

# Government Gazette

Vol. 410, No. 20357, 6 August 1999

## GENERAL NOTICE

Notice 1776 of 1999

DEPARTMENT OF CONSTITUTIONAL DEVELOPMENT

### MINISTRY FOR PROVINCIAL AND LOCAL GOVERNMENT LOCAL GOVERNMENT: MUNICIPAL SYSTEMS BILL, 1999

1. I, Fholisani Sydney Mufamadi, Minister for Provincial and Local Government, under section 154 of the Constitution, hereby publish the Local Government: Municipal Systems Bill, 1999, for public comment.
2. Comments must please be submitted in writing to -  
  
The Director-General  
Attention: Mr S L Louw  
Department of Constitutional Development  
Private Bag X 804  
PRETORIA  
0001
3. Comments may also be faxed to facsimile number (012) 334 0608 at the above address.
4. Comments must be received by no later than **17 September 1999**.

### LOCAL GOVERNMENT: MUNICIPAL SYSTEMS BILL, 1999

#### INTRODUCTION

The Municipal Systems Bill gives effect to the country's vision of "developmental local government" as envisaged in the Local Government White Paper. Building on the Constitution's provisions for basic development rights, the governance and developmental objectives of local government, and the principles of a people oriented public administration, amongst others, the Bill elaborates the core principles, mechanisms and processes that are necessary to enable municipalities to move progressively towards the social and economic upliftment of communities, and ensure universal access to quality services that are affordable to all. The Bill extends the definition of municipality to include residents and communities within the municipal area, working in partnership with the municipality's political and administrative structures. This relationship is fundamental to sound and effective governance, and the long-term sustainability of local government. The Bill establishes a simple and enabling framework for the core processes of planning, performance management, resource mobilisation and organisational change which underpin the notion of developmental local government. By linking these processes into a single, integrated cycle at local level, the Bill undoes the complex, fragmented, top-down, over-regulated approaches of the past. In seeking to maximise resident's knowledge of municipal plans and targets, and giving both Council and residents tools with which to evaluate and compare municipal performance, the Bill creates a bottom-up process of driving development, improving performance and facilitating change. Municipalities are obliged to put "people first" in the way they run their administrations, and to constantly seek the best way of delivering services to all residents. The Bill empowers municipalities to use a wide variety of mechanisms to restructure and deliver services. It also explicitly seeks to empower the poor and ensure that municipalities put in place service tariffs and credit control policies that take their needs

into account. The Bill therefore affirms the crucial role local government plays in the overall reconstruction and development of South Africa, while at the same time making sure that municipalities get the basics right by focusing on the performance of priority services. The Bill establishes a framework for support, monitoring and intervention by other spheres of government in order to progressively build local government into an efficient, frontline development agency capable of integrating the activities of all spheres of government for the overall social and economic upliftment of our communities.

## CHAPTER 1

### INTERPRETATION

#### Definitions

1. In this Act unless inconsistent with the context-

"**category**", in relation to municipalities, means a category A, B or C municipality envisaged in section 155(1) of the Constitution;

"**cost-benefit**" means a research and analytical process which compares the overall costs (negative impacts) and overall benefits (positive impacts) associated with different options or alternatives, and uses both quantitative approaches (i.e. financial, demographic, and socio-economic data) and qualitative approaches (i.e. subjective views, attributes, and experiences, as well as values, descriptions and assessments that cannot be precisely measured) to determine or describe both costs and benefits;

"**councillor**" means a member of a municipal council;

"**delegating authority**" -

- a. in relation to a delegation of a power or duty by a municipal council, means the municipal council; or
- b. in relation to a sub-delegation of a power or duty by a committee, functionary or official of a municipality, means that committee, functionary or official;

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

"**district municipality**" means a municipality that has municipal executive and legislative authority in an area that includes more than one municipality, and which is described in section 155 (1) of the Constitution as a category C municipality;

"**development**" includes integrated social, economical, environmental, spatial, infrastructural, institutional, organisational and human resources upliftment of a community aimed at improving the quality of life of its residents with specific reference to the poor and other disadvantaged sections of the community;

"**environmentally sustainable**", in relation to the performance of a municipal service, means the performance of a municipal service in a manner that is likely to ensure that -

- a. the risk of harm to the environment and to human health and safety is minimised to the extent reasonably possible under the circumstances;
- b. the potential benefits to the environment and to human health and safety are maximised to the extent reasonably possible under the circumstances; and
- c. legislation intended to protect the environment and human health and safety is complied with;

"**executive authority**", in relation to a municipality, means the municipality's executive authority

envisaged in section 156 (1) of the Constitution, read with section **15 (1)** of this Act;

**"executive obligation"**, in relation to a municipality, means any duty which the municipality is obliged to perform in terms of national or provincial legislation applicable to the municipality or in terms of a by-law passed by the municipality, but excludes a duty to make a by-law;

**"Financially sustainable"**, in relation to the performance of a municipal service, means the performance of a municipal service in a manner that -

- a. is likely to ensure that revenues from that service are sufficient to cover the cost of -
  - i. operating the service; and
  - ii. maintaining, repairing, and replacing the physical assets used in the performance of the service;
- b. is likely to ensure -
  - i. a reasonable surplus, in the case of a service performed by a municipality itself; or
  - ii. a reasonable profit, in the case of a service performed by a service provider other than the municipality itself;
- c. is likely to enable the municipality or other service provider to obtain sufficient capital requirements for the performance of the service; and
- d. takes account of the current and anticipated future -
  - i. level and quality of that service;
  - ii. demand for the service; and
  - iii. ability and willingness of residents to pay for the service;

**"Government Gazette"** means the national Government Gazette;

**"integrated development plan"** means a plan envisaged in section 23;

**"internal trading entity"** means an entity operating within the administration of a municipality for the provision or sale of services or goods;

**"legislative authority"**, in relation to a municipality, includes the municipality's authority to make a by-law;

**"local municipality"** means a municipality that shares municipal executive and legislative authority in its area with a district municipality within whose area it falls, and which is described in section 155 (1) of the Constitution as a category B municipality;

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

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

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

**"municipal business enterprise"** means an entity which -

- a. is a juristic person under the ownership control of a municipality or municipalities;
- b. has been assigned financial and operational authority to carry on a business activity;
- c. as its principal business provides goods or services in accordance with ordinary business principles; and
- d. is financed fully or substantially from sources other than -
  - i. a municipality; or

ii. by way of a tax, levy or other statutory money;

"**municipal council**" or "**council**" means a municipal council referred to in section 157 of the Constitution;

"**municipality**" -

- a. as a juristic entity, includes a municipality referred to in section 155 (6) of the Constitution; and
- b. as a geographic area, means an area determined in terms of the Local Government: Municipal Demarcation Act, 1998;

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

"**municipal service**" means a service which a municipality is competent to render to its residents;

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

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

"**organ of state**" means -

- a. any department of state or administration in the national or provincial sphere of government; or
- b. any other functionary or institution in the national or provincial sphere of government (excluding a court or a judicial officer) -
  - i. exercising a power or performing a function in terms of the Constitution or a provincial constitution;; or
  - ii. exercising a public power or performing a public function in terms of any legislation;

"**ownership control**", in relation to an entity, means the ability to exercise any of the following powers to govern the financial and operating policies of the entity in order to obtain benefits from its activities:

- a. to appoint or remove at least the majority of the board of directors or equivalent governing body;
- b. to cast at least the majority of the votes at meetings of the board of directors or equivalent governing body; or
- c. to control at least the majority of the voting rights at a general meeting;

"**prescribe**" means prescribe by regulation in terms of section 36, 73, 89, 118, or 134;

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

"**resident**", in relation to a municipality, means a person -

- a. who is ordinarily resident in the municipality; or
- b. who is not so resident or is a juristic person and is liable for -
  - i. rates on property in the municipality; or
  - ii. surcharges on fees for services provided either by the municipality or in terms of a service delivery agreement;

**"service delivery agreement"** means an agreement between a municipality and a third party mentioned in section 90 (c) in terms of which a municipal service is provided by that third party, either for own account or on behalf of or in partnership with the municipality;

**"service provider"** means a person or institution, or any combination of persons and institutions, which provide a municipal service to residents in a municipality in accordance with a service delivery agreement with the municipality;

**'this Act'** includes any regulations made in terms of section 36, 73, 89, 118, or 134;

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

## CHAPTER 2

### LEGAL NATURE OF MUNICIPALITIES AND INTERNAL RELATIONSHIPS

#### Legal nature

#### 2. A municipality -

- a. is a juristic entity within the local sphere of government of the Republic of South Africa exercising legislative and executive authority within an area determined in terms of the Local Government: Municipal Demarcation Act, 1998;
- b. has a separate legal personality
- c. consists of -
  - i. the governing structures and administration of the municipality; and
  - ii. the residents and communities in the municipality; and
- d. functions in its area in accordance with the political, statutory and other relationships between its governing structures and administration and its residents and communities.

#### Co-operative government

3. As government in the Republic in terms of section 40 of the Constitution is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated, and municipalities, despite their separate legal personality, collectively constitute the local sphere of government, municipalities must within the constitutional system of co-operative government envisaged in that section

- a. integrate the exercise of their legislative and executive authority with the policies, programmes, legislation and institutional arrangements of the national and provincial spheres of government;
- b. participate in organised local government to the extent necessary -
  - i. to seek solutions for problems germane to local government generally;
  - ii. to develop common approaches for local government as a distinct sphere of government; or
  - iii. to facilitate compliance with the principles of co-operative government and intergovernmental relations as set out in section 41 of the Constitution; and
- c. seek to comply as far as this is in the interest of the municipality concerned with any agreements concluded by organised local government within its mandate on behalf of local government.

#### Rights and duties of governing structures

4. (1) The council of a municipality and, to the extent of their delegated authority, its committees and functionaries, have the right-

- a. to govern the local government affairs of residents and communities in the municipality;
- b. to perform the functions and exercise the powers of the municipality;
- c. to conduct their business without interference or fear of intimidation and threats; and
- d. to claim from residents fees for services and to impose on them surcharges on fees, rates on property and other taxes, levies and duties to finance the affairs of the municipality.

(2) The council of a municipality and, to the extent of their delegated authority, its committees and functionaries, must, within the municipality's financial and administrative capacity and having regard to practical considerations -

- a. exercise the municipality's executive and legislative authority and use the resources of the municipality in the best interests of residents and communities in the municipality;
- b. provide, without favour or prejudice, democratic and accountable government for residents and communities;
- c. encourage the involvement of residents, communities and other stakeholders in the affairs of the municipality;
- d. ensure the provision of municipal services to all residents and communities in a financially and environmentally sustainable manner;
- e. promote development in the municipality;
- f. promote a safe and healthy environment in the municipality; and
- g. together with organs of state in the other spheres of government, assist in the progressive realisation of the fundamental rights contained in sections 26 and 27 of the Constitution concerning housing, health care, food, water, social security and the environment.

### **Rights and duties of residents and communities**

5. (1) A resident and a community in a municipality has the right-

- a. to demand that the proceedings of the municipal council and its committees and functionaries are -
  - i. open to the public;
  - ii. conducted impartially and without prejudice; and
  - iii. untainted by personal self-interest;
- b. to submit written recommendations, representations and complaints to the municipal council, its committees and functionaries;
- c. to participate in the decision-making processes of the municipality through mechanisms and in accordance with processes and procedures provided for in this Act;
- d. to be informed of decisions of the municipal council, its committees and functionaries affecting their rights, including their property;
- e. to regular disclosure of the state of affairs of the municipality, including its finances;
- f. to prompt responses from the municipal council, its committees and functionaries to written complaints; and
- g. to the use and enjoyment of public facilities and municipal services which the municipality provides to residents, provided they comply with their duties set out in subsection (2).

(2) A resident and a community of residents in a municipality has the duty-

- a. to pay their service fees, surcharges on fees, rates on property and other taxes, levies and duties imposed by the municipality;
- b. to observe the mechanisms, processes and procedures of the municipality for exercising their rights;
- c. to respect the municipal rights of other residents;
- d. to treat councillors and municipal employees with dignity and respect;
- e. to allow municipal officials access to their property for the conduct of municipal business; and

f. to comply with municipal legislation applicable to them.

### **Exercise of rights and duties**

6. The rights and duties of the governing structures and of the residents and communities of a municipality as set out in sections 4 and 5 are subject to the Constitution, the other provisions of this Act and other applicable legislation.

## **CHAPTER 3**

### **PUBLIC PARTICIPATION**

#### **Development of culture of public participation**

7. (1) A municipal council must seek to develop a culture of municipal governance that shifts from strict representative government to participatory governance, and must for this purpose encourage, and create conditions for, residents, communities and other stakeholders in the municipality to participate in local affairs through -

- a. structures for participation and the code of conduct for councillors in terms of the Municipal Structures Act;
- b. the core systems and processes for municipal governance established in terms of this Act;
- c. other appropriate structures and procedures adopted by the municipality; and
- d. general provisions for participation as provided for in this Chapter.

(2) To facilitate such participation, a municipal council must

- a. conduct its business in a manner that is comprehensible to the public;
- b. articulate the objectives and policies regulating its main activities in a such way that they could be understood by the public and monitored and evaluated by stakeholders; and
- c. ensure that its by-laws and other legislation are understood by and accessible to the public; and
- d. keep residents and communities in the municipality and, where appropriate, the national government and the relevant provincial government, informed about its main activities.

(3) Subsection (1) may not be interpreted as allowing interference with a municipal council's right to govern and to perform the functions and exercise the powers of the municipality.

#### **Mechanisms, processes and procedures for public participation**

8. (1) A municipal council must establish appropriate mechanisms, processes and procedures to enable residents, communities and stakeholders in the municipality to participate in local affairs in the municipality, and must for this purpose provide for -

- a. the receipt, processing and consideration of petitions and complaints lodged by residents, communities and stakeholders in the municipality;
- b. the receipt, processing and consideration of written objections and representations with regard to any matter with regard to which it is required to invite public comment;
- c. public meetings of residents, on a ward or any other basis;
- d. public hearings by the council and its committees when appropriate; and
- e. surveys among residents when appropriate and the processing and publication of the results.

(2) When establishing mechanisms, processes and procedures in terms of subsection (1) the municipal council must take into account the special needs of -

- a. people who cannot read or write;
- b. people with disabilities; and

c. other disadvantaged groups.

(3) A municipal council must, within the financial and administrative capacity of the municipality, disseminate among residents, communities and other stakeholders in the municipality, information concerning these mechanisms, processes and procedures, taking into account -

- a. language preferences and usage in the municipal area; and
- b. the special needs of persons who cannot read or write.

(4) A municipal council may establish one or more advisory committees consisting of persons who are not councilors to advise the council on any matter within the council's competence.

### **Capacity building**

9. A municipal council within the financial and administrative capacity of the municipality must build the capacity of residents and communities to participate in the local affairs of the municipality by disseminating information concerning -

- a. the available mechanisms, processes and procedures to encourage and facilitate public participation;
- b. the matters with regard to which public participation is encouraged;
- c. the rights and duties of residents and communities; and
- d. municipal governance, management and development.

### **Public notice of meetings of municipal councils**

10. A municipal council must give public notice of the time, date and venue of every meeting of the council.

### **Admission of the public to meetings**

11. (1) Meetings of a municipal council and its committees are, subject to subsection (2), open to the public, including the media, and the council or a committee may not exclude the public, including the media, from a meeting, except when -

- a. it is reasonable to do so having regard to the nature of the business being transacted; and
- b. a by-law or a resolution of the council specifying the circumstances in which the council or the committee may close a meeting and which complies with paragraph (a), authorises the council or the committee to close the meeting to the public.

(2) The meetings of an executive committee mentioned in section 42 of the Municipal Structures Act and a mayoral committee mentioned in section 60 of that Act are not open to the public, including the media.

(3) A municipal council -

- a. within its financial and administrative capacity must set aside places for the public in the chambers and places where the council and its committees meet; and
- b. may take reasonable steps to regulate public access to, and public conduct at, meetings of the council and its committees.

## **CHAPTER 4**

### **MUNICIPAL FUNCTIONS AND POWERS**

#### **General empowerment**



**12.** (1) A municipality has all the functions and powers assigned to it in terms of sections 156 and 229 of the Constitution, subject to Chapter 5 of the Municipal Structures Act.

(2) A municipality has the right to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions.

### **Consultation when additional Sanctions and powers are assigned to municipalities**

**13.** (1) A Cabinet member initiating the assignment of a function or power to municipalities in general in terms of section 44 (1) (a) (iii) or 156 (1) (b) of the Constitution, must consult the Minister and organised local government, and consider any assessment of the Financial and Fiscal Commission in terms of subsection (4), before the draft legislation providing for the assignment is introduced in Parliament.

(2) An MEC initiating the assignment of a function or power to municipalities in the province in terms of section 104 (1) (c) or 156 (1) (b) of the Constitution, must consult the MEC for local government in the province and organised local government, and consider any assessment of the Financial and Fiscal Commission in terms of subsection (4), before the draft legislation providing for the assignment is introduced in the relevant provincial legislature.

(3) The Cabinet member or MEC initiating the assignment of a function in terms of section 44 (1) (a) (iii), 99, 104 (1) (c), 126 or 156 (1) (b) of the Constitution to municipalities in general, to municipalities in a province or to any specific municipality, as may be appropriate, must either undertake to provide the funds, or make alternative financial arrangements, necessary for the performance of the assigned function by the municipalities or municipality concerned if -

- a. the assignment of the function imposes a duty on the municipalities or municipality concerned;
- b. that duty falls outside the functional areas listed in Part B of Schedule 4 or Part B of Schedule 5 of the Constitution or is not incidental to any of those functional areas; and
- c. the performance of that duty has significant financial implications for the municipalities or municipality concerned.

(4) The Cabinet member or MEC initiating the assignment of a function referred to in subsection (3), or organised local government, may request the Financial and Fiscal Commission to make an assessment of the financial implications of the assignment for the municipalities or municipality concerned.

### **Exercise of executive and legislative authority**

**14.** (1) The executive and legislative authority of a municipality is exercised by the council of the municipality, and the council takes all the decisions of the municipality except those decisions taken in consequence of a delegation or sub-delegation in terms of section 62.

(2) A municipality may exercise executive and legislative authority within its boundaries only, but may, by written agreement with another municipality, exercise executive authority in the area of that other municipality.

### **Executive authority**

**15.** (1) A municipality exercises its executive authority by -

- a. developing policy, plans, programmes and strategies, including setting targets for delivery;
- b. promoting and undertaking social and economic development;
- c. implementing legislation;
- d. administering and regulating its affairs and the local government affairs of its communities;
- e. providing for and regulating the provisioning of municipal services including the appointment of the appropriate service provider for any function listed in Part B of Schedule 4 or Part B of Schedule 5 of the Constitution;
- f. taking and implementing administrative decisions;

- g. where necessary, establishing and maintaining an administration;
- h. approving and implementing its budgets;
- i. imposing and recovering rates, taxes, levies, duties and fees, including setting and implementing tariff, rates and tax policies;
- j. monitoring the impact or effectiveness of any services, policies, programmes or plans, including establishing and implementing performance management systems; and
- k. doing anything else within its executive competence.

(2) A decision taken by a municipal council in the exercise of its executive authority must be in writing.

### **Legislative procedures**

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

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

- a. in accordance with the rules and orders of the council; and
- b. with a supporting vote of a majority of its members.

(3) Regulations and other subordinate legislative instruments made in terms of a by-law must -

- a. in the case of a municipal council, be made by a decision taken by the council-
  - i. in accordance with the rules and orders of the council and the applicable by-law; and
  - ii. by a majority of the votes cast; or
- b. in the case of a committee or functionary of the council, be made by a decision taken by the committee or functionary in accordance with the applicable by law.

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

- a. all the members of the council have been given reasonable notice; and
- b. the proposed by-law has been published for public comment in a manner that allows the public an opportunity to make representations with regard to the proposed by-law.

(5) Subsections (1) to (4) apply also when a municipal council incorporates by reference, as by-laws, the provisions of legislation passed by another legislative organ of state.

### **Publication of by-laws**

**17.** A by-law passed by a municipal council must be published promptly in the *Provincial Gazette*, and takes effect when published or on a date determined in or in terms of the by-law.

### **Standard draft by-laws**

**18.** (1) (a) The Minister, on request by organised local government, or after consulting the MEC's for local government and organised local government,, may by notice in the *Government Gazette* -

- i. publish standard draft by-laws concerning any matter for which municipal councils may make by-laws that may be adopted by municipalities as enforceable by-laws in their areas; and
- ii. amend any standard draft by-laws published in terms of subparagraph (i).

b. The Minister must publish any proposed standard draft by-laws in the *Government Gazette* for public comment before publishing them in terms of paragraph (a).

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

- i. publish standard draft by-laws concerning any matter for which municipal councils may make by-laws that may be adopted by municipalities in the province as enforceable by-laws in their areas; and
- ii. amend any standard draft by-laws published in terms of subparagraph (i).

b. The MEC must publish any proposed standard draft by-laws in the *Provincial Gazette* for public comment before publishing them in terms of paragraph (a).

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

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

(4) If a municipal council intends to adopt a standard draft by-law with or without any modifications or qualifications, it must follow the procedure set out in section 16 (4) and, after adoption, publish the by-law in accordance with section 17.

### **Municipal code**

19. (1) A municipal council must compile and maintain, in bound or loose leaf form, a compilation of all its by-laws, regulations and other legislative instruments applicable in the municipality.

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

- a. constantly be updated and annotated; and
- b. be kept at the municipality's head office as the municipality's official record of all applicable by-laws, regulations and other legislative instruments.

### **Copy of *Provincial Gazette* as evidence**

20. A copy of the *Provincial Gazette* in which a by-law, regulation or other legislative instrument or a municipal code was published may on its mere production in a court by any person, be used as evidence that that by-law, regulation or other legislative instrument was passed or issued by a municipality concerned.

## **CHAPTER 5**

### **INTEGRATED DEVELOPMENT PLANNING**

#### ***Part 1: Introduction***

#### **Municipal planning to be developmentally oriented**

21. Municipal planning must be developmentally oriented to ensure that municipalities

- a. pursue the objectives of local government set out in section 152 of the Constitution;
- b. give effect to their developmental duties as required by section 153 of the Constitution; and
- c. assist in the progressive realisation of the fundamental rights contained in sections 26 and 27 of the Constitution.

#### **Municipal planning in co-operative governance**

**22.** Municipal planning must be aligned with, and complement, the development plans and strategies of adjacent municipalities, the province within which the municipality is located, and national organs of state, to give effect to the principles of co-operative governance contained in sections 40 and 41 of the Constitution and to ensure participation in national and provincial development programmes as required in terms of section 153 (b) of the Constitution.

### **Adoption of integrated development plans**

**23.** Each municipal council must within the first 12 months of its elected term adopt a single, inclusive plan for the development of the municipality which -

- a. links, integrates and co-ordinates plans, schemes and proposals for the development of the municipality;
- b. aligns the resources and capacity of the municipality for the implementation of the plan;
- c. forms the policy framework and general basis on which annual budgets must be based;
- d. complies with the provisions of this Chapter; and
- e. is compatible with national and provincial development planning requirements binding on the municipality in terms of legislation.

### *Part 2: Contents of integrated development plans*

#### **Core components**

**24.** (1) An integrated development plan must be in writing, have attached to it maps, statistics and other appropriate documents, and must reflect

- a. the municipal council's vision for the long term development of the municipality with special emphasis on the municipality's most critical development and internal transformation needs;
- b. an assessment of the existing level of development in the municipality, which must include an identification of communities which do not have access to adequate basic services;
- c. its development priorities and objectives for its elected term including its internal transformation needs, subject to section **25**;
- d. its development strategies, subject to section **26**, which must include any sectoral planning requirements binding on the municipality in terms of legislation;
- e. a spatial development framework for the municipality, subject to section **27**;
- f. its operational strategies, subject to section **28**; and
- g. a financial plan, subject to section **29**.

(2) The integrated development plan of a district municipality must contain a framework for the integrated development plans of the local municipalities within the area of that district municipality.

#### **Development priorities and objectives**

**25.** The development priorities and objectives set out in an integrated development plan must reflect the municipality's most critical development needs for each priority identified. The municipality must state what its medium and short term objectives are, taking into account -

- a. its long term vision for meeting those needs;
- b. the basic needs of disadvantaged sections of the community;
- c. the need for social and economic advancement of those sections of the community;
- d. financial sustainability; and
- e. its capacity and available resources.

#### **Development strategies**

**26.** The development strategies set out in an integrated development plan must be aimed at meeting its development objectives, and must -

- a. integrate the various activities and resources of the municipality for the realisation of its

- objectives;
- b. specify the timeframes within which its development objectives will be realised;
- c. include particulars of the specific priority development programs and projects to be implemented during the municipal council's elected term;
- d. include any sectoral plans required by national legislation, including disaster management plans;
- e. take into account options available to the municipal council to meet its development objectives, including by way of service delivery agreements; and
- f. take into account development principles, policies, plans and strategies of the national and provincial governments.

### **Spatial framework**

**27.** The spatial development framework set out in a municipality's integrated development plan must relate the development priorities and objectives to different geographic areas of the municipality, and indicate how the various development strategies will be co-ordinated in relation to, and impact on, those different geographic areas.

### **Operational strategies**

**28.** The operational strategies must -

- a. ensure that the municipality, either alone or through service delivery agreements, has the institutional and organisational capacity to realise its development objectives;
- b. ensure that the municipality has the financial capacity to realise its development objectives and the ability to sustain its development achievements;
- c. align the municipality's resources for the realisation of its development objectives, which must be based on appropriate performance management mechanisms, systems and processes in accordance with Chapter 6; and
- d. inform and involve residents, communities and other stakeholders with regard to the implementation of the integrated development plan, including project specific beneficiaries in the case of specific projects.

### **Financial plan**

**29.** The integrated development plan of a municipality must include a medium term financial plan setting out -

- a. how the capital and operational expenditure associated within its integrated development plan is matched by its revenue raising strategy;
- b. the inter-relationship between capital and operating elements in the budget, projected investments, borrowings and loan requirements; and
- c. the overall long term viability of the integrated development plan and the financial plan.

### **Annual review and amendment of integrated development plan**

**30.** A municipal council -

- a. must annually review and update its integrated development plan; and
- b. may amend its integrated development plan whenever necessary.

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

**31.** (1) A copy of the integrated development plan as adopted by a municipal council, and any subsequent amendment to the plan, must be submitted to the MEC for local government in the province within 30 days of the adoption or amendment of the plan.

(2) If an integrated development plan as adopted by a municipal council, or any subsequent amendment to the plan, does not comply with a requirement of this Act or is in conflict with or is not

aligned with or negates any of the development plans and strategies of adjacent municipalities, the province in which the municipality is located or national organs of state, the MEC for local government in the province may, within 30 days of receiving a copy of the plan or the amendment, request the municipal council to adjust the plan or the amendment in accordance with the MEC's proposals.

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

- a. if it agrees with those proposals, adjust its integrated development plan or amendment in accordance with the MEC's request; or
- b. if it disagrees with the proposals, object to the MEC's request and furnish the MEC with reasons in writing why it disagrees.

(4) On receipt of an objection in terms of subsection (3) (b) the MEC may refer the municipality's objection to -

- a. the development tribunal established for the province in terms of section 15 the Development Facilitation Act, 1995 (Act 67 of 1995), if the disagreement between the municipality and the MEC can be resolved by an enquiry into and findings on disputed factual or legal issues; or
- b. an *ad hoc* committee appointed by the MEC and consisting of an equal number of members representing local government, the provincial government and the national government, if the disagreement between the municipality and the MEC concerns policy or other issues that cannot be resolved by an enquiry and findings as envisaged in paragraph (a).

(5) The MEC appoints the members of an *ad hoc* committee representing -

- a. local government, with the concurrence of the municipality and any other municipality involved in the dispute;
- b. the provincial government, with the concurrence of the provincial organ or organs of state involved in the dispute or in whose functional area the dispute is located; and
- c. the national government, with the concurrence of the national organ or organs of state involved in the dispute or in whose functional area the dispute is located.

(6) An objection referred to a development tribunal or an *ad hoc* committee must be dealt with -

- a. in the case of a tribunal, in accordance with procedures determined in terms of the Development Facilitation Act, 1995, as augmented by procedures prescribed in terms of subsection (8); and
- b. in the case of an *ad hoc* committee, in accordance with procedures prescribed in terms of subsection (8).

(7) A matter before -

- a. a development tribunal must be decided in terms of the Development Facilitation Act, 1995; and
- b. an *ad hoc* committee is decided if the representatives of at least two spheres of government agree on the matter.

(8) The Minister may make regulations regulating the application of this section, including regulations prescribing-

- a. the manner and time within which an objection must be referred to a development tribunal or *ad hoc* committee;
- b. the manner and time within which written evidence or documents must be submitted to a tribunal or *ad hoc* committee; and
- c. the procedure at hearings of a tribunal or at meetings of an *ad hoc* committee.

(9) The municipality, within 30 days of the tribunal having made a finding or the *ad hoc* committee

having taken a decision, must adjust its integrated development plan or amendment in accordance with the finding or the decision.

### ***Part 3: Process for planning, drafting and adopting integrated development plans***

#### **Adoption of process**

**32.** Each municipal council, within the first two months of its elected term, must adopt a process set out in writing to guide the planning, drafting, adoption and review of its integrated development plan.

#### **Contents of process**

**33.** (1) The process referred to in section **32** must assist the municipal council to identify and define its development needs, priorities and objectives, and must -

- a. include a programme for the drafting of the integrated development plan;
- b. determine methods and procedures
  - i. to consult communities, residents and other stakeholders on their development needs and priorities; and
  - ii. to provide for their participation in the drafting process and the review of the integrated development plan;
- c. identify other role players to be consulted in the drafting process, including -
  - i. adjacent and other affected municipalities;
  - ii. relevant national and provincial organs of state; and
  - iii. private sector and other non-governmental role players; and
- d. identify all statutory planning requirements binding on the municipality.

(2) The process adopted by a district municipality in terms of section **32** must include procedures for consultation with the local municipalities within the area of the district municipality.

#### **Copy of process to be submitted to MEC for local government**

**34.** (1) A copy of the process as adopted by a municipal council, and any subsequent amendment to the process, must be submitted to the MEC for local government in the province within 30 days of the adoption or amendment of the process.

(2) If a process as adopted by a municipal council, or any subsequent amendment to the process, does not comply with a requirement of this Chapter, the MEC for local government in the province may, within 30 days of receiving a copy of the process or the amendment, request the municipal council to adjust the process or the amendment in accordance with the MEC's proposals.

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

- a. if it agrees with those proposals, adjust its process or amendment in accordance with the MEC's request; or
- b. if it disagrees with the proposals, object to the MEC's request and furnish the MEC with reasons in writing why it disagrees.

(4) On receipt of an objection in terms of subsection (3) (b) the MEC may refer the municipality's objection to the development tribunal established for the province in terms of section 15 the Development Facilitation Act, 1995 (Act 67 of 1995).

(5) An objection referred to a development tribunal must be dealt with and decided in accordance with procedures determined in terms of the Development Facilitation Act, 1995, as augmented by procedures prescribed in terms of subsection (6).

(6) The Minister may make regulations regulating the application of this section, including regulations prescribing

- a. the manner and time within which an objection must be referred to a development tribunal;
- b. the manner and time within which written evidence or documents must be submitted to a tribunal; and
- c. the procedure at hearings of a tribunal.

(7) The municipality, within 30 days of the tribunal having made a finding, must adjust its process or amendment to its process in accordance with the finding.

### **Drafting of integrated development plan**

**35.** (1) The executive committee or executive mayor of a municipality or, if the municipality does not have an executive committee or executive mayor, a committee of councilors appointed by the municipal council, must

- a. manage the drafting of the municipality's integrated development plan;
- b. assign responsibilities in this regard to the municipal manager; and
- c. submit the draft plan to the municipal council for adoption by the council.

(2) (a) If the municipality is required to comply with planning requirements in terms of legislation, the responsible national or provincial organs of state must-

- i. integrate their planning requirements with the planning processes of the municipality in terms of this Chapter; and
- ii. take reasonable steps to assist the municipality to meet the time limit mentioned in section **23** and the other requirements of this Chapter applicable to its integrated development plan.

- b. A municipality must comply with any provincial and national planning legislation promulgated before this Act took effect, to the extent that such legislation is consistent with the planning provisions of this Chapter.
- c. A municipal council must report any unnecessary delays to the MEC for local government in the province.

(3) A district municipality must

- a. plan integrated development for the area of the district municipality as a whole but in close consultation with the local municipalities in that area; and
- b. draft its integrated development plan taking into account the integrated development processes and proposals of the local municipalities in that area.

(4) A local municipality must align its integrated development plan with the framework required in terms of section **24** (2) and contained in the integrated development plan of the district municipality in whose area that local municipality falls.

### **Ministerial regulations**

**36.** The Minister, after consulting the MECs for local government, may make regulations not inconsistent with this Act concerning integrated development planning and drafting of integrated development plans.

### ***Part 4: Legal consequences of adopted integrated development plan***



**Status**

**37.** (1) An integrated development plan adopted by a municipality -

- a. is the principle planning instrument which guides and informs all planning and development, and all decisions with regard to planning and development, in the municipal area; and
- b. binds all persons except to the extent of any inconsistency between a municipality's integrated development plan and national or provincial legislation, in which case such legislation prevails.

(2) A spatial development framework contained in an integrated development plan prevails over a plan as defined in section 1 of the Physical Planning Act, 1991 (Act 125 of 1991).

**Municipality to give effect to integrated development plan**

**38.** A municipal council must give effect to its integrated development plan and conduct its affairs in a manner which is consistent with its integrated development plan.

**CHAPTER 6****PERFORMANCE MANAGEMENT*****Part 1: General*****Establishment of performance management system**

**39.** In order to give effect to its integrated development plan in terms of section 24 (1), including its transformation programme, a municipal council must administer its affairs in an economical, effective, efficient and accountable manner, and must for this purpose -

- a. establish a performance management system -
  - i. commensurate with its resources and best suited to its circumstances; and
  - ii. that complies with the requirements of this Act; and
- b. promote a culture of performance management among its members, committees and functionaries and in its administration.

**Identification of political and administrative key role players**

**40.** A municipal council must determine which of its political and administrative structures and functionaries should be the key role players in the implementation of its performance management system, which may include, depending on the resources of the municipality -

- a. the council itself;
- b. a political structure or functionary of the municipality established or appointed by the council in terms of the Municipal Structures Act;
- c. the municipal manager;
- d. a department in the administration;
- e. a head of a department;
- f. a division within a department;
- g. a head of a division;
- h. any other functionary of the municipality performing a management function; and
- i. any service provider.

**Performance management system**

- 41.** A municipal council may for the purpose of its performance management system -
- a. set appropriate performance indicators as a yardstick for measuring performance in any of or all the areas of responsibility of the structures and functionaries identified in terms of section **40** as key role players;
  - b. set performance targets in those areas of responsibility;
  - c. measure performance in those areas of responsibility against those indicators and targets;
  - d. evaluate performance in those areas of responsibility;
  - e. take steps to improve performance; and
  - f. require regular internal reporting to the council and to specific structures and functionaries.

### **Monitoring and review of performance management system**

- 42.** A municipal council must
- a. establish mechanisms to monitor its performance management system in an ongoing manner; and
  - b. review, when necessary, its performance management system.

### *Part 2: Core components of performance management system*

#### **Core components**

- 43.** A municipality's performance management system must oblige the municipal council to -
- a. set, in accordance with sections **44** and **45**, appropriate key performance indicators as a yardstick for measuring performance with regard to the municipality's development objectives set out in the integrated development plan;
  - b. set targets, in accordance with section **46**, for the improvement of performance with regard to each of those development objectives;
  - c. monitor and measure, in accordance with section **48**, performance with regard to each of those development objectives against the key performance indicators and targets set in terms of paragraphs (a) and (b);
  - d. evaluate, in accordance with section **49**, performance with regard to each of those development objectives; take steps, in accordance with section **50**, to improve performance with regard to those development objectives where performance targets are not met; and
  - e. establish a process of regular -
    - i. internal reporting to the council and specific structures and functionaries of the council; and
    - ii. external reporting to the public and appropriate national and provincial organs of state.

### *Key performance indicators and targets*

#### **Key performance indicators**

- 44.** The following guidelines must be applied in setting key performance indicators:
- a. Key performance indicators must be set with regard to each of the municipality's development objectives;
  - b. Key performance indicators must be precise, relevant and suitable for measuring performance with regard to the matter for which it is set.
  - c. Key performance indicators must include general key performance indicators as may be prescribed for local government in terms of section **45**, to the extent that these indicators are applicable to the municipality concerned.
  - d. Key performance indicators must be reviewed annually by the municipal council.

#### **General key performance indicators**

**45.** (1) The Minister, after consultation with the MECs for local government and organised local government, may -

- a. prescribe general key performance indicators that are appropriate and that can be applied to local government generally; and
- b. when necessary, review and adjust those general key performance indicators.

(2) General key performance indicators prescribed for local government in terms of subsection (1), must reflect the object and purport of section **21**.

(3) When prescribing general key performance indicators the Minister may differentiate between different categories, different types and different kinds of municipalities as may be appropriate in the circumstances.

(4) The Minister must publish draft general key performance indicators in the *Government Gazette* for public comment before publishing them in terms of subsection (1).

### **Performance targets**

**46.** The setting of targets for the improvement of performance must -

- a. be realistic, taking into account the municipality's financial, institutional and organisational capacity;
- b. be consistent with the municipality's development priorities, objectives and strategies set out in its integrated development plan;
- c. take into account minimum national standards as may be prescribed, but in the case of the rendering of a municipal service, may not be below the minimum national standards as may prescribed; and
- d. be adjusted following an amendment of its integrated development plan that affects its targets.

### **Notification of key performance indicators and performance targets**

**47.** A municipal council must make known, both internally and to the general public, the key performance indicators and performance targets set by it for purposes of its performance management system.

### ***Monitoring, measurement, evaluation and improvement of performance***

#### **Performance monitoring and measurement**

**48.** (1) A municipal council must develop mechanisms, systems and processes for the monitoring and measurement of performance with regard to the municipality's development objectives.

(2) Performance measurement in terms of subsection (1) must -

- a. reflect both quantitative and qualitative elements;
- b. be accurate and sufficiently extensive to enable the municipal council to perform a sound and authoritative evaluation of the factors referred to in section **49**;
- c. form part of the internal auditing processes of the municipality; and
- d. be carried out at least once per year.

(3) The results of a performance measurement in terms of subsection (1) must annually be audited by the municipality's external auditor.

#### **Performance evaluation**

**49.** (1) As and when the results of a performance measurement in terms of section 48 becomes

available, a municipal council must -

- a. assess its performance with regard to the municipality's development priorities and internal transformation needs;
- b. assess the progress with the implementation of the municipality's integrated development plan;
- c. reassess its key performance indicators and targets;
- d. consider the reasons for under performance if targets are not met;
- e. reconsider its capacity and delivery mechanisms, including the appropriateness of its service providers, to achieve its targets; and
- f. assess the need for a review of, or any adjustments to, the municipality integrated development plan.

(2) The results of a performance measurement in terms of section 48 must form the main basis for an evaluation in terms of subsection (1), but other relevant factors may also be taken into account.

### **Steps to improve performance**

**50.** If a municipal council's evaluation in terms of section 49 shows that the municipality is under performing in relation to its performance targets, the council must-

- a. take appropriate steps to improve performance, including capacity building, management reform and use of technology;
- b. if necessary, consider alternative service delivery mechanisms and service providers; and
- c. **review** the municipality's integrated development plan.

### ***Performance reporting***

#### **Annual reports**

**51.** (1) A municipal council must prepare within four months of the end of each financial year an annual report consisting of-

- a. a performance report reflecting-
  - i. the municipality's performance during that financial year, including that of any service provider;
  - ii. the development and service delivery priorities and the performance targets set by the council for the following financial year; and
  - iii. measures that were or are to be taken to improve performance;
- b. the audited financial statements for that financial year; and
- c. any other reporting requirements in terms of legislation.

(2) The report must -

- a. explain the municipality's performance and that of any service provider during the financial year, with reference to the key performance indicators set for that year in terms of the municipality's performance management system;
- b. give reasons for any significant change in the performance targets for the previous financial year and those for the following financial year;
- c. specify the extent to which performance targets set for the previous financial year were achieved; and
- d. contain statements by the municipality's external auditor concerning the reasonableness of the report.

#### **Publication**

**52.** The municipal council must within 14 days after adoption of its annual report -

- a. make copies of the report accessible to the public, interested persons and the media, free of charge or at a reasonable price; and
- b. submit a copy of the report to the Minister, the MEC for local government in the province and the Auditor-General.

### **Failure to comply with reporting requirements**

**53.** (1) If a municipal council fails to comply with a provision of this Part, the MEC for local government in the province must appoint a person to comply with that provision on behalf of the council.

(2) The cost of appointing such person, including expenses incurred by that person, is recoverable by the MEC from the council.

### **Reports by Minister**

**54.** (1) The Minister must annually compile and submit to Parliament, the provincial legislatures and the MECs for local government -

- a. a consolidated report of local government performance in terms of general key performance indicators; and
- b. an assessment of the validity and accuracy of municipal results.

(2) The report must be audited by the Auditor-General.

### **Annual performance management assessment**

**55.** (1) The Minister must annually -

- a. consult with organised local government, the MECs for local government and any stakeholders with an interest in local government matters, regarding -
  - i. the overall effectiveness of the performance management system; and
  - ii. any amendments to the system that may be required; and

- b. compile a report in this regard and circulate this report together with the report referred to in section 54 to all municipalities.

(2) A municipal council must make these reports available to residents in a manner that allows easy access to the reports.

## **CHAPTER 7**

### **LOCAL PUBLIC ADMINISTRATION AND HUMAN RESOURCES**

#### ***Part I :Basic principles***

#### **Basic values and principles governing local public administration**

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

(2) In administering their affairs municipalities must strive to achieve the objects of local government set out in section 152 (1) of the Constitution and to -

- a. consult residents, as far as is practical, about the level and quality of services and the available options;

- b. give residents equal access to the services to which they are entitled;
- c. treat residents with courtesy and consideration;
- d. give residents full, accurate information about the municipal services they are entitled to receive;
- e. inform residents, when necessary, of how municipalities are managed, the cost involved and the persons in charge;
- f. offer residents, when necessary, an apology and an explanation if the promised standard of a municipal service is not met;
- g. provide residents with a sympathetic and speedy response to any complaints that are made; and
- h. provide residents with the best possible value for money regarding the provision of municipal services.

(3) When interpreting and applying this Act the spirit, purport and objects of these values and principles must be promoted.

### **Organisation of administration**

**57.** A municipal council must establish and organise its administration in a manner that -

- a. is responsive to the needs of residents;
- b. facilitates a culture of public service amongst staff;
- c. is performance orientated and focused on its core business;
- d. involves staff in management decisions as far as is practicable, and creates a collective sense of responsibility for performance;
- e. creates a clear relationship between political and administrative structures and functionaries;
- f. allows flexibility in the way structures and staff are organised or deployed in order to respond to changing priorities and circumstances;
- g. enables the functions of the administration to be organised into the most operationally effective and appropriate structures and mechanisms, including departments, functional or business units, business enterprises, service agencies, inter-agency co-ordinating units, participatory or advisory forums for staff, residents or stakeholders, or any other appropriate structures or mechanisms;
- h. assigns clear responsibilities for management and co-ordination of these structures and mechanisms;
- i. facilitates co-operation, co-ordination and communication between the various structures and functionaries;
- j. maximises efficiency of communication and decision making within the administration;
- k. delegates and devolves responsibility to the most effective level within the administration;
- l. ensures managers, structures and staff are held accountable for performance;
- m. allows managers and staff to clearly relate their roles and responsibilities to the priorities and objectives set out in the municipality's integrated development plan; and
- n. enables the municipal manager to be held accountable for the overall performance of the administration.

### ***Part 2: Structures, functionaries and roles***

#### **Roles and responsibilities**

**58.** (1) A municipal council must, within the framework of the Municipal Structures Act, define the specific role and area of responsibility of each structure or functionary of the municipality established or appointed by the council.

(2) The respective roles and areas of responsibility of each structure or functionary must -

- a. be defined in precise terms by way of separate terms of reference, in writing, for each structure or functionary; and
- b. be acknowledged and given effect to in the rules, procedures, instructions, policy statements and other written instruments of the municipality.

(3) Instruments defining, acknowledging or giving effect to the roles and areas of responsibility of the structures or functionaries must be appropriate to the category and type in which the municipality falls.

(4) Terms of reference mentioned in subsection (2) (a) may include the delegation of powers and duties to the relevant structure or functionary in terms of section 62.

### **Municipal managers**

**59.** (1) As head of administration the municipal manager of a municipality is, subject to the policy directions of the municipal council, responsible for -

- a. the formation and development of an efficient and performance driven administration;
- b. the management of the municipality's administration in accordance with this Act;
- c. the implementation of the municipality's integrated development plan, and the monitoring of progress with implementation of the plan;
- d. the management of the provision of services to communities in a sustainable manner;
- e. the control, management, effective utilisation and training of staff;
- f. the maintenance of discipline of staff;
- g. the promotion of sound labour relations;
- h. advising the municipal council and other political structures and functionaries of the municipality;
- i. managing communications between the municipality's administration and the political structures and functionaries of the municipality;
- j. carrying out the decisions of the municipal council and the decisions of other political structures and functionaries of the municipality;
- k. the administration and implementation of the municipality's by-laws and other legislation;
- l. the exercise of any powers and the performance of any duties delegated by the council, or sub-delegated by other delegating authorities of the municipality, to the municipal manager in terms of section 62; and
- m. the implementation of national and provincial legislation applicable to the municipality.

(2) As accounting officer of the municipality the municipal manager is responsible and accountable for -

- a. all income and expenditure of the municipality;
- b. all assets and the discharge of all liabilities of the municipality;
- c. sound financial management of the municipality, including the establishment of effective credit control mechanisms;
- d. ensuring that the municipality is financially sustainable; and
- e. compilation and signing of annual financial statements.

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

**60.** (1) The municipal manager and each manager directly accountable to the municipal manager must enter into a written employment contract with the municipality.

(2) The contract must include-

- a. details of remuneration, benefits and other terms and conditions of employment;
- b. performance objectives and targets that must be met, and the time frames within which those performance objectives and targets must be met;
- c. standards and procedures for evaluating performance and intervals for evaluation; and
- d. the consequences of substandard performance.

(3) In addition the contracts for municipal managers appointed after this section took effect must-

- a. be for a fixed term of employment not exceeding five years, but which may be renewed by

- agreement; and
- b. include a provision for renewal or cancellation of the contract.

(4) A municipal council may extend the application of subsection (3) to any category of officials appointed after such application.

### ***Part 3: Relationships between structures, functionaries, councillors and officials***

#### **Demarcation and co-ordination of roles and responsibilities**

**61.** For purposes of demarcating and co-ordinating the respective roles and areas of responsibility of each structure or functionary of the municipality, the municipal council must determine -

- a. the relationships among those structures and functionaries and the manner in which they must interact;
- b. appropriate lines of accountability and reporting for those structures and functionaries;
- c. mechanisms, systems and processes for minimising cross-referrals and unnecessary overlapping of responsibilities between those structures and functionaries;
- d. mechanisms, systems and processes resolving disputes between those structures and functionaries; and
- e. mechanisms, systems and processes for interaction, between-
  - i. those structures or functionaries and officials of the municipality; and
  - ii. councillors and officials of the municipality.

#### **Delegations**

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

- a. delegate appropriate powers, excluding a power mentioned in section 160(2) of the Constitution and the power to approve its integrated development plan and annual report, to any of its structures, functionaries, councillors and officials;
- b. instruct any such structure, functionary, councillor or official to perform any of the council's duties; and
- c. withdraw any delegation or instruction.

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

- a. must be in accordance with the Constitution and this Act and the Municipal Structures Act;
- b. must be in writing;
- c. is subject to any limitations, conditions and directions the municipal council may impose;
- d. may include the power to sub-delegate a delegated power;
- e. does not divest the council of the responsibility concerning the exercise of the power or the performance of the duty; and
- f. must be reviewed when a new council is elected or, if it is a district council, elected and appointed.

(3) The municipal council -

- a. in accordance with procedures in its rules and orders, may, or at the request in writing of at least one quarter of the councillors, must, review any decision taken by such a structure, functionary, councillor or official in consequence of a delegation or instruction, and either confirm, vary or revoke the decision subject to any rights that may have accrued to a person; and
- b. may require its executive committee or executive mayor to co-ordinate or review any decision taken by such a structure, functionary, councillor or official in consequence of a delegation or instruction.



### **Delegation of certain powers to councillors or officials disallowed**

**63.** A municipal council may not delegate to a councillor or official the power to -

- a. alienate immovable property;
- b. expropriate immovable property or rights in or to immovable property;
- c. determine or alter the remuneration, benefits or other conditions of service of the municipal manager or managers directly responsible to the municipal manager; and
- d. the power to decide an appeal in terms of section **65**.

### **Referral of matters to delegating authorities for decision**

**64.** A structure, functionary, councillor or official of a municipality to whom a delegating authority has delegated or sub-delegated a power to dispose of matters falling within the area of responsibility of that structure, functionary, councillor or official may, or must if instructed to do so by the relevant delegating authority, refer a matter before the structure, functionary, councillor or official to the relevant delegating authority for a decision.

### **Appeals**

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

(2) The municipal manager must immediately submit the appeal to the relevant delegating authority.

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

### **Duty to report to delegating authorities**

**66.** A structure, functionary, councillor or official of a municipality to whom a delegating authority has delegated or sub-delegated a power or duty, must report to the delegating authority every three months, or at such shorter intervals as the delegating authority may require, on all decisions taken in terms of that delegated or sub-delegated power or duty during the relevant period.

### **Withdrawal, amendment or lapse of delegation or subdelegation**

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

### **Review of delegations**

**68.** (1) Whenever it becomes necessary in terms of section **62** (2) (f) to review a municipality's delegations, the municipal manager of the municipality must submit to the municipal council -

- a. a report on the existing delegations issued in terms of section **62** by the council and other delegating authorities of the municipality; and
- b. recommendations on any changes to the existing delegations which the municipal manager may consider necessary.

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

### ***Part 4: Staff matters***

## **Staff establishments**

- 69.** A municipal manager, within a policy framework determined by the municipal council, must-
- a. approve a staff establishment for the municipality;
  - b. provide a job description for each post on the staff establishment;
  - c. determine the remuneration and other conditions of service for each post on the staff establishment in accordance with any applicable labour legislation; and
  - d. regularly evaluate the posts on the staff establishment and if necessary review the staff establishment and associated remuneration and conditions of service.

## **Staff code**

**70.** (1) A municipal council must adopt a staff code providing for efficient, effective and transparent personnel administration, including -

- a. the recruitment, selection and appointment of persons as staff members;
- b. service benefits and obligations of staff;
- c. the supervision, control and disciplining of staff;
- d. the monitoring, measuring and evaluating of performance of staff;
- e. the promotion and demotion of staff;
- f. the transfer of staff;
- g. grievance procedures;
- h. the investigation of allegations of misconduct and complaints against staff;
- i. the dismissal and retrenchment of staff; and
- j. any other matter as may be prescribed.

(2) A staff code, to the extent that it deals with matters falling under applicable labour legislation, must comply with any procedural and other requirements of such legislation.

(3) A staff code applies to a person referred to in section 60 except to the extent that it is inconsistent with that person's employment contract.

(4) The municipal manager must -

- a. provide every staff member with a copy of the Staff Code, including any amendment of the Code; and
- b. ensure that the purpose, contents and consequences of the Code are explained to staff members who cannot read.

## **Job evaluation and remuneration**

**71.** (1) A municipal manager must implement a system of job evaluation for municipal employees determined by the council of the municipality in terms of subsection (3) -

- a. to ensure that work of equal value is remunerated equally;
- b. to assist in achieving cost-effective work organisation; and
- c. to determine appropriate remuneration and conditions of service.

(2) The Minister, after consulting the bargaining council for local government established in terms of applicable labour legislation, may by notice in the *Government Gazette* issue guidelines to municipalities concerning -

- a. the establishment and review of the job evaluation system; and
- b. the manner in which to enhance the quality of the system.

(3) A municipal council must establish, regularly review and, when necessary, amend its job evaluation system in accordance with national guidelines issued in terms of subsection (2).

## Remuneration

**72.** (1) A municipal council must develop a remuneration grading and incentive framework for municipal employees to ensure that remuneration -

- a. results in equal pay for equal work;
- b. supports and motivates employees for improved delivery;
- c. rewards good performance; and
- d. transparently and equitably determines rewards.

(2) The Minister, after consulting the bargaining council for local government established in terms of applicable labour legislation, may by notice in the *Government Gazette* issue guidelines -

- a. to determine the upper limits of the remuneration for senior managers; and
- b. to review these limits annually.

(3) A municipal council must adopt a policy for determining salaries, allowances and benefits for all employees, taking into account -

- a. the grading of a municipality;
- b. available funding;
- c. performance evaluation results;
- d. job evaluation results; and
- e. bargaining council agreements.

(4) A municipal manager must determine the salaries, allowances and benefits for all employees in accordance with the policy adopted in terms of subsection (1).

## Regulations

**73.** (1) The Minister may make regulations on recommendation of or after consultation with organised local government

- a. setting uniform standards for-
  - i. municipal staff establishments;
  - ii. municipal staff codes and the matters that must be dealt with in staff codes; and
  - iii. any other matter concerning municipal personnel administration; and
- b. regulating remuneration and other conditions of service of municipal
- c. employees subject to any applicable labour legislation.

(2) Regulations in terms of subsection (1) may differentiate between different categories, types and other classes of municipalities.

## Provident and pension funds

**74.** (1) A staff member of a municipality must be a member of a pension or provident fund registered in terms of the Pension Funds Act, 1956( Act No of 1956), and contribute to that fund in accordance with the rules applicable to the fund.

(2) The MEC for local government in a province, on such conditions as the MEC may determine, may exempt from the provisions of subsection (1) -

- a. any category of staff members of a municipality in the province; or
- b. any category of municipal employees in the province.

(3) A municipality must contribute to any pension or provident fund of which any of its employees are members, in accordance with the rules of that fund.

## **Medical schemes**

**75.** (1) A staff member of a municipality must be a member of a medical scheme registered in terms of the Medical Schemes Act, 1967 (Act No 72 of 1967), and contribute to that medical scheme in accordance with the rules applicable to the medical scheme.

(2) The MEC for local government in a province, on such conditions as the MEC may determine, may exempt from the provisions of subsection (1) -

- a. any category of staff members of a municipality in the province; or
- b. any category of municipal employees in the province.

(3) A municipality must contribute to any medical scheme of which any of its employees are members, in accordance with the rules of that medical scheme.

## ***Part 5: Measuring and evaluating staff performance***

### **Measurement and evaluation system**

**76.** (1) A municipality must establish and implement a system for measuring and evaluating the performance of its staff or categories of staff at regular intervals.

(2) The performance measurement and evaluation system must enable the municipal manager and other managers acting in accordance with the directions of the municipal manager-

- a. to establish appropriate performance standards for various staff duties;
- b. to measure performance by individual staff members against those performance standards;
- c. to assess and grade performance by individual staff members;
- d. to reward consistent exceptional performance by an individual staff member; and
- e. to take corrective steps when performance by an individual staff member is substandard.

### **Evaluation results and appeals**

**77.** The performance measurement and evaluation system, to the extent that it is applied to an individual staff member, must provide for a staff member -

- a. to signify whether the results of that staff member's assessment is accepted; and
- b. must provide for an appeal where a staff member does not agree with an assessment.

### **Substandard performance**

**78.** (1) When the performance of a staff member is substandard, the municipal manager, or the manager of the component concerned, or a person designated by the municipal manager or such manager, must investigate and take appropriate steps regarding the performance of the staff member.

(2) Steps to improve substandard performance by a staff member may include-

- a. improved supervision and guidance;
- b. counselling;
- c. training or retraining;
- d. use of appropriate technology;
- e. transfer to another position at the same or lower level; and
- f. dismissal where any of the above measures have failed to improve performance.

## ***Part 6: Capacity building and training of staff***

### **Level of capacity**

**79.** A municipal council must develop its human resource capacity to a level that enables it to

perform its functions and exercise its powers efficiently and effectively, taking into account -

- a. the results of its performance evaluation system;
- b. any proposals of the Sector Education and Training Authority for local government established in terms of the Skills Development Levies Act, 1998; and
- c. any national or provincial priorities for training and capacity building as determined by the Minister and the MEC for local government in the province, respectively, in terms of section 79 (2).

### **National and provincial capacity building programs**

**80.** (1) A national or provincial organ of state that intends introducing a capacity building program for municipalities must consult with the relevant Sector Education and Training Authority established in terms of the Skills Development Levies Act, 1998, with regard to -

- a. the objectives and outcomes of the program;
- b. the content of the program;
- c. the methodology and time frames for implementation of the program; and
- d. funding of the program.

(2) The Minister and the relevant MEC for local government after consulting organised local government, may respectively determine national and provincial priorities for inclusion in sector skills plans.

### **Training programs**

**81.** (1) A municipality-

- a. must develop and implement programs for the education, training and development of its staff; and
- b. may in addition to any provision for a training levy in terms of the Skills Development Levies Act, 1998, make provision in its budget for the development and implementation of those training programs.

(2) Municipalities that do not have the financial means to provide funds for training programs in addition to the levy payable in terms of the Skills Development Levies Act, 1998, may apply to the Local Government Sector Education and Training Authority for the funding of those programs.

(3) A municipality must submit its training programs to the relevant Sector Education and Training Authority for quality assurance and accreditation.

### **In-house training**

**82.** (1) A municipality that provides training for its staff in terms of a training program may invite other municipalities in its vicinity and other institutions and organisations to nominate staff members for participation in the training program.

(2) The hosting municipality may determine the number of participants from other municipalities, institutions and organisations.

### **Records regarding training**

**83.** (1) A municipality must keep a record of the training provided to each of its staff members.

(2) Training records must be made available on request to the relevant Sector Education and Training Authority.

## ***Part 7: Code of conduct for staff members***

## **Application**

**84.** The Code of Conduct contained in Schedule 1 applies to every staff member of a municipality.

## **Code of Conduct to be provided to staff members**

**85.** (1) The municipal manager of a municipality must -

- a. provide a copy of the Code of Conduct to every member of the staff of the municipality; and
- b. provide every staff member with any amendment of the Code of Conduct.

(2) The municipal manager must ensure that the purpose, contents and consequences of the Code of Conduct are explained to staff members who cannot read.

## **CHAPTER 8**

### **MUNICIPAL SERVICES**

#### **General duty**

**86.** (1) A municipal council must give priority to the basic needs of the community, promote the social and economic development of the community, and ensure that all residents and communities in the municipality have access to at least the minimum level of basic municipal services in terms of section 152 (1) (b) and 153 (b) of the Constitution.

(2) The municipal services provided to residents and communities in a municipality must -

- a. be within the municipality's financial and administrative capacity;
- b. be provided in a manner that -
  - i. is fair and equitable to all its residents and communities;
  - ii. ensures the highest quality service at the lowest cost and the most economical use and allocation of available resources; and
  - iii. is financially and environmentally sustainable; and
- c. regularly be reviewed with a view to upgrading, extension and improvement.

#### ***Part 1: Service tariffs***

#### **Tariff policy**

**87.** (1) A municipal council must adopt, maintain and implement a tariff policy on the levying of fees and other charges for municipal services provided by the municipality or another service provider and which complies with the provisions of this Act.

(2) A tariff policy must be structured in such a way that-

- a. users and consumers of municipal services are treated equitably in the application of tariffs;
- b. in general the amount a user or consumer must pay for services is in proportion to their use of that service;
- c. tariffs reflect the costs reasonably associated with rendering the service, including capital costs and interest charges;
- d. tariffs are set at levels that secure the financial sustainability of the service, taking into account available and reliable subsidies;
- e. it provides for a surcharge or levy to be imposed, in appropriate circumstances, on the tariff for a service, and the criteria to be taken into account by the council in imposing and determining the duration of such a surcharge or levy;

- f. it allows the council to promote local economic development through special tariffs for categories of commercial and industrial users and consumers;
- g. it encourages and promotes the efficient use and consumption of resources, the recycling of waste, and other appropriate environmental objectives, through -
  - i. higher tariffs for higher levels of use or consumption of services;
  - ii. penalties or surcharges for excessive or wasteful use or consumption; or
  - iii. any other appropriate method;
- h. notwithstanding the above, by utilising transparent cross-subsidies within and between services, and equitable share allocations, it enables poor households to gain access to at least basic services, through -
  - i. tariffs that cover only operating and maintenance costs;
  - ii. special tariffs or flat rates for low levels of use or consumption of services or for basic levels of service; or
  - iii. any other direct or indirect method of identifying and targeting subsidies to poor households;
- i. clearly identifies the extent of subsidisation of poor households and other categories of consumer.

(3) A tariff policy may differentiate between different categories of users, consumers, debtors, services, service standards, geographical areas and other matters.

### **By-laws to give effect to policy**

**88.** (1) A municipal council must adopt by-laws to give effect to its tariff policy, its implementation and enforcement.

(2) By-laws in terms of subsection (1) may differentiate between different categories of users, customers, debtors, services, service standards and other matters.

### **Regulations**

**89.** (1) The Minister may make regulations and issue guidelines concerning -

- a. the preparation, adoption and implementation of a municipal tariff policy;
- b. the integration of sectoral requirements in terms of legislation with the provisions of this Act, and the manner in which municipalities must comply with these; and
- c. any other matter incidental to any of the above matters.

(2) Regulations in terms of subsection (1) may differentiate between different categories, types or classes of municipalities.

## ***Part 2: Provision of services***

### **Mechanisms for provision of services**

**90.** A municipal council may provide a municipal service in the municipality or part of the municipality through -

- a. an administrative structure within its administration;
- b. an internal trading entity established by it subject to the Local Government: Municipal Finance Management Act, 2000; or
- c. a service delivery agreement concluded by it with one or more or any combination of the following service providers:
  - i. other municipalities;

- ii. other organs of state;
- iii. municipal business enterprises;
- iv. companies registered in terms of section 21 of the Companies Act;
- v. private sector business enterprises;
- vi. community based organisations or non-governmental organisations; or
- vii. water committees established in terms of the Water Services Act, 1997 (Act 108 of 1997).

### **Municipal business enterprises and companies**

**91.** (1) A municipality may in terms of a by-law -

- a. subject to the provisions of the Local Government: Municipal Finance Management Act, 2000, establish or acquire an interest in a municipal business enterprise or company registered in terms of the Companies Act, which as its main business provides a municipal service in the municipality in terms of a service delivery agreement with the municipality; and
- b. transfer any of its staff to that municipal business enterprise subject to any applicable labour legislation.

### **Service delivery agreements**

**92.** (1) If a municipal council provides for a municipal service to be provided by way of a service delivery agreement, the council remains responsible for ensuring that that service is provided to the relevant residents and communities in terms of the provisions of this Act, and accordingly must -

- a. regulate the provision of the service, including the establishment of appropriate policies and objective and quantified goals, standards and targets in terms of section **94**;
- b. monitor and from time to time assess implementation of the agreement, including the performance of the service provider in terms of section **94**;
- c. exercise its powers and perform its duties in terms of Chapter 5 and 6 if the municipal service in question falls within a development priority and objective in terms of the municipality's integrated development plan; and
- d. within a tariff policy determined by the council in terms of section **87**, control the setting and adjustment of customer tariffs by the service provider for the municipal service in question.

(2) In terms of a service delivery agreement a municipality may -

- a. delegate to a service provider responsibility for -
  - i. developing and implementing detailed service delivery plans within the framework of the municipality's integrated development plan;
  - ii. the operational planning, management and delivery of the municipal service;
  - iii. providing and undertaking social and economic development that is directly related to the delivery of the service;
  - iv. public consultation and customer management;
  - v. managing its own accounting, financial management, budgeting, investment and borrowing procedures within a framework of transparency, accountability, reporting and financial control determined by the council;
  - vi. imposing tariffs for the service rendered by the service provider; and
  - vii. recovering, in accordance with the credit control measures established in terms of Chapter 9, tariffs for such service and any rates, surcharges, levies, duties and other taxes due to the municipality.
- b. pass on any subsidies to the service provider for the subsidisation of services to the poor, provided that explicit mechanisms for passing such subsidies on to the intended beneficiaries are established and monitored;
- c. transfer or second any of its employees to the service provider with the same or in aggregate equivalent conditions of service with the concurrence of the employees concerned; and
- d. make provision for taking over the management or establishing judicial management of the



service provider, or in any other way ensuring the continuity of service delivery, if it becomes insolvent or is for any reason unable to perform its functions in terms of the service delivery agreement.

(3) A service delivery agreement may be amended by agreement between the parties, except where an agreement has been concluded following a competitive bidding process, in which case an amendment can only be made as a result of unforeseen events or circumstances outside the reasonable control of either of the parties to the contract.

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

### **By-laws regulating provision of municipal services**

**93.** A municipal council must adopt by-laws regulating the provision of municipal services whether provided by the council itself or by way of service delivery agreements.

### **Performance management of municipal services**

**94.** A municipal council must develop objective and quantified goals, standards, targets and mechanisms in terms of which the performance of municipal services must be monitored and assessed, whether provided by the council itself or by way of service delivery agreements.

## ***Part 3: Reviewing and deciding on mechanisms to provide municipal services***

### **When municipalities must decide on mechanisms to provide municipal services**

**95.** A municipal council must review and decide on the appropriate mechanism to provide a municipal service when -

- a. the integrated development plan of the municipality proposes a change in the delivery mechanism for a municipal service;
- b. the council decides to provide a new service, or to upgrade, extend or improve an existing service;
- c. the performance evaluation requires a review of the delivery mechanism in terms of section 49 (1) (e);
- d. in the view of the council institutional restructuring or reorganisation in terms of the Municipal Structures Act, 1998, provides an opportunity to review the service delivery mechanism;
- e. a significant body of residents or stakeholders acting through the consultation mechanisms established by the council request a review of the service delivery mechanism; or
- f. the council is instructed to do so by the MEC for local government in the province acting in terms of section 139 (1) (a) of the Constitution.

### **Criteria for deciding on mechanisms to provide municipal services**

**96.** (1) When a municipal council has to decide on a mechanism to provide a municipal service in the municipality or a part of the municipality, or to review any existing mechanism, it must

- a. select the mechanism or range of mechanisms which, in the opinion of the council, will
  - i. most effectively and rapidly extend municipal services to unserved or underserved residents and communities in the municipality;
  - ii. provide residents and consumers with the best quality service, at the lowest overall cost to the municipality, residents and consumers; and most effectively enable the municipality to achieve its objects set out in section 152 (1) of the Constitution; and
- b. in selecting the mechanism, the municipality must undertake a cost-benefit analysis of the different service delivery options, which takes into account all the direct and indirect costs and

benefits associated with the project, as well as any other relevant factors, including - :

- i. the quality, condition and extent of existing infrastructure, including equipment, facilities and other assets used or to be used for the provision of the service;
- ii. the effectiveness of that infrastructure to satisfy current and expected demand with regard to quantity, quality, price and accessibility;
- iii. the capacity and potential future capacity of the municipality and prospective third party service providers to furnish the skills, expertise and resources necessary for the provision of the service;
- iv. the available financial resources of the municipality and demands on , those resources;
- v. the expected effect of any service delivery mechanism on the environment and on human health, well-being and safety;
- vi. whether the service delivery mechanism will be financially and environmentally sustainable; and
- vii. the views of residents, community organisations and other stakeholders.

(2) Instead of selecting a particular mechanism for service delivery, the municipal council may decide to publicly request proposals from all of the categories of potential service providers listed in section 90.

### **Implementation**

**97.** (1) If a municipal council decides to provide a service by way of a service delivery agreement -

- a. with another municipality, it may negotiate and enter into such an agreement with the relevant municipality; or
- b. with any person other than another municipality, it must follow the procedure set out in Part 4 of this Chapter before entering into such an agreement with any such person.

(2) A municipality must -

- a. identify and actively solicit the views of stakeholders and workers affected by the agreement before entering into a service delivery agreement; and
- b. establish a mechanism and programme for stakeholder consultation and information dissemination regarding the service delivery agreement.

### ***Part 4: Service delivery agreements with persons other than municipalities***

### **Competitive bidding**

**98.** (1) If a municipal council decides to provide a municipal service by way of a service delivery agreement with a person other than another municipality, it must select the service provider through selection and pre-qualification processes which must -

- a. be competitive, fair, transparent, equitable and cost-effective, including provisions for all prospective service providers to have equal and simultaneous access to information relevant to the bidding process;
- b. minimise the possibility of fraud and corruption; and
- c. provide for a municipal council to be accountable to residents and other stakeholders for its actions, including informing residents and stakeholders about progress with selecting a service provider, and the reasons for any council decision in this regard.

(2) In line with section 217 (2) of the Constitution a municipal council may determine a preference for categories of service providers in order to advance the interest of persons disadvantaged by apartheid, provided that the manner in which such preference is exercised does not compromise or limit the quality, coverage, cost and developmental impact of the services.

(3) The selection process may comprise -

- a. formal competitive tendering among bidders selected through a formal pre qualification process;
- b. competitive negotiation (without formal competition among parties selected through a formal pre-qualification process);
- c. solicitation of competing proposals from two or more potential providers, without a formal pre-qualification process;
- d. any other fair, equitable, transparent, and cost-effective competitive process as may be prescribed; and
- e. in the case of unsolicited proposals which contain genuine innovations in service delivery mechanisms, procedures to ensure cost competitiveness and value for money while at the same time recognising the value of, and rewarding genuine innovators.

(4) In selecting a service provider a municipal council must apply the criteria listed in section 96 (a) well as any preference for categories of service providers referred to in subsection (2).

### **Selection and pre-qualification processes to be prescribed**

**99.** (1) The Minister, after consulting organised local government, may make regulations prescribing-

- a. each of the different kinds of selection processes referred to in section 98;
- b. requirements for reporting to the public, stakeholders and service providers involved in the selection process;
- c. pre-qualification processes, including minimum pre-qualifications criteria;
- d. the circumstances in which a particular selection process must be used;
- e. the circumstances in and the conditions on which a council may dispense with the prescribed selection processes;
- f. the requirements or kind of requirements a municipality may or must impose on prospective participants as preconditions for participation in a selection process;
- g. procedures for dealing with unsolicited proposals, including incentives for prospective service providers (which may include preferential treatment in the bidding process), to make unsolicited proposals concerning the provision of a service which -
  - i. is innovative and original; and
  - ii. uses procedures or technology that the council has not previously considered or that has not been applied elsewhere in the Republic; and
- h. the debarment of certain prospective service providers which have been proven to have been engaged in corrupt or illegal practices, the criteria and procedures for determining which prospective service providers are debarred, and appeal mechanisms for debarred prospective service providers.

(2) Different regulations may be made for different categories, types or other classes of municipalities.

### **Negotiation and agreement with prospective service provider**

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

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

- (3) When a municipal council has entered into a service delivery agreement it must -
- a. make copies of the agreement available at its offices for public inspection during office hours; and
  - b. give notice in a newspaper circulating in the municipality of -
    - i. particulars of the service that will be provided under the agreement;
    - ii. the name of the selected service provider; and
    - iii. the place where and the period for which copies of the agreement are available for public inspection.

### ***Part 5: Municipal service districts***

#### **Establishment of internal municipal service districts**

**101.** (1) A municipal council may establish a part of the municipality as an internal municipal service district to facilitate the performance of a municipal service in that part of the municipality.

(2) When a municipal council establishes an internal municipal service district, the council -

- a. must determine the boundaries of the district;
- b. must determine the mechanism that will provide the service in the district;
- c. in order to finance the service in the district, may -
  - i. impose a special surcharge in the district on the tariff for the service;
  - ii. increase the tariff in the district for that service; or
  - iii. levy a special rate on property in the district;
- b. must establish separate accounting and other record-keeping systems with respect to the performance of the service in the district; and
- c. may establish a board composed of residents and any other stakeholders in the district -
  1. to manage the service in the district; or
  2. to advise the council regarding the management of the service in the district.

#### **Establishment of multi-jurisdictional municipal service districts**

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

#### **Contents of agreements establishing multi-jurisdictional municipal service districts**

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

- a. determine the boundaries of the district;
- b. identify the municipal service to be performed in terms of the agreement;
- c. determine the mechanism that will provide the service in the district;
- d. determine budgetary, funding and scheduling arrangements for implementation of the agreement;
- e. provide for -
  - i. the establishment of a governing body for the multi-jurisdictional municipal service district;
  - ii. the appointment of representatives of the participating municipalities to the governing body, the filling of vacancies and the replacement and recall of representatives;
  - iii. the number of representatives appointed for each participating municipality,

- subject to subsection (2);
  - iv. the terms and conditions of appointment of those representatives;
  - v. the appointment of a chairperson;
  - vi. the operating procedures of the governing body; and
  - vii. any other matter relating to the governing body and its proper functioning;
- f. provide for-
- i. the acquisition of infrastructure, goods, services, supplies or equipment by the governing body, or the transfer of infrastructure, goods, services, supplies or equipment to the governing body;
  - ii. the appointment of staff by the governing body, or the transfer or secondment of staff to the governing body;
  - iii. the terms and conditions on which any acquisition, transfer, appointment or secondment is made; and
- g. determine the conditions for, and consequences of, the withdrawal from the agreement of a participating municipality;
- h. determine the conditions for, and consequences of, the termination of the agreement, including-
- i. the method and schedule for winding-up the operations of the district;
  - ii. the distribution of the proceeds; and
  - iii. the allocation among the participating municipalities of any liabilities; and
- i. provide for any other matter the participating municipalities may agree on.

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

### **Legal status of governing bodies**

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

### **Powers and duties of governing bodies**

**105.** (1) The governing body of a multi-jurisdictional municipal service district, in relation to the performance of the municipal service for which the district is established -

- a. may exercise any of the powers a municipality may exercise for the proper performance of a service of the kind in question, subject to any limitations, qualifications and directives set out in the agreement establishing the governing body; and
- b. must perform all the duties a municipality must perform in terms of legislation when performing a service of the kind in question, subject to any limitations, qualifications and directives set out in the agreement.

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

- a. to determine its own staff establishment and appoint employees to posts on its staff establishment;
- b. to obtain the services of any person or entity to perform any specific act or function;
- c. to open a bank account;
- d. to acquire or dispose of any right in or to property;
- e. to insure itself against any loss, damage, risk or liability;
- f. to perform legal acts, or institute or defend any legal action in its own name; and
- g. to do anything that is incidental to the exercise of any of its powers.

### **Control of governing bodies**

**106.** (1) The governing body of a multi-jurisdictional municipal service district

- a. is accountable to the participating municipalities; and
- b. must comply with any legislation applicable to the financial management of municipalities and municipal public entities.

(2) A participating municipality -

- a. is entitled to receive regular written reports from the governing body of a district with respect to its activities and performance, as may be set out in the agreement establishing the governing body;
- b. may request the governing body to furnish it with such information regarding its activities as the participating municipality may reasonably require; and
- c. may appoint a nominee to inspect, at any time during normal business hours, the books, records, operations and facilities of the governing body, and of those of its contractors relating to the performance of the municipal service for which the district is established.

### **Termination of multi-Jurisdictional municipal service districts**

**107.** A multi-jurisdictional municipal service district terminates -

- a. automatically, when there is only one remaining participating municipality;
- b. by written agreement among all of the participating municipalities; or
- c. upon the occurrence of any date or condition for termination contained in the agreement establishing the district.

## **CHAPTER 9**

### **CREDIT CONTROL AND DEBT COLLECTION**

#### **Customer care and management**

**108.** In relation to the levying of rates and other taxes by a municipality and the charging of fees for municipal services, a municipality must -

- a. establish a sound customer management system that aims to create a positive and reciprocal relationship between persons liable for these payments and the municipality, and when applicable, a service provider;
- b. establish mechanisms for residents and users of services to give feedback to the municipality or other service provider regarding the quality of the services and the performance of the service provider;
- c. ensure that residents and users of services understand the costs involved in service provision, the reasons for the payment of service fees, and the manner in which monies raised from the service are utilised;
- d. as far as is practicable, ensure that the consumption of services by individual households is measured through accurate and verifiable metering systems;
- e. ensure that persons liable for payments, receive regular and accurate accounts that indicate the basis for calculating the amounts due;
- f. provide accessible mechanisms for those persons to query or verify accounts and metered consumption, and appeal procedures which allow such persons to receive prompt redress for inaccurate accounts;
- g. provide accessible mechanisms for dealing with complaints from such persons, together with prompt replies and corrective action by the municipality;
- h. provide mechanisms to monitor the response time and efficiency in paragraph (g); and
- i. provide accessible pay points and other mechanisms for settling accounts.

#### **Debt collection responsibility of municipal councils**

**109.** A municipal council -

- a. must ensure that all money that is due and payable to the municipality is collected, subject to this Act; and
- b. for this purpose, must adopt, maintain and implement a credit control and debt collection policy consistent with its rates and tariff policies and complying with the provisions of this Act.

### **Contents of policy**

**110.** (1) A credit control and debt collection policy must include -

- a. credit control procedures;
- b. debt collection procedures;
- c. provision for indigent debtors that is consistent with its rates and tariff policies and any national developed policy on indigents;
- d. interest on arrears;
- e. extensions of time for payment of accounts; and
- f. matters relating to unauthorised consumption of services, theft and damages.

(2) A credit control and debt collection policy may differentiate between different categories of taxpayers, customers, debtors, taxes, services, service standards and other matters.

### **By-laws to give effect to policy**

**111.** (1) A municipal council must adopt by-laws to give effect to its credit control and debt collection policy, its implementation and enforcement.

(2) By-laws in terms of subsection (1) may differentiate between different categories of taxpayers, customers, debtors, taxes, services, service standards and other matters.

### **Supervisory authority**

**112.** A municipality's executive committee or executive mayor or, if a municipality does not have an executive committee or executive mayor, the council itself or a committee appointed by it, must -

- a. oversee and monitor
  - i. the implementation and enforcement of the municipality's credit control and debt collection policy and any by-laws enacted in terms of section **111**; and
  - ii. the performance of the municipal manager in implementing the policy and any by-laws;
- b. when necessary, evaluate, review or adapt the policy and any by-laws, or the implementation of the policy and any such by-laws, in order to improve efficiency of its credit control and debt collection mechanisms, processes and procedures; and
- c. report monthly to a meeting of the council, except when the council itself performs the duties mentioned in paragraphs (a) and (b).

### **Implementing authority**

**113.** The municipal manager must -

- a. implement and enforce the municipality's credit control and debt collection policy and any by-laws enacted in terms of section **111**;
- b. in accordance with the credit control and debt collection policy and any such by-laws, establish effective administrative mechanisms, processes and procedures to collect money that is due and payable to the municipality; and

- c. report the prescribed particulars monthly to a meeting of the supervisory authority.

### **Unsatisfactory levels of indebtedness**

**114.** (1) If the level of indebtedness in a particular ward or part of a municipality exceeds the level of the acceptable norm as determined in the municipality's credit control policy, the supervisory authority mentioned in section **113** must, without delay, advise the councillor for that ward or part.

(2) The councillor concerned -

- a. must without delay convene a meeting of the ward committee, if there is one, or convene a public meeting and report the matter to the committee or meeting for discussion and advice; and
- b. may make any appropriate recommendations to the supervisory authority.

### **Municipality's right of access to premises**

**115.** The occupier of premises in a municipality must give an authorised representative of the municipality access to the premises in order to read, inspect, install or repair any meter or service connection for reticulation, or to disconnect, stop or restrict the provision of any service.

### **Accounts**

**116.** A municipality may -

- a. consolidate any separate accounts of persons liable for payments to the municipality;
- b. debit a payment by such a person against any account of that person, and
- c. implement any of the debt collection and credit control measures provided for in this Chapter in relation to any arrears on any of the accounts of such a person.

### **Agreements with employers**

**117.** A municipality may -

- a. with the consent of a person liable for the payment of rates or other taxes, or fees for municipal services, to the municipality, enter into an agreement with the employer of that person to deduct from the salary or wages of that person-
  - i. any outstanding amounts due by that person to the municipality; or
  - ii. regular monthly amounts as may be agreed; and
- b. provide special incentives for employers to enter into such agreements.

### **Regulations**

**118.** (1) The Minister may make regulations concerning -

- a. the particulars that must be contained in the municipal manager's report in terms of section **114**;
- b. the identification of every municipal service provided by the municipality or other service providers to customers where the use of the service by the customer can reasonably be determined, measured or estimated per quantity used or per frequency of such use;
- c. the determination, measurement or estimate of the use by each customer of each service so identified;
- d. customer agreements and deposits for the provision of municipal services;
- e. the rendering of accounts to taxpayers and customers and the particulars to be contained in the accounts;
- f. the action that may be taken to secure the payment of accounts that are in arrear;
- g. appeals against -



- i. the accuracy of accounts for municipal taxes or services; and
  - ii. action taken by a municipality to secure the payment of arrears;
- h. the manner in and time within which such appeals must be lodged and determined and the consequences of successful and unsuccessful appeals;
- i. extensions for the payment of arrears;
  - j. service connections and disconnections, and the resumption of discontinued services;
  - k. the combating of unauthorised consumption, connection and reconnection and theft of municipal services;
  - l. the tampering with or theft of meters, service supply equipment and reticulation network and any other fraudulent activity in connection with the provision of municipal services; and
  - m. any other matter incidental to any of the above matters.

(2) Regulations in terms of subsection (1) may differentiate between different categories of taxpayers, customers, debtors, taxes, services, service standards and other matters.

## CHAPTER 10

### PROVINCIAL AND NATIONAL SUPERVISION

#### *Part 1: Provincial supervision*

#### **Provincial monitoring of municipalities**

**119.** (1) The MEC for local government in a province must establish mechanisms, systems and processes -

- a. to monitor municipalities in the province in managing their own affairs, exercising their powers and performing their functions,;
- b. to monitor the development of local government capacity in the province; and
- c. to assess the support needed by municipalities to strengthen their capacity to manage their own affairs, exercise their powers and perform their functions.

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

(3) When exercising their powers in terms of subsection (1) MEC's for local government

- a. must rely as far as is possible on annual reports in terms of section 51 and information submitted by municipalities in terms of subsection (2); and
- b. may make reasonable requests to municipalities for additional information after taking into account -
  - i. the administrative burden on municipalities to furnish the information;
  - ii. the cost involved;
  - iii. existing performance monitoring mechanisms, systems and processes in the municipality; and
  - iv. any guidelines that may be issued in terms of subsection (3).

(4) The Minister, by notice in the *Government Gazette*, may issue uniform guidelines to the provinces on the establishment of provincial monitoring and assessment mechanisms, systems and processes in terms of subsection (1).

#### **Failure to fulfil executive obligations**

**120.** (1) If an MEC has reason to believe that a municipality in the province cannot or does not fulfil an executive obligation binding on that municipality, the MEC may, in order to establish whether or not the municipality is fulfilling the executive obligation -

- a. by written notice to the municipality, request the municipal council or municipal manager to provide the MEC with information required in the notice;
- b. designate a person to investigate the matter; or
- c. appoint a commission of inquiry to inquire into and report on the matter.

(2) In the absence of a provincial Act relating to commissions of inquiry, the provisions of sections 2, 3, 4, 5 and 6 of the Commissions Act, 1947 (Act No. 8 of 1947), and the regulations made in terms of that Act, apply with the necessary changes as the context may require.

### ***Part 2: National supervision***

#### **Furnishing of information**

**121.** The Minister may by notice in the *Government Gazette* require municipalities of any category, type or class specified in the notice to submit to a specified national department or institution such information concerning their affairs as may be required in the notice, either at regular intervals or within a period as may be specified.

#### **Essential national and minimum standards**

**122.** The Minister may by notice in the *Government Gazette* establish essential national standards and minimum standards for-

- a. any municipal service or function assigned in terms of section 156 (1) of the Constitution, after consulting organised local government, the MECs for local government and any national Minister responsible for regulating that service, and after publishing a draft notice for public comment; and
- b. the exercise by MECs of their functions in terms of this Chapter, after consulting SALGA and the MECs for local government.

## **CHAPTER 11**

### **LEGAL MATTERS AND OFFENCES**

#### ***Part 1: Legal matters***

#### **Legal proceedings**

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

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

#### **Notices**

**124.** (1) When anything must be notified by a municipality in the media, it must be done in a newspaper or newspapers circulating in its area and determined by the municipal council as a newspaper of record.

(2) When a municipality must publicly notify anything, it must be done in the official languages determined by the municipal council, having regard to language preferences and usage within its

area.

(3) A copy of every notice that must be published in the *Provincial Gazette* or the media, must be displayed at the municipal offices.

(4) When the public is invited to submit written comments or representations to the municipal council on any matter before the council, it must state in the invitation that any person who cannot write may come during office hours to a place or an official of the council named in the invitation, who will assist that person to transcribe that person's comments or representations.

(5) (a) When a form must be completed, a municipal council must give reasonable assistance to persons who cannot read or write to understand and complete the form.

b. If the form relates to a charge or the provision of any services, the assistance must include an explanation of its terms and conditions.

### **Certain certificates to be evidence**

**125.** In legal proceedings against a municipality, a certificate signed by an official of the municipality that the municipality used the best known, or only, or most practicable and available methods in exercising any power or performing any duty assigned to it in terms of any legislation, must on its mere production by any person be accepted by the court as evidence of that fact.

### **Prosecution of offences**

**126.** (1) The municipal manager of a municipality, or any other official or suitably qualified person authorised by the municipal manager, may prosecute in a magistrate's court for any contravention of -

- a. a by-law or regulation of the municipality; or
- b. any other legislation -
  - i. administered by the council of the municipality or any of its officials; or
  - ii. which confers on the municipality the right of prosecution in respect of offences in terms of that legislation.

(2) The state prosecuting authority must, within its financial and administrative capacity, assist and build the capacity of municipalities to prosecute matters in terms of subsection (1).

### **Fines and bail**

**127.** Fines and estreated bails recovered in respect of offences or alleged offences of by-laws or regulations of the municipality-

- a. are excluded from payment into the National Revenue Fund; and
- b. must be paid into the revenue fund of the municipality.

### **Time of notices and payments**

**128.** Normal office hours is the only time a payment may be made to or any notice may be served on -

- a. the council of a municipality;
- b. any other structure or functionary of the municipality; or
- c. any official of the municipality in an official capacity.

### **Service of documents and process**

**129.** (1) Any notice or other document that is served on a person in terms of -

- a. when it has been delivered to that person personally;
- b. when it has been left at that person's place of residence or business in the Republic with a person apparently over the age of sixteen years;
- c. when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic and an acknowledgement of the posting thereof from the postal service, is obtained;
- d. if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided by paragraphs (a), (b) or (c); or
- e. if that person's address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the land or premises, if any, to which it relates.

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

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

### **Public servitudes**

**130.** Public servitudes within a municipal area are under the control of the council of the municipality which must protect and enforce the rights of the public arising from those servitudes.

### **Custody of documents**

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

### **Restraint on transfer of property**

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

- a. issued by the municipality in which that property is situated; and
- b. which certifies that all amounts due for municipal rates and service charges on the property during the three years preceding the date of application for the certificate have been fully paid.

(2) In the case of the transfer of immovable property by a trustee of an insolvent estate, the provisions of this section are subject to section 89 of the Insolvency Act, 1936(Act 24 of 1936).

(3) An amount due for municipal rates and service charges is a charge upon the property in respect of which the amount is owing and enjoys preference over any mortgage bond registered against the property.

## ***Part 2: Offences***

**[TO BE ADDED]**

### **Interference**

**133.** A councillor who attempts to influence the municipal manager or any municipal official or agent not to enforce an obligation in terms of this Act or any by law, regulation or decision of the council, is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding .....

## **CHAPTER 12**

## MISCELLANEOUS

### Regulations

**134.** (1) The Minister may make regulations not inconsistent with this Act prescribing -

- a. any matter that may or must be prescribed in terms of this Act; and
- b. any matter that may facilitate the application of this Act.

(2) The absence of a regulation that must or may be prescribed in terms of this Act does not prevent -

- a. the application of a provision of this Act in connection with which the regulation must or may be prescribed; or
- b. the performance of a function or the exercise of a power assigned in such a provision.

### Amendment and repeal of legislation

**135.** The legislation mentioned in Schedule 2 is hereby repealed or amended to the extent set out in the third column of the Schedule. (Still to be finalised).

### Transitional arrangements

**136.** Any written agreement referred to in section 14 (2) which exists when this Act takes effect, must be regarded as having been concluded in terms of that subsection.

### Short title and commencement

**137.** (1) This Act is called the Local Government: Municipal Systems Act, 1999, and takes effect on a date to be fixed by the Minister by notice in the *Government Gazette*, except Chapters 3, 5, 6 and 7 which take effect on the date of the first election of municipal councils held after the publication of this Act.

(2) Different dates may be fixed in respect of the different provisions of the Act.

## SCHEDULE 1

### CODE OF CONDUCT FOR MUNICIPAL OFFICIALS

#### Definitions

**1.** In this Schedule "**partner**" means a person who permanently lives with another person in a manner as if married.

#### General conduct

**2.** An employee of a municipality must at all times -

- a. loyally execute the lawful policies of the municipal council;
- b. perform the functions of office in good faith, diligently, honestly and in a transparent manner;
- c. act in such a way that the spirit, purport and objects of section 56 are promoted;
- d. act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised; and
- e. act impartially and treat all people, including other employees, equally without favour or prejudice.

#### Commitment to serving the public interest

**3.** An employee of a municipality is a public servant in a developmental local system, and must accordingly -

- a. implement the provisions of section **56** (2) of the Act;
- b. foster a culture of commitment to serving the public and a collective sense of responsibility for performance in terms of standards and targets;
- c. promote and seek to implement the basic values and principles of public administration described in section 195 (1) of the Constitution;
- d. obtain copies of or information about the municipality's integrated development plan, and as far as possible within the ambit of the employee's job description, seek to implement the objectives set out in the integrated development plan, and achieve the performance targets set for each performance indicator;
- e. participate in the overall performance management system for the municipality, as well as the official's individual performance appraisal and reward system, if such exists, in order to maximise the ability of the municipality as a whole to achieve its objectives and improve the quality of life of its residents.

### **Personal gain**

**4.** (1) An employee may not

- a. use the position or privileges of an employee, or confidential information obtained as an employee, for private gain or to improperly benefit another person; or
- b. take a decision on behalf of the municipality concerning a matter in which that employee, or that employee's spouse, partner or business associate, has a direct or indirect personal or private business interest.

(2) Except with the prior consent of the council of a municipality an employee of the municipality may not -

- a. be a party to or beneficiary under a contract for -
  - i. the provision of goods or services to the municipality; or
  - ii. the performance of any work for the municipality otherwise than as an employee;
- b. obtain a financial interest in any business of the municipality; or
- c. be engaged in any business, trade or profession other than the work of the municipality.

### **Disclosure of benefits**

**5.** (1) An employee of a municipality who, or whose spouse, partner, business associate or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the municipality, must disclose in writing full particulars of the benefit to the council.

(2) This item does not apply to a benefit which an employee, or a spouse, partner, business associate or close family member, has or acquires in common with other residents of the municipality.

### **Unauthorised disclosure of information**

**6.** (1) An employee of a municipality may not without permission disclose any privileged or confidential information obtained as an employee of the municipality to an unauthorised person.

(2) For the purpose of this item "privileged or confidential information " includes any information

- a. determined by the council or any structure or functionary of the municipality to be to be privileged or confidential;
- b. discussed in closed session by the council or a committee of the council;
- c. disclosure of which would violate a person's right to privacy; or
- d. declared to be privileged, confidential or secret in terms of any law.

(3) This item does not derogate from a person's right of access to information in terms of national legislation.

### **Undue influence**

7. An employee of a municipality may not -

- a. influence or attempt to influence the council of the municipality, or a structure or functionary of the council, or a councillor, with a view to obtaining any appointment, promotion, privilege, advantage or benefit, or for a family member, friend or associate;
- b. mislead or attempt to mislead the council, or a structure or functionary of the council, in its consideration of any matter; or
- c. be involved in a business venture with a councillor without the prior written consent of the council of the municipality.

### **Rewards, gifts and favours**

8. (1) An employee of a municipality may not request, solicit or accept any reward, gift or favour for -

- a. persuading the council of the municipality, or any structure or functionary of the council, with regard to the exercise of any power or the performance of any duty;
- b. making a representation to the council, or any structure or functionary of the council;
- c. disclosing any privileged or confidential information; or
- d. doing or not doing any thing within that employee's powers or duties.

(2) An employee must without delay report to a superior official or to the speaker of the council any offer which, if accepted by the employee, would constitute a breach of subitem (1).

### **Council property**

9. An employee of a municipality may not use, take, acquire, or benefit from any property or asset owned, controlled or managed by the municipality to which that official has no right.

### **Payment of arrears**

10. A municipal employee may not be in arrears to the municipality for rates and service charges for a period longer than 3 months, and a municipality may deduct any outstanding amounts from an employee's salary after this period.

### **Participation in elections**

11. An employee of a municipality may not participate in an election of the council of the municipality, other than in an official capacity or pursuant to any constitutional right.

### **Reporting duty of employees**

12. Whenever an employee has reasonable grounds for believing that there has been a breach of this Code, the employee must without delay report the matter to a superior officer or to the speaker of the council.

### **Breaches of Code**

13. Breaches of this Code must be dealt with in terms of the disciplinary procedures of the municipality envisaged in section 69 (1) (h).

## **SCHEDULE 2**

## LEGISLATION REPEALED

### EXPLANATORY MEMORANDUM

The Municipal Systems Bill is the third piece of legislation to give effect to the Local Government White Paper, the first two being the Municipal Demarcation Act and Municipal Structures Act. While the first two Acts deal with the institutional and jurisdictional aspects of the local government transformation process, the Municipal Systems Bill seeks to establish the basic principles and mechanisms to give effect to our collective vision of "developmental government". Its focus is therefore primarily on the internal systems and administration of the municipality.

The Bill will be complemented by and is aligned with the legislation to be enacted by the Department of Finance dealing with issues of financial management, budgeting, borrowing and treasury control, as well as legislation reforming the property rating and taxation system.

Together this suite of legislation will complete the process of reviewing and reforming the overall regulatory system for local government, and will enable government to repeal virtually the entire body of legislation and provincial ordinances inherited from the apartheid era. It is proposed to deal with the repeal process in a single Bill to be presented to Cabinet early in the year 2000.

The legislative approach adopted in the Municipal System Bill is broadly enabling, and seeks to achieve a degree of equivalence and balance between the regulatory frameworks governing the three spheres of government. The Bill is mandatory only to the extent that the fundamental elements of public sector reform, socio-economic development, delivery of basic services, and public reporting and accountability need to be applied uniformly on a country-wide basis.

The Bill describes the core processes or elements that are essential to realising a truly developmental local government system. These include participatory governance, integrated development planning, performance management and reporting, resource allocation and organisational change. The Bill links these processes into a single cycle at local level, that will align various sectoral initiatives from national and provincial government departments with a municipality's own capacity and processes. This will ensure better synergy between local, provincial and national initiatives, and a more effective system of inter-governmental relations.

In summary the Bill aims to:

- Clarify the legal nature of a municipality, and, by including the residents and communities within the municipal area in the definition of a municipality, establish a system of internal relationships for effective participatory governance, in which the different components of a municipality have certain key rights and responsibilities. This lays the foundation for the later Chapters in the Bill, in which participatory processes are critical to the success of initiatives such as planning and performance management.
- Establish certain basic requirements for public accountability and participation which are essential to the long term sustainability of the municipality.
- Assign powers of general competence to local government, and manage the process of decentralising functions to local government to ensure proper co-ordination of the decentralisation process and the prevention of unfunded mandates.
- Regulate the promulgation of municipal by-laws to achieve greater symmetry between national, provincial and local legislative actions.
- Clarify the nature of the executive power of municipalities, and in particular develop the notion of a separation between the roles of "service authority" and "service provider". This separation was initially introduced through the Water Services Act, and it is proposed to extend this to all municipal services. As "service authorities" municipalities remain responsible for and must see to the effective delivery of a particular service, and provide a policy and regulatory framework within which that service is provided) subject to any applicable national or



provincial legislation. This lays the basis for the Bill to enable municipalities to choose the most appropriate service provider from a menu of options, ranging from internal departmental delivery through corporatisation and joint ventures to private sector delivery options.

- Rationalise the system of municipal planning into a single comprehensive 5 yearly planning cycle, subject to annual monitoring and review, in which Integrated Development Plans (IDPs) are adopted by municipal councils as their core planning and management instrument. This system provides an important framework for integrating the more detailed sectoral planning requirements of various national Departments. By linking their sectoral planning requirements into the municipality's IDP and budgeting processes, line Departments will achieve better integration of initiatives, improved compliance, as well as benefit from the alignment of IDP sectoral strategies with municipal budgets and human resource deployment in terms of legal obligations.
- Establish a performance management system for local government, including a system of measuring and evaluating performance in priority areas, and reporting annually to citizens and other spheres of government, so that performance can be compared across the whole of local government, and under-performance in critical areas identified at an early stage. This will provide municipalities with a tool to evaluate progress with their IDP, as well as a more rational and informed basis for choosing appropriate service providers. It will also enable a far more appropriate and targeted system of capacity building and intervention to be put in place by national and provincial government.
- Entrench the "Batho Pele" principles in local public administration, and synchronise local administrative reform with the system of performance contracts, performance evaluation, codes of conduct, job evaluation, performance incentives, managerial responsibilities and delegations being implemented in national and provincial government.
- Provide a clear regulatory framework for municipal service partnerships, particularly processes such as competitive bidding, dealing with unsolicited proposals, and contract monitoring and compliance, which gives legal effect to the framework agreement on restructuring municipal services signed between government and COSATU on 16 December 1998.
- Make provision for municipal service districts, including multi-jurisdictional service districts in which municipalities combine their regulatory powers in order to manage service provision on a more functional basis.
- Establish a set of principles and guidelines to guide the setting of tariffs for municipal services, in order to help municipalities ensure long term sustainability of service delivery, and establish mechanisms for assisting indigent households.
- Empower municipalities to implement tough and effective credit control and debt collection strategies, in order to deal with non-payment for services, while at the same time making sure that the genuinely indigent receive targeted relief.
- Create a clear framework to guide provincial monitoring and capacity building in terms of the Constitution, which avoids duplication of existing monitoring systems, and aims over the longer term to build an effective, integrated, performance oriented service delivery system.
- Augment the legal capacity of municipalities to prosecute for contraventions of municipal by-laws.

The various provisions of the Bill will be implemented incrementally, with the bulk of the Bill's provisions becoming effective from the date of the next local government elections in late 2000. The Bill will enable municipalities, over time, to move towards a more performance orientated "Batho Pele" approach to service delivery, and lead to a progressive build-up of municipal capacity to perform the functions allocated to local government by the Constitution and subsequent legislation.

The Bill has been drafted on the basis of a detailed investigation into the current capacity problems of local government, and an analysis of existing approaches and innovations to service delivery in local government. The Bill is informed by a large number of policy, research and legislative processes. These include (per subject matter):

Legal nature, powers and functions:

The Local Government Transition Act 1993, as amended, in which a large number of the basic systems and procedures for local government need to be preserved or further developed in future legislation.

A legal opinion of Advocates Trengove and Spitz on the constitutionality of the Structures Act including the meaning of executive powers of municipalities in terms of the Constitution.

The Local Government White Paper and the large body of background research and policy papers which informed this.

Public participation and accountability:

Masakhane "best practice" reports examining innovations in approaches to participation and partnerships with the community, as well as the annual reports on the Presidential Awards for Community Initiative, which have highlighted successful local level partnerships.

Development planning:

Research into twenty development planning pilot projects across the country and an analysis of the problems and lessons learnt.

The draft report of the Development Planning Commission and status reports and reviews of the land development objectives implementation process of the Department of Land Affairs.

Research into fifteen local economic development projects, with particular focus on mechanisms for municipalities to proactively adopt poverty alleviation strategies.

"Regulatory Study on Local Economic Development" by Erica Emdon published in January 1999.

Performance management and public administration:

Batho Pele White Paper released by the Department of Public Service and Administration.

"People First", a Department of Constitutional Development policy paper on performance management in local government released in August 1998.

A discussion document compiled by the Department of Constitutional Development entitled: "A Performance Management System for Local Government" released in February 1999.

The new Public Service Regulations which will be promulgated during July 1999 in terms of the Public Service Act, 1994 as amended.

The Skills Development Act, 1998 and background research and proposals for the establishment of a Local Government SETA which *inter alia* includes a demarcation document and a constitution.

Municipal services:

A publication entitled "Municipal Infrastructure Investment Framework" published by the Department of Constitutional Development in June 1997.

A publication entitled: "The Municipal Infrastructure Programme Progress Report" published by the Department of Constitutional Development in June 1997.

A publication entitled: "The Consolidated Municipal Infrastructure Programme Handbook" published by the Department of Constitutional Development in June 1997.

A publication entitled: "Municipal Service Options: A Guideline for Local Authorities" published by the Department of Constitutional Development in June 1997.

A publication entitled: "Guidelines for Private Sector Participation in Municipal Service Delivery" published by the Department of Constitutional Development in June 1997.

The Municipal Service Partnership Policy Framework developed by the Department of Constitutional Development dated 29 April 1999.

The Framework Agreement on Restructuring Municipal Services, signed between government and COSATU in December 1998.

Municipal Infrastructure Investment Unit Pipeline Projects and Municipal Public Private Partnership Pipeline Projects: Status Report.

The Water Law Review studies and reports, particularly as regards the relationship between service authorities and service providers, and the consequent Water Services Act, 1997.

Tariff setting, credit control and debt collection:

A document entitled: "Providing affordable basic service: Tariff modeling and targeting subsidies - Towards an indigents policy for local government" released by the Department of Constitutional Development on 30 September 1998.

The Poverty and Inequality Report released by the Co-ordination and Implementation Unit in the Office of the Deputy President in 1998, in particular the recommendations pertaining to local government.

Provincial supervision of local government:

Project Viability quarterly reports published in March and June 1998 and reports released in June and September 1998 (unpublished), and an analysis of credit control and debt collection problems and approaches in approximately 600 municipalities. SALGA's research into provincial powers of supervision, capacity building, monitoring and intervention entitled: "Provincial Supervision and Monitoring of Local Government: SALGA Framework Policy".

The Department of Constitutional Development's policy proposals on a framework for monitoring, support and intervention in terms of section 139 of the Constitution.

### **Other Departments and organisations consulted:**

In the process of drafting the Bill the following organisations and forums have been consulted:

All nine provincial MEC's for local government

SALGA

Department of Land Affairs

Department of Finance

Department of State Expenditure

Department of Minerals and Energy

Department for Public Service and Administration

Department of Labour

Department of Housing

Department of Transport

Department of Water Affairs and Forestry

Office for Public Enterprises

Office of the Auditor-General

South African Municipal Workers Union

Independent Municipal and Allied Trade Unions

Urban Sector Network

Institute for Local Government Managers

Institute for Municipal Administrators of South Africa

Institute for Municipal Finance Officers

Development and Planning Commission

All metropolitan municipalities

### **Forums**

Local Government MINMEC

Sectoral Forum

Bargaining Council