

SALGA

South African Local Government Association

**Guideline Document on the Roles and
Responsibilities of Councillors, Political
Structures and Officials**

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1 Introduction

The purpose of this guideline document is to define the roles and responsibilities of councillors and officials in a municipality.

The document will focus on the roles and responsibilities of the following key role players in a municipality:

- (a) the municipal council;
- (b) the executive committee;
- (c) the mayor ;
- (d) mayoral committee;
- (e) executive mayor;
- (f) ward committees;
- (g) section 79 committee (committee appointed by council);
- (h) section 80 committee (committee appointed by the Executive Committee/Executive Mayor);
- (i) the deputy-mayor;
- (j) the speaker;
- (k) the chief whip,
- (l) non-executive councillors and
- (m) the municipal manager

It does this by outlining the roles identified in legislation for these role players in the municipality.

Ultimately each of these roles will be specifically defined in precise terms by each municipality in the country and will be determined by the internal arrangements with the municipalities.

1.1 Terms of reference

Every municipal council has the right to determine its internal procedures.

This right is protected by the Constitution, which allows the municipal council to decide how to structure the internal operation of the municipality and what kind of mandate/area of responsibility it assigns to political structures, office-bearers and the municipal manager.

This right is coupled with an obligation in the Systems Act, which instructs each municipality to define the roles and areas of responsibility of political office-bearers and political structures.

*S160
Constitution*

*S 53
Systems
Act*

Terms of reference must be prepared for:

- (a) the municipal council;
- (b) the executive committee;
- (c) the mayor ;
- (d) each section 79 committee (committee appointed by council);
- (e) each section 80 committee (committee appointed by the Executive Committee);
- (f) the deputy-mayor;
- (g) the speaker; and
- (h) the municipal manager

All the above terms of reference must:

- (a) be in writing;
- (b) be in precise terms; and
- (c) give effect to council's internal documents, such as rules, procedures, delegations, standing orders, etc. This simply means that standing orders, delegations, rules etc must not contradict the terms of reference, but implement them.

S53(2)
Systems Act

The terms of reference may include delegations. Delegations can also be determined separately.

Delegations included in the terms of reference must comply with the system of delegations provided for in the Systems Act.

S59
Systems Act

1.1.1 Requirements and principles for terms of reference

The Systems Act contains two types of requirements. The first type is requirements and principles that apply to terms of reference in general, while the second type is elements that each terms of reference must include - its core components.

General requirements

Minimise cross-referrals

This requirement aims to ensure that the roles and responsibilities make efficient and timeous governance possible.

If an issue reaches a political structure or office-bearer, it must not be referred on endlessly. A decision must be taken somewhere and without too many steps in between.

Minimise overlap of responsibilities

The terms of reference should not allocate an area of responsibility that is already covered by another office-bearer or political structure. This is to prevent conflict.

Dispute resolution

The municipality must have a mechanism for resolving disputes involving

S(53)(5)
Systems Act

political structures, office-bearers or the municipal manager.

Interaction between councillors and staff members

The Systems Act requires procedures for interaction between councillors and staff members. Importantly, the Code of Conduct for councillors prohibits individual councillors from interfering with the administration and from giving instructions without a mandate from the council.

Core components of terms of reference

Terms of reference must at least include:

Definition of areas of responsibility

They must describe 'in precise terms' what the areas of responsibility are of a particular political office-bearer or structure. Importantly, this is not a delegation of responsibilities, but a description of areas of responsibility. It will, however, give rise to the need for particular delegations.

S(53)(5)
Systems Act

Lines of accountability and reporting

It must clearly spell out to whom a structure or office-bearer reports. Note that individual delegations also create a reporting duty on decisions taken in terms of the delegated power.

Relationship with other structures and office-bearers

The terms of reference must indicate how the relevant political structure or office-bearer interacts with other political structures or office-bearers. It must explain how interaction will take place, for example through monthly reports, regular meetings etc.

Interaction with the municipal manager

The terms of reference must determine how the political structure or office-bearer will interact with the municipal manager.

Interaction with officials other than the municipal manager

The terms of reference must determine how the political structure or office-bearer will interact with officials other than the municipal manager. For example, the terms of reference for the Finance Portfolio Committee could include a section on the interaction between the Chief Financial Officer and the Committee.

It is important to bear in mind that the Systems Act instructs the municipality to structure its administration in such a manner that it can hold the Municipal Manager accountable for the overall performance of the administration. This principle is important in determining interaction between political structures and officials other than the municipal manager.

2 Legal framework

The local government arena is largely regulated for through the following key pieces of legislation. Brief summaries of these pieces of legislation are provided below. The relevant sections of the legislation will be discussed in further detail in the text of the document.

2.1 Constitution

Chapter Seven of the Constitution deals with Local Government and embodies the core principles that inform the basis for developmental local government in South Africa. Section 152 of the Constitution sets out the overall objectives of local government.

152. (1) *The objects of local government are –*
- (a) *to provide democratic and accountable government for local communities;*
 - (b) *to ensure the provision of services to communities in a sustainable manner;*
 - (c) *to promote social and economic development;*
 - (d) *to promote a safe and healthy environment; and*
 - (e) *to encourage the involvement of communities and community organisations in the matter of local government*

2.2 Municipal Structures Act

The Local Government Municipal Structures Act 117 of 1998 (hereinafter referred to as the Structures Act) provides for the establishment of a new generation of municipalities and essentially lays the foundation for a new system of local government in South Africa.

Essentially, the Structures Act gives flesh to the categories of municipalities identified in the Constitution and goes on to define the different types of municipalities that can be established within each category.

The Structures Act also divides the powers and functions between the categories of municipalities and regulates matters connected with local government its systems and structures.

The Structures Act deals fairly extensively with the Municipal Council and provides for issues such as the election, removal from office of councillors, and the internal proceedings in and the dissolution of the Council.

2.3 Municipal Systems Act

The Municipal Systems Act 32 of 2000 (“the Systems Act”) defines the legal nature of a municipality and provides for the manner in which municipal powers and functions are exercised and performed. In addition, the Systems Act provides the framework for local public administration.

2.4 Municipal Finance Management Act

The Municipal Finance Management Act 56 of 2003 (MFMA) is intended to ensure sound and sustainable financial management in municipalities and deepens the budgetary process in municipalities by making community involvement compulsory. The MFMA will be phased in from the 1st of July 2004.

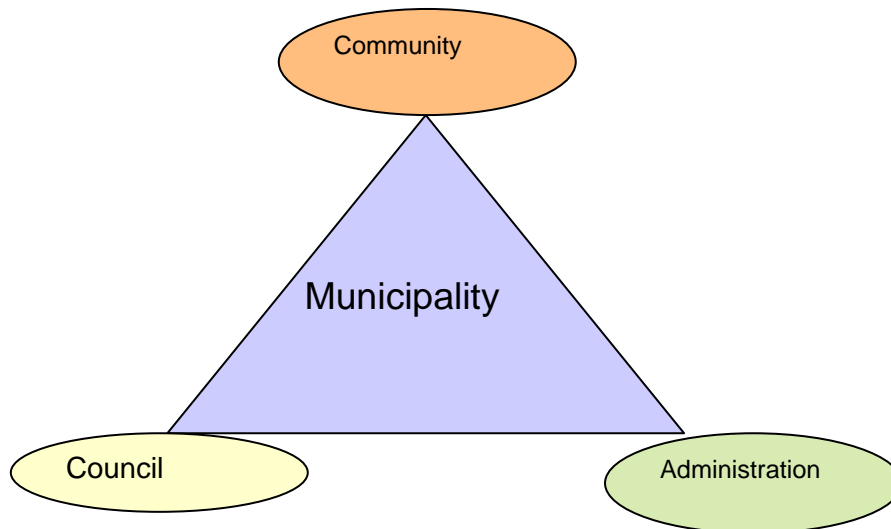
One of the most important objectives of the MFMA is that of developing sound financial governance within every municipality. This means developing a comprehensive system clarifying and separating the responsibilities of mayors, councillors and officials.

The MFMA read together with the Systems and the Structures Act provide clear guidance on the roles and responsibilities of councillors and officials.

3 Definition of a municipality

3.1 What is a municipality?

A distinction must be made between a municipality and its municipal council.

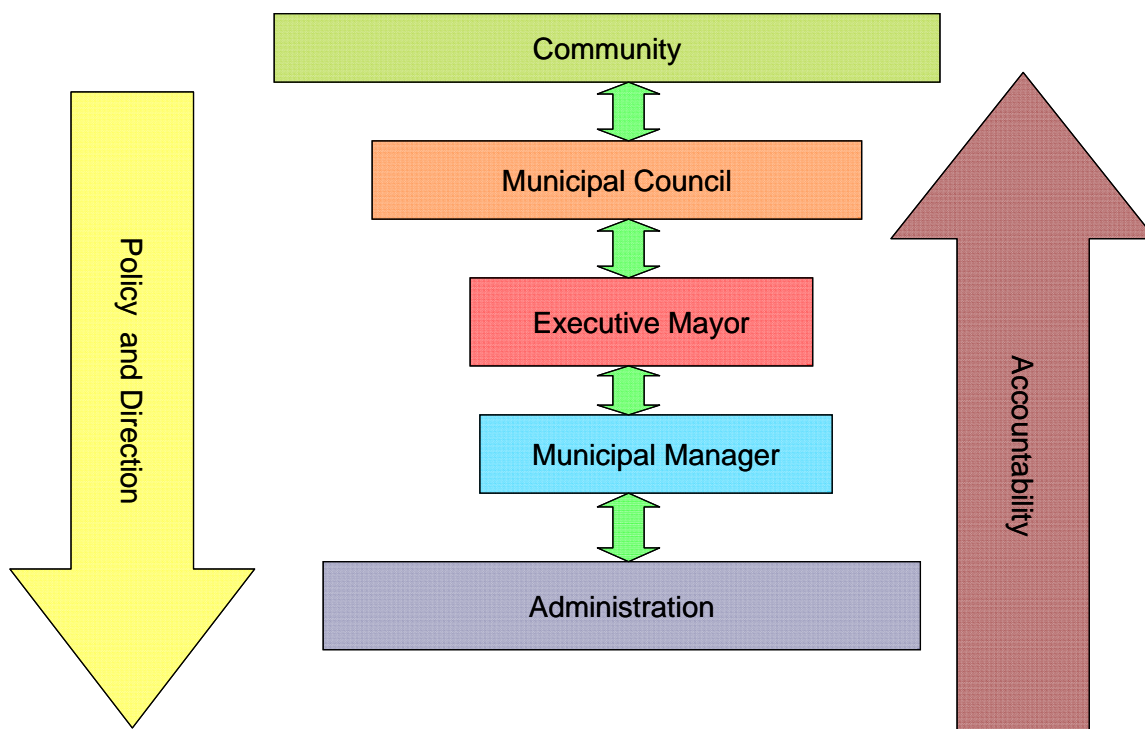


Municipalities are the core institutions within the sphere of local government. Municipalities are organs of state that consist of the political structures and administration of the municipality and the community within (residents inhabiting) the municipal area.

A municipal council is a body consisting of directly or directly and indirectly elected councillors/members. A municipal council is thus one of the political structures of a municipality.

“Municipality” is therefore a much broader concept and a more inclusive collection of institutions or structures than a municipal council. A municipality and its council are not synonymous with each other.

The aforementioned legislation establishes a separation of roles and responsibilities between the mayor and the council and the mayor and the municipal manager. The diagram below illustrates the governance and accountability relationships between the political and administrative structures within a municipality.



3.2 Categories of municipalities

Section 156 of the Constitution establishes 3 distinct categories of municipalities and provides that national legislation must define the different types of municipalities that may be established within each category.



3.3 Types of municipalities

Types of municipality refer to the way in which a municipality is governed and is determined by the MEC responsible for Local Government in the province.

There are essentially 3 different types of municipalities and this is regulated for in section 7 of the Local Government: Municipal Systems Act. Depending on the category of municipality, these can be amplified by either a ward participatory system or a sub-council participatory system. District municipalities are restricted to the essential three types of municipalities.

Collective Executive System

Allows for the exercise of executive authority through an executive committee in which executive leadership is collectively vested.

Small group of persons can be assigned to administer the municipality like a mini-cabinet

Mayoral Executive System

Allows for the exercise of executive authority through an executive Mayor, in whom the executive leadership of the municipality is vested.

The Executive Mayor is assisted by a mayoral committee

Plenary Executive System

The exercise of executive authority is limited to the municipal council itself.

As such the municipal council is the only organ that has executive authority.

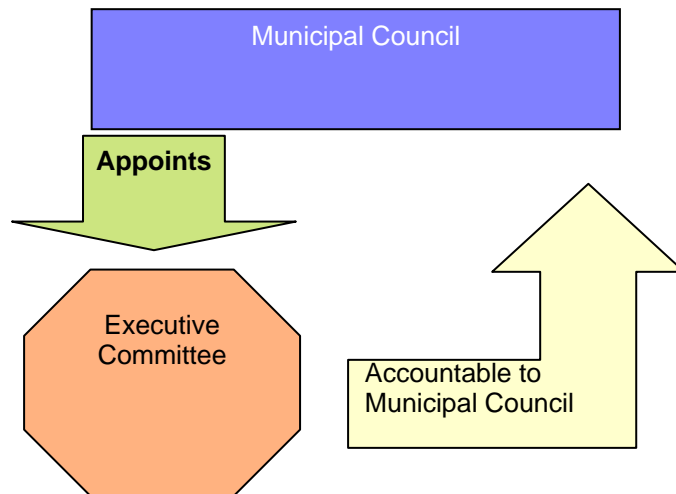
Ward Participatory System

Allows for matters of local concern to the wards to be dealt with by committees established by the wards

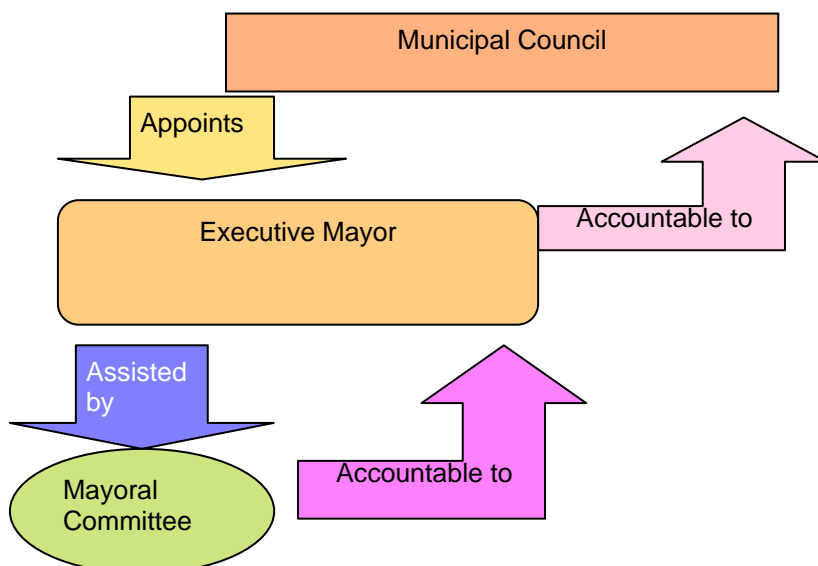
Sub-Council Participatory System

Allows for delegated powers to be exercised by sub-councils established for parts of the municipality

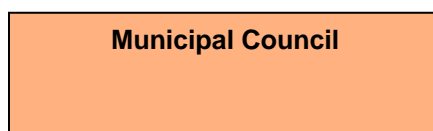
3.3.1 Collective Executive System



3.3.2 Mayoral Executive System



3.3.3 Plenary Executive System



3.4 Role of a municipality

A municipality has the right to govern on its own initiative the local government affairs of its community. To govern means to exercise governmental authority. Governmental authority is the authority to make rules that apply in principle to everybody within the area of the body that made the rules and to enforce those rules. Governmental authority typically consists of three distinct powers, namely legislative, executive and judicial power.

A municipality exercises its legislative authority by making and administering bylaws for the effective administration of the matters that it has a right to administer. A municipality has the right to administer the local government matters listed in parts B of Schedules 4 and 5 to the Constitution and any other matter assigned to it by national or provincial legislation. A municipality has executive authority (i.e. policy-and decision making powers) in respect of the same matters.

The Constitution vests the legislative and executive authority of a municipality in its municipal council. Municipalities do not have pure judicial powers like the courts. A municipal council makes decisions concerning the exercise of all the powers and the performance of all the functions of the municipality.

*S151 (2)
Constitution*

Where a council has delegated decision-making power to another body or person, it may change the decisions of that delegated body, subject to any rights that may have accrued pursuant to a decision of the delegated body.

A municipal council's decision-making authority is limited to those matters that are expressly by law assigned to the municipality or the council itself and matters reasonably necessary for and incidental to those assigned matters. It cannot make decisions regarding matters that had by law been assigned to

another body or person.

The Constitution obliges every municipality to strive, within its administrative and financial capacity to achieve the objects of local government. The objects of local government represent the core functions of a municipality and the reasons why municipalities exist. Those objects are as follows:

- To provide democratic and accountable government for local communities;
- To ensure sustainable provision of services to communities;
- To promote social and economic development ;
- To promote a safe and healthy environment; and
- To encourage communities and their organizations to become involved in local government matters.

*S151
Constitution*

Municipalities are further required to structure and manage their administrations, budgeting and planning processes in such a manner that they-

- Prioritise the basic needs of the community;
- Promote social and economic development and
- Participate in national and provincial development programmes.

*S 153
Constitution*

A municipality must further, within its administrative and financial capacity, establish an administration. The administration that it establishes must comply with certain principles and contribute to the realization of specified objectives.

*S 51
Systems Act*

In relation to the imposition of taxes and service charges a municipality must, within its administrative and financial capacity-

- 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;
- 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;

*S 95
Systems Act*

- 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;
- 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;
- ensure that persons liable for payments, receive regular and accurate accounts that indicate the basis for calculating the amounts due;
- 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;
- provide accessible mechanisms for dealing with complaints from such persons, together with prompt replies and corrective action by the municipality;
- provide mechanisms to monitor the response time and efficiency in complying with paragraph (g); and
- provide accessible pay points and other mechanisms for settling accounts or for making pre-payments for services.

3.5 Role of the municipal administration

The following values and principles govern the municipal administration:

- A high standard of professional ethics.
- Efficient, economic and effective use of resources.
- A development-orientation.
- Impartial, fair, equitable and unbiased services provision.
- Responsiveness.
- Public participation in policy-making.

*S 195(1)
Constitution*

- Accountability.
- Transparency by providing the public with timely, accessible and accurate information.
- Good human-resource management and career-development practices to maximise human potential.
- Representivity, with employment and personnel management practices based on ability, objectivity, fairness and the need to redress the imbalances of the past to achieve broad representation.

Legislation requires of the administration to-

*S 6(2)
Systems Act*

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

A municipality's administration must enable it to -

*S 51 Systems
Act*

- respond to the needs of the community;
- facilitate a culture of public service and accountability amongst staff;
- be performance orientated;
- focus on the objects and developmental duties of local government set out the Constitution;

- align the roles and responsibilities of its political structures, political office-bearers, managers and other employees with the priorities and objectives set out in the municipality's integrated development plan;
- establish clear relationships, and facilitate co-operation, co-ordination and communication, between its political structures and political office-bearers and its administration and between its political structures, political office-bearers and administration and the community;
- organise its political structures, political office-bearers and administration in a flexible way in order to respond to changing priorities and circumstances;
- perform its functions through operationally effective and appropriate administrative units and mechanisms including departments and other functional units and when necessary, on a decentralised basis;
- assign clear responsibilities for the management and co-ordination of administrative units and mechanisms;
- hold the municipal manager accountable for the overall performance of the administration;
- maximise efficiency of communication and decision-making within the administration;
- delegate responsibility to the most effective level within the administration;
- involve staff in management decisions as far as is practicable; and
- provide an equitable, fair, open and non-discriminatory working environment.

Based on the above, the role of a municipality's administration may be described as follows:

- Implements the lawful policies, resolutions and bylaws of the municipal council and the policies and laws of other spheres of government.
- Advises the council and its structures.
- Makes administrative/operational policies.

- Manages, operates and maintains the provision of services in a sustainable and equitable manner.
- Administers the affairs of the municipality.
- Manages the municipality's resources.

4 Municipal Council

4.1 Executive Obligations

A municipal council must, within the municipality's financial and administrative capacity and having regard for practical considerations,

*S 4(2) of the
Systems Act*

- exercise the municipality's executive and legislative authority and use the resources of the municipality in the best interests of the community;
- provide, without favour or prejudice, democratic and accountable government;
- encourage the involvement of the community;
- strive to ensure that municipal services are provided to the community in a financially and environmentally sustainable manner;
- consult the community about the level, quality, range and impact of municipal services and the available options for service delivery;
- give members of the community equitable access to the municipal services to which they are entitled;
- promote and undertake development in the municipality;
- promote gender equity in the exercise of the municipality's executive and legislative authority;
- promote a safe and healthy environment in the municipality; and
- 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.

The following additional executive obligations are imposed on every municipal council.

*S 19(2)
Structures Act*

A council must annually review-

- The needs of the community
- Its priorities to meet those needs
- Its processes for involving the community
- Its organisational and delivery mechanisms for meetings those needs
- Its overall performance in achieving the objects of local government set out in the Constitution.

<p>The following financial executive obligations are imposed on every municipal council:</p> <ul style="list-style-type: none"> • Approval of the budget of the municipality 	<p><i>S 16 MFMA</i></p>
<ul style="list-style-type: none"> • Oversight over tabling of annual budget, approval of service delivery and budget implementation plans or the signing of annual performance agreements 	<p><i>S 53(2) MFMA</i></p>
<ul style="list-style-type: none"> • Adopt and annually review Supply Chain Management Policy 	<p><i>Chapter 11 MFMA</i></p>

4.2 Community Participation and Processes

A municipal council is further required to develop mechanisms to consult the community and community organisations in exercising and performing its powers and functions. The consultation requirements of the Structures Act are further elaborated in ss. 16 and 17 of the Systems Act. Section 16 of the latter Act requires a municipality to make appropriate systemic arrangements for ensuring participation. For this purpose every municipality must encourage and create conditions for community participation in at least-

- the integrated development planning process ,
- the establishment, implementation and review of its performance management system , the monitoring and review of its performance,
- the preparation of the budget and

- strategic decisions regarding the provision of services .

Citizen participation in local government affairs must take place through the ward committees provided for in the Structures Act, the mechanisms and procedures provided for in the Systems Act, mechanisms and procedures established by the municipal council and through councillors. The mechanisms and procedures established by a council must at least provide for the receipt, processing and consideration of complaints and petitions, notification and public comment procedures, public meetings and public hearings and reporting back to the community.

S 17 Systems Act

4.3 Core Functions

In order for a municipality to comply with these obligations, the core functions of a municipal council may be listed as follows. A municipal council must-

- | | |
|---|---|
| <ul style="list-style-type: none"> • Make policies and bylaws that are informed by, and seek to satisfy, community needs with regard to the matters that it has the right to administer. | <p><i>S 156 of the Constitution</i></p> |
| <ul style="list-style-type: none"> • Ensure implementation of national, provincial and local legislation and policies by supplying appropriate resources and authority to the administration. | <p><i>Ss 3, 4 Systems Act</i></p> |
| <ul style="list-style-type: none"> • Establish suitable control and reporting systems and procedures for monitoring and evaluating policy implementation in order to give account to the community with regard thereto. | <p><i>S 51 Systems Act</i></p> |
| <ul style="list-style-type: none"> • Ensure that the municipality meets its executive obligations, discharges its developmental duties and realises the constitutional objects of local government as elaborated in legislation. | <p><i>S 19 Structures Act</i></p> |
| <ul style="list-style-type: none"> • Enforce the codes of conduct for employees and councillors. | <p><i>S 67 Systems Act</i></p> |
| <ul style="list-style-type: none"> • Cooperate with other spheres of government, organs of state within those spheres and municipalities. | <p><i>S 41 of the Constitution</i></p> |
| <ul style="list-style-type: none"> • Build and promote good relations with the private sector, non-governmental and community organizations and other local organisations. | <p><i>Ch 4 Systems Act</i></p> |
| <ul style="list-style-type: none"> • Act as employer. | <p><i>S 56 Systems Act</i></p> |
| <ul style="list-style-type: none"> • Approve the budget of the municipality | <p><i>S 16 MFMA</i></p> |

The MFMA recognises the municipal council as the highest authority in the municipality and strengthens the powers of the council by vesting it with significant powers of approval and oversight.

A council delegates its executive authority to the executive mayor or committee, but does not delegate its legislative powers. The council retains the powers to approve policy and budgets and to exercise oversight over the mayor in the implementation of policy, budgets and by-laws.

5 Speakers of Municipal Councils

The Structures Act defines the speaker as a councillor elected in terms of section 36 of the Act to be the chairperson of a municipal council as envisaged in section 160 (1)(b) of the Constitution.

The speaker's role in a municipality will mostly depend on the internal arrangements made by the municipality itself. The formulation of the terms of reference for the speaker in terms of section 53 of the Systems Act will be a critical process.

The speaker's role in a municipality is key to ensuring oversight, accountability, integrity, discipline of office, and the efficient running of council meetings. As such, impartiality in the exercise of his or her function is essential for the speaker. The speaker must distinguish between his or her activities as a politician and his or her functions as a speaker. It also means that the function of the speaker and the non-partisan exercise of that function must be respected by members, parties and interests represented in the council.

The key principles underlying the role of the Speaker are:

- (a) chair of council meetings;
- (b) implementation of the Code of Conduct; and
- (c) exercise of delegated functions including -
 - i. facilitating public participation in legislative matters;
 - ii. establishment and functioning of ward committees; and
 - ii. support to councillors.

5.1 General principles regarding the functions of the speaker

5.1.1 Legislative process

The overall principle in the determination of the function of the speaker is that the speaker is in charge of the legislative arm of the municipal council.

This means that he or she must guard the integrity of the legislative process. Further, the speaker must protect the 'checks and balances' between the legislature and the executive, in other words, the 'oversight' that the council must exercise over the actions of the executive.

5.1.2 Integrity, privileges and interests of the council and councillors

The speaker is the guardian of the integrity of the council and the guardian of members' privileges and interests as council members. The privileges and interests of councillors include freedom of speech and immunity in the council as well as the use of council facilities, receipt of allowances, training and support, etc. Importantly, this role, combined with the speaker's role in terms of the Code of Conduct (Schedule 1 to the Systems Act), requires the speaker to guard against the abuse of councillors' privileges and interests.

5.1.3 Independence of the speaker

The speaker must demonstrate impartiality. The type of functions that the speaker must exercise requires him or her to be recognised by all parties and interest groups in the council as the legitimate guardian of the integrity of the council and of council members.

An important implication of this is that the speaker is accountable to the council. The speaker is not elevated above the council. He or she must exercise his or her duties within the rules determined by the council. The speaker is not accountable to the executive of the municipality, since the speaker must protect the council's constitutional control of the executive.

This means that the speaker must be able to perform his or her function independently from the executive arm of the council. It is clear in that a mayor cannot be a speaker at the same time (except for municipalities of a 'plenary type'). This is necessary to clearly distinguish between the executive and the legislative arms of the municipal council. Accordingly, it should follow that a councillor elected as speaker does not sit on executive committee or mayoral committee

S 36(5)
Structures Act

5.2 Functions of Speakers

The functions of speakers are set out in section 37 of the Structures Act

FUNCTIONS OF SPEAKERS

37. The speaker of a municipal council-

- (a) presides at meetings of the council;
- (b) performs the duties and exercises the powers delegated to the speaker in terms of section 59 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);
- (c) must ensure that the council meets at least quarterly;
- (d) must maintain order during meetings;
- (e) must ensure compliance in the council and council committees with the Code of Conduct set out in Schedule 1 to the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000); and
- (f) must ensure that council meetings are conducted in accordance with the rules and orders of the council.

Local Government Municipal Structures Act 117 of 1998 as amended

5.2.1 Conducting council meetings

The Speaker has the following duties:

- (a) preside at council meetings;
- (b) ensure council meets at least quarterly;
- (c) maintain order during council meetings;
- (d) ensure that council meetings are conducted in accordance with the rules and orders of the council; and
- (e) ensure compliance in the council and its committees with the Code of Conduct.

It is clear that the speaker's main function relates to council meetings. He or she calls the meeting, presides, ensures order and compliance with council's rules of order.

S 37
Structures Act

The Speaker's responsibilities in council meetings include:

- Preside at meetings of Council;
- Maintain order during Council meetings;
- Ensure that Council meetings are conducted in accordance with Rules of Order of Council;
- Ensure that councillors get adequate notice of meetings;
- Ensure implementation of procedure with regard to quorums and compliance with section 30 of the Municipal Structures Act;
- Allocate speaking time to members in accordance with the Council's policy;
- Implement voting procedure in accordance with Rules of Order and subject to the Municipal Structures Act;
- Ensure that councillors freedom of speech is protected;
- Ensure that councillors freedom of speech is exercised subject to council's Rules of Order;
- Ensure and facilitate the admission of public to council meetings;
- Grant leave of absence to councillors in accordance with council's Rules of Orders;
- Guard against the abuse of councillor's privileges and interest and;
- Maintain an attendance register.

Calling a meeting

The speaker calls council meetings and decides on their time and venue.

However, if a majority of the councillors request a meeting, the speaker must convene a meeting accordingly. The speaker must ensure that members are given adequate notice of meetings in terms of the rules of order.

S 29(1)
Structures Act

Policy formulation: Rules of Order

The speaker should take the initiative in the policy formulation around the rules of order. The speaker should chair the committee that deals with rules of order. The ultimate decision-maker on the rules of order is the council.

Freedom of speech

Debating the merits or demerits of an issue before council lies at the heart of local democracy. Free and open debate is protected in the Constitution. The Structures Act provides for the freedom of speech in a municipal council, subject to the rules and order of council (s 28).

The role of the speaker is to ensure that:

1. councillors' freedom of speech in the council is protected, i.e. that councillors are allowed to speak freely, that there is order in the meeting, that there are no interruptions, etc.;
2. councillors' freedom of speech is exercised subject to council's rules of order, i.e. no insults, defamation, compliance with rules of debate management, etc.

Agenda

The speaker's responsibility for presiding over council meetings implies that the speaker must be involved in the preparation of the agenda that is circulated to council members prior to the meeting. Items for the agenda come from various 'corners' of the municipality, e.g. council's executive, the administration, portfolio committees, etc. Council's rules of order must provide for a procedure that must be followed in preparing the agenda. The principle that is suggested here is that this should be a consultative process, including at least the (executive) mayor, the municipal manager and the speaker.

Procedures

The speaker must ensure the implementation of the provisions in the Structures Act dealing with council meetings, such as section 30 which deals with quorums and decisions. Section 30 also contains procedural requirements around certain decisions that require a prior report and recommendation from the executive committee or executive mayor. The speaker must see to it that these provisions are adhered to.

Debate management

The speaker's responsibility to ensure members' freedom of speech, subject to council's rules of order, implies that the speaker is in charge of allocating speaking time to members in terms of the council's policy on that issue. The speaker must also implement section 81(3) of the Structures Act, which affords the participating traditional authorities an opportunity to address the council in particular circumstances.

Voting

The speaker must implement the voting procedures as determined by the council in its rules of order, subject to the Structures Act (quorum, abstentions, voting by division, declaration of the result, etc.). If council cannot take a decision on any matter, the councillor presiding, which would normally be the speaker, can cast an extra vote to decide the matter (s 30(4) of the Structures Act).

Admission of public

The speaker must facilitate the implementation of legislation in as far as it deals with the public's admission to council meetings. The council decides whether or not to close a meeting but the speaker must be able to advise council and facilitate the decision making around the issue. The speaker must ensure that members of the public are seated in designated areas and should have the authority to remove any person who refuses to comply with the speaker's ruling.

S 20(1) & (2)
Systems Act

Granting of leave of absence

The Code of Conduct for councillors provides that councillors can be granted leave of absence in terms of applicable national or provincial legislation or the council's rules of order

Item 3(a)

The speaker must maintain an attendance register in order to implement the Code of Conduct. This provides for the removal of a councillor after a third consecutive absence from a council meeting without having obtained leave of absence.

Item 4(2)

5.3 Legislative process

5.3.1 Legality and constitutionality

Part of the speaker's responsibility in respect of the legislative process is to ensure that by-laws that are tabled comply with the Constitution, the Structures Act, the Systems Act and other applicable national and provincial legislation.

This includes questions such as:

- (a) Does the municipality have the competency to legislate on the matter?
- (b) Is there national or provincial legislation on the matter?
- (c) If yes, does the proposed by-law conflict with that legislation?
- (d) Does the proposed by-law conflict with the Bill of Rights or other parts of the Constitution?

5.3.2 Procedures

The speaker must ensure that the procedural requirements that apply specifically to the adoption of by-laws have been adhered to. Examples are:

- publication for comment of the by-law;
- public consultation around the by-law;
- reasonable notice to councillors; and
- affording traditional leaders an opportunity to address the council.

The speaker's role around the constitutionality/legality and procedures implies he or she should be equipped to assess the legalities of proposed by-laws by having access to a legal adviser or the municipality's legal office. In practice, and at the very least, a report in support of a particular by-law must specifically address the procedural matters listed above.

5.4 Code of Conduct

The speaker plays a pivotal role in the implementation of the Code of Conduct for councillors.

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

Item 13.

The speaker must ensure that every councillor receives a copy of the Code and that the Code is available wherever the council meets.

Item 13(4)

5.4.1 Policy formulation

The speaker should drive the formulation of policy to implement the Code of Conduct. The Code of Conduct calls for policy on a number of issues, including:

- a standing procedure for the imposition of a fine or removal of a councillor as a sanction for non-attendance of meetings
- procedures and policy for the granting of leave of absence and
- instances where council must decide on permission or consent to be granted to councillors, e.g. consent for outside work by full-time councillors
- permission to disclose information.

Item 4(3)

Item 3(a)

Item 8

Item 10(1)

Most of these could be dealt with in rules of order. The speaker's role as protector of council's integrity means that he or she should chair the committee that deals with ethics, member's interests, etc.

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

- authorise an investigation into the facts;
- give the councillor an opportunity to respond;
- report to a council meeting; and
- report to the MEC.

The speaker is not the only person who can enforce the Code of Conduct. The council can also launch an investigation and

Item 14(1)(a)

in extreme circumstances, the MEC for local government can initiate an investigation | *Item 14(4)*

5.4.2 Sanctions

Ultimately, the Code of Conduct vests the authority to impose a sanction for breach of the Code of Conduct in the municipal council | *Item 14(2)*

or, alternatively, the MEC for Local Government. | *Item 14(6)*

5.4.3 Councillors' accountability towards the community

The preamble of the Code of Conduct widens the ambit of the Code of Conduct by emphasising the accountability of councillors towards the community. It states that councillors must report back at least quarterly to constituencies on the performance of the municipality. The speaker also plays a role in monitoring the degree to which councillors' are open and accountable towards the community.

5.4.4 Complaints against councillors

Municipalities are obliged by the Systems Act to have complaints procedures in place | *S17(2)(a)
Systems Act*

It is suggested that the speaker should deal with complaints lodged against councillors by members of the community. He or she could either chair a complaints committee of councillors or in small councils, deal with the complaint. | *Item 14(i)(b)*

5.4.5 Compliance in council's committees

The Structures Act states that the speaker must ensure compliance in the council and council committees of the Code of Conduct. 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 on 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. The same rule as with council meetings applies to the attendance of committee meetings.

5.4.6 Application to traditional leaders

The Code of Conduct applies to a certain degree to traditional leaders that participate in the council in terms of section 81 of the Structures Act. | *Item 15*

Ultimately, their right to participate can be suspended or cancelled upon breach of the Code.

5.4.7 Support and assistance to councillors

The integrity of council and councillors relates to their freedom of speech in the council. But it also deals with ensuring that councillors are enabled and assisted in their responsibilities as public representatives. This may entail dedicated administrative support to councillors to assist them in the exercise of their duties.

5.4.8 Allowances and use of council facilities

The Code of Conduct prohibits councillors from using their privileges for private gain or to improperly benefit another person | *Item 6(1)*

The speaker must implement and enforce this Code of Conduct. Therefore, it is suggested that the speaker's office at least be involved in the setting of policy on council facilities and the monitoring of councillor's use of their privileges.

5.5 Additional roles of Speakers

5.5.1 Ceremonial functions

Council can decide that the speaker should fulfil certain ceremonial functions. This would depend on the circumstances within the municipality, in particular whether or not the municipality has a deputy mayor.

5.5.2 Ward committees

An additional role that the municipal council can consider for the speaker relates to ward committees. Council may task the speaker with overseeing the establishment and functioning of ward committees. In that scenario, the speaker would, for example:

- oversee the election of ward committee members;
- ensure that ward committees meet regularly;
- ensure that ward committees function in general;
- ensure that ward councillors report back to the council on their ward committee meetings; and
- co-ordinate the assignment of PR councillors to ward committees if the council decides to go that route.

5.5.3 District representation

Another possible role for the speaker of a local municipality concerns the facilitation of the municipality's representation on the district council. The speaker may be tasked to ensure that the council formulates mandates that the district representatives take to district meetings. Similarly, the speaker could ensure that the district representatives report back to the local council on the district meetings that they attended.

5.5.4 Appeals in terms of Access to Information Act

Section 74 of the Access to Information Act 2 of 2000 provides for an internal appeal procedure against decisions taken by the information officer (the municipal manager) on requests for access to information held by the municipality.

The Act states that the council must decide which person is the appeal authority: the mayor, the speaker or any other person. This means that council can decide to designate the speaker as the appeal authority in terms of the Access to Information Act.

*S (1) Access
to
Information
Act*

5.6 Line of Authority

The speaker reports to the Council.

5.7 Interaction with municipal manager

The speaker interacts directly with the municipal manager.

5.8 Interaction with staff members

The speaker interacts with staff members in consultation with the municipal manager.

5.9 Dispute resolution

In the event of a dispute between the speaker and any other political structure, or the municipal manager, the dispute must be referred to Council.

6 Executive Committees

Only municipalities with a collective executive system may establish an executive committee. A collective executive system is a system of local government where the exercise of the executive authority is through an executive committee in which the executive leadership of the municipality is collectively vested.

Executive Committees are regulated in terms of sections 42-53 of the Structures Act. These sections would only apply to those municipalities who choose to establish an executive committee.

6.1 Composition of Executive Committee

An executive committee:

- Is elected by council of the municipality
- Consists of no more than 20 percent of the councillors or 10 councillors, whichever is the least, and may not have less than 3 members
- Must be composed in such a way that parties and interests represented in council are represented in the executive committee in the same proportions as they are represented in council

S 43
Structures Act

6.2 Powers of Executive Committee

An executive committee is the principal committee of the council of the municipality and as such receives reports from the other committees of the council. The Executive committee considers these reports and disposes of those which the committee is authorised to do in terms of its delegated powers and forwards the remainder of the reports together with its recommendations to the municipal council for decision.

44(2) The executive committee must-

- (a) identify the needs of the municipality;
- (b) review and evaluate those needs in order of priority;
- (c) recommend to the municipal council strategies, programmes and services to address priority needs through the integrated development plan and estimates of revenue and expenditure, taking into account any applicable national and provincial development plans; and
- (d) recommend or determine the best methods, including partnership and other approaches, to deliver those strategies, programmes and services to the maximum benefit of the community.

Municipal Structures Act 117 of 1998 as amended

In performing these duties, the executive committee must do the following:

44 (3) The executive committee in performing its duties must-

- (a) identify and develop criteria in terms of which progress in the implementation of the strategies, programmes and services referred to in subsection (2) (c) can be evaluated, including key performance indicators which are specific to the municipality and common to local government in general;
- (b) evaluate progress against the key performance indicators;
- (c) review the performance of the municipality in order to improve-
 - (i) the economy, efficiency and effectiveness of the municipality;
 - (ii) the efficiency of credit control and revenue and debt collection services; and
 - (iii) the implementation of the municipality's by-laws;
- (d) monitor the management of the municipality's administration in accordance with the policy directions of the municipal council;
- (e) oversee the provision of services to communities in the municipality in a sustainable manner;
- (f) perform such duties and exercise such powers as the council may delegate to it in terms of section 32;
- (g) annually report on the involvement of communities and community organisations in the affairs of the municipality; and
- (h) ensure that regard is given to public views and report on the effect of consultation on the decisions of the council.

Municipal Structures Act 117 of 1998 as amended

6.3 Line of Authority

The Executive Committee reports to the council.

6.4 Interaction with the municipal manager

The Executive Committee interacts directly with the municipal manager.

6.5 Interaction with staff members

The Executive Committee, or its individual members, interacts with staff members in consultation with the municipal manager.

6.6 Dispute resolution

In the event of a dispute between the Executive Committee and any other political structure, or the municipal manager, the dispute must be referred to Council.

7 Mayors

The mayor of a municipality with a collective executive system has the following statutory powers and functions in terms of the Municipal Structures Act:

- (a) presides at meetings of the executive committee;
- (b) performs the duties, including any ceremonial functions, and exercises the powers delegated to her/him by the municipal council or the executive committee and
- (c) determine the date, time and venue of ordinary and special executive committee meetings.

7.1 Finance

Sections 52 – 59 of the MFMA spell out the responsibilities of Mayors regarding the financial and fiscal affairs of a municipality. The powers and duties assigned to the mayor in the MFMA, may be delegated by the council of the municipality to another member of the executive committee.

The responsibilities of the Mayor are as follows:

- | | | |
|----|--|--------------------|
| 1. | Provide guidance over the fiscal and financial affairs of the municipality. | S 52 (a)
MFMA |
| 2. | To oversee the preparation of the Annual Budget. | S 52
MFMA |
| 3. | Provide political guidance over the budget process and the priorities that must guide the budget. | S 53(1)(a)
MFMA |
| 4. | Monitor and oversee the chief financial officer and the municipal manager in the exercising of their responsibilities in terms of the Municipal Finance Management Act as provided for in the Act. | S 52 (b)
MFMA |
| 5. | Ensure that the municipality performs its statutory functions in the limits of the approved budget. | S 52 (c)
MFMA |
| 6. | Submit quarterly reports to Council on the implementation of the budget and the financial status of the municipality. | S 52(d)
MFMA |

- | | | |
|-----|--|----------------------|
| 7. | To coordinate the annual revision of the IDP and preparation of the annual budget. | S 53 (1)(b)
MFMA |
| 8. | To take reasonable steps to ensure that: <ul style="list-style-type: none"> a. municipality approves its annual budget before the start of the financial year, b. that the budget and services delivery implementation plan is finalized within 28 days after the approval of the budget, c. performance agreements are in line with legislation and are linked to measurable performance objectives. | S 53 (1)(c)
MFMA |
| 9. | Allow the public access to the service delivery and budget implementation plans of the municipality, by making it available no later than 14 days after the approval of these plans | S 53(3)(a)
MFMA |
| 10. | Table the draft budget before the Council. | S 21
MFMA |
| 11. | Ensure that the reports to the council will adequately facilitate the council's oversight functions. | S 54
MFMA |

7.2 Identification of financial problems

- | | | |
|----|--|-----------------|
| 1. | To receive monthly budget report submitted by the municipal manager and to: <ul style="list-style-type: none"> a. consider them, b. check whether budget is implemented in accordance with budget and service delivery agreement, c. give instruction to the municipal manager to ensure that budget is implemented in terms of the budget implementation plan and service delivery plan and that spending of funds and revenue collection proceed in accordance with the budget. | S 54 MFMA |
| 2. | Initiate any remedial or corrective action when the municipality face financial problems. | S 54(2)
MFMA |
| 3. | Table adjustment budgets. | S 54(2)
MFMA |
| 4. | Alert the MEC for local government in the province of any | S 54(2) |

financial problems.

MFMA

5. May recommend appropriate provincial intervention to the MEC if the municipality cannot approve an annual budget or face serious financial problems.

S 55
MFMA

7.3 Inferred powers and functions of the mayor

The powers and functions of the mayor that is incidental to her/his stipulated statutory functions, are similar to that of the Speaker, although only in relation to the executive committee and not the council as a whole.

This means that the mayor must, in respect of the executive committee-

- (a) Preside at public meetings and hearings called by the executive committee.
- (b) Receive petitions on behalf of the municipality when requested to do so by petitioners.
- (c) Ensure compliance with the law, including the municipality's rules and orders, during executive committee meetings.
- (d) Interpret the rules and orders of the municipality when required to do so during meetings of the executive committee, taking into account any prior rulings and interpretations made by the Speaker.
- (e) Ensure that the executive committee's reports to the council are adequate for facilitating the council's oversight functions in relation to committee and mayor.

7.4 Preparation of legislation

The Constitution states that a municipal council may not delegate, amongst other things, the making of bylaws and that the adoption of bylaws requires an absolute majority, i.e. a majority of all the councillors of the municipality must vote in favour of the adoption of a bylaw.

S 160(2)
Constitution

However, the Structures Act prohibits a council from adopting a proposed bylaw until it received a report and recommendation with regard to the proposed bylaw from the executive committee.

S 30
Structures
Act

A municipality has the right to make bylaws for the effective administration of the matters assigned to it in terms of the Constitution and national and provincial legislation. Because Speakers control the proceedings of municipal councils, they have clear responsibilities with regard to the legislative process in the municipal council. These responsibilities require that she/he must protect and promote the integrity of the legislative process.

Part of the mayor's responsibility in respect of the preparation of proposed bylaws is to ensure that bylaws that are recommended to the council comply with the Constitution and any applicable national and provincial legislation.

This means that the mayor should ensure that:

- (a) the municipality is competent to legislate on the matter.
- (b) a proposed bylaw is consistent with national or provincial legislation, if any.
- (c) the proposed by-law does not conflict with the Bill of Rights or any other provision of the Constitution.
- (d) the proposed bylaw complies with all the legal requirements for a bylaw.
- (e) the proposed bylaw is prepared and available in all the official languages determined by the council in its language policy.

7.5 Integrity, privileges and immunities of councillors

The mayor is the guardian of councillors' privileges and immunities in the executive committee. The privileges and immunities of councillors include freedom of speech during committee meetings and immunity from criminal and civil litigation in certain instances. Not only must the mayor ensure that councillors benefit from this special dispensation, she/he must also ensure that councillors do not abuse their privileges and immunities. This requires that the mayor must be absolutely certain what limitations, if any, the rules and orders of the municipality and other legislation, including the Constitution, imposes on councillors' freedom of speech.

7.6 Enforcing the code of conduct for councillors in executive committee meetings

The mayor should, for the sake of uniformity, have similar arrangements with regard to enforcing the code of conduct in the executive committee as would be the case with the committees of council.

7.7 Agenda and minutes

The mayor presides at executive committee meetings where she/he is present. This implies that she/he should be involved in the preparation of the agenda that is circulated to executive committee members prior to any meeting. Items for the agenda originate from various sources in the municipality, e.g. the administration, portfolio committees, motions submitted by councillors and written questions submitted by councillors. The mayor must, for instance, ensure that the different reports that must be submitted to the executive committee are complete, are arranged in logical order in the agenda and are submitted in time for inclusion in the agenda. She/he must also ensure that agendas are dispatched to executive committee members in accordance with the timeframes stipulated in the municipality's rules and orders prior to a meeting and to ensure that they have adequate time to prepare for meetings.

The mayor should, in consultation with the Speaker and the committee services section of the municipality, ensure that there are adequate facilities and resources for keeping minutes of executive committee meetings and other activities involving the executive committee, such as public meetings and public hearings. The mayor should work closely with the committee services section to ensure that minutes are of high quality, correct and accessible for councillors, employees and the public.

7.8 Meeting procedures

The mayor must see to it that the provisions of the municipality's rules and orders with regard to executive committee meetings are adhered to. The rules and orders of the municipality may regulate the detail of the procedures during and conduct of executive committee meetings. Such procedures may, for example, prescribe behavioural rules.

The mayor must therefore know the rules and orders that re applicable to the executive committee in order for her/him to consistently apply them. Rules and orders would, for example, determine what motions and proposals may and may not be made, when a motion or proposal must be disallowed, how an interview with a deputation must be conducted, how to deal with a petition tabled at an executive committee meeting and so on. As in the case of the code of conduct the mayor should have a record of all the Speaker's interpretations of the rules and orders, as well as precedents that developed through application and enforcement of the rules to ensure consistent application thereof.

7.9 Order

The degree of order or lack thereof during executive committee meetings will reflect positively or negatively on the image of the municipality as a whole, although executive committee meetings are often more relaxed and less formal than council meetings.

The mayor is, in respect of executive committee meetings, responsible to promote members' freedom of speech, subject to the municipality's rules and orders. She/he must however, also adjudicate the content of councillors' contributions to discussion in the executive committee for compliance with the rules and orders of the municipality and other legislation.

7.10 Conduct of voting during meetings

The mayor is first and foremost a councillor with all the rights, privileges and duties of a councillor. The mayor is thus also entitled to cast a vote on questions that must be determined by the executive committee.

The mayor must implement the voting procedures as determined by the municipality's rules and orders, subject to the prerequisites in the Constitution and other legislation in the executive committee.

Mayors must also uphold a councillor's right to have her/his opposition to a resolution recorded in the minutes of a meeting.

If the executive committee cannot take a decision on any proposal where a simple majority is required, the councillor presiding, which would normally be the mayor, may in addition to her/his ordinary (called a deliberative vote) vote, cast an extra vote (called a casting vote) to decide the matter.

7.11 Admission of public to executive committee meetings

In terms of section 160 of the Constitution read with section 20(1) of the Systems Act, executive committee meetings are in principle open to the public and the media.

However, the Systems Act empowers an executive committee to close all its meetings provided it is reasonable to do so having regard to the nature of

| S 20(3)
Systems Act

the business being transacted.

It does, however, prohibit an executive committee from closing its meetings to the public and the media when considering or voting on any of the following matters: a draft by-law;

- a budget;
- the municipality's draft integrated development plan, or any amendment of the plan;
- the municipality's draft performance management system, or any amendment of the system,;
- the decision to enter into a service delivery agreement referred to in section 76 (b) of the Act; or
- any other matter prescribed by regulation.

*S 20(2)
Systems Act*

The mayor must facilitate the implementation of the public and media's admission to executive committee meetings. Whilst the executive committee must decide whether or not to close a meeting, the mayor must be able to advise the committee and facilitate decision

*S 20(1) &(2)
Systems Act*

The mayor must ensure that members of the public are seated in designated areas from where they can observe the proceedings of the executive committee. The rules and orders of municipalities usually authorize the mayor to have any person who refuses to comply with any ruling made by her/him or who persistently disrupts a meeting removed from the meeting. The mayor must therefore ensure that arrangements had been made for the presence of one or more employees or other persons for this purpose.

The mayor determines the time, date and venue for executive committee meetings. When the mayor makes her/his decision, she/he must take into account whether the designated venue offers enough room to accommodate members of the public who may wish to attend such a meeting and whether there are not other meetings taking place on that date and time. The standard rules and orders for municipalities in the Free State provides, for example, that no committee or public meeting or public hearing may take place in a municipality on the same day as a council meeting.

7.12 Granting of leave of absence

The Code of Conduct for councillors provides that councillors can be granted leave of absence for meetings they are required to attend in terms of applicable national or provincial legislation or the council's rules and orders.

Item 3(a)

It also determines that a councillor who is absent from three or more consecutive committee meetings which she/he was required to attend, i.e. in respect of which she/he did not have leave to be absent, must be removed from office as a councillor.

Item 4(2)

The mayor must therefore ensure that an attendance register is circulated and completed by all councillors during council and committee meetings. She/he would have to make arrangements

that the attendance registered is regularly submitted for inspection to the Speaker to ensure compliance with this provision.

7.13 Compliance with the code of conduct in committees

The Structures Act states that the Speaker must ensure compliance in the council and committees with the code of conduct for councillors.

This requires at a minimum that the Speaker must establish a system of communication with the mayor as chairperson of the executive committee to discuss matters relating to the code of conduct. The mayor should inform the Speaker of issues related to and possible transgressions of the code of conduct. An example is the attendance by councillors of committee meetings. The same rule as with council meetings applies to the attendance of committee meetings.

7.14 Ceremonial functions

The council can decide that the mayor should fulfil certain ceremonial functions. This would depend on the circumstances within the municipality (see below).

7.15 Appeals in terms of Access to Information Act

Section 74 of the Access to Information Act 2000 (Act No 2 of 2000) provides for an internal appeal procedure against decisions taken by the information officer (the municipal manager) of a municipality regarding requests for access to information held by the municipality. The Act requires that every municipal council must appoint an appeal authority to consider any appeals against a decision by the information officer. The appeal authority could be the mayor, the Speaker or any other person. A council may decide to designate the mayor as the appeal authority in terms of the Access to Information Act.

7.16 Receiving reports from delegated bodies

A political structure, political office-bearer, councillor or employee of a municipality to whom a delegating authority (i.e. the body or person who delegates a power) 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.

S 63
Systems Act

A municipal council may delegate certain powers, including ceremonial powers, to a mayor. Where the council has delegated powers to its mayor, the Speaker must ensure that the mayor complies with the reporting requirements set out in this section. The mayor must submit her/his reports on the exercise of her/his delegated powers to the Speaker to the council for consideration. Where the executive committee delegated powers to the mayor, the committee itself must ensure that the mayor complies with these requirements.

7.17 Delegated powers of the mayor

In municipalities with collective executive systems, the council as well as the executive committee may delegate powers to the mayor.

It is a general requirement of delegation that a delegated body (i.e. the person or body to whom a power had been delegated or sub-delegated) must in writing report on the exercise of her/his delegated powers at such intervals as the delegating authority (i.e. the person or body that delegates or sub-delegates the power concerned) may determine. Should any powers, including ceremonial powers, be delegated to the mayor, she/he must also comply with this requirement.

S 63
Systems Act

A council may delegate the following powers and functions to its mayor-

- to promote the image of the municipality
- to ensure that the executive committee performs its functions properly
- to lead and promote social and economic development in municipality
- to preside over public meetings and hearings called by executive committee or mayor
- to convene public meetings and hearings
- to promote inter-governmental and inter-institutional relations
- to identify those of the municipality's activities that need a specific committee of councillors to investigate, discuss, evaluate and report and make recommendations to the executive committee after consultation with the municipal manager;
- to appoint a member of the executive committee as chairperson for each committee established by the council;
- to ensure, in consultation with the municipal manager, that a proper committee service responsible for the agendas and minutes is in place for the executive and other committees, that all committees meet regularly and that they submit reports to the executive committee timely;
- to take responsibility for the quality and speed of decision-making in the executive committee;
- to, build, maintain and enhance sound relationships between the council, councillors and the administration in consultation with the municipal manager;
- to be available on a regular basis to interview the public and visitors to the municipal offices, and to interact with prominent business people as well as developers;
- to perform such ceremonial role as the council may determine by resolution from time to time; and

- to assess the performance of the municipal manager and the mayor's personal assistant, if any, in terms of the relevant performance agreement.

7.18 Ceremonial powers and functions of the mayor

The following ceremonial powers could be delegated to the mayor:

- Opening projects, civic functions and events and new buildings
- Hosting and welcoming dignitaries to the municipality
- Advocating council policy
- Representing the council at civic events
- Leading/championing campaigns initiated by the mayor or the council
- Representing the council during disasters
- "First citizen"
- Patron for local organizations on an invitation basis

7.19 Relationship between the mayor and speaker in a collective executive system

The Speaker and the mayor in a municipality with a collective executive system must work closely together to ensure that the decision-making (including planning and policy-making) processes run smoothly and in the best interests of the community. It must be clear that the Speaker and mayor must fulfil complementary roles in this regard.

7.20 Line of Authority

The Mayor reports to the council.

7.21 Interaction with the municipal manager

The Mayor will interact directly with the municipal manager.

7.22 Interaction with staff members

The Mayor interacts with staff members in consultation with the municipal manager.

7.23 Dispute resolution

In the event of a dispute between the Mayor and the Speaker or the Municipal Manager, such dispute shall be referred to Council.

8 Deputy Mayors

Deputy Mayors are provided for in section 48 of the Structures Act.

In the collective executive system, deputy mayors are appointed by council only if the MEC for local government in the province approves that a deputy mayor be appointed. The deputy mayor is a member of the executive committee of the municipal council and is elected when the executive committee is elected.

The deputy mayor exercises the powers and performs the duties of the mayor if the mayor is absent or not available or if the office of the mayor is vacant. The mayor may delegate duties to the deputy mayor.

8.1 Line of Authority

The Deputy Mayor reports to the Council.

8.2 Interaction with the municipal manager

The Deputy Mayor interacts directly with the municipal manager.

8.3 Interaction with staff members

The Deputy Mayor interacts with staff members in consultation with the municipal manager.

8.4 Dispute resolution

In the event of a dispute between the Deputy Mayor and the Speaker or the Municipal Manager, such dispute shall be referred to Council.

9 Executive Mayors

The Structures Act defines an Executive Mayor as an executive mayor elected in terms of section 55 of the Act.

Only municipalities of the type that have a mayoral executive system may have an executive mayor. A Mayoral executive system is a system of municipal government which allows for the

exercise of executive authority through an executive mayor in whom the executive leadership of the municipality is vested and who is assisted by a mayoral committee.

The powers and functions of the Executive Mayor are set out in section 56 of the Structures Act. The Executive Mayor is the political head of the Municipality and exercises both statutory and ceremonial functions. These functions are illustrated below.

56 Functions and powers of executive mayors

(1) An executive mayor is entitled to receive reports from committees of the municipal council and to forward these reports together with a recommendation to the council when the matter cannot be disposed of by the executive mayor in terms of the executive mayor's delegated powers.

(2) The executive mayor must-

- (a) identify the needs of the municipality;
- (b) review and evaluate those needs in order of priority;
- (c) recommend to the municipal council strategies, programmes and services to address priority needs through the integrated development plan, and the estimates of revenue and expenditure, taking into account any applicable national and provincial development plans; and
- (d) recommend or determine the best way, including partnership and other approaches, to deliver those strategies, programmes and services to the maximum benefit of the community.

(3) The executive mayor in performing the duties of office, must-

- (a) identify and develop criteria in terms of which progress in the implementation of the strategies, programmes and services referred to in subsection (2) (c) can be evaluated, including key performance indicators which are specific to the municipality and common to local government in general;
- (b) evaluate progress against the key performance indicators;
- (c) review the performance of the municipality in order to improve-
 - (i) the economy, efficiency and effectiveness of the municipality;
 - (ii) the efficiency of credit control and revenue and debt collection services; and
 - (iii) the implementation of the municipality's by-laws;
- (d) monitor the management of the municipality's administration in accordance with the directions of the municipal council;
- (e) oversee the provision of services to communities in the municipality in a sustainable manner;
- (f) perform such duties and exercise such powers as the council may delegate to the executive mayor in terms of section 59 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);
- (g) annually report on the involvement of communities and community organisations in the affairs of the municipality; and
- (h) ensure that regard is given to public views and report on the effect of consultation on the decisions of the council.

9.1 Statutory functions

1. To identify the needs of the municipality.

2. To review and evaluate those needs in order of priority.
3. To recommend strategies, programmes and services to address priority needs through the IDP and the estimate of revenue and expenditure taking into account national and provincial plans.
4. To recommend or determine the best way to deliver strategies, programmes and services to the maximum benefit of the community.
5. To identify and develop criteria to evaluate strategies programmes and services mentioned in 3 above and to develop key performance indicators.
6. To evaluate progress against the key performance indicators.
7. Review the performance of the municipality in order to improve
 - 7.1 the economic, efficiency and effectiveness of the municipality,
 - 7.2 efficiency of credit control and revenue and debt collection services, and
 - 7.3 implementation of the municipality by-laws.
8. To monitor the management of the municipality's administration.
9. To oversee the provision of services to the community in a sustainable manner.
10. To ensure community involvement in municipal matters by report on the following:
 - 10.1 Annually reports on the involvement of community and community organizations in municipal affairs,
 - 10.2 Ensure that regard is give to public views and report on the effect of consultation on the decision of Council.
11. To handle appeals on matter decided by the municipal manager.

9.2 Mayoral Committee

Section 60 of the Structures Act provides that the Executive Mayor must appoint a mayoral committee amongst the councillors if Council consist of more than nine members.

In respect of the Mayoral Committee, the Executive Mayor has the following responsibilities:

1. Chair the meeting of the Mayoral Committee.
2. Oversee the preparation of the Mayoral Committee Agenda.
3. May delegate specific responsibilities or powers to members of the Mayoral Committee.
4. May dismiss a member of the Mayoral Committee.
5. Ensure compliance with the Law including the rules of order, during Mayoral Committee meeting.
6. Ensure that members of the Public are allowed in Mayoral Committees meetings.

9.3 Finance

Section 52 – 59 of the Municipal Finance Management Act (MFMA) spells out the responsibilities of Mayors regarding the financial and fiscal affairs of a municipality. The powers and duties assigned to the Executive Mayor in the MFMA, may be delegated by the executive mayor to another member of the municipality's mayoral committee.

The responsibilities of the Executive Mayor are as follows

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|----|--|------------------------------|
| 1. | Provide guidance over the fiscal and financial affairs of the municipality. | <i>S 52 (a)
MFMA</i> |
| 2. | To oversee the preparation of the Annual Budget. | <i>S 52
MFMA</i> |
| 3. | Provide political guidance over the budget process and the priorities that must guide the budget. | <i>S 53(1)(a)
MFMA</i> |
| 4. | Monitor and oversee the chief financial officer and the municipal manager in the exercising of their responsibilities in terms of the Municipal Finance Management Act as provided for in the Act. | <i>S 52 (b)
MFMA</i> |
| 5. | Ensure that the municipality performs its statutory functions in the limits of the approved budget. | <i>S 52 (c)
MFMA</i> |
| 6. | Submit quarterly reports to Council on the implementation of the budget and the financial status of the municipality. | <i>S 52(d)
MFMA</i> |
| 7. | To coordinate the annual revision of the IDP and preparation of the annual budget. | <i>S 53 (1)(b)
MFMA</i> |
| 8. | To take reasonable steps to ensure that: <ul style="list-style-type: none"> a. municipality approves its annual budget before the start of the financial year, b. that the budget and services delivery implementation plan is finalized within 28 days after the approval of the budget, c. performance agreements are in line with legislation and are linked to measurable performance objectives. | <i>S 53 (1)(c)
MFMA</i> |
| 9. | Allow the public access to the service delivery and budget implementation plans of the municipality, by making it available no later than 14 days after the approval of these plans | <i>S 53(3)(a)
MFMA</i> |

- | | | |
|-----|--|----------------------|
| 10. | Table the draft budget before the Council. | <i>MFMA</i> |
| 11. | Ensure that the reports to the council will adequately facilitate the council's oversight functions. | <i>S 54
MFMA</i> |

9.4 Identification of financial problems

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|----|--|-------------------------|
| 1. | To receive monthly budget report submitted by the municipal manager and to: | |
| a. | consider them, | |
| b. | check whether budget is implemented in accordance with budget and service delivery agreement, | |
| c. | give instruction to the municipal manager to ensure that budget is implemented in terms of the budget implementation plan and service delivery plan and that spending of funds and revenue collection proceed in accordance with the budget. | <i>S 54 MFMA</i> |
| 2. | Initiate any remedial or corrective action when the municipality face financial problems. | <i>S 54(2)
MFMA</i> |
| 3. | Table adjustment budgets. | <i>S 54(2)
MFMA</i> |
| 4. | Alert the MEC for local government in the province of any financial problems. | <i>S 54(2)
MFMA</i> |
| 5. | May recommend appropriate provincial intervention to the MEC if the municipality cannot approve an annual budget or face serious financial problems. | <i>S 55
MFMA</i> |

9.5 Political head

As the political head of the municipality, the Executive Mayor has the following responsibilities:

1. To promote the council's image.
2. To promote and defend the constitutional status of the municipality.
3. To uphold the principles of cooperate governance.
4. To ensure that the Mayoral committee performs its functions properly.
5. To lead and promote social and economic development.

6. To promote inter-governmental and inter-institutional relations.
7. To ensure in consultation with the Municipal Manager that a proper committee service responsible for agendas and minutes is in place for the Mayoral committee.
8. To take responsibility for the quality and speed of decision – making.
9. To be available on a regular basis to interview the public and visitors to the Municipal offices and to interact with prominent business people.

9.6 Ceremonial Functions

In addition to the statutory functions the Executive Mayor must also perform a ceremonial role as determined by the municipal council.

This role includes:

1. Opening project, civic functions and events and new buildings,
2. Hosting and welcoming dignitaries,
3. Advocating council policy,
4. Represent the council during disasters,
5. Leading campaigns initiated by the council or other spheres of government,
6. Acting as patron of Local organizations,
7. Receive petitions on behalf of the Council when requested to do so by petitioners, and
8. Preside at Public Meeting and Hearings.

9.7 Other functions

Approves leave for the Municipal Manager.

9.8 Line of Authority

The Executive Mayor reports to the council.

9.9 Interaction with the municipal manager

The Executive Mayor will interact directly with the municipal manager.

9.10 Interaction with staff members

The Executive Mayor interacts with staff members in consultation with the municipal manager.

9.11 Dispute resolution

In the event of a dispute between the Executive Mayor and the Speaker or the Municipal Manager, such dispute shall be referred to Council.

10 Whip of Council

The Office of the Whip of Council has been introduced by the Notice on the Upper Limits on Councillor Remuneration in 2006. The Whip of Council is not an Office Bearer in terms of the Systems Act, so the Council is not legally obliged to adopt a terms of reference for the Whip. It is, however, advisable to commit to a clear definition of the role of the Whip in relation to that of the Speaker.

10.1 Statutory functions of the Whip of Council

There are no statutory functions for the Whip of Council

10.2 Other functions of the Whip of Council

The Council may delegate the following functions to the Whip –

- Political management of council meetings and committee meetings
- Inform councillors of meetings called by the Speaker and the Mayor and ensuring that such meetings quorate
- Advises the Speaker and Mayor on the Council agenda
- Informs councillors on important matters on the relevant agenda
- Advise the Speaker on the amount of time to be allocated to speakers and the order of such speakers addressing the Council
- Ensures that councillors' motions are prepared and timeously tabled in terms of the procedural rules of Council
- Assisting the Speaker in the counting of votes
- Advising the Speaker and the Mayor of urgent motions
- Advising the Speaker and Mayor on how to deal with important items not disposed of at a Council meeting

10.3 Line of Authority

The Whip is accountable to the Council.

10.4 Interaction with the municipal manager

The Whip will interact directly with the municipal manager.

10.5 Interaction with staff members

The Whip interacts with staff members in consultation with the municipal manager.

10.6 Dispute resolution

In the event of a dispute between the Whip, Executive Mayor and the Speaker or the Municipal Manager, such dispute shall be referred to Council.

11 Mayoral Committees

Mayoral Committees are provided for in section 60 of the Structures Act. Mayoral Committees only exist in municipalities that have a mayoral executive system and an executive mayor.

A Mayoral executive system is a system of municipal government which allows for the exercise of executive authority through an executive mayor in whom the executive leadership of the municipality is vested and who is assisted by a mayoral committee.

If a municipal council in a municipality having a mayoral executive system and an executive mayor, has more than 9 members, the executive mayor must appoint a mayoral committees from amongst the councillors.

The role of the mayoral committee is to assist and advise the executive mayor. The Executive Mayor together with the Mayoral Committee performs those powers and functions that have been designated to the Executive Mayor by the municipal Council.

The Mayoral Committee is empowered to do the following –

11.1 Statutory functions of the Mayoral Committee

- to assist and advise the Executive Mayor.

11.2 Other functions of the individual members of the Mayoral Committee

- specifically delegated responsibilities by the Executive Mayor.
- any Executive Mayor's powers delegated by the Executive Mayor.

11.3 Line of Authority

- Reports to the Executive Mayor.

11.4 Interaction with the municipal manager

- The Mayoral Committee and its members interact with the municipal manager via the Executive Mayor unless direct interaction has been authorised by the Executive Mayor.

11.5 Interaction with staff members

- The Mayoral Committee and its members may only interact with staff members, after having been authorised by the Executive Mayor. For the sake of accountability, all such interaction must take place via the office of the municipal manager.

11.6 Dispute resolution

- In the event of a dispute between the Mayoral Committee and either the municipal manager or staff members, the Executive Mayor will decide on the matter.

12 Ward committees

Ward Committees are the vehicles through which the notions of a participatory democracy and a representative democracy as outlined in Section 152 of the Constitution become a reality.

74. A ward committee-
- (a) may make recommendations on any matter affecting its ward-
 - (i) to the ward councillor; or
 - (ii) through the ward councillor, to the metro or local council, the executive committee, the executive mayor or the relevant metropolitan subcouncil; and
 - (b) has such duties and powers as the metro or local council may delegate to it in terms of section 32.

Local Government Municipal Structures Act 117 of 1998 as amended

In both the Structures Act and the Systems Act a statutory framework is established that broadly outlines a system of participatory democracy. The Structures Act gives the bare bones of a ward committee whilst the Systems Act defines the nature of community participation.

Councils have discretion as to whether or not they want to establish ward committees. Where ward committees are established, the principles of participatory democracies apply.

Whilst the Systems and the Structures Act set the national statutory basis which allows for the establishment of ward committees, the framework for a system of ward committees is best captured in by-laws.

12.1 Composition of ward committees

A ward committee may only have ten members. The Guidelines however make provision for the establishment of sub-committees to assist the ward committees in performing their functions and to involve the communities more broadly.

12.2 Functions of ward committees

The powers and functions of ward committees are left to the discretion of the municipality. To assist municipalities, the Department of Provincial and Local Government has published a **Guideline for the Establishment and Operation of Municipal Ward Committees**, which provides a list of duties that can be delegated to ward committees. These include:

- Advising ward councillors on policy matters affecting wards;
- Identifying needs and challenges that wards face;
- Receiving complaints from residents about municipal service delivery; and
- Communicating information to wards on budgets, IDP's and service delivery options.

12.3 Executive Powers

No executive powers can be delegated to ward committees.

12.4 Administrative support

Municipalities must make administrative arrangements to support ward committees in performing their functions. More importantly, municipalities should allocate resources and allocate funds for community participation.

The term of office for members of ward committees is at the discretion of the municipality, but it may not be less than two years or more than three years. Municipalities should apply the same term of office to all ward committees within their jurisdiction.

12.5 Remuneration

Members of ward committees are not remunerated for their services by the municipality. However, municipalities must budget for members out-of-pocket expenses incurred in the participation in ward committees.

13 Section 79 Committees

79	Establishment
(1)	A municipal council may-
(a)	establish one or more committees necessary for the effective and efficient performance of any of its functions or the exercise of any of its powers;
(b)	appoint the members of such a committee from among its members; and
(c)	dissolve a committee at any time.
(2)	The municipal council-
(a)	must determine the functions of a committee;
(b)	may delegate duties and powers to it in terms of section 32;
(c)	must appoint the chairperson;
(d)	may authorise a committee to co-opt advisory members who are not members of the council within the limits determined by the council;
(e)	may remove a member of a committee at any time; and
(f)	may determine a committee's procedure.
<i>Local Government Municipal Structures Act 117 of 1998 as amended</i>	

13.1 Line of Authority

- Reports to the Municipal Council.

13.2 Interaction with the municipal manager

- Interacts with the municipal manager as per its delegated authority from the Municipal Council.

13.3 Interaction with staff members

- Interacts with staff members as permitted in terms of its delegated powers and in consultation with the municipal manager.

13.4 Dispute resolution

- In the event of a dispute between itself and the municipal manager, the Municipal Council will decide on the matter.

14 Section 80 Committees

80 Committees to assist executive committee or executive mayor

- (1) If a municipal council has an executive committee or executive mayor, it may appoint in terms of section 79, committees of councillors to assist the executive committee or executive mayor.
- (2) Such committees may not in number exceed the number of members of the executive committee or mayoral committee.
- (3) The executive committee or executive mayor-
 - (a) appoints a chairperson for each committee from the executive committee or mayoral committee;
 - (b) may delegate any powers and duties of the executive committee or executive mayor to the committee;
 - (c) is not divested of the responsibility concerning the exercise of the power or the performance of the duty; and
 - (d) may vary or revoke any decision taken by a committee, subject to any vested rights.
- (4) Such a committee must report to the executive committee or executive mayor in accordance with the directions of the executive committee or executive mayor

Local Government: Municipal Structures Act 117 of 1998

14.1 Line of Authority

- Reports to the Executive Mayor or Executive Committee, depending on the governance structure at the municipality.

14.2 Interaction with the municipal manager

- The Committee and its members interact with the municipal manager via the Executive Mayor or the Executive Committee as per its delegated powers.

14.3 Interaction with staff members

- The Committee and its members interact with staff members, in accordance with its delegated powers and in consultation with the municipal manager.

14.4 Dispute resolution

- In the event of a dispute between the committee and the municipal manager, the Executive Mayor or the Executive Committee will decide on the matter.

15 Part-time councillors

Part-time councillors are expected to play a political role in representing residents and other stakeholders thereby providing the political linkage between the council and the community.

Part-time councillors therefore play a key role in facilitating consultative processes that are envisaged in the Systems Act as well as is in the MFMA, particularly with regard to budgets, IDPs, budget-related policies, tariff setting for services, indigent policies, long-term borrowing.

In addition, the Systems Act and the MFMA, expand the role of councillors to include an oversight role through council or committee meetings.

16 Municipal manager

When examining the role and responsibilities of a municipal manager it is important to make a distinction between those powers that are vested in the municipal manager and those that imposed on the municipality as an entity, but the due to the nature of the responsibility, the onus is with the municipal manager to ensure implementation, subject to the policy directions of council¹. An example is the obligation on the municipality to maximise the efficiency of communication and decision making within the administration (s 51(j) of the Systems Act).

16.1 Municipal manager's accountability

¹ Local Government Law Bulletin, Vol. 3. No. 2. June 2001

Section 51(i) of the Systems Act states that the municipality must organise its administration in a manner that enables it to hold the municipal manager accountable for the overall performance of the municipality.

This has two consequences:

1. The council must have the tools to hold the municipal manager accountable, i.e. to demand explanation and to review his or her performance.
2. The municipal manager must have the tools to answer to that accountability, i.e. the administration must be managed in such a way that it enables the municipal manager to account for the performance of the entire administration.

16.1.1 Contracts and terms of reference

The three internal documents that, to a large extent, determine what is expected from a municipal manager are:

- | | |
|---|-------------------------------|
| 1. the performance agreement, concluded each year by the municipal manager and the mayor or executive mayor on behalf of the municipality (s 57(1) of the Systems Act); | S 57(1)
<i>Systems Act</i> |
| 2. the employment contract, which must include 'details of duties' (s 57(3) of the Systems Act); and | S 57(3)
<i>Systems Act</i> |
| 3. the municipal manager's terms of reference (s 53 of the Systems Act). | S 53
<i>Systems Act</i> |

Performance agreement

The performance agreement must include the performance objectives and targets that the municipal manager must reach, together with the time frames. These are based on the municipality's integrated development plan (IDP). A system for the evaluation of the municipal manager's performance together with the consequences of unsatisfactory performance must also appear in the agreement. It is within the council's discretion to determine which consequences apply to substandard performance.

S 57
Systems Act

Employment contract

The employment contract is for a fixed term and must include a provision for cancellation of the contract in the case of non-compliance with the employment contract itself .

S 57
Systems Act

No municipal manager can be appointed without him or her signing the performance agreement. This does not mean that the employment contract and the performance agreement must be concluded at the same time. The performance agreement is separate from the employment contract and must be concluded within a reasonable time after the appointment of a municipal manager. This means that municipalities are not legally bound to wait until the IDP process has resulted in the formulation of key performance indicators, strategies and targets before appointing a municipal manager. The employment contract can be concluded before then, provided that it caters for the consequences of substandard performance in terms of the performance agreement.

The employment contract must, where applicable, provide for cancellation of the contract in reaction to substandard performance in terms of the performance agreement.

Terms of reference

In this document, the council must define the relationship between the political structures, office-bearers and the municipal manager, and determine the manner in which they must interact, for example, the establishment of an internal memo or reporting system (s 53 of the Systems Act). The lines of reporting and accountability must also be included, for example, whether the municipal manager report to the council, to portfolio committees or to the (executive) mayor. The document must also make provision for dispute resolution between the municipal manager and the political structures and office bearers. The terms of reference may include delegations.

16.1 Duties in relation to the council

16.1.1 Beginning of term and by-elections

The municipal manager must call the first meeting of a newly elected council and preside over the election of the speaker (s 36(3) of the Systems Act).

S(29) & (36)
Systems Act

Each councillor must, within 60 days of the election or appointment, declare to the municipal manager, in writing, any financial interests held (item 7 of the Code of Conduct for Councillors in the Systems Act). The same applies to gifts exceeding R1000. The council must decide which of the financial interests must be made public (item 7(4)).

If a by-election is necessary, the municipal manager must call and set a date for the by-election, after consulting with the Independent Electoral Commission (s 25(3) of the Systems Act).

16.1.2 Municipal manager as head of the administration

A municipality's administration is governed by the principles of section 195(1) of the Constitution. Section 6(2) of the of the Systems Act defines these further and instructs the administration, for example, to take measures to prevent corruption and to give members of the community full and accurate information about the level and standard of services they are entitled to receive and about the persons in charge of municipal management. The municipal manager must see to the implementation of these principles in his or her administration.

As head of the administration, the municipal manager is responsible for the formation and development of an economical, effective, efficient and accountable administration, which is equipped to implement the IDP, operates within the municipality's performance management system, and is responsive to the needs of the local community to participate in municipal affairs (s 55(1) of the Systems Act). Section 55(1) makes the municipal manager's responsibility subject to the policy directions of the council: the municipal manager is not responsible for the policy, but for its implementation.

S 55(1)
Systems Act

16.1.3 Communication between council and administration

The municipal manager must manage the communication between the political structures and office-bearers and the administration (s 55(1)(j) of the Systems Act). Instructions, queries and other forms of communication from the council, committees, the (executive) mayor or the speaker to the administration cannot bypass the municipal manager's office, because the municipal manager is accountable for the entire municipal administration (s 51(i) of the Systems Act).

S 51(1)
Systems Act

In the event of such information being communicated directly to officials or departments, the municipality would have to establish procedures to ensure that the municipal manager is informed accordingly. Such procedures should stipulate the level of detail required for the municipal manager to answer to his or her accountability towards the council. A delegation that has the effect

of enabling the (executive) mayor or executive committee to issue instructions directly to officials other than the municipal manager, would effectively disable the accountability of the municipal manager to the council (s 51(i) of the Systems Act). It would therefore run contrary to the scheme envisaged by the legislation.

16.1.4 Advising the political structures

The municipal manager must advise the political structures and office-bearers. Particular issues where the municipal manager must render advice are:

- financial matters;
- issues related to the internal administration, such as human resources matters;
- policy matters; and
- legal and technical matters.

16.1.5 Integrated development plans

The executive mayor, executive committee or a special committee (in a municipality of the 'plenary' type) manages the drafting of the IDP. Part of that duty is the assignment of responsibilities to the municipal manager.

Section 30 clearly identifies the two primary actors in the IDP management. The executive mayor/executive committee or the IDP committee is under a legal duty to 'manage the IDP process'. Duties can only be assigned to the municipal manager. The municipal manager acts within the scope of these assignments.

S 30
Systems Act

16.1.6 Performance management

The Systems Act places the 'development of the performance management system' (PMS) in the hands of the executive mayor, executive committee or a special committee. They must assign responsibilities to the municipal manager. Sections 44(3)(a) and 56(3)(a) of the Structures Act place the responsibility for the development of evaluation criteria, including key performance indicators, on the executive committee and the executive mayor respectively.

The establishment of a process of regular reporting to council, other political structures, office-bearers, staff, the public, and appropriate organs of state, such as the provincial government (s 41(1)(e) of the Systems Act), is important. The municipal manager must implement and manage this reporting system and advise the council on the kind of reporting system it should adopt.

S 39
Systems Act

Implementation of performance management

Sections 44(3) and 56(3) of the Structures Act charge the executive committee/executive mayor with:

- evaluation of progress against the key performance indicators;
- review of the performance of the municipality; and
- monitoring of the administration.

The Act states that the performance of the municipality must be monitored, measured and reviewed at least once a year (s 41(1)(c)). Regular reports

S 41

must go to the council on the implementation of the performance management system (s 41(1)(e)). In view of the fact that the executive committee/executive mayor is charged by law with the above three, it appears that these structures must manage and drive the monitoring, measuring and reviewing exercises as well as the preparation of the reports to council.

Systems Act

The actual implementation of the performance management system would be most appropriately placed in the office of the municipal manager. Ultimately, 'the municipality' must be able to hold the municipal manager accountable for the overall performance of the administration (s 51(i) of the Systems Act). The executive committee/executive mayor's assignments to the municipal manager in terms of section 39(b) of the Systems Act will prove to be of utmost importance to ensure clarity around the division of responsibilities.

16.1.7 Annual report

The municipal manager must drive the preparation of the municipality's annual report. He or she must notify the community, the Auditor-General and the MEC of a meeting on the annual report. Importantly, the Systems Act states that the municipal manager must be available at the meeting to respond to questions, which can come from the council, but also from the Auditor-General or the MEC, since they have the right to attend and speak at the meeting.

*S 46
Systems Act*

16.1.8 Delegations

The municipal manager must provide the newly elected council with a report on existing delegations together with recommended changes. This enables a review of the existing system of delegations inherited from the previous council. The report must be submitted to the council 'through' the executive committee or the executive mayor. The municipal manager drafts the report and submits it to the executive committee/executive mayor. Changes can be made there before it is passed on to council, provided that it is clear where changes have been made.

*S 65
Systems Act*

16.2 Duties in relation to the public

16.2.1 Responsive administration

The municipal manager plays a specific role, assigned to him by section 55(1)(a)(iii) of the Systems Act. It states that the municipal manager must ensure that the municipal administration is responsive to the needs of the local community to participate in the affairs of the municipality. The Systems Act envisages a municipal manager who ensures that the administration is open to, and facilitates the input of local communities and residents in municipal affairs.

The municipal manager is accountable to 'the municipality' (s 51(i)), which consists of the political structures, the administration and the community (s 2(b)). Therefore, the Systems Act also envisages a role for the community and for the administration in holding the municipal manager accountable for the performance of the administration. This should not be interpreted as a right for 'the community' or 'the administration' to interfere with the municipal manager's functioning or to call the municipal manager to book. However, it does entitle the community and the administration to a municipal manager's office that is transparent, answers queries and engages with the municipal administration and the larger local community. For example, the transparency requirement is reflected in section 58 where the municipality is instructed to publish the salary scales and benefits of the municipal manager.

16.2.2 Public participation mechanisms

The onus is on the municipality to put in place mechanisms and processes

S 17(2)

to enable public participation. The council must decide on the processes it wants to establish. It is the municipal manager's responsibility to implement that decision and set up those mechanisms. Section 55(1)(n) of the Systems Act states that it is the municipal manager's responsibility to facilitate public participation in the implementation of the IDP. The executive committee or executive mayor is responsible for reporting to the council on the involvement of communities in municipal affairs. The executive committee or executive mayor is also charged with ensuring that public views are taken into account and with reporting on the effects of public participation on decision making (ss 44 and 56 of the Structures Act).

Systems Act

16.2.3 Communication

The municipal manager has to ensure that the relevant information regarding public participation is communicated to the local community. A critical responsibility of the municipal manager is the publication of various notices. The Systems Act requires that a number of notices must be published and/or information be made available to the public. The Systems Act mostly refers to 'the municipality' as being responsible for communication, but sometimes the responsibility is assigned to the municipal manager.

S 18
Systems Act

- The municipal manager must give notice of the time, date and venue of council meetings;
- the municipal manager must notify the public (as well as the Auditor-General and the MEC) of meetings at which the annual report will be discussed;
- copies of the annual report must be submitted to the MEC, Auditor-General and other prescribed institutions
- copies of the annual report must be available to the public, interested organisations and the media
- proposed by-laws must be published for public comment
- adopted by-laws must be published in the Provincial Gazette and in a local newspaper
- the municipality must keep and maintain a compilation of its by-laws (Municipal Code)
- every notice that was published in the Provincial Gazette must be displayed at the municipal offices
- the community must be notified of the IDP 'process plan'
- the community must be notified of the adoption of the IDP and

S 19
Systems Act

S 46(3)(a)
Systems Act

S 46(4)(b)
Systems Act

S 46(4)(a)
Systems Act

S 12
Systems Act

S 13
Systems Act

S 15
Systems Act

S 21(3)
Systems Act

S 28(3)
Systems Act

S 25(4)

copies and a summary must be made available

Systems Act

- reporting to the public on the performance management system
- the municipality must communicate its key performance indicators and performance targets to the public and
- the municipal manager must ensure that those parts of the Code of Conduct for staff members that affect the local community are communicated to the public

*S 41(e)(ii)
Systems Act*

*S 44
Systems Act*

*S 70(2)(b)
Systems Act*

16.2.4 Appeals

Appeals against decisions taken by the council, or against decisions taken in terms of powers delegated to a committee, office-bearer or staff member, must be directed to the municipal manager. The municipal manager must immediately submit the appeal to the relevant authority. The municipal manager is the appeal authority if the appeal is lodged against a decision taken by another staff member.

*S 62(1)
Systems Act*

16.2.5 Service delivery

The municipal manager is responsible for the provision of services to the local community in a sustainable and equitable manner. He or she must develop and maintain a system to assess the satisfaction of the community with the municipal services (s 55(1)(d) and (o) of the Systems Act). The Structures Act states that the executive committee or executive mayor must 'oversee' the sustainable provision of services (ss 44(3)(e) and 56(3)(e)).

16.3 Duties in relation to the administration

The municipal manager is responsible, subject to the policy direction of the council, for the management of the administration in accordance with the Systems Act and other applicable legislation. Importantly, the municipal manager is tasked with the implementation of the IDP and the monitoring of its progress.

*S 55(1)
Systems Act*

Section 51 lists the general responsibilities of the municipality with regard to the administration. The onus is on the municipal manager, as head of the administration, to see to the implementation of these principles and values in his or her administration. Critically, section 51(d) stipulates that all staff and councillors must align their roles and responsibilities with the priorities and objectives of the IDP. The municipal manager must ensure that everyone within the administration contributes towards the implementation of the IDP.

Importantly, the Code of Conduct for councillors states that an individual councillor may not interfere in the management or administration of any department of the council, unless the council mandated that councillor (item 11(a)). Individual councillors cannot give instructions to employees without authorisation of the council (item 11(b)).

16.3.1 Staff matters

The municipal manager deals with staff matters, including:

- the appointment of staff;
- (evaluation and review of) staff establishment;

*S 55(1)(e)
Systems Act*

*S 66(1)(a)
&(d)*

- job descriptions
- remuneration
- staff discipline
- training and
- labour relations
- remuneration

Systems Act
S 66(1)(b)
Systems Act
S 66(1)(c)
Systems Act
S 55(1)(g)
Systems Act

S 55(1)(f)
Systems Act
S 55(1)(h)
Systems Act

S 66(1)(c)
Systems Act

Importantly, the Systems Act assigns these duties directly to the municipal manager. The Systems Act envisages the municipal manager to manage day-to-day staff matters.

The municipal manager has to exercise these responsibilities subject to the policy directions of the council. The role of the council is to provide the policy framework and give political direction.

The Systems Act makes the municipal manager responsible for the appointment of staff subject to the policy directions of the council (s 55(1)) and the Employment Equity Act 55 of 1998. It is submitted that the executive committee or the executive mayor determines the policy direction on staff appointments. However, the Systems Act vests the responsibility for individual appointments in the municipal manager. He or she has the discretion to take these decisions, provided that they take place within the framework of the said policy. These provisions do not apply to managers who are directly accountable to the municipal manager.

16.3.2 Senior management

The council must appoint the managers, referred to above, after consultation with the municipal manager (s 56 of the Systems Act). The municipal manager negotiates performance contracts (s 57 of the Systems Act) with new appointees. This represents a balance between the council's interest in appointing a senior management team to drive its IDP goals and the municipal manager's interest in having an opportunity to influence appointments and subsequently formalising what is expected of the new manager in a performance agreement.

16.3.3 Code of Conduct

The municipal manager must ensure that each staff member receives a copy of the Code of Conduct for staff members and that the Code of Conduct is explained to staff members who cannot read.

S 70
Systems Act

16.3.4 Finances

As accounting officer, the municipal manager is responsible for all income and expenditure, all assets and discharge of liabilities of the municipality and the compliance with the municipal finance management legislation.

The Accounting Officer must provide guidance and advice on the compliance with the MFMA to the political structures, political office-bearers and officials of the municipality and to any municipal entity under the sole or shared control of the municipality.

Fiduciary responsibilities of accounting officers

The Accounting Officer of a municipality must act with integrity and in the best interest of the municipality in managing its financial affairs

S 61
MFMA

Bank account

- Manage municipality's bank account. S 10
MFMA

- Quarterly reports to council on bank account. S 11 (4)
MFMA

Budget process

- Assist the Mayor in performing the legislated budgetary functions S 68
MFMA

- Ensure public participation in budget process S 22
MFMA

- Submit draft budget to relevant institutions S 22
MFMA

- Monthly report on state of the budget to provincial treasury S 71
MFMA

Budgetary control

- Take steps to ensure budgetary control S 69
MFMA

- Spending in accordance with budget S 69
MFMA

- Monitor revenue and expenditure S 69
MFMA

- Reduce spending if necessary S 69
MFMA

- Report under collection, shortfalls, overspending and steps to be taken to the municipal council S 70
MFMA

- Must ensure that unauthorised, irregular or fruitless and wasteful expenditure and other losses are prevented S 62
MFMA

Accountability

The Accounting Officer is accountable to Council.

