



SALGA

South African Local Government Association

Local Government Brief: 01/2011

Introduction

By now, all municipal councils will have had their first council meeting and will have constituted most of their political structures. This Brief highlights some key governance issues that will be on the Municipal Council's agenda for the first two months in office.

When does a councillor legally assume office?

A councillor legally assumes office when the IEC formally determines the result of the election in the municipality. The precise date is important in relation to, for example, remuneration. Legally, the IEC's declaration of the result of the election is the only decisive date. The swearing in of a councillor was an important ceremonial and political event but the newly elected councillors were councillors **as from the day that they were declared elected** by the IEC.

How does the remuneration of councillors work?

The municipality determines the remuneration of councillors but must do this within the limits of the Public Office-Bearers Act 20 of 1998. In terms of the Act, the national Minister of Cooperative Governance and Traditional Affairs determines the **upper limits** of councillor salaries, allowances and benefits from time to time. The current determination is based on a combination of three factors:

1. The municipality's **'grade'** (determined on the basis of municipal income and population);
2. Whether the councillor is **full-time or part-time**; and
3. The individual councillor's **position** (i.e. mayor/member of exco/chief whip etc.)

If a municipality pays someone more than is allowed for, this will be **irregular expenditure** and the municipality will be forced by law to recover the money from the councillor. The municipal budget must include the proposed costs for the remuneration of councillors and the municipality must report specifically on the remuneration of councillors in its Annual Report.

Declaration of financial interests and gifts by councillors

The Code of Conduct for Councillors prescribes that each councillor must declare his or her financial interests within **60 days** of his or her election as a councillor. The types of interests (e.g. shares, membership of close corporations, directorships etc.) are listed in item 7(1) of the Code. Any changes to this during the terms of office must also be declared.

During his or her terms of office, a councillor must also declare **gifts exceeding R1000**. The financial interests and gifts are declared to the Municipal Manager so the Municipal Manager must inform the councillors how the declaration is to take place.

The council is not obliged to publicise everything that is declared in terms of these provisions but it must make a decision as to which items must be public. This is a matter of balancing the public interest and the need for confidentiality.

ELECTION OF OFFICE-BEARERS

Speaker

Each council should by now have elected a Speaker. The role of the Speaker is to chair council meetings, oversee compliance with the Code of Conduct for Councillors and generally to perform other statutory and delegated powers. Often, the Speaker carries specific responsibilities with regard to community participation and ward committees. When there is an equality of votes in the council, the Speaker may cast an extra vote to determine the matter. The speaker is full-time.

In some municipalities ('plenary executive'), there is no distinction between the speaker and the mayor. These municipalities do not elect an executive committee or executive mayor. The office of the speaker and the mayor are combined into one.

Chief Whip

Most municipal councils would have elected a chief whip. A chief whip is responsible for the political management of all councillors. In large municipalities the chief whip may be full-time. Schedule 3 of Municipal Structures Act does not apply to the election of a chief whip. The Municipal Council must treat this as a regular decision in terms of its Rules and Orders.

Municipal Executive

There are three types of municipal executives: Executive Committees, Executive Mayors and Plenary Executives.

Executive Committee

Municipalities of the executive committee type should have elected an **Executive Committee** during the first council meeting. The council determines the procedure to elect members of the executive committee (it is not regulated by Schedule 3 of the Structures Act). Members of the executive committee are **full-time**.

It is important to note that the Constitution provides that the executive committee may not simply be a 'winner-takes-it-all' committee. The council has a choice but whatever it chooses, it must be **'fair'**. It is important that the council takes a resolution that indicates clearly which system is adopted for allocating executive committee seats.

- It may choose a **proportional system**. All parties and interests on the council are then proportionally reflected on the executive committee.

Tip: A council that chooses this system may want to use the formulas in Part 2 of Schedule 2 of the Municipal Structures Act to allocate seats on the executive committee. These formulas apply to the election of district representatives but could just as well be used as a framework for proportional representation on the executive committee.

- However, the council may also choose an **alternative system**, provided that the system complies with the **'fairness'** principle of section 160(8) of the Constitution.

This means that the room for **'coalitions'** in municipalities with the executive committee type is not unlimited: the Constitution demands that the executive committee at least **'fairly'** represents whatever is represented in the council. In other words, it may be illegal for a party that has significant representation in the council to be completely excluded from the executive committee. At the same time, it is not compulsory for each party to have representation on the executive committee that is proportional to its representation on the council. This balance is very difficult to strike when the council is very small. There may be so little room to manoeuvre that it is impossible to grant every party representation.

Municipalities of the executive committee type must elect a **mayor** from among the members of the executive committee. A **deputy mayor** may be elected but only if the MEC for local government agrees that the municipality may have one. The procedure for the election is set out in Schedule 3 of the Municipal Structures Act. The mayor chairs meetings of the executive committee, is the political head of the municipality and generally carries out important delegated and statutory powers. The mayor is full-time.

Executive Mayor.

Municipalities of the executive mayoral type elect an executive mayor. A **deputy executive mayor** may be elected but only if the MEC for local government agrees that the municipality should have one. The procedure for the election the executive mayor is set out in Schedule 3 of the Municipal Structures Act. The executive mayor appoints a **mayoral committee**, comprising of councillors. The mayoral committee may not be larger than 20% of the council or ten members (whichever is the least). The executive mayor does not have to count as a member of the mayoral committee in determining the permissible size of the mayoral committee. Legally, the executive mayor is not compelled to appoint any member of another party. However, he or she is free to do so. Members of the mayoral committee and the (deputy) executive mayor are full-time.

Appointing district representatives

A newly elected local council should have appointed a **delegation to the district** council. The larger the number of registered voters in a local municipality, the larger its delegation to the district council will be. The appointment of the district representatives is not an ordinary majority council resolution. The newly elected councillors of the local council cast votes for the district representatives in an election that is managed by the IEC (municipal electoral officer) in terms of Part 2 of Schedule 2 of the Municipal Structures Act. The composition of the district delegation will broadly reflect the composition of the local council.

The political composition of the local council's delegation to the district will **stay the same** throughout the term of office, even if the political composition of the local council changes as a result of by-elections.

COMMITTEES

Section 79 committees

Each council may establish **council committees** in terms of section 79 of the Municipal Structures Act to assist the council. The council must appoint members to these committees and appoint a chairperson. The Council Committees report directly to the council. Committee chairpersons may sometimes be full-time. These committees are generally linked to the municipality's overall organisational structure and dedicated projects or focal areas of the municipality.

Section 80 committees

The municipal council may also establish **committees to assist the executive mayor/committee**. These committees are chaired by members of the executive committee/mayoral committee and report to the executive. The members are appointed by the council

OTHER GOVERNANCE MATTERS

Budget and IDP

Each municipality must ensure that its budget is adopted **before the start of the new financial year**, i.e. 1 July 2011. Should the council fail to adopt a budget in time, the provincial government must intervene. The council must ensure that the annual review of the IDP has been completed so that the budget for 2011/2012 can be adopted. The rules for the budget process and the key milestones are in the Municipal Finance Management Act, the Budget Preparation Regulations and relevant Treasury Circulars.

Delegations

The municipality's powers are vested in the council (subject to limits set in the law). Municipal councils must have systems of delegation to political structures, office-bearers and municipal officials so that decision making can be efficient. At the beginning of the term of office, the municipal council must **review its system of delegations**. This is done on the basis of a report prepared by the municipal manager for the executive committee/mayor. The law does not prescribe a deadline but it is clear that it must be done as soon as possible.

Rules and Orders

The Rules and Orders (or 'Standing Orders') of the council determine how council and committee meetings are conducted. Typically, it would deal with agenda setting, decision making, reporting, behaviour during council meetings etc. These rules may need to be **updated**. For example, if the municipality has a 'hung council', it is important that the rules and orders provide for a casting vote for committee chairpersons as this is not provided for in the law.

Election of ward committee members

All local and metropolitan municipalities may have ward committees. The ward committee comprises **10 elected community members**, chaired by the ward councillor. The municipality must have a policy in place that sets out how the community members are elected. The term of the previous ward committees has now expired. The municipality must therefore prepare for **ward committee elections** to be carried out.

Expiry of the contract of Municipal Manager

By law, the current Municipal Manager's contract may not go beyond 18 May 2012. Most municipal managers have contracts that expire earlier. The Municipal Council appoints the Municipal Manager. The council should therefore ensure that it starts the relevant procedures towards **extending the contract or recruiting someone else** in time to avoid a vacancy when the current contract expires.

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