

Ref : 4/4/1
Date : 17 June 2022

**MADAM SPEAKER
COUNCIL ITEM**

**REQUEST TO ESTABLISH INDEPENDENT COMMITTEE : ENFORCING
CODE OF CONDUCT FOR COUNCILLORS**

1. PURPOSE

The purpose of this report is to request the Municipal Council to establish an Independent committee to deal with matters related to breach of the councillor code of conduct

2. BACKGROUND

The mushrooming of community pressure groups and spate of protests around service delivery issues was experienced especially from 2020, throughout 2021 and intensified for a full week which resulted to the closure of the Bram Fischer building during the month of March 2022. These protests bear testimony to a sense of unease amongst communities over their public representatives' ability or willingness to be responsive to their needs. And in the last 12 months a total of 15 service delivery disruptions and full three day shutdown happened in April 2021 and just to highlight that four of those cases took place here at our main head Office, the Bram Fischer Building which also resulted to the total blockade of the building.

Most of these community protests, and unrests resulted in blocking of traffic in the main routes with rocks, stones and debris, the most recent one happened in Dewetsdorp, which resulted in the closure of the R702 road through that town. A perceived lack of responsiveness on the part of councillors towards their communities as well as perceived and alleged cases of corruption and maladministration involving councillors all contribute to the perception that municipal council lacks accountability to the broader Mangaung community. While it is generally acknowledged and accepted and often reiterated that the necessary legislation to ensure accountable local government is in place, the lack of enforcement of this legislation is often cited as the problem.

3. ENFORCING ACCOUNTABILITY

The Municipal Systems Act provide that the council has the duty to provide, without favour or prejudice, accountable local government. Similarly, it provides that members of the local community have the right to demand that the proceedings of the council and its committees are conducted impartially, without prejudice and untainted by personal self-interest. What further emerges clearly from these fundamental provisions in local government's basic legislation is that the accountability is first and foremost linked to the municipality's own local communities. This is despite the fact that a variety of organs of state in various spheres of government are holding municipalities and councillors accountable in many ways. The provincial treasuries and National COGTA, including the office of the AG. Section 152(1)(a) Constitution. Section 4(2)(b) of the Municipal Systems Act and again Section 5(1)(e) of the Municipal Systems Act. The National Prosecuting Authority, in some way or another, hold municipalities and councillors accountable for the quality of their governance and the integrity of their actions. However, because the Constitution establishes municipalities as part of a distinctive sphere of government with their own assemblies of locally elected representatives, its intention is incontrovertible: a municipality's primary accountability is towards its citizens, thereby establishing the need for a framework for local accountability.

4. CODE OF CONDUCT

A key component of this framework for local accountability is the Code of Conduct for councillors, contained in the Municipal Systems Act. Before dealing with the issue of enforcement of the Code, it is appropriate to first outline the content of the Code.

4.1. Preamble of the Code of Conduct

The Code's preamble makes clear that the Code of Conduct is not only concerned with the integrity of councillors but also with their accountability towards local communities. It provides that councillors are elected to represent local communities on municipal councils. They must ensure that municipalities have structured mechanisms of accountability to local communities and must meet the priority needs of communities by providing services equitably, effectively and sustainably within the means of the municipality.

Further, 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.

4.2. General conduct and arrears to municipality

In general, councillors must perform their duties in good faith, honestly, in a transparent manner, in the best interest of the municipality and without

compromising the municipality's credibility or integrity. A councillor may not be in arrears to the municipality for rates and service charges for a period longer than three months.

4.3. Attendance of Council and Committee meetings

Councillors must attend meetings of the council or committees of which they are members unless they have obtained leave of absence or are required to withdraw from the meeting. Councillors can be granted leave of absence in terms of applicable national or provincial legislation or the council's standing rules and orders. The council may impose fines for a councillor not attending a meeting that he or she is required to attend or for a councillor failing to remain in attendance at such a meeting. However, failure to attend three or more consecutive council or committee meetings without having obtained leave of absence must result in removal from office of that councillor.

4.4 Declaration and disclosure of interests

Financial interests and gifts Each councillor must, within 60 days of his or her election or appointment, declare to the municipal manager, in writing, any of the following financial interests:

- (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.

The same applies to gifts above an amount prescribed by the Minister for local government. Any change in the nature or detail of the financial interests of a councillor must be declared in writing to the municipal manager annually. The council must decide which of the financial interests must be made public having regard to the need for confidentiality and the public interest for disclosure.

- Personal interests in a council matter

A councillor must disclose any indirect or direct personal or business interest that he or she (or a spouse, partner or business associate) may have in matters before the council or its committees. Unless the council or committee decides that the interest is “trivial or irrelevant”, a councillor must withdraw from council or committee proceedings

- **Benefits from a contract with the municipality**

A councillor who acquired or stands to acquire any direct benefit from a contract concluded with the municipality must disclose full particulars of the benefit to the council. This must be done at the first council meeting at which it is possible to do so. The same obligation rests on a councillor whose spouse, partner, business associate or close family member acquired or stands to acquire any direct benefit from a contract concluded with the municipality. If the abovementioned benefit is acquired in common with other residents of the municipality, the abovementioned does not apply.

4.5. Outside work

Full-time councillors are not permitted to engage in any other paid work without the consent of the council. Any reasonable requests for such consent should be honoured by the council.

4.6 Personal gain

Councillors may not use their position, privileges or confidential information for private gain for themselves or to improperly benefit another person. The use of council facilities, properties, vehicles and allowances naturally falls within this provision. A councillor may not be a party to or a beneficiary under a contract for:

- (a) the provision of goods or services to the municipality; or
- (b) the performance of any work other than as a councillor for the municipality.

Similarly, a councillor may not obtain a financial interest in any business of the municipality or appear on behalf of any other person before the council or a committee in return for a fee or other consideration. The council may, on a case by case basis, consent to a deviation from the above rules. If more than one quarter of the councillors objects to consent being given, the MEC for local government’s approval is necessary for such consent.

A councillor may not use, take or acquire or benefit from any property or asset owned, controlled or managed by the municipality to which that councillor has no right.

4.6. Bribery

Councillors may not request, solicit or accept rewards, gifts or favours for:

- (a) (not) voting in a particular manner before a committee or before the council;

- (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 of its committees; or
- (d) disclosing privileged or confidential information to third parties;
- (e) coercing officials to do wrong and illegal activities in order to dilute the reports or items in a particular direction;

4.7. Confidentiality

Without the consent of the council, councillors are not allowed to disclose privileged or confidential information of the council to unauthorised persons. Similarly, councillors are not allowed to disclose privileged or confidential information of a committee without the consent of that committee. The Act provides that 'privileged or confidential' is information:

- (a) that is so declared by the council or a committee;
- (b) that is discussed in a closed session by the council or a committee. A closed session refers to a meeting of the council or of a committee which is being held behind closed doors.
- (c) that is declared privileged, confidential or secret in terms of law; or
- (d) disclosure of which would violate a person's right to privacy. This does not derogate from any rights to access to information in terms of national legislation.

4.8. Interfering with administration

The Code of Conduct prohibits a councillor from interfering in the administration of the municipality, unless the council has given the councillor a mandate. The same applies to instructing any employee of the council without authorisation. Councillors may not obstruct the implementation of any council or committee decision or behave in such a way that would contribute to maladministration in the council. Exceptions to this rule can be formulated by law. It is a criminal offence for a councillor to attempt to influence the municipal manager, any other staff member or an agent of a municipality not to enforce an obligation in terms of the Systems Act, other legislation, a by-law or a council decision. The offence is punishable by a fine or imprisonment of up to two years.

5. Enforcing the Code of Conduct

As stated in the introduction, the perceived lack of responsive and accountable local government is not so much caused by inadequate or incomplete provisions on ethical conduct but rather in the lack of enforcement thereof. It is therefore necessary to address the issue as to how the Code of Conduct is enforced. The Code contains various provisions dealing with enforcement. The role players in the enforcement are (1) the speaker, (2) the Council and the (3) MEC for local government. The speaker plays a particularly pivotal role in the enforcement of

the Code of Conduct for councillors. This role is determined by the statutory duties, assigned to the speaker in the Structures Act and the Code of Conduct, as well as the traditional role of speakers as guardians of the integrity of the legislatures

- **Speaker's duty to ensure compliance**

The Municipal Structures Act states that the speaker must ensure compliance with the Code of Conduct in the council and council committees. He or she must ensure that every councillor receives a copy of the Code and that the Code is available wherever the council meets.

- **Compliance in council's committees**

The speaker must ensure compliance with the Code of Conduct, not only in the council but also in council committees. This means that the speaker must have a system of communication with the chairpersons of all council committees, including portfolio committees, the mayoral committee (in municipalities with an executive mayor), the executive committee (in municipalities with an executive committee) and ad hoc committees relating to Code of Conduct issues. These chairpersons should inform the speaker of issues related to the Code of Conduct. An example is the attendance by councillors of committee meetings.

- **Speaker's duty to investigate breaches**

If the speaker has a reasonable suspicion that the Code of Conduct has been breached, he or she must:

- (a) authorise an investigation into the facts and circumstances of the alleged breach;
- (b) give the councillor a reasonable opportunity to respond in writing; and
- (c) report to a council meeting.

Importantly, the report must be open to the public. The speaker must report the outcome of the investigation to the MEC for local government. The Code does not provide clarity as to the moment of reporting to the MEC for local government, i.e. whether it must be done before or after the report to the council. However, it seems appropriate, in light of the principles of cooperative government that the MEC is informed after the council has had an opportunity to discuss the report.

- **Council investigations into a breach of the Code of Conduct**

The municipal council can investigate and make a finding on an alleged breach of the Code. It can also establish a special committee to investigate and make recommendations to the council. Any investigation by the Council or a special committee into a breach of the Code by a councillor or traditional leader should be in accordance with the rules of natural justice. That means that a fair hearing must take place. The councillor concerned should be notified of the intended

action to be taken against him or her and should be given a proper opportunity to be heard.

- **Sanctions for breach of the Code of Conduct**

Ultimately, the Code of Conduct vests the authority to impose a sanction for breach of the Code of Conduct in the municipal council or, alternatively, the MEC. If the council or a special committee finds that a councillor has breached the Code of Conduct, the council can punish a councillor by:

- (a) issuing a formal warning;
- (b) reprimanding the councillor;
- (c) fining the councillor;
- (d) requesting the MEC to suspend the councillor for a period; or
- (e) requesting the MEC to remove the councillor from office.

Importantly, the council can thus not suspend or remove the councillor from office but can request the MEC to take such action. If the MEC finds that there was a breach and that the breach warrants a suspension or removal, he or she can take either action.

- **Appeal to Speaker against warning, reprimand or fine**

Councillors can appeal through the Speaker to the MEC against a warning, reprimand or fine issued by the municipal council. The appeal must be lodged within 14 days after the councillor was notified of the decision and a copy must be provided to the council. The council may, within 14 days of receipt of the appeal, make written representations to the MEC. The MEC can, after having considered the appeal, confirm, set aside or vary the decision taken by the council.

- **MEC's power to investigate**

The Code states that the MEC can appoint a person or committee to investigate any alleged breach and to recommend whether or not the councillor should be suspended or removed from office. Any investigation by the MEC into a breach of the Code by a councillor or traditional leader should be in accordance with the rules of natural justice. That means that a fair hearing must take place. The councillor concerned should be notified of the intended action to be taken against him or her and should be given a proper opportunity to be heard.

5. What about the role of the Speaker?

One of the aspects that deserve attention in terms of making those gains is the role and place of the office of the speaker. It is suggested that Mangaung municipality should better utilise the institution of the Council Speaker, as created by the Municipal Structures Act, in order to safeguard the integrity of the council and of councillors. The Speaker is presented by the legislation as the key

municipal organ, responsible for upholding the integrity of council and of councillors. The speaker is vested with the important function of monitoring compliance with the Code of Conduct and initiating investigations into alleged misconduct. However, in line with the same principle of local government autonomy, the legislation leaves it to the individual municipality to regulate its internal affairs and adopt its own internal procedures to give effect to the internal enforcement of the Code of Conduct. Important in this respect are:

- (a) the terms of reference for political office bearers, such as the speaker, which a municipality is obliged to define;
- (b) a municipality's delegation system, which, among other things, outlines any powers and functions which the council delegates to political office bearers, such as the speaker; and
- (c) a municipality's Standing Rules and Orders, which is the by-law that prescribes its internal processes and proceedings relating to the management of Council and Committee meetings, including the role of the speaker.

6. Statutory Functions of the Speaker in terms of the Amended Municipal Structures Act and the Municipal Systems Act

- must ensure compliance in the council and council committees with the code of conduct
- must ensure that council meetings are conducted in accordance with the rules and orders of the council
- must ensure that the legislative authority of the municipality functions effectively;
- is responsive for the effective oversight over the executive authority of the municipality;
- must ensure the effectiveness of the committees of the municipal council established in terms of the section 79;
- is responsible for the ethics and accountability of the municipal council; and
- must ensure the effectiveness and functionality of the ward committees and the public participation processes;

6.1. The impact and limitations of Self-Regulation

Whenever an allegation of misconduct is made against a councillor, the Speaker is required to investigate such allegations and afterwards is mandated to submit a report to the Municipal Council for consideration. It is common cause that the Speaker will be chairing the Council meeting during the tabling of such a report. This process might be seen as not being transparent or fair and thus limiting the principle of natural justice, because the Speaker will be seen as the referee, judge and jury at the same time. While at the same time the whole process borders on self-regulation (refers to the extent to which people influence, modify, correct, impose discipline or control their own behaviour) which might fall short of justification and may cast doubt of the whole process.

The best approach is to regulate the whole process by way of appointing or establishing an independent External Committee for the Enforcement of Code of

Conduct which will report directly to Council with its investigation report and with clear recommendations.

7. Appeals Committee

That the Municipal Council adopts an Appeals Committee comprised of three members and to be constituted as follows, namely;

- The Speaker, who shall serve as the chairperson;
- Independent Community members;
- One person from the legal profession;

8. Effective Governance

Effective governance is underpinned by purpose, vision, values and ethics, that are reflected in the behaviours and actions of the Council members and the Executive Management Team and cascaded throughout the organization. The Municipal Council in conjunction with Executive Management Team is responsible for setting the tone at the top, shaping the culture of the organization, and setting strategic direction. The Municipality need to be proactive in driving service delivery improvements in their governance beyond adherence and should drive optimum requirements. Both the Council members and Senior Officials should at all times be exemplary and above reproach. Mangaung municipality should not be in the news for bad things or poor governance and we should mitigate corporate governance failures.

9. Breaches of the Code

The Amended Municipal Structures Act, Act No. 117 of 1998 provide the framework on how the Speaker should process, the alleged breaches of the code, in terms of section 15, of the Act; which states as follows,

- 1) If the Speaker of a Municipal Council, on reasonable suspicion, is of the opinion that a provision of the Code has been breached, the Speaker must -
 - a) Authorise an investigation of the facts and circumstances of the alleged breach;
 - b) Give the councillor a reasonable opportunity to reply in writing regarding the alleged breach; and
 - c) Report the matter to a meeting of the Municipal Council after paragraph a) and b) above have been complied with;
- 2) The report on the alleged breach by member should be discussed in the open Council meeting;
- 3) The Speaker must report the outcome of the investigation to the MEC of COGTA

4) The Speaker must ensure that each councillor, when taking office, is given a copy of the Code of Conduct and that a copy is always available in every committee rooms or Council Chambers during meetings;

5) if the Speaker of Council is the alleged perpetrator, or the Speaker refuses to authorise investigation, the Council must establish a Special Committee, as contemplated in Item 16(1)(b) of the Act, to investigate and make a finding on any breach of the code.

10. Financial Implications

The Independent External Committee will be re-imbursed for the travelling costs, committee sitting fees which are regulated in line with the Companies Act, (Act No.71 of 2008)

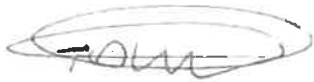
11. Recommendations

It is hereby recommended that it be resolved, namely

- a) That the Municipal Council take note of this report;
- b) That the Municipal Council approve the establishment of an independent and external committee of five members, responsible for the enforcement of Code of Conduct of councillors;
- c) That the committee be comprised of the following members, namely;
 - An expert in the field of municipal governance, preferably from the Free State university;
 - An independent member of the community with high moral standing;
 - A current councillor serving in any of the Free State municipalities;
 - A delegate from SALGA Free State; and
 - A legal person or practising Attorney within the municipal area.
- d) That the Municipal Council take note and approve the Standing Procedure regarding Administration of leave for councillors
- e) That the establishment of the committees, including application or functionality be effective from the date of approval.
- f) That the Municipal Council approves for the establishment of the Appeals Committee as part of the process
- g) That the Executive Mayor and Acting City Manager be requested to submit to the Municipal Council the Delegations of Powers policy as soon as possible;

- h) That the terms of Reference of the both Committees (Independent Committee and Appeals) be finalized and submitted to the next ensuing Council meeting;

Submitted



.....
MR TEBOGO MOTLASHUPING
ACTING CITY MANAGER 24/06/2022

APPROVED / NOT APPROVED



.....
COUNCILLORS LOCKMAN-NAIDOO
SPEAKER OF COUNCIL



STANDING PROCEDURE FOR THE GRANTING OF LEAVE FOR MANGAUNG COUNCILLORS

INTRODUCTION

Mangaung Councillors will be granted leave in accordance with the Code of Conduct of Councillors. The Code of Conduct of Councillors is based on and consistent with:

- 1.1. Public Office Bearers Act No. (Act No.20 of 1998)
- 1.2. The Municipal Structures Act (Act No. 117 of 1998)
- 1.3. The Municipal Systems Act (Act No. 32 of 2000)
- 1.4. Standing Rules and Orders of Council
- 1.5. Determination of Upper Limits of Councillors

2. Leave of absence is classified as follows:

- 2.1. Annual leave
- 2.2. Sick leave with full pay
- 2.3. Family responsibility leave (including religious leave, Bereavement and Cultural events)
- 2.4. Maternity leave
- 2.5. Paternity leave
- 2.6. Absence from duty due to injury
- 2.7. **Absence due to Family member Indisposition** (partner, children and parents)
- 2.7. Examination leave
- 2.8. Attendance at courses
- 2.9. Master's and Doctoral leave
- 2.10. Unauthorised (Absence without Leave) absence
- 2.11. Party political deployment leave (outside the jurisdiction of the municipality)

2.12 Special leave

On condition that acceptable documentary proof is submitted to substantiate the specific application, special leave may be considered in the following instances:

1. to participate in recognised sport activities at provincial, national level or internally;
2. to appear as a State witness;
3. to relocate next of kin (child or family member) to a new location.

3. PURPOSE

The purpose of this Standing Procedure Manual is to regulate leave of absence and to provide guidelines when taking of leave for Mangaung Municipal Councillors.

4. OWNERSHIP

The Office of the Speaker is the custodian of this standing procedure manual

5. SCOPE OF PRACTISE & APPLICABILITY

This standing procedure manual applies when a councillor seeks permission to be granted leave.

6. TYPE OF STANDING PROCEDURE MANUAL

This Standing Procedure Manual is of an operational nature and is effective and applicable immediately after the endorsement by the Rules Committee and signing there-off by the Council Speaker;

DEFINITIONS

6.1. Accrued leave: Refers to leave days provided at an incremental rate of 2.01 days per month up to 24 days per annum.

6.2. Accumulated leave: Refers to any untaken leave days which are carried forward on a quarterly basis up to an annual basis.

6.3. Calendar month: A period from the first to the last day of any of the twelve calendar months of the year.

6.4. Councillor: An elected public representative, representing different political parties, who is a member of the Mangaung Municipal Council on a fulltime/part-time basis.

6.5. Pay: Refers to the applicable salary scale.

6.6. **Sabbatical leave:** a period of paid leave granted away from work to a councillor for purposes of study research and /or dissertations and professional reasons

6.7. **Compulsory occasional leave:** it is compulsory leave granted during the Council recess period in December to middle of January.

6.8. **Ex gratia sick leave:** is additional sick leave granted to a councillor in deserving circumstances at the discretion of the Speaker.

6.9. **Religious Leave:** it is the leave taken for the purpose of spiritual beliefs or observances.

6.10. **Examination leave:** it is when councillor is unable to attend Council or Committee meetings due to writing structured examinations

6.10. **Unauthorised (Absence without Leave) absence:** happens when a councillors just ignores notices for Council or committee meetings or activities which result to non-attendance

6.11. **Party political deployment leave:** when members of different parties are required by their parties to attend party related deployments / responsibilities outside the municipal jurisdiction, the Speaker will grant leave to councillor concerned

6.12. **official leave :** any leave of absence granted by Council or by the Speaker under the terms set out in the provisions of work schedule to a councillor to attend official business of the Municipality, primarily outside the borders of the city

6.13. **Absence due to Family member Indisposition:** leave shall be granted to a councillor when a partner, child or parent is ill or sick.

6.14. **Sick leave:** when a members is indisposed, and unable to attend to work as a result

6.14. **Maternity leave:** a period of absence from work granted to a mother before and after the birth of her child.

6.15. **Paternity leave:** a period of absence from work granted to a father after or shortly before the birth of his child.

7. APPLICATION FOR LEAVE

7.1. An councillor should, under normal circumstances, apply for annual leave at least five working days before the proposed date of leave;

7.2. This application for leave should be submitted in writing, through an email, or per hand to the office of the Speaker and copy send to the Secretariat for updating in the personnel file of the councillor concerned;

7.3. If special leave is required, the specific type of leave must be indicated on the yellow leave form available at the Secretariat services;

7.4. A councillor who has applied for annual leave may not be absent from the office before receiving approval from the office of the Speaker, all councillors with the exception of Members of the Mayoral Committee;

7.5. Members of the Mayoral Committee should apply to be granted leave of absence by the Executive Mayor, a copy of the granting or approval of the leave should also be forwarded to the Secretariat for capturing;

7.6. Application for leave to be excused for the Municipal Council or Council Committee should be submitted at least six hours prior to the meeting in writing to the chairperson of the Committee and copy also send or mailed to the Secretariat for capturing.

8. ANNUAL LEAVE

8.1. NUMBER OF LEAVE DAYS

The annual leave accrues on a pro rata basis at 6 days per quarter of the year. Meaning three days accrue per quarter and add up to 24 days per annum, if a member does not take leave during the course of the year.

- a) Annual leave may not be taken in the first three months from the date of commencement of new council cycle after the elections.
- b) After three months of been elected, a councillor will be entitled to annual leave equal to the number of days accrued for the period worked.
- c) Compulsory occasional leave will be granted to councillors between 25 December and 1 January. These days will be in addition to the 24 working days annual leave.
- d) Any untaken accrued leave must be taken no later than six months after the end of the annual leave cycle.
- e) a councillor should, under normal circumstances, apply for leave at least 5 working days before the proposed date of annual leave.

9. GRANTING OF SICK LEAVE

- a) Paid sick leave will be granted only in respect of absence from duty of a councillor due to an illness, indisposition or injury not due to his/her misconduct.
- b) a councillor who is absent due to ill-health must report his/her absence within 24 hours, or if circumstances do not permit, within a reasonable time but must be within a maximum of 48 hours. Reasonable time will be determined on the basis of the nature of the illness and whether the councillor access to communication facilities (e.g. telephone, email, cell phone, fax, etc).

10. SUBMISSION OF MEDICAL CERTIFICATE

If a councillor is absent from duty for a continuous period of more than two consecutive working days owing to illness, he/she may be granted sick leave, only if he/she furnishes a valid medical certificate signed by a medical practitioner, dentist or psychologist, or any other person who is certified to diagnose and treat patients, and who is registered with a professional council established by an Act of Parliament. If his/her traditional healer does not give medical certificates, a councillor may be asked to go to one who does.

11. FAMILY RESPONSIBILITY LEAVE

* A councillor is entitled to five (5) working days per annum. A councillor unused entitlement to leave in terms of this section lapses at the end of the calendar year in which it accrues i.e. these days cannot be accumulated and carried over to the following calendar year.

* a councillor shall be granted five (5) working days, if a councillor's spouse or life partner dies; or a councillor's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling and the parents/siblings of one's life partner/spouse dies.

* Councillor shall be granted three (3) working days if a councillor's child, spouse or life partner is sick. Councillor shall be granted two (2) working days for religious leave, cultural activity

13. SPECIAL LEAVE

13.1. MATERNITY LEAVE

13.1.1. Maternity leave may be granted for purposes of confinement of councillor on the following conditions: four (4) consecutive months' maternity leave may be taken per confinement all female councillors, regardless of marital status, qualify for maternity leave.

13.1.2. A councillor who has completed one full year of continuous employment with Municipal Council will be entitled to maternity leave with full pay.

13.1.3. A councillor who has not completed one full year of continuous employment with the Municipal will be entitled to maternity leave without pay.

13.1.4. Maternity leave may be used before and/or after birth but birth must take place within the period of maternity leave and leave taken for this purpose must be continuous. However, in cases where a baby is hospitalised, maternity leave may be interrupted for the period of such hospitalisation.

A councillor may commence maternity leave:

13.1.5. (a) at any time from four weeks before the expected date of birth, unless otherwise agreed, or

(b) on a date from which a medical practitioner or a midwife certifies that it is necessary for the councillor's health or that of her unborn child.

13.1.6. Available leave may be utilised for a further period of absence before and/or after the period of maternity leave. Any leave granted in addition will be granted without pay.

13.1.7. The application for maternity leave must be done in writing, unless the councillor is unable to do so, and must indicate the date on which the councillor intends to:

- * commence maternity leave; and
- * return to work after maternity leave.

13.1.8. Notification for maternity leave must also be given:

- * at least four weeks before an employee intends to commence maternity leave; or
- * if it is not reasonably practical to do so, as soon as is reasonably practical.

13.1.9. A councillor may not work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.

- a) A councillor who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for six weeks after the miscarriage or stillbirth, whether or not the councillor had commenced maternity leave at the time of the miscarriage or stillbirth. Councillor whose maternity leave results in a stillbirth should inform the office of the Speaker about their condition so that their leave can be re-arranged.
- b) The benefit will apply in its entirety to the councillor who is the primary caregiver of a legally adopted child who is younger than 24 months on the date of adoption. This period can be reduced from four (4) months to two (2) months at the discretion of Speaker.

14. ABSENCE FROM DUTY DUE TO INJURY ON DUTY

14.1. Special sick leave may be granted to a councillor who is absent from duty due to:

- a) an injury sustained in an accident arising out of and in the course of his/ her duties, or
- b) a disease contracted in the course of and as a result of his/her duties.:
- ba) Special sick leave with full pay will be granted for the period he/she is incapacitated for duty, or special sick leave will be granted with full pay
- bb) Special sick leave will not be granted if injury in an accident is attributable to the serious and wilful misconduct of the councillor.

14.4. A councillor who is granted special sick leave must submit a medical certificate that indicates the nature of the injury or illness and the period necessary for recuperation. Special sick leave will only be granted for a period recommended by a medical practitioner who will also be expected to recommend medical boarding if the special leave granted becomes too extended and disrupts work in the Municipal committee programs. Council reserves the right to seek a second opinion.

14.5. Special sick leave granted will not impact on the councillors of sick leave and will not be taken into account in the calculation of sick leave or any other leave.

14.6. A leave application of Councillor on file, with the supporting documentation from a medical practitioner must nevertheless be completed for the period of absence and it must be indicated clearly that it is special sick leave.

15. EXAMINATION LEAVE

- 15.1. A councillor is entitled to examination leave with full pay, subject to a maximum of 24 working days per calendar year, in pursuit of studies approved by the Municipal Council.
- 15.2. A Councillor should, under normal circumstances, apply for leave at least 10 working days before the proposed date of examination leave.
- 15.3. Examination Leave will be granted as follows:
- a) one day prior to the examination for preparation, and
 - b) one day on which the examination is taken.
- 15.4. Approved Municipal Council studies include:
- a) all councillors should be assisted by Speakers capacity building program
 - b) studies undertaken by the councillor for a course of study that is not sponsored by the Municipal Council or SALGA, provided that such course of study has been declared by the councillor and accepted by the office of the Speaker and submission to the Council approval granted at the commencement of the course of study and declared at the beginning of each calendar year where relevant information is provided;
 - c) studies should be approved by the office of the Speaker and endorsed by the Remunerations and Benefits Committee.
- 15.5. The latest available time-tables or relevant documents must accompany such applications for leave.
- 15.6. The concession of the additional day to prepare for the examination will not apply in respect of a supplementary examination or a year end examination of a study course or part of a study course, which the councillor did not pass and had to repeat.
- 15.7. The concession of an additional day to prepare for the examination:
- a) will fall away if the examination is written on a day following a weekend or on a day following a public holiday.
 - b) is granted per day on which a councillor writes an examination and not granted per examination written. This means that if a councillor writes examinations on one day, he/she would only be entitled to one day study leave prior to the examination.

16. ATTENDANCE AT COURSES

- 17.1. A councillor on approval by the Speaker for studies who, on account of his/her studies is required to be absent from his/her place of work for compulsory course attendance, may be released from duty on condition that for every day of annual leave with full pay granted for attendance at courses, one day special leave with full pay may be granted to the extent that the annual leave allows.
- 17.2. A councillor should under normal circumstances, apply for leave to attend classes at least 10 working days prior the proposed date on which classes must be attended.

18. MASTERS AND DOCTORAL STUDENTS

- 18.1 A councillor who is entitled to a study leave for Masters and Doctoral studies.
- 18.2 The attendance of the compulsory lectures or block releases is deemed the equivalent of class attendance and must apply for course attendance.
- 18.3 The time required for the assessment of the assignments and presentations towards credits shall be deemed an equivalent of an examination, hence the application for examination leave. This leave is granted for the maximum of 15 working days per calendar year.
- 18.4 The abovementioned is granted annually on submission of the assignment timetables, proof of attendance and the proof of submission of assignments for assessment and/or proof of attendance to present.

20. UNAUTHORISED ABSENCES (ABSENT WITHOUT LEAVE)

Unauthorised absences from duty will, apart from any disciplinary action that may be taken against a councillor, be regarded as absence without pay, unless the Municipal rules otherwise and the following categories fall under the unauthorised absences;

- a) failure to attend Council or Council committees without valid reason or explanation;
- b) failure to attend Council or Council Committee programs or activities which the member is duly required to attend;
- c) failure to honour programs or activities as may be directed by the Council to attend to, for an example service delivery schedules or forums, failure to attend community public participation activities when directed to;
- d) failure to attend formal workshops or capacity building training schedules as directed to attend by the Council or by way of committee resolution.

21. UNPAID LEAVE

The Speaker may grant a councillor who has no leave to his/her credit, leave without pay to a maximum of twenty (20) working days per year or which ever sanction issued by the Council, following the process of disciplinary misconduct as a result of violation of the Code of Conduct for councillors

Date : May 2022

Councillor Tona Mokgothu

Chairperson : Rules Committee

**2022-2024 INDEPENDENT EXTERNAL COMMITTEE
ENFORCEMENT OF CODE OF GOOD CONDUCT
Terms of Reference**

Councillors must follow the councillors' code of conduct. The code seeks to ensure that councillors observe high standards of conduct which are consistent with the principles of conduct in public life, namely selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

NOW THEREFORE THE TERMS OF REFERENCE FOR THE INDEPENDENT EXTERNAL COMMITTEE ARE SET FORTH AS FOLLOWS:

1. INTERPRETATION

1. In this Terms of Reference ("ToR"), unless inconsistent with or otherwise indicated by the context, the following words or expressions shall bear the following meanings:-

1.1 **"Accounting Officer"** means the Municipal Manager of MMM or the Chief Executive Officer or the Managing Director of a Municipal Entities;

1.2 **"Auditor General"** means external auditor of MMM appointed in terms of the Auditor General Act 12 of 1995;

1.3 **"the Chairperson"** means the Chairperson of the External Independent Committee appointed from time to time;

1.4 **"Councillor"** means an elected public representative serving in the Mangaung Council

1.5 **"MMM"** means the City of Mangaung Metropolitan Municipality;

1.6 **"MMM Speaker"** means The Speaker of Council;

1.7 **"Municipal Council "** means all serving councillors as defined in section 157(1) of the Constitution;

1.8 **"the Constitution"** means the Constitution of the Republic of South Africa Act, 108 of 1996, as amended from time to time;

1.9 **"Companies Act"** means the Companies' Act, 71 of 2008, as amended from time to time;

1.10 **"Effective Date"** means the date that this Terms of Reference becomes enforceable which date shall be the date of Council approval;

1.11 **"IEC"** means Independent External Committee of the City of Mangaung Metropolitan Municipality established in terms of resolution number

1.12 **"Secretariat"** means the division which has been established within the Corporate Services Department, and is tasked with secretariat responsibilities for the Municipal Council, Mayoral Committee, and all Council Committees and the administration;

1.13 **"IDP"** means Integrated Development Plan;

1.14 **"Management"** means the heads of departments who are defined as section 57 employees in terms of the Municipal Systems Act

1.15 **"the Mayor"** means the Executive Mayor of the City of Mangaung Metropolitan Municipality

1.16 **"Mayoral Committee"** means the committee established in terms of the Local Government: Municipal Structures Act, 117 of 1998;

1.17 **"MFMA"** means the Local Government: Municipal Finance Management Act, 56 of 2003;

1.18 **"MSA"** means the Local Government : Municipal Structures Act, Act 117 of 1998;

1.19 **"SRO"** means Standing Rules and Orders of Council

1.20 **"Code of Conduct"** means the code of Conduct for councillors as defined in schedule 1 of the Municipal Systems Act, Act 32 of 2000

Purpose

The purpose of the Independent External Committee is to enforce the code of conduct of councillors within the Mangaung Municipality by enhancing five key codes of good ethics

Term

This Terms of Reference is effective from date of the Council consideration and approval, June 30, 2022 and continues until the date of review.

Membership and Procedure

- The Committee shall consist of at least five members;
- The members are independent and have no relationship with internal affairs of the Municipal Council;
- The committee members are elected by majority resolution by vote during the Municipal Council meeting;
- A Quorum for a meeting shall be three members of the Committee.
Committee members to submit apologies in advance of meetings (to the chairperson and copy to the Secretariat) and to aim to attend all meetings whenever possible.

- The Municipal Council will appoint a Chair and Vice-Chair at the time of appointment of the committee.
- The chairperson of the committee shall ensure that the terms and responsibilities are complied with and shall report to the Municipal Council, through the office of the Speaker.
- The Secretariat of the Municipal Council, shall provide secretarial support to the Committee.
- To give at least seven days' notice of meetings and to circulate the Agenda at least seven days' before the meeting to all members of the Committee.
- To circulate minutes within one week of the meeting and to include in the circulation: Once approved, to post in our e-portal Sharepoint within two weeks.
- To ensure that all decisions are made and carried out in accordance with the policies of the Municipal Council, seeking appropriate advice where necessary.
- To encourage committee members to undertake appropriate training.

What are the five codes of ethics?

- Integrity.
- Objectivity.
- Professional competence
- Confidentiality.
- Professional behaviour.

Responsibilities

- a) Receive a report on the alleged breach of the code of conduct of councillors, authorise further 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, or accord member a hearing;
- c) Consider, process and evaluate a report on the alleged breach and draft a report with clear recommendation to the Municipal Council;
- d) Submit a report on the breach to a meeting of the Municipal Council after paragraph a) and b) above have been complied, with a clear recommendation;
- e) The chairperson table the report to the open and full sitting of the Municipal Council;
- f) The chairperson makes representation to the Appeals committee (if requested to do so) on the reasons of the recommendations reached;

Meetings

All meetings will be chaired by chairperson

A meeting quorum will be three members of the committee

Decisions made by consensus (i.e. members are satisfied with the decision even though it may not be their first choice). If not possible, chairperson makes final decision

Meeting agendas and minutes and technical support will be provided by secretariat of the Municipal Council, this includes:

- preparing agendas and supporting papers
- preparing meeting minutes and information.

Meetings will be held at least once a quarter for (ordinary meetings) at (Boardroom 708, seventh floor, Bram Fischer Building).

If required subgroup meetings will be arranged outside of these times at a time convenient to subgroup members.

Review, Amendment or Modification

This Terms of Reference may be reviewed, amended or modified in writing after consultation and approval by the Municipal Council.

