) recommendations on any changes to the existing delegations which the municipal manager may consider necessary.

(2) If the municipality has an executive committee or executive mayor, the municipal manager must submit the report and any recommendations to the municipal council through the executive committee or executive mayor.

Part 4: Staff matters

Staff establishments

66. (1) A municipal manager, within a policy framework determined by the municipal council and subject [o any applicable legislation, must—

(a) approve a staff establishment for the municipality:

(b) provide a job description for each post on the staff establishment;

(c) attach to those posts the remuneration and other conditions of service as may be determined in accordance with any applicable labour legislation; and

(d) establish a processor mechanism to regularly evaluate the staff establishment and, if necessary, review the staff establishment and the remuneration and conditions of service.

(2) Subsection (1)*(c)* and *(d)* do not apply to remuneration and conditions of service regulated by employment contracts referred to in section 57,

Human resource development

67. (1) A municipality, in accordance with the Employment Equity Act. 1998, must develop and adopt appropriate systems and procedures to ensure fair, efficient, effective and transparent personnel administration, including-

(a) the recruitment, selection and appointment of persons as staff members:

(b) service conditions of staff;

(c) the supervision and management of staff;

(d) the monitoring, measuring and evaluating of performance of staff;

(e) the promotion and demotion of staff;

(f) the transfer of staff;

(,s) grievance procedures;

(h) disciplinary procedures:

(i) the Investigation of allegations of misconduct and complaints against staff;

(j) the dismissal and retrenchment of staff; and

(k) any other matter prescribed by regulation in terms of section 72.

(2) Systems and procedures adopted in terms of subsection (1), to the extent that they deal with matters falling under applicable labour legislation and affecting the rights and interests of staff members, must be consistent with such legislation.

(3) Systems and procedures adopted in terms of subsection (1), apply to a person referred to in section 57 except to the extent that they are inconsistent with that person's employment contract.

(4) The municipal manager must—

(a) ensure that every staff member and every relevant representative trade union has easy access to a copy of these staff systems and procedures, including any amendments;

(b) on written request by a staff member, make a copy of or extract from these staff systems and procedures, including any amendments, available to that staff member; and

(c) ensure that the purpose, contents and consequences of these staff systems and procedures are explained to staff members who cannot read.

Capacity building

68. (1) A municipality must develop its human resource capacity to a level that enables it to perform its functions and exercise its powers in an economical, effective, efficient and accountable way, and for this purpose must comply with the Skills Development Act, 1998 (Act No. 81 of 1998), and the Skills Development Levies Act, 1999 (Act No. 28 of 1999).

(2) A municipality may in addition to any provision for a training levy in terms of the Skills Development Levies Act, 1999, make provision in its budget for the development and implementation of training programmed.

(3) A municipality which does not have the financial means to provide funds for training programmed in addition to the levy payable in terms of the Skills Development Levies Act, 1999, may apply to the Sector Education and Training Authority for local government established in terms of the Skills Development Act, 1998, for such funds,

Code of Conduct for municipal staff members

69. The Code of Conduct contained in Schedule 2 applies to every staff member of a municipality.

Code of Conduct to be provided to staff members and communicated to local community

70, (1) The municipal manager of a municipality must—

(a) provide a copy of the Code of Conduct to every member of the staff of the municipality; and

(b) provide every staff member with any amendment of the Code of Conduct.

(2) The municipal manager must—

(a) ensure that the purpose, contents and consequences of the Code of Conduct are explained to staff members who cannot read; and

(b) communicate sections of the Code of Conduct that affect the public to the local community.

Bargaining council agreements

71. Municipalities must comply with any collective agreements concluded by organised local government within its mandate on behalf of local government in the bargaining council established for municipalities.

Part 5: Miscellaneous

Regulations and guidelines

72. (1) The Minister msubject to applicable labour legislation and after consultation with thebargaining council established for municipalities. for [he purposes of this Chapter—

(a) make regulations to regulate the following matters:

(i) the procedure to be followed in appealing against decisions taken in terms of delegated powers and the disposal of such appeals;
(ii) the suspension of decisions on appeal;
(iii) the setting of uniform standards for_
(aa) municipal staff establishments;
(bb) municipal staff systems and procedures and the matters that must be dealt with in such systems and procedures; and
(cc) any other matter concerning municipal personnel administration;
(iv) capacity building within municipaf administrations;
(v) training of staff members of municipalities, including in-house training, subject to the requirements of the Skills Development Act, 1998 (Act No. 81 of 1998), and the Skills Development Levies Act, 1999 (Act No. 28 of 1999); and
(vi) any other matter that may facilitate the application of this Chapter: or
(b) issue guidelines to provide for the following matters:
(i) the establishment of job evaluation systems:
(ii) the regulation of remuneration and other conditions of' service of staff members of municipalities, subject to applicable labour legislation;
(iii) the measuring and evaluation of staff performance;
(iv) the development of remuneration grading and incentive frameworks for staff members of municipalities;
(v) corrective steps in the case of substandard performance by staff members of municipalities;
(vi) any other matter that may facilitate the implementation by a municipality of an efficient and effective system of personnel administration.

(2) When making regulations or issuing guidelines in terms of section 120 to provide for or to regulate the matters mentioned in subsection (1) of this section. the Minister must—
(a) take into account the capacity of municipalities to comply with those matters; and
(b) differentiate between different kinds of municipalities according to their respective capacities.

(3) The Minister, by notice in the *Gazette*, may phase in the application of the provisions of this Chapter which place a financial or administrative burden on municipalities.

(4) A notice in terms of subsection (3) may—
(a) determine different dates on which different provisions of this Chapter becomes applicable to municipalities;
(b) apply to all municipalities generally;
(c) differentiate between different kinds of municipalities which may, for the purpose of the phasing in of the relevant provisions, be defined in the notice in relation to categories or types of municipalities or in any other way; or
(d) apply to a specific kind of municipality only. as defined in the notice,

CHAPTER 8

MUNICIPAL SERVICES

General duty

73. (1) A municipality must give effect to the provisions of the Constitution and—
(a) give priority to the basic needs of the local community;
(b) promote the development of the local community; and
(c) ensure that all members of the local community have access to at least the minimum level of basic municipal services.

(2) Municipal services must—
(a) be equitable and accessible:

(b) be provided in a manner that is conducive to-
(i) the prudent, economic, efficient and effective use of available resources; and
(ii) the improvement of standards of quality over time;
(c) be financially sustainable;
(d) be environmentally sustainable; and
(e) be regularly reviewed with a view to upgrading, extension and improvement.

Part 1: Service tariffs

Tariff policy

74. (1) A municipal council must adopt and implement a tariff policy on the levying of fees for municipal services provided by the municipality itself or by way of service delivery agreements, and which complies with the provisions of this Act and with any other applicable legislation.

(2) A tariff policy must reflect at [east the following principles, namely that—

(a) users of municipal services should be treated equitably in the 'application of tariffs;

(b) the amount individual users pay for services should generally be in proportion to their use of that service;

(c) poor households must have access to at least basic services through-
(i) tariffs that cover only operating and maintenance costs;
(ii) special tariffs or life line tariffs for low levels of use or consumption of services or for basic levels of service; or
(iii) any other direct or indirect method of subsidisation of tariffs for poor households;

(d) tariffs must reflect the costs reasonably associated with rendering the service, including capital, operating, maintenance, administration and replacement costs, and interest charges;

(e) tariffs must be set at levels that facilitate the financial sustainability of the service, taking into account subsidisation from sources other than the service concerned;

(f) provision may be made in appropriate circumstances for a surcharge on the tariff for a service;

(g) provision may be made for the promotion of local economic development through special tariffs for categories of commercial and industrial users;

('h) the economical, efficient and effective use of resources, the recycling of waste, and other appropriate environmental objectives must be encouraged:

(i) the extent of subsidisation of tariffs for poor households and other categories of users should be fully disclosed.

(3) A tariff policy may differentiate between different categories of users, debtors. service providers, services, service standards, geographical areas and other matters as long as the differentiation does not amount to unfair discrimination.

By-laws to give effect to policy

75. (1) A municipal council must adopt by-laws to give effect to the implementation and enforcement of its tariff policy.

(2) By-laws in terms of subsection (1) may differentiate between different categories of users, debtors, service providers. services, service standards and geographical areas as long as such differentiation does not amount to unfair discrimination.

Part 2: Provision of services

Mechanisms for provision of services

76. A municipality may provide a municipal service in its area or a part of its area through—

(a) an internal mechanism, which may be—

(i) a department or other administrative unit within its administration:

(ii) any business unit devised by the municipality, provided it operates within the municipality's administration and under the control of the council in accordance with operational and performance criteria determined by the council; or

(iii) any other component of its administration; or

(b) an external mechanism by entering into a service delivery agreement with—

(i) a municipal entity;

(ii) another municipality;

(iii) an organ of state, including

(aa) a water committee established in terms of the Water Services Act, 1997 (Act No. 108 of 1997);

(bb) a licensed service provider registered or recognised in terms of national legislation: and

(cc) a traditional authority;

(iv) a community based organisation or other non-governmental organisation legally competent to enter into such an agreement: or

(v) any other institution, entity or person legally competent to operate a business activity.

Occasions when municipalities must review and decide on mechanisms to provide municipal services

77. A municipality must review and decide on the appropriate mechanism to provide a municipal service when—

((r) preparing or reviewing its integrated development plan;

(b) a new municipal service is to be provided;

(c) an existing municipal service is to be significantly upgraded, extended or improved:

(d) a performance evaluation in terms of Chapter 6 requires a review of the delivery mechanism;

(e) the municipality is restructured or reorganised in terms of the Municipal Structures Act;

(f) requested by the local community through mechanisms, processes and procedures established in terms of Chapter 4; or

(g) instructed to do so by the provincial executive acting in terms of section 139(l)(a) of the Constitution.

Criteria and process for deciding on mechanisms to provide municipal services

78. (1) When a municipality has in terms of section 77 to decide on a mechanism to provide a municipal service in the municipality or a part of the municipality, or to review any existing mechanism—

(a) it must first assess—

(i) the direct and indirect costs and benefits associated with the project if the service is provided by the municipality through an internal mechanism, including the expected effect on the environment and on human health, well-being and safety:

(ii) the municipality's capacity and potential future capacity to furnish the skills. expertise and resources necessary for the provision of the service through an internal mechanism mentioned in section 76*(a)*:

(iii) the extent to which the re-organisation of its administration and the development of the human resource capacity within that administration. as provided for in sections 51 and 68, respectively. could be utilised to provide a service through an internal mechanism mentioned in section 76*(a)*:

(iv) the likely impact on development, job creation and employment patterns in the municipality; and

(v) the views of organised labour; and

(b) it may take into account any developing trends in the sustainable provision of municipal services generally.

(2) After having applied subsection (l), a municipality may—

(a) decide on an appropriate internal mechanism to provide the service; or

(b) before it takes a decision on an appropriate mechanism, explore the possibility of providing the service through an external mechanism mentioned in section *76(b).*

(3) If a municipality decides in terms of subsection *(2)(b)* to explore the possibility of providing the service through an external mechanism it must—

(a) give notice to the local community of its intention to explore the provision of the service through an external mechanism; and

(b) assess the different service delivery options in terms of section *76(b),* taking into account—

(i) the direct and indirect costs and benefits associated with the project, including the expected effect of any service delivery mechanism on the environment and on human health, well-being and safety;

(ii) the capacity and potential future capacity of prospective service providers to furnish the skills, expertise and resources necessary for the provision of the service;

(iii) the views of the local community;

(iv) the likely impact on development and employment patterns in the municipality; and

(v) the views of organised labour.

(4) After having applied subsection (3), a municipality must decide on an appropriate internal or external mechanism, taking into account the requirements of section 73(2) in achieving the best outcome.

(5) When applying this section a municipality must comply with—

(a) any applicable legislation relating to the appointment of a service provider other than the municipality; and

(b) any additional requirements that may be prescribed by regulation.

Provision of services by municipality through internal mechanisms

79. If a municipality decides to provide a municipal service through an internal mechanism mentioned in section 76(a), it must—

(a) allocate sufficient human, financial and other resources necessary for the proper provision of the service; and

(b) transform the provision of that service in accordance with the requirements of this Act.

Provision of services through service delivery agreements with external mechanisms

80. (l) If a municipality decides to provide a service through a service delivery agreement in terms of section *76(b)* with—

(a) a municipal entity, another municipality or a national or provincial organ of state, it may negotiate and enter into such an agreement with the relevant municipal entity, municipality or organ of state without applying Part 3 of this Chapter; or

(b) any institution or entity. or any person, juristic or natural, not mentioned in paragraph *(a),* it must apply Part 3 of this Chapter before entering into such an agreement with any such institution, entity or person.

(2) Before a municipality enters into a service delivery agreement for a basic municipal service it must establish a mechanism and programme for community consultation and information dissemination regarding the service delivery agreement. The contents of a service delivery agreement must be communicated to the local community through the media.

Responsibilities of municipalities when providing services through service delivery agreements with external mechanisms

81. (I) If a municipal service is provided through a service delivery agreement in terms of section 76*(b)*, the municipality remains responsible for ensuring that that service is provided to the local community in terms of the provisions of this Act, and accordingly must—

(a) regulate the provision of the service, in accordance with section41;

(b) monitor and assess the implementation of the agreement, including the performance of the service provider in accordance with section 4 I:

(c) perform its functions and exercise its powers in terms of Chapters 5 and 6 if the municipal service in question falls within a development priority or objective in terms of the municipality's integrated development plan;

(d) within a tariff policy determined by the municipal council in terms of section 74, control the setting and adjustment of tariffs by the service provider for the municipal service in question; and

(e) generally exercise its service authority so as to ensure uninterrupted delivery of the service in the best interest of the local community.

(2) A municipality, through a service delivery agreement—

(a) may assign to a service provider responsibility for—

(i) developing and implementing detailed service delivery plans within the framework of the municipality's integrated development plan:

(ii) the operational planning, management and provision of the municipal service;

(iii) undertaking social and economic development that is directly related to the provision of the service;

(iv) customer management;

(v) managing its own accounting, financial management, budgeting. investment and borrowing activities within a framework of transparency, accountability, reporting and financial control determined by the municipality, subject to applicable municipal finance management legislation;

(vi) the collection of service fees for its own account from users of services in accordance with the municipal council's tariff policy in accordance with the credit control measures established in terms of Chapter 9;

(b) may pass onto the service provider, through a transparent system that must be subject to performance monitoring and audit. funds for the subsidisation of services to the poor;

(c) may in accordance with applicable labour legislation. transferor second any of its staff members to the service provider, with the concurrence of the staff member concerned:

(d) must ensure continuity of the service if the service provider is placed under judicial management, becomes insolvent, is liquidated or is for any reason unable to continue performing its functions in terms of the service delivery agreement; and

(e) must, where applicable, take over the municipal service, including all assets, when the service delivery agreement expires or is terminated.

(3) The municipal council has the right to set, review or adjust the tariffs within its tariff policy. The service delivery agreement may provide for the adjustment of tariffs by the service provider within the limitations set by the municipal council.

(4) A service delivery agreement maY be amended by agreement between the parties, except where an agreement has been concluded following a competitive bidding process, in which case an amendment can only be made after the local community has been given—

(a) reasonable notice of the intention to amend the agreement and the reasons for the proposed amendment: and

(b) sufficient opportunity [0 make representations to the municipality,

(5) No councillor or staff member of a municipality may share in any profits or improperly receive any benefits from a service provider providing a municipal service in terms of a service delivery agreement.

Municipal entities

82. (1) If a municipality intends to provide a municipal service in the municipality through a service delivery agreement with a municipal entity, it may—

(a) alone or together with another municipality, establish in terms of applicable national or provincial legislation a company. co-operative, trust, fund or other corporate entity to provide that municipal service as a municipal entity under the ownership control of that municipality or those municipalities;

(b) alone or together with another municipality, acquire ownership control in any existing company, co-operative, trust, fund or other corporate entity which as its main business intends to provide that municipal service in terms of a service delivery agreement with the municipality: or

(c) establish in terms of subsection (2) a service utility to provide that municipal service.

(2) *(a)* A municipality establishes a service utility in terms of subsection (I)*(c)* by passing a by-law establishing and regulating the functioning and control of the service utility.

(b) A service utility is a separate juristic person.

(c) The municipality which established the service utility must exercise ownership control over it in terms of its by-laws.

Part 3: Service delivery agreements involving competitive bidding

Competitive bidding

83. (1) If a municipality decides to provide a municipal service through a service delivery agreement with a person referred to in section 80(1)(b), it must select the service provider through selection processes which—

(a) are competitive, fair, transparent, equitable and cost- effective;

(b) allow all prospective service providers to have equal and simultaneous access to information relevant to the bidding process;

(c) minimise the possibility of fraud and corruption;

(d) make the municipality accountable to the local community about progress with selecting a service provider, and the reasons for any decision in this regard; and

(e) takes into account the need to promote the empowerment of small and emerging enterprises.

(2) Subject to the provisions of the Preferential Procurement Policy Framework Act. (Act No. 5 of 2000), a municipality may determine a preference for categories of service providers in order to advance the interest of persons disadvantaged by unfair discrimination, as long as the manner in which such preference is exercised does not compromise or limit the quality, coverage, cost and developmental impact of the services.

(3) The selection process referred to in subsection (1), must be fair, equitable. transparent, cost-effective and competitive, and as may be provided for in other applicable national legislation.

(4) In selecting a service provider a municipality must apply the criteria listed in section 78 as well as any preference for categories of service providers referred to in subsection (2) of this section.

Negotiation and agreement with prospective service provider

84. (1) After a prospective service provider has been selected. the municipality must on the basis of the bidding documents, and any addenda. amendments or variations thereto that were provided to all the bidders, negotiate the final terms and conditions of the service delivery agreement with the preferred service provider and. if successful, enter into such an agreement with the selected service provider on the terms and conditions specified in the bidding documents, as modified or supplemented in the negotiations, if such modifications do not materially affect the bid in a manner which compromises the integrity of the bidding process.

(2) If the municipality and the selected service provider fail to reach agreement within a reasonable time allowed by the municipality for negotiations, the municipality may negotiate with the next-ranked prospective service provider.

(3) When a municipality has entered into a service delivery agreement it must—

(a) make copies of the agreement available at its offices for public inspection during office hours; and

(b) give notice in the media of—

(i) particulars of the service that will be provided under the agreement;

(ii) the name of the selected service provider; and

(iii) the place where and the period for which copies of the agreement are available for public inspection.

Part 4: Municipal service districts

Establishment of internal municipal service districts

85. (1) A municipality may, in accordance with the policy framework referred to in section 86, establish a part of the municipality as an internal municipal service district to facilitate the provision of a municipal service in that part of the municipality.

(2) Before establishing an internal municipal service district, the municipality must—

(a) consult the local community on the following matters:

(i) The proposed boundaries of the service district;

(i) the proposed nature of the municipal service that is to be provided:

(iii) the proposed method of financing the municipal service; and

(iv) the proposed mechanism for the provision of the municipal service: and

(b) obtain the consent of the majority of the members of the local community in the proposed service district that will be required to contribute to the provision of the municipal service.

(3) When a municipality establishes an internal municipal service district. the municipality—

(a) must determine the boundaries of the district;

(b) must determine the mechanism that will provide the service in the district;

(c) in order to finance the service in the district, may—

(i) set a tariff or levy for the service in the district;

(ii) impose a special surcharge in the district on the tariff for the service; or

(iii) increase the tariff in the district for that service:

(d) must establish separate accounting and other record-keeping systems with respect to the provision of the service in the district: and

(e) may establish a committee composed of persons representing the community in the district to act as a consultative and advisory forum for the municipality regarding the management of and other matters relating to the service in the district, provided that gender representivity is taken into account when such a committee is established.

Policy framework for internal municipal service district

86. (1) A municipality must develop and adopt a policy framework for the establishment, regulation and management of an internal municipal service district.

(2) Such a policy framework must reflect at least the following:

(a) The development needs and priorities of designated parts of the municipality that must be balanced against that of the municipality as a whole:

(b) the extent to which the establishment of one or more internal municipal service districts—

(i) will promote the Iota! economic development of the municipality as a whole;

(ii) will contribute to enhancing the social, economic and spatial integration of the municipality; and

(iii) may not entrench or contribute to further disparities in service provision.

Establishment of multi-jurisdictional municipal service districts

87. Two or more municipalities, by written agreement, may establish their respective municipal areas or designated parts of their respective municipal areas as a multi-jurisdictional municipal service district to facilitate the provision of a municipal service in those municipal areas or those designated parts.

Minister requesting the establishment of multi-jurisdictional municipal service districts

88. (1) The Minister may, in [he national interest and in consultation with the national Minister responsible for the functional area in question, request two or more municipalities to establish designated multi-jurisdictional municipal service districts to conform to the requirements of national legislation applicable to the provision of a specific municipal service.

(2) The municipalities that receive a request in terms of subsection (l), must within two months of receiving such request decide whether to accede to the request, and convey their decision to the Minister.

Contents of agreements establishing multi-jurisdictional municipal service districts

89. (1) An agreement establishing a multi-jurisdictional municipal service district must describe the rights, obligations and responsibilities of the participating municipalities and must—

(a) determine the boundaries of the district;

(b) identify the municipal service to be provided in terms of the agreement;

(c) determine the mechanism that will provide the service in the district;

(d) determine budgetary, funding and scheduling arrangements for implementation of the agreement;

(e) provide for—

(i) the establishment of a governing body for the multi-jurisdictional municipal service district;

(ii) the appointment of representatives of the participating municipalities to the governing body, the filling of vacancies and the replacement and recall of representatives;

(iii) the number of representatives appointed for each participating municipality, subject to subsection (2);

(iv) the terms and conditions of appointment of those representatives;

(v) the appointment of a chairperson;

(vi) the operating procedures of the governing body;

(vii) the delegation of powers and duties to the governing body consistent with section 92; and

(viii) any other matter relating to the proper functioning of the governing body;

(f) provide for—

(i) the acquisition of infrastructure, goods. services, supplies or equipment by the governing body, or the transfer of infrastructure. goods, services. supplies or equipment to the governing body;

(ii) the appointment of staff by the governing body, or the transfer or secondment of staff to the governing body in accordance with applicable labour legislation;

(iii) the terms and conditions on which any acquisition. transfer. appointment or secondment is made; and

(g) determine the conditions for, and consequences of, the withdrawal from the agreement of a participating municipality:

(h) determine the conditions for, and consequences of, the termination of the agreement, including—

(i) the method and schedule for winding-up the operations of the district;

(ii) the distribution of the proceeds; and

(iii) the allocation among the participating municipalities of any assets and liabilities.

(2) A governing body must consist of between three and fifteen representatives.

Legal status of governing bodies

90. The governing body of a multi-jurisdictional municipal service district is a juristic person.

Powers and duties **of** governing bodies of multi-jurisdictional municipal service districts

91. (1) The governing body of a multi-jurisdictional municipal service district. in relation to the provision of the municipal service for which the district is established—

(a) may in terms of the delegation in the agreement establishing the governing body exercise any of the powers, a municipality may exercise for the proper provision of a service of the kind in question, subject to section 160(2) of the Constitution and any limitations. qualifications and directives set out in the agreement; and

(b) must in terms of the delegation perform all the duties a municipality must perform in terms of this Act or any other applicable legislation when providing a service of the kind in question. subject to any limitations. qualifications and directives set out in the agreement.

(2) In addition a governing body has the following powers, subject to any limitations. qualifications and directives set out in the agreement establishing the governing body:

(a) To determine its own staff establishment and appoint persons to posts on its staff establishment;

(b) to obtain the services of any person or entity to perform any specific act or function;

(c) to open a bank account;

(d) to acquire or dispose of any right in or to property;

(e) to insure itself against any loss, damage, risk or liability;

(f) to perform legal acts, or institute or defend any legal action in its own name;

(g) to do anything that is incidental to the exercise of any of its powers or duties: and

(h) to set, review and adjust tariffs within the policy framework approved by the participating municipalities.

Control of governing bodies of multi-jurisdictional municipal service districts

92. (1) The governing body of a multi-jurisdictional municipal service district—

(a) is accountable to the participating municipalities; and

(b) must comply with any legislation applicable to the financial management of municipalities and municipal entities.

(2) A participating municipality—

(a) is entitled to receive such regular written reports from the governing body of a district with respect to its activities and performance, as may be set out in the agreement establishing the governing body;

(b) may request the governing body to furnish it with such information regarding its activities as the participating municipality may reasonably require: and

(c) may appoint a nominee to inspect. at any time during norms] business hours. the books, records. operations and facilities of the governing body, and of those of its contractors relating to the provision of the municipal service for which the district is established.

Termination of multi-jurisdictional municipal service districts

93. A multi-jurisdictional municipal service district terminates—
(a) automatically, when there is only one remaining participating municipality;
(b) by written agreement among all of the participating municipalities; or
(c) upon the termination date or the fulfillment of any condition for termination contained in the agreement establishing the district.

Part 5: Regulations and guidelines

Regulations and guidelines

94. (1) The Minister may for the purposes of this Chapter make regulations or issue guidelines in accordance with section 120 to provide for or regulate the following matters:
(a) The preparation, adoption and implementation of a municipal tariff policy;
(b) the subsidisation of tariffs for poor households through—
(i) cross-subsidisation within and between services;
(ii) equitable share allocations to municipalities; and
(iii) national and provincial grants to municipalities;
(c) limits on tariff increases;
(d) criteria to be taken into account by municipalities when imposing surcharges on tariffs for services and determining the duration thereof;
(e) incentives and penalties to encourage—
(i) the economical, efficient and effective use of resources when providing services;
(ii) the recycling of waste; and
(iii) other environmental objectives;
(f) criteria to be taken into account by municipalities when assessing options for the provision of a municipal service;
(g) measures against malpractice in selecting and appointing service providers, including measures against the stripping of municipal assets;
(h) mechanisms and procedures for the co-ordination and integration of sectoral requirements in terms of legislation with the provisions of this Chapter, and the manner in which municipalities must comply with these:
(i) standard draft service delivery agreements;
(j) performance guarantees by service providers: and
(k) any other matter that may facilitate—
(i) the effective and efficient provision of municipal services: or
(ii) the application of this Chapter.

(2) The Minister may make regulations and issue guidelines contemplated in paragraphs *(a), (b), (c), (d)* and *(e)* of subsection (1) only after consultation with the Minister of Finance.

(3) When making regulations or issuing guidelines in terms of section 120 to provide for or to regulate the matters mentioned in subsection (1) of this section, the Minister must—
(a) take into account the capacity of municipalities to comply with those matters: and
(b) differentiate between different kinds of municipalities according to their respective capacities.

(4) The Minister, by notice in the *Gazette*, may phase in the application of the provisions of this Chapter which place a financial or administrative burden on municipalities.

(5) A notice in terms of subsection (4) may—
"*(a)* determine different dates on which different provisions of this Chapter becomes applicable to municipalities;
(b) apply to all municipalities generally;
(c) differentiate between different kinds of municipalities which may. for the purpose of the phasing in of the relevant provisions. be defined in the notice in relation to categories or types of municipalities or in any other way; or

(d) apply to a specific kind of municipality only, as defined in the notice.

CHAPTER 9

CREDIT CONTROL AND DEBT COLLECTION

Customer care and management

95. In relation to the levying of rates and other taxes by a municipality and the charging of fees for municipal services, a municipality must, within its financial and administrative capacity—

(a) establish a sound customer management system that aims to create a positive and reciprocal relationship between persons liable for these payments and the municipality, and where applicable, a service provider;

(b) establish mechanisms for users of services and ratepayers to give feedback to the municipality or other service provider regarding the quality of the services and the performance of the service provider;

(c) take reasonable steps to ensure that users of services are informed of the costs involved in service provision. the reasons for the payment of service fees, and the manner in which monies raised from the service are utilised:

(d) where the consumption of services has to be measured, take reasonable steps to ensure that the consumption by individual users of services is measured through accurate and verifiable metering systems:

(e) ensure that persons liable for payments, receive regular and accurate accounts that indicate the basis for calculating the amounts due;

(f) provide accessible mechanisms for those persons to query or verify accounts and metered consumption, and appeal procedures which allow such persons to receive prompt redress for inaccurate accounts;

(g) provide accessible mechanisms for dealing with complaints from such persons, together with prompt replies and corrective action by the municipality;

(h) provide mechanisms to monitor the response time and efficiency in complying with paragraph *(g)*; and

(i) provide accessible pay points and other mechanisms for settling accounts or for making pre-payments for services.

Debt collection responsibility of municipalities

96. A municipality—

(a) must collect all money that is due and payable to it, subject to this Act and any other applicable legislation; and

(b) for this purpose, must adopt, maintain and implement a credit control and debt collection policy which is consistent with its rates and tariff policies and complies with the provisions of this Act.

Contents of policy

97. (I) A credit control and debt collection policy must provide for—

(a) credit control procedures and mechanisms:

(b) debt collection procedures and mechanisms:

(c) provision for indigent debtors that is consistent with its rates and tariff policies and any national policy on indigents:

(d) realistic targets consistent with—

(i) general recognised accounting practices and collection ratios: and

(ii) the estimates of income set in the budget less an acceptable provision for bad debts;

(e) interest on arrears, where appropriate;
(f) extensions of time for payment of accounts;
(g) termination of services or the restriction of the provision of services when payments are in arrears;
(h) matters relating to unauthorised consumption of services, theft and damages; and
(i) any other matters that may be prescribed by regulation in terms of section 104.

(2) A credit control and debt collection policy may differentiate between different categories of ratepayers, users of services, debtors, taxes, services, service standards and other matters as long as the differentiation does not amount to unfair discrimination.

By-laws to give effect to policy

98. (1) A municipal council must adopt by-laws to give effect to the municipality's credit control and debt collection policy, its implementation and enforcement.

(2) By-laws in terms of subsection (1) may differentiate between different categories of ratepayers, users of services, debtors, taxes, services, service standards and other matters as long as the differentiation does not amount to unfair discrimination.

Supervisory authority

99. A municipality's executive committee or executive mayor or, if a municipality does not have an executive committee or executive mayor, the municipal council itself or a committee appointed by it, as the supervisory authority must—

(a) oversee and monitor—
(i) the implementation and enforcement of the municipality's credit control and debt collection policy and any by-laws enacted in terms of section 98; and
(ii) the performance of the municipal manager in implementing the policy and any by-laws;
(b) when necessary, evaluate or review the policy and any by-laws, or the implementation of the policy and any such by-laws, in order to improve efficiency of its credit control and debt collection mechanisms, processes and procedures; and
(c) at such intervals as may be determined by the council report to a meeting of the council, except when the council itself performs the duties mentioned in paragraphs (a) and *(b)*.

Implementing authority

100. The municipal manager or service provider must—

(a) implement and enforce the municipality's credit control and debt collection policy and any by-laws enacted in terms of section 98;
(b) in accordance with the credit control and debt collection policy and any such by-laws, establish effective administrative mechanisms, processes and procedures to collect money that is due and payable to the municipality; and
(c) at such intervals as may be determined by the council report the prescribed particulars to a meeting of the supervisory authority referred to in section 99.

Municipality's right of access to premises

101. The occupier of premises in a municipality must give an authorised representative of the municipality or of a service provider access at all reasonable hours

to the premises in order to read, inspect, install or repair any meter or service connection for reticulation, or to disconnect, stop or restrict the provision of any service,

Amounts

102. (l) A municipality may—

(a) consolidate any separate accounts of persons liable for payments to the municipality;

(b) credit a payment by such a person against any account of that person; and

(c) implement any of the debt collection and credit control measures provided for *in* this Chapter in relation to any arrears on any of the accounts of such a person.

(2) Subsection (1) does not apply where there is a dispute between the municipality and a person referred to in that subsection concerning any specific amount claimed by the municipality from [hat person.

Agreements with employers

103. A municipality may—

(a) with the consent of a person liable to the municipality for the payment of rates or other taxes, or fees for municipal services, enter into an agreement with that person's employer to deduct from the salary or wages of that person—

(i) any outstanding amounts due by that person to the municipality; or

(ii) such regular monthly amounts as may be agreed: and

(b) provide special incentives for—

(i) employers to enter into such agreements; and

(ii) employees to consent to such agreements.

Regulations and guidelines

104. (1) The Minister may for the purposes of this Chapter make regulations or issue guidelines in accordance with section 1 20 to provide for or regulate the following matters:

(a) the particulars that must be contained in the municipal manager's report in terms of section 100*(c)*;

(b) the identification of municipal services provided by the municipality or other service providers to users of services where the use of the service by the user can reasonably be determined, measured or estimated per quantity used or per frequency of such use;

(c) the determination, measurement or estimate of the use by each user of each service so identified;

(d) user agreements. and deposits and bank guarantees for the provision of municipal services;

(e) the rendering of accounts to ratepayers and users and the particulars to be contained in the accounts;

(f) the action that may be taken by municipalities and service providers to secure payment of accounts that are in arrear, including—

(i) the termination of municipal services or the restriction of the provision of services;

(ii) the seizure of property;

(iii) the attachment of rent payable on a property; and

(iv) the extension of liability to a director, a trustee or a member if the debtor is a company, a trust or a close corporation:

(g) appeals against the accuracy of accounts for municipal taxes or services:

(h) the manner in and time within which such appeals must be lodged and determined and the consequences of successful and unsuccessful appeals;

(i) extensions for the payment of smears and interest payable in respect of such arrears;

(j) service connections and disconnections, and the resumption of discontinued services;

(k) the combating of unauthorised consumption, connection and reconnection and theft of municipal services;

(l) the development and implementation of an indigent policy;

(m) the tampering with or theft of meters, service supply equipment and reticulation network and any other fraudulent activity in connection with the provision of municipal services; and

(n) any other matter that may facilitate—

(i) effective and efficient systems of credit control and debt collection by municipalities; or

(ii) the application of this Chapter.

(2) When making regulations or issuing guidelines in terms of section 120 to provide for or to regulate the matters mentioned in subsection (1) of this section, the Minister must—

(a) take into account the capacity of municipalities to comply with those matters: and

(b) differentiate between different kinds of municipalities according to their respective capacities.

CHAPTER 10

PROVINCIAL AND NATIONAL MONITORING AND STANDARD SETTING

Part 1: Provincial monitoring

Provincial monitoring of municipalities

105. (1) The MEC for local government in a province must establish mechanisms, processes and procedures in terms of section 155 (6) of the Constitution to—

(a) monitor municipalities in the province in managing their own affairs. exercising their powers and performing their functions;

(b) monitor the development of local government capacity in the province; and

(c) assess the support needed by municipalities to strengthen their capacity to manage their own affairs, exercise their powers and. perform their functions.

(2) The MEC for local government in a province may by notice in the *Provincial Gazette* require municipalities of any category or type specified in the notice or of any other kind described in the notice, to submit to a specified provincial organ of state such information as may be required in the notice, either at regular intervals or within a period as may be specified.

(3) When exercising their powers in terms of subsection (1) MECs for local government—

t(a) must rely as far as is possible on annual reports in terms of section 46 and reformation submitted by municipalities in terms of subsection (2); and

(b) may make reasonable requests to municipalities for additional information after taking into account—

(i) the administrative burden on municipalities to furnish the information;

(ii) the cost involved; and

(iii) existing performance monitoring mechanisms, systems and processes in the municipality.

Non-performance and maladministration

106. (i) If an MEC has reason to believe that a municipality in the province cannot or does not fulfil a statutory obligation binding on that municipality or that maladministration, fraud, corruption or any other serious malpractice has occurred or is occurring in a municipality in the province, the MEC must—

(a) by written notice to the municipality, request the municipal council or municipal manager to provide the MEC with information required in the notice; or

(b) if the MEC considers it necessary, designate a person or persons to investigate the matter.

(2) In the absence of applicable provincial legislation, the provisions of sections 2,3, 4, 5 and 6 of the Commissions Act, 1947 (Act No. 8 of 1947), and the regulations made in terms of that Act apply, with the necessary changes as the context may require, to an investigation in terms of subsection (1)(b).

(3) An MEC issuing a notice in terms of subsection (1)*(a)* or designating a person to conduct an investigation in terms of subsection (1)*(b)*, must submit a written statement to the National Council of Provinces motivating the action.

Part 2: National monitoring and standard setting

Furnishing of information

107. The Minister. by notice in the *Gazette*, may require municipalities of any category or type specified in the notice, or of any other kind described in the notice. to submit to a specified national organ of state such information concerning their affairs as may be required in the notice, either at regular intervals or within a period as may be specified.

Essential national and minimum standards

108. (i) Except where otherwise provided for by an Act of Parliament, the Minister may, by notice in the *Gazette,* establish essential national standards and minimum standards for any municipal service or for any matter assigned to municipalities in terms of section 156 (1) of the Constitution, after consulting—

(a) the Minister of Finance:

(b) organised local government representing local government nationally;

(c) the MECS for local government; and

(d) any Cabinet member responsible for regulating that service.

(2) A Cabinet member, after consulting the Minister, may exercise the power contained in subsection (1) in relation to a municipal service or matter falling within the functional area for which that Cabinet member is responsible.

(3) Standards established in terms of subsection (1) may distinguish between different categories, types and kinds of municipalities.

(4) Draft standards in terms of subsection (1) or (2) must be published for public comment in the *Gazette* before their enactment.

(5) When establishing standards in terms of subsection(1) or (2), the Minister or other Cabinet member must—

(a) take into account the capacity of municipalities to comply with those standards; and

(b) differentiate between different kinds of municipalities according to their respective capacities.

CHAPTER 11

LEGAL MATTERS

Legal proceedings

109. (1) A municipality is a local authority for purposes of the Limitation of Legal Proceedings (Provincial and Local Authorities) Act. 1970 (Act No. 94 of 1970).

(2) A municipality may compromise or compound any action, claim or proceedings. and may submit to arbitration any matter other than a matter involving a decision on its status, powers 01- duties or the validity of its actions or by-laws.

Certain certificates to be evidence

110. In legal proceedings against a municipality, a certificate' which purports to be signed by a staff member of the municipality and which claims that the municipality used the best known, or the only, or the most practicable and available methods in exercising any of its powers or performing any of its functions, must on its mere production by any person be accepted by the court as evidence of that fact.

Copy of *Provincial Gazette* as evidence

111. A copy of the *Provincial Gazette* in which a by-law was published, may on its mere production in a court by any person, be used as evidence that that by-law was passed by a municipality concerned.

Prosecution of offences

112. A staff member of a municipality authorised in terms of section *22(8)(6)* of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), to conduct prosecutions, may institute criminal proceedings and conduct the prosecution in respect of a contravention of or failure to comply with a provision of—

(a) a by-law or regulation of the municipality;

(b) other legislation administered by the municipality; or

(c) other legislation as the National Director of Public Prosecutions may determine in terms of section 22(8)(b) of the National Prosecuting Authority Act, 1998.

Fines and bail

113. Fines and estreated bails recovered in respect of offences or alleged offences referred to in item 2 of Schedule 4 to the Public Finance Management Act, 1999 (Act No 1 of 1999), must be paid into the revenue fund of the municipality.

Time of notices and payments '

114. Normal or extended office hours is the only time—

(a) a payment may be made at a municipality, except when payment is made by electronic transfer or at agency pay-points; or

(b) any notice or other document may be served on the municipality, including on its council, or other structure or functionary or a staff member in an official capacity, except when the matter in connection with which a summons is served is an urgent matter.

Service of documents and process

115. (1) Any notice or other document that is seined on a person in terms of this Act, is regarded as having been served—

(a) when it has been delivered to that person personally;

(b) when it has been left at that person's place of residence or business in the Republic with a person apparently over the age of sixteen years;

(c) when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic and an acknowledgement of the posting thereof from the postal service is obtained;

(d) if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided by paragraphs *(a), (b)* or (c); or

(e) if that person's address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the property or premises, if any, to which it relates.

(2) When any notice or other document must be authorised or served on the owner, occupier or holder of any property or right in any property, it is sufficient if that person is described in the notice or other document as the owner, occupier or holder of the property or right in question, and it is not necessary to name that person.

(3) Any legal process is effectively and sufficiently served on a municipality when it is delivered to the municipal manager or a person in attendance at the municipal manager's office.

Public servitudes

116. Public servitudes in favour of a municipality are under the control of the municipality which must protect and enforce the rights of [he local community arising from those servitudes.

Custody of documents

117. Except where otherwise provided, all records and documents of a municipality are in the custody of the municipal manager.

Restraint on transfer of property

118. (1) A registrar of deeds or other registration officer of immovable property may not register the transfer of property except on production to that registration officer of a prescribed certificate—

(a) issued by the municipality in which that property is situated; and

(b) which certifies that all amounts due in connection with that property for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties during the two years preceding the date of application for the certificate have been fully paid.

(2) In the case of the transfer of immovable property by a trustee of an insolvent estate, the provisions of this section are subject to section 89 of the Insolvency Act, 1936 (Act No. 24 of 1936).

(3) An amount due for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties is a charge upon the property in connection with which the amount is owing and enjoys preference over any mortgage bond registered against the property.

CHAPTER 12

MISCELLANEOUS

Offences and penalties

119. (1) A councillor who attempts to influence the municipal manager or any other staff member or an agent of a municipality not to enforce an obligation in terms of this Act, any other applicable legislation or any by-law or a decision of the council of the municipality, is guilty of an offence and on conviction liable to a tine or to imprisonment for a period not exceeding two years.

(2) A municipal manager or other staff member of a municipality who accedes to an attempt mentioned in subsection (1), is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding two years.

(3) A person who contravenes section 101 is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.

(4) A person convicted of an offence and sentenced to more than 12 month's imprisonment without the option of a fine, is disqualified to remain a councillor of the municipality concerned and to become a councillor of any municipality during a period of five years as from the conviction.

Regulations and guidelines

120. (1) The Minister may, by notice in the *Gazette* and after consultation with organised local government representing local government nationally, make regulations or issue guidelines not inconsistent with this Act concerning—

(a) the matters listed in sections 22,37,49,72,94 and 104;

(b) any matter that may be prescribed in terms of this Act; and

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

(2) Regulations and guidelines made or issued in terms of subsection (1) may differentiate between—

(a) different kinds of municipalities which may, for the purposes of the regulations, be defined in the regulations either in relation to categories or types of municipalities or in any other way;

(b) different categories of municipal services:

(c) different categories of service providers;

(d) ratepayers, users of services, debtors and other categories of persons; or

(e) different categories of ratepayers, users of services or debtors as long as the differentiation does not amount to unfair discrimination.

(3) Regulations in terms of subsection (1) may prescribe penalties for the contravention of or non-compliance with any specific provisions of the regulations, which may include an appropriate fine and imprisonment not exceeding six months.

(4) Draft regulations and guidelines must be published in the *Gazette* for public comment before their enactment in terms of subsection (1).

(5) The absence of a regulation or guideline that maybe prescribed in terms of this Act does not prevent—

(a) the application of a provision of this Act in connection with which the regulation or guideline may be prescribed; or

(b) the performance of a function or the exercise of a power assigned in such a provision.

(6) *(a)* Guidelines issued in terms of subsection (1) are not binding.

(b) Compliance with guidelines issued in terms of subsection (1) may be taken into account in the determination of inter-governmental financial policies and arrangements.

(7) Regulations made in terms of this section—

(a) must be submitted to Parliament at least 30 days before their publication in the *Gazette;* and

(b) take effect on a date determined in the regulations, which must be the date of publication or a date after such publication.

Amendment of legislation

121. The legislation mentioned in Schedule 3 is hereby amended to the extent set out in that Schedule.

Transitional arrangements

122. (1) Any written agreement referred to in section' 11(2) which existed immediately before this Act took effect, must be regarded as having been concluded in terms of that section.

(2) The Minister must—

(a) initiate steps for the rationalisation of existing national and provincial planning legislation applicable to municipalities in order to facilitate local development planning as an integrated concept within the constitutional system of co-operative government envisaged in section 41 of the Constitution; and

(b) establish mechanisms for facilitating co-ordination between sectoral regulation with respect to local government matters.

Phasing in of certain provisions of this Act

123. (1) The Minister, by notice in the *Gazette*, may phase in the application of the provisions of this Act which place a financial or administrative burden on municipalities.

(2) A notice in terms of subsection (1) may—

(a) determine different dates on which different provisions of this Act become applicable to municipalities;

(b) apply to all municipalities generally:

(c) differentiate between different kinds of municipalities which may, for the purpose of the phasing in of the relevant provisions, be defined in the notice in relation to categories or types of municipalities or in any other way: or

(d) apply to a specific kind of municipality only, as defined in the notice.

Short title and commencement

124. This Act is called the Local Government: Municipal Systems Act, 2000, and takes effect on a date determined by the President by proclamation in the *Gazette*.

SCHEDULE 1

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 of the Municipal Structures Act, the following Code of Conduct is established.

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

2. A councillor must—
(a) perform the functions of office in good faith, honestly and 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.

Attendance at meetings

3. 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.

Sanctions for non-attendance of meetings

4. (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 3; 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 3, must be removed from office as a councillor.
(3) Proceedings for the imposition of a tine 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. The uniform standing procedure must comply with the rules of natural justice.

Disclosure of interests

5. (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

(h) 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 at which it is possible for the councillor to make the disclosure.

(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

6. (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) Except with the prior consent of the municipal council. a councillor may not—

(a) be a party to or beneficiary under a contract for—

(i) the provision of goods or services to the municipality; or

(ii) the performance of any work otherwise than as a councillor for the municipality;

(b) obtain a financial interest in any business of the municipality: or

(c) for a fee or other consideration appear on behalf of any other person before the council or a committee.

(3) If more than one quarter of the councillors object to consent being given to a councillor in terms of subitem (2). such consent may only be given to the councillor with the approval of the MEC for local government in the province.

Declaration of interests

7. (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

8. 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

9. A councillor may not request, solicitor 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

10. (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.

Intervention in administration

11. 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 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.

Council property

12. A councillor may not use, take, acquire or benefit from any property or asset owned, controlled or managed by the municipality to which that council [or has no right.

Duty of chairpersons of municipal councils

13. (1) If the chairperson of a municipal council, on reasonable suspicion, is of the opinion that a provision of this Code has been breached, the chairperson 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 chairperson must report the outcome of the investigation to the MEC for local government in the province concerned.
(4) The chairperson 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.

Breaches of Code

14. (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 period;

(d) fine the councillor; and

(e) request the MEC to remove the councillor from office.

(3) *(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.

(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.

(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 councillor should be suspended or removed from office.

(5) The Commissions Act, 1947 (Act 8 of 1947), may be applied to an investigation in terms of subitem (3).

(6) 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.

(7) Any investigation in terms of this item must be in accordance with the rules of natural justice.

Application of Code to traditional leaders

15. (1) Items 1.2,5,6, 9*(b)* to *(d)*, 10, 11, 12, 13 and 14(1) apply to a traditional leader who participates or has participated in the proceedings of a municipal council in terms of section 81 of the Municipal Structures Act.

(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 14 (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, 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 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) of the Municipal Structures Act.

SCHEDULE 2

CODE OF CONDUCT FOR MUNICIPAL STAFF MEMBERS

Definitions

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

Generai conduct

2. A staff member of a municipality must at all times—

(a) loyally execute the lawful policies of the municipal council;

(b) perform the functions of office in good faith, diligently, honestly and in a transparent manner;

(c) act in such a way that the spirit, purport and objects of section 50 are promoted;

(d) act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised; and

(e) act impartially and treat all people, including other staff members. equally without favour or prejudice.

Commitment to serving the public interest

3. A staff member of a municipality is a public servant in a developmental local system, and must accordingly—

(a) implement the provisions of section 50(2);

(b) foster a culture 'of commitment to serving the public and a collective sense of responsibility for performance in terms of standards and 'targets;

(c) promote and seek to implement the basic values and principles of public administration described in section 195 (1) of the Constitution;

(d) obtain copies of or information about the municipality's integrated development plan, and as far as possible within the ambit of the staff member's job description, seek to implement the objectives set out in the integrated development plan, and achieve the performance targets set for each performance indicator;

(e) participate in the overall performance management system for the municipality, as well as the staff member's individual performance appraisal and reward system, if such exists, in order to maximise the ability of the municipality as a whole to achieve its objectives and improve the quality of life of its residents.

Personal gain

4. (1) A staff member of a municipality may not—

(a) use the position or privileges of a staff member. or confidential information obtained as a staff member. for private gain or to improperly benefit another person: or

(b) take a decision on behalf of the municipality concerning a matter in which that staff member. or that staff member's spouse. partner or business associate, has a direct or indirect personal or private business interest.

(2) Except with the prior consent of the council of a municipality a staff member of the municipality may not—

(a) be a party to a contract for—

(i) the provision of goods or services to the municipality; or

(ii) the performance of any work for the municipality otherwise than as a staff member;

(b) obtain a financial interest in any business of the municipality; or

(c) be engaged in any business, trade or profession other than the work of the municipality.

Disclosure of benefits

5. (1) A staff member of a municipality 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 in writing full particulars of the benefit to the council.

(2) This item does not apply to a benefit which a staff member, or a spouse, partner. business associate or close family member, has or acquires in common with all other residents of the municipality.

Unauthorised disclosure of information

6. (1) A staff member of a municipality may not without permission disclose any privileged or confidential information obtained as a staff member of' the municipality to an unauthorised person.

(2) For the purpose of this item "privileged or confidential information" includes any information—

(a) determined by the municipal council or any structure or functionary of the municipality to be privileged or confidential;

(b) discussed in closed session by the council or a committee of the council;

(c) disclosure of which would violate a person's right to privacy; or

(d) declared to be privileged, confidential or secret in terms of any law.

(3) This item does not derogate from a person's right of access to information in terms of national legislation.

Undue influence

7. A staff member of a municipality may not—

(a) unduly influence or attempt to influence the council of the municipality. or a structure or functionary of the council, or a council or, with a view to obtaining any appointment, promotion, privilege, advantage or benefit. or for a family member, friend or associate;

(b) mislead or attempt to mislead the council, or a structure or functionary of the council, in its consideration of any mutter: or

(c) be involved in a business venture with a councilor without the prior written consent of the council of the municipality.

Rewards, gifts and favours

8. (I) A staff member of a municipality may not request, solicit or accept any reward. gift or favour for-

(a) persuading the council of the municipality. or any structure or functionary of the council, with regard to the exercise of any power or the performance of any duty;

(b) making a representation to the council, or any structure or functionary of' the council;

(c) disclosing any privileged or confidential information: or

(d) doing or not doing anything within that staff member's powers or duties.

(2) A staff member must without delay report to a superior official or to the speaker of the council any offer which, if accepted by the staff member. would constitute a breach of subitem (I).

Council property

9. A staff member of a municipality may not use, take, acquire, or benefit from any property or asset owned, controlled or managed by the municipality to which that staff member has no right.

Payment of arrears

10. A staff member of a municipality may not be in arrears to the municipality for rates and service charges for a period longer than 3 months, and a municipality may deduct any outstanding amounts from a staff member's salary after this period.

Participation in elections

11. A staff member of a municipality may not participate in an election of the council of the municipality, other than in an official capacity or pursuant to any constitutional right.

Sexual harassment

12. A staff member of a municipality may not embark on any action amounting to sexual harassment.

Reporting duty of staff members

13. Whenever a staff member of a municipality has reasonable grounds for believing that there has been a breach of this Code, the staff member must without delay report the matter to a superior officer or to the speaker of the council.

Breaches of Code

14. Breaches of this Code must be dealt with in terms of the disciplinary procedures of the municipality envisaged in section 67(1)*(h)* of this Act.

SCHEDULE 3

LEGISLATION AMENDED

1. Sections 31 and 32 of, and Schedule 5 to, the Municipal Structures Act are hereby repealed.

2. Section 27 of the Municipal Structures Act is hereby amended by the substitution for paragraph *(d)* of the following paragraph:

"*(d)* contravenes a provision of the Code of Conduct for Councillors set out in Schedule [5] 1 of the Local Government: Municipal Systems Act, 2000, and is removed from office in terms of the Code:".

3. Section 81 of the Municipal Structures Act is hereby amended by the substitution for subsection (5) of the following subsection:

"(5) 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 [5] 1 of the Local Government: Municipal Systems Act, 2000.".

4. Section 82 of the Municipal Structures Act is hereby amended by the addition of the following subsection. the existing section becoming subsection (1):

"(2) A person appointed as municipal manager must have the relevant skills and expertise to perform the duties associated with that post.".

5. Schedule 4 of the Public Finance Management Act. 1999 (Act No. 1 of 1999), is hereby amended by the addition of the following item:

"2. Fines and estreated bails paid in respect of offences and alleged offences in terms of—

(a) by-laws enacted by municipalities; or
(b) national or provincial legislation, the administration of which is assigned to municipalities.".