



**2<sup>ND</sup> SUPPLEMENTARY TO THE**

**AGENDA**

**SPECIAL  
COUNCIL MEETING**

to be held on

**FRIDAY, 3 JUNE 2011**

in the

**Mayor's Parlour  
Municipal Building  
VANDERBIJLPARK**

at

**08:00**



Notice is hereby given that a Special Meeting of the Emfuleni Local Municipality will be held in the **MAYOR'S PARLOUR, VANDERBIJLPARK** on **FRIDAY, 3 JUNE 2011** at **08:00**.

**M P GQELOSHA**  
**SPEAKER**

30 May 2011

- A G E N D A
- A. OPENING AND WELCOME
  - B. APPLICATION FOR LEAVE OF ABSENCE
  - C. INTRODUCTION OF SENIOR MANAGEMENT TEAM
  - D. DISCLOSURE OF INTEREST
  - E. ESTABLISHMENT OF SECTION 79/80 COMMITTEES
  - F. ELECTION OF REPRESENTATIVES ON SALGA STRUCTURES
  - G. PARTICIPATION OF EMFULENI LOCAL MUNICIPALITY REPRESENTATIVES IN IGR STRUCTURES
  - H. CODE OF CONDUCT FOR COUNCILLORS
  - I. STANDING ORDERS
  - J. REMUNERATION OF PUBLIC OFFICE BEARERS
  - K. DECLARATION OF INTERESTS
  - L. BUDGET AND IDP
  - M. INTERIM DELEGATION
  - N. WARD COMMITTEES
  - O. COUNCILLOR ORIENTATION AND INDUCTION
  - P. FUTURE MEETINGS
  - Q. CLOSURE
- South African history archive

## EMFULENI LOCAL MUNICIPALITY

### REPORTS OF THE MAYORAL COMMITTEE ON MATTERS WHICH MUST BE CONSIDERED BY THE COUNCIL ON 3 JUNE 2011

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**ITEM A2356**  
**DISCLOSURE OF INTERESTS**  
**(MC 31-05-2011)**

Item 5 of the Code of Conduct for Councillors as prescribed in the Municipal Systems Act 32 of 2000 reads as follows:

**"5. Disclosure of interests**

- (1) A councillor must-
- (a) *disclose to the municipal council, or any committee of which that councillor is a member, any direct or indirect personal or private business interest that the councillor, or any spouse, partner or business associate of that councillor may have in any matter before the council or the committee; and*
  - (b) *withdraw from the proceedings of the council or committee when that matter is considered by the council or committee, unless the council or committee decides that the councillor's direct or indirect interest in the matter is trivial or irrelevant.*
- (2) **A councillor who, or whose spouse, partner, business associate or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the municipality, must disclose full particulars of the benefit of which the councillor is aware at the first meeting or the municipal council at which it is possible for the councillor to make the disclosure.**
- (3) *This section does not apply to an interest or benefit which a councillor, or a spouse, partner, business associate or close family member, has or acquires in common with other residents of the municipality".*

In line with the Councillor's Code of Conduct, it is therefore:

**RECOMMENDED THAT**

1. Councillors who have interests as described in the Code of Conduct must disclose these at the Council Meeting or any applicable committee of which he/she is a member and
2. The Councillor who disclosed such interest must be recused from the Meeting when the item is called upon.

**ITEM A2357**  
**ESTABLISHMENT AND APPOINTMENT OF SECTION 79 AND 80 COMMITTEES**  
**(MC 31-05-2011)**

**PURPOSE**

The purpose of the report is to recommend to Council the establishment and appointment of members to the Section 79 and 80 Committees.

**DISCUSSION**

The Local Government: Municipal Structures Act, Act No. 117 of 1998, provides for the establishment of Section 79 and 80 Committees.

**SECTION 79 COMMITTEES**

The Section 79 Committees are Committees of Council appointed by the Council for specific purposes and are responsible and accountable directly to Council. The Council will normally delegate functions and powers to the Section 79 Committees however, there are other committees which have inherent legislative powers and the Council cannot take away such committee functions and powers but may appoint and dismiss members of such committees. The Council may also co-opt members which are not councillors to serve in the Section 79 Committees to provide and assist Council with their technical expertise.

The Committees must be established in such a way that they reflect gender balance and accommodate all political parties within the Municipality.

Historically the following Section 79 Committees were established in Emfuleni Local Municipality and they are:

1. **The Audit Committee:** Derives its functions and powers from the Local Government: Municipal Finance Management Act, Act No. 56 of 2003. It should be mentioned from the onset that this Committee consists of external people who are not councillors and they have been appointed for a duration of three (3) years. Taking this into account, the Council cannot de-establish the current Committee but must let the members serve on the Committee until the lapse of its term.
2. **The Land Tribunal Committee:** This Committee is composed of Councillors and it derives its functions and powers from the Gauteng Removal of Restrictive Conditions Act, Act No. 3 of 1996.
3. **Municipal Public Accounts Committee (MPAC):** This Committee is composed of Councillors and derives its functions and powers from the Local Government: Municipal Finance Management Act, Act 56 of 2003.
4. **Performance Audit Committee:** This Committee consists of external people whose term of office is for a duration of three years and Council cannot de-establish the Committee until the end of its term.
5. **Risk Committee:** This Committee consists of external people whose term of office is for a duration of three years and Council cannot de-establish the Committee until the end of its term.
6. **Gender Committee**

7. Petitions Committee
8. Rules and Ethics Committee

### **SECTION 80 COMMITTEES**

The Section 80 Committees are appointed by the Council to assist the Executive Mayor in the execution of his or her duties. These Committees are accountable to the Executive Mayor who also appoints the chairpersons of the Committees from his or her Mayoral Committee members. The number of these Committees cannot exceed the number of the Mayoral Committee members.

Emfuleni Local Municipality has eighty nine (89) Councillors and can therefore appoint not more than ten (10) Mayoral Committee members. Therefore, should the Emfuleni Local Municipality appoint ten (10) Mayoral members, it can therefore establish ten (10) Section 80 Committees.

Historically, the Emfuleni Local Municipality had the following section 80 committees:

1. Local Economic Development, Tourism and Development Planning;
2. Health and Social Development;
3. Housing;
4. Sport, Recreation, Arts and Culture;
5. Public Transport, Roads and Public Works;
6. Finance;
7. Waste Management, Refuse and Landfill;
8. Infrastructure Electricity, Water and Sanitation;
9. Public Safety and
10. Administration – Including Corporate Services, Human Resources, IT and Legal.

### **RECOMMENDED THAT**

Council establish and appoint Councillors to serve on the following Section 79 and 80 Committees:

1. **Local Economic Development, Tourism and Development Planning;**
2. **Health and Social Development;**
3. **Housing;**
4. **Sport, Recreation, Arts and Culture;**
5. **Public Transport, Roads and Public Works;**
6. **Finance;**
7. **Waste Management, Refuse and Landfill;**
8. **Infrastructure Electricity, Water and Sanitation;**
9. **Public Safety and**
10. **Administration – Including Corporate Services, Human Resources, IT and Legal.**

**ITEM A2358**  
**APPOINTMENT OF REPRESENTATIVES TO SALGA CONFERENCES AND WORKING COMMITTEES**  
**(MC 31-05-2011)**

**PURPOSE**

The purpose of the report is to request Council to appoint delegates to attend the SALGA Provincial and National Conferences and to appoint representatives to represent the Emfuleni Local Municipality to the SALGA Working Groups.

**INTRODUCTION**

SALGA is a listed public entity established in terms of Section 21 of the Companies Act, Act 61 of 1973, and is recognized by the Minister of Co-operative Governance and Traditional Affairs and in terms of the Organised Local Government Act, 1997 (Act 52 of 1997)

SALGA is an Association with a membership of two hundred and eighty three (283) municipalities. SALGA represents local Government on numerous intergovernmental forums such as the Provincial Coordinating Committee (PCC), Minister and MECs (MinMec) Forum, the Budget Forum, the National Council of Provinces (NCOP) and the Financial and Fiscal Commission.

SALGA aims, among other things, to:

- transform Local Government to enable it to fulfill its developmental role;
- enhance the role of provincial local government associations as provincial representatives and consultative bodies on local government ;
- raise the profile of local government;
- ensure full participation of women in local government;
- act as the national employers' organisation for municipal and provincial member employers and
- provide legal assistance to its members, using its discretion in connection with matters that affect employee relations.

**DISCUSSION**

The SALGA Constitution provides that Provincial and National Conferences must be held within sixty (60) and ninety (90) days, respectively , after the Elections. The member municipality must send delegates to attend both the said Conferences.

Furthermore, the Constitution provides that the Municipal Council must nominate representatives to attend the Provincial and National Conferences and to serve on the various SALGA Provincial Working Groups.

*"Working Groups" is defined as the governance structure established to develop policies, strategies and programmes to address critical local government issues; to facilitate co-operative governance between the spheres of government as mandated by the National Executive Committee or the Provincial Executive Committee respectively and facilitate consultation, co-ordination and participative decision-making between SALGA and its provincial and municipal members; chaired by a person duly appointed by the National Executive Committee or the Provincial Executive Committee from amongst the additional and/or co-opted members"*

The following are the Provincial Working Groups of SALGA:

1. Economic Development Working Group;
2. Municipal Finance and Administration Working Group;
3. Social Development, Health and Safety Working Group;
4. Municipal Services Working Group;
5. Human Resources Development Working Group and
6. Governance, Inter-Governmental Relations and International Relations Working Group.

The Municipal Council must appoint Councillors to attend the SALGA Provincial and National Conferences as well as Councillors to participate in the SALGA Provincial Working Groups.

**RECOMMENDED THAT**

1. the Municipal Council delegate the Chief Whip and the Speaker of Council to oversee the nomination of delegates to attend the SALGA Provincial and National Conferences;
2. the report must be submitted to Council within thirty (30) days from date of this meeting and
3. the Chief Whip be delegated to appoint representatives to the SALGA Provincial Working Committees.





**ITEM A2359**  
**PARTICIPATION OF EMFULENI LOCAL MUNICIPALITY IN IGR STRUCTURES**  
**(MC 31-05-2011)**

**PURPOSE**

The purpose of the report is to obtain Council commitment and approval of participation of the Emfuleni Local Municipality in the relevant IGR structures.

**DISCUSSION**

The aim and objective of intergovernmental relations is to promote and facilitate intergovernmental relations between the three spheres of government namely, National, Provincial and Local Government and to come about with a mechanism to settle intergovernmental disputes. This is in line with the provisions of Section 41(2) of the Constitution Act, Act 108 of 1996.

The Intergovernmental Relations Framework Act, Act 13 of 2005, provides for the establishment of a President's Coordinating Council, National Intergovernmental Forums, Provincial and Municipal Intergovernmental Forums as provided for in the Intergovernmental Framework Act, Act 13 of 2005, and IGR Policies.

**RECOMMENDED THAT**

the Municipal Council commits and approves the participation of Emfuleni Local Municipality on the relevant IGR Structures at Local, District, Provincial and National Levels in accordance with the provisions of the IGR Act and IGR Policies applicable at those levels.



## SCHEDULE 5

## CODE OF CONDUCT

**Preamble**

Councillors are elected to represent local communities on municipal councils, to ensure that municipalities have structured mechanisms of accountability to local communities, and to meet the priority needs of communities by providing services equitably, effectively and sustainably within the means of the municipality. In fulfilling this role councillors must be accountable to local communities and report back at least quarterly to constituencies on council matters, including the performance of the municipality in terms of established indicators. In order to ensure that councillors fulfil their obligations to their communities, and support the achievement by the municipality of its objectives set out in section 19 of the Act, the following Code of Conduct is established.

**Definitions**

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

**General conduct of councillors**

2. A councillor must—

- (a) perform the functions of office in good faith, honestly and a transparent manner; and
- (b) at all times act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised.

**Attendance at meetings**

3. A councillor must attend each meeting of the municipal council and of a committee of which that councillor is a member, except when—

- (a) leave of absence is granted in terms of an applicable law or as determined by the rules and orders of the council; or
- (b) that councillor is required in terms of this Code to withdraw from the meeting.

**Sanctions for non-attendance of meetings**

4. (1) A municipal council may impose a fine as determined by the standing rules and orders of the municipal council on a councillor for:

- (a) not attending a meeting which that councillor is required to attend in terms of item 3; or
- (b) failing to remain in attendance at such a meeting.

(2) A councillor who is absent from three or more consecutive meetings of a municipal council, or from three or more consecutive meetings of a committee, which that councillor is required to attend in terms of item 3, must be removed from office as a councillor.

(3) Proceedings for the imposition of a fine or the removal of a councillor must be conducted in accordance with a uniform standing procedure which each municipal council must adopt for the purposes of this item. The uniform standing procedure must comply with the rules of natural justice.

**Disclosure of interests**

5. (1) A councillor must—

(a) disclose to the municipal council, or to any committee of which that councillor is a member, any direct or indirect personal or private business interest that that councillor, or any spouse, partner or business associate of that councillor may have in any matter before the council or the committee: and

(b) withdraw from the proceedings of the council or committee when that matter is considered by the council or committee, unless the council or committee decides that the councillor's director indirect interest in the matter is trivial or irrelevant.

(2) A councillor who, or whose spouse, partner, business associate or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the municipality, must disclose full particulars of the benefit of which the councillor is aware at the first meeting of the municipal council at which it is possible for the councillor to make the disclosure.

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

#### Personal gain

6. (1) A councillor may not use the position or privileges of a councillor, or confidential information obtained as a councillor, for private gain or to improperly benefit another person.

(2) Except with the prior consent of the municipal council, a councillor may not—

(a) be a party to or beneficiary under a contract for—  
(i) the provision of goods or services to the municipality; or  
(ii) the performance of any work otherwise than as a councillor for the municipality;

(b) obtain a financial interest in any business of the municipality; or

(c) for a fee or other consideration appear on behalf of any other person before the council or a committee.

(3) If more than one quarter of the councillors object to consent being given to a councillor in terms of subitem (2), such consent may only be given to the councillor with the approval of the MEC for local government in the province,

#### Declaration of interests

7. (1) When elected or appointed, a councillor must within 60 days declare in writing to the municipal manager the following financial interests held by that councillor:

(a) shares and securities in any company;

(b) membership of any close corporation;

(c) interest in any trust;

(d) directorships;

(e) partnerships;

(f) other financial interests in any business undertaking;

(g) employment and remuneration;

(h) interest in property;

(i) pension; and

(j) subsidies, grants and sponsorships by any organisation.

(2) Any change in the nature or detail of the financial interests of a councillor must be declared in writing to the municipal manager annually.

(3) Gifts received by a councillor above a prescribed amount must also be declared in accordance with subitem (1).

(4) The municipal council must determine which of the financial interests referred in subitem (1) must be made public having regard to the need for confidentiality and the public interest for disclosure.

Act No. 117, 1998 LOCAL GOVERNMENT MUNICIPAL STRUCTURES ACT.  
1998

### Full-time councillors

8. A councillor who is a full-time councillor may not undertake any other paid work, except with the consent of a municipal council which consent shall not unreasonably be withheld.

### Rewards, gifts and favours

9. A councillor may not request, solicit or accept any reward, gift or favour for—
- voting or not voting in a particular manner on any matter before the municipal council or before a committee of which that councillor is a member;
  - persuading the council or any committee in regard to the exercise of any power, function or duty;
  - making a representation to the council or any committee of the council; or
  - disclosing privileged or confidential information.

### Unauthorised disclosure of information

10. (1) A councillor may not without the permission of the municipal council or a committee disclose any privileged or confidential information of the council or committee to any unauthorised person.

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

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

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

### Intervention in administration

11. A councillor may not, except as provided by law—
- interfere in the management or administration of any department of the municipal council unless mandated by council;
  - give or purport to give any instruction to any employee of the council except when authorised to do so;
  - obstruct or attempt to obstruct the implementation of any decision of the council or a committee by an employee of the council; or
  - encourage or participate in any conduct which would cause or contribute to maladministration in the council.

### Council property

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

### Duty of chairpersons of municipal councils

13. (1) If the chairperson of a municipal council, on reasonable suspicion, is of the opinion that a provision of this Code has been breached, the chairperson must—

- authorise an investigation of the facts and circumstances of the alleged breach;
- give the councillor a reasonable opportunity to reply in writing regarding the alleged breach; and
- report the matter to a meeting of the municipal council after paragraphs (a) and (b) have been complied with.

(2) A report in terms of subitem (1)(c) is open to the public.

(3) The chairperson must report the outcome of the investigation to the MEC for local government in the province concerned.

(4) The chairperson must ensure that each councillor when taking office is given a copy of this Code and that a copy of the Code is available in every room or place where the council meets.

#### Breaches of Code

14. (1) A municipal council may—

(a) investigate and make a finding on any alleged breach of a provision of this Code; or

(b) establish a special committees—

(i) to investigate and make a finding on any alleged breach of this Code; and  
(ii) to make appropriate recommendations to the council.

(2) If the council or a special committee finds that a councillor has breached a provision of this Code, the council may—

(a) issue a formal warning to the councillor;

(b) reprimand the councillor;

(c) request the MEC for local government in the province to suspend the councillor for a period;

(d) fine the councillor; and

(e) request the MEC to remove the councillor from office.

(3) (a) Any councillor who has been warned, reprimanded or fined in terms of paragraph (a), (b) or (d) of subitem (2) may within 14 days of having been notified of the decision of council appeal to the MEC for local government in writing setting out the reasons on which the appeal is based.

(b) A copy of the appeal must be provided to the council.

(c) The council may within 14 days of receipt of the appeal referred to in paragraph (b) make any representation pertaining to the appeal to the MEC for local government in writing.

(d) The MEC for local government may, after having considered the appeal, confirm, set aside or vary the decision of the council and inform the councillor and the council of the outcome of the appeal.

(4) The MEC for local government may appoint a person or a committee to investigate any alleged breach of a provision of this Code and to make a recommendation on whether the councillor should be suspended or removed from office.

(5) The Commissions Act, 1947 (Act No. 8 of 1947), may be applied to an investigation in terms of subitem (3).

(6) If the MEC is of the opinion that the councillor has breached a provision of this Code, and that such contravention warrants a suspension or removal from office, the MEC may—

(a) suspend the councillor for a period and on conditions determined by the MEC;

or

(b) remove the councillor from office.

(7) Any investigation in terms of this item must be in accordance with the rules of natural justice.

#### Application of Code to traditional leaders

15. (1) Items 1.2, 5, 6, 9 (b) to (d), 10.11, 12.13 and 14 (1) apply to a traditional leader who participates or has participated in the proceedings of a municipal council in terms of section 81.

(2) These items must be applied to the traditional leader in the same way they apply to councillors.

(3) If a municipal council or a special committee in terms of item 14 (1) finds that a traditional leader has breached a provision of this Code, the council may—

(a) issue a formal warning to the traditional leader; or

(b) request the MEC for local government in the province to suspend or cancel the traditional leader's right to participate in the proceedings of the council.

Act No. 117,1998 LOCAL Government **MUNICIPAL STRUCTURES ACT.**  
1998

(4) The MEC for local government may appoint a person or a committee to investigate any alleged breach of a provision of this Code and to make a recommendation on whether the right of the traditional leader to participate in the proceedings of the municipal council should be suspended or cancelled.

(5) The Commissions Act, 1947, may be applied to an investigation in terms of subitem (4).

(6) If the MEC is of the opinion that the traditional leader has breached a provision of this Code, and that such breach warrants a suspension or cancellation of the traditional leader's right to participate in the council's proceedings, the MEC may

- (a) suspend that right for a period and on conditions determined by the MEC; or
- (b) cancel that right.

(7) Any investigation in terms of this item must be in accordance with the rules of natural justice.

(8) The suspension or cancellation of a traditional leader's right to participate in the proceedings of a council does not affect that traditional leader's right to address the council in terms of section 81(3).



## SCHEDULE 6

*Identification of traditional leaders for purposes of section 81***Manner of identification**

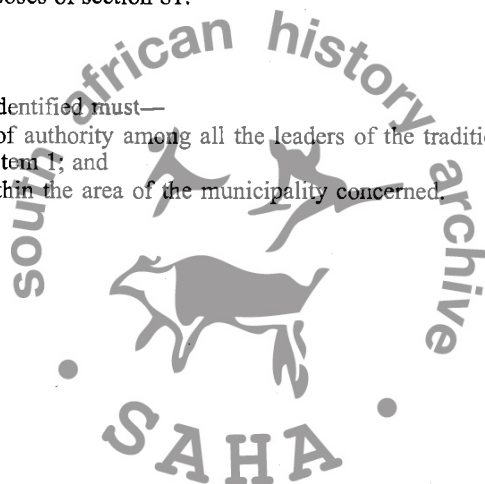
1. (1) If it comes to the notice of the MEC for local government in a province that one or more traditional authorities traditionally observe a system of customary law in the area of a municipality, the MEC—

- (a) must inform the provincial House of Traditional Leaders of the maximum number of traditional leaders that may be identified in terms of section 81 to participate in the proceedings of the council of that municipality;
- (b) must request that House of Traditional Leaders to recommend which leaders of that traditional authority or of those traditional authorities can be identified for the purposes of section 81;
- (c) on receipt of the recommendation, or if no recommendation is received within 30 days after the request in terms of paragraph (b) has been made, may identify the leaders of that authority or authorities; and
- (d) if any leaders have been identified in terms of paragraph (c), must submit the names of those leaders to the municipal manager of that council.

(2) In a province in which no provincial House of Traditional Leaders has been established, the MEC must consult the traditional authority concerned before identifying any leader for the purposes of section 81.

**Guidelines for identification**

2. The traditional leader to be identified must—
- (a) hold the supreme office of authority among all the leaders of the traditional authority referred to in item 1; and
  - (b) be ordinarily resident within the area of the municipality concerned.



## SCHEDULE 5

## CODE OF CONDUCT

## Preamble

Councillors are elected to represent local communities on municipal councils, to ensure that municipalities have structured mechanisms of accountability to local communities, and to meet the priority needs of communities by providing services equitably, effectively and sustainably within the means of the municipality. In fulfilling this role councillors must be accountable to local communities and report back at least quarterly to constituencies on council matters, including the performance of the municipality in terms of established indicators. In order to ensure that councillors fulfil their obligations to their communities, and support the achievement by the municipality of its objectives set out in section 19 of the Act, the following Code of Conduct is established.

## Definitions

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

## General conduct of councillors

2. A councillor must—

- (a) perform the functions of office in good faith, honestly and a transparent manner; and
- (b) at all times act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised.

## Attendance at meetings

3. A councillor must attend each meeting of the municipal council and of a committee of which that councillor is a member, except when—

- (a) leave of absence is granted in terms of an applicable law or as determined by the rules and orders of the council; or
- (b) that councillor is required in terms of this Code to withdraw from the meeting.

## Sanctions for non-attendance of meetings

4. (1) A municipal council may impose a fine as determined by the standing rules and orders of the municipal council on a councillor for:

- (a) not attending a meeting which that councillor is required to attend in terms of item 3; or
- (b) failing to remain in attendance at such a meeting.

(2) A councillor who is absent from three or more consecutive meetings of a municipal council, or from three or more consecutive meetings of a committee, which that councillor is required to attend in terms of item 3, must be removed from office as a councillor.

(3) Proceedings for the imposition of a fine or the removal of a councillor must be conducted in accordance with a uniform standing procedure which each municipal council must adopt for the purposes of this item. The uniform standing procedure must comply with the rules of natural justice.

## Disclosure of interests

5. (1) A councillor must—



- (a) disclose to the municipal council, or to any committee of which that councillor is a member, any direct or indirect personal or private business interest that that councillor, or any spouse, partner or business associate of that councillor may have in any matter before the council or the committee; and
- (b) withdraw from the proceedings of the council or committee when that matter is considered by the council or committee, unless the council or committee decides that the councillor's director indirect interest in the matter is trivial or irrelevant.

(2) A councillor who, or whose spouse, partner, business associate or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the municipality, must disclose full particulars of the benefit of which the councillor is aware at the first meeting of the municipal council at which it is possible for the councillor to make the disclosure.

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

#### Personal gain

6. (1) A councillor may not use the position or privileges of a councillor, or confidential information obtained as a councillor, for private gain or to improperly benefit another person.

(2) Except with the prior consent of the municipal council, a councillor may not—

- (a) be a party to or beneficiary under a contract for—
  - (i) the provision of goods or services to the municipality; or
  - (ii) the performance of any work otherwise than as a councillor for the municipality;
- (b) obtain a financial interest in any business of the municipality; or
- (c) for a fee or other consideration appear on behalf of any other person before the council or a committee.

(3) If more than one quarter of the councillors object to consent being given to a councillor in terms of subitem (2), such consent may only be given to the councillor with the approval of the MEC for local government in the province.

#### Declaration of interests

7. (1) When elected or appointed, a councillor must within 60 days declare in writing to the municipal manager the following financial interests held by that councillor:

- (a) shares and securities in any company;
- (b) membership of any close corporation;
- (c) interest in any trust;
- (d) directorships;
- (e) partnerships;
- (f) other financial interests in any business undertaking;
- (g) employment and remuneration;
- (h) interest in property;
- (i) pension; and
- (j) subsidies, grants and sponsorships by any organisation.

(2) Any change in the nature or detail of the financial interests of a councillor must be declared in writing to the municipal manager annually.

(3) Gifts received by a councillor above a prescribed amount must also be declared in accordance with subitem (1).

(4) The municipal council must determine which of the financial interests referred in subitem (1) must be made public having regard to the need for confidentiality and the public interest for disclosure.

Act No. 117, 1998 LOCAL GOVERNMENT MUNICIPAL STRUCTURES ACT.  
1998**Full-time councillors**

8. A councillor who is a full-time councillor may not undertake any other paid work, except with the consent of a municipal council which consent shall not unreasonably be withheld.

**Rewards, gifts and favours**

9. A councillor may not request, solicit or accept any reward, gift or favour for—
- (a) voting or not voting in a particular manner on any matter before the municipal council or before a committee of which that councillor is a member;
  - (b) persuading the council or any committee in regard to the exercise of any power, function or duty;
  - (c) making a representation to the council or any committee of the council; or
  - (d) disclosing privileged or confidential information.

**Unauthorised disclosure of information**

10. (1) A councillor may not without the permission of the municipal council or a committee disclose any privileged or confidential information of the council or committee to any unauthorised person.

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

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

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

**Intervention in administration**

11. A councillor may not, except as provided by law—
- (a) interfere in the management or administration of any department of the municipal council unless mandated by council;
  - (b) give or purport to give any instruction to any employee of the council except when authorised to do so;
  - (c) obstruct or attempt to obstruct the implementation of any decision of the council or a committee by an employee of the council; or
  - (d) encourage or participate in any conduct which would cause or contribute to maladministration in the council.

**Council property**

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

**Duty of chairpersons of municipal councils**

13. (1) If the chairperson of a municipal council, on reasonable suspicion, is of the opinion that a provision of this Code has been breached, the chairperson must—

- (a) authorise an investigation of the facts and circumstances of the alleged breach;
- (b) give the councillor a reasonable opportunity to reply in writing regarding the alleged breach; and
- (c) report the matter to a meeting of the municipal council after paragraphs (a) and (b) have been complied with.

(2) A report in terms of subitem (1)(c) is open to the public.

(3) The chairperson must report the outcome of the investigation to the MEC for local government in the province concerned.

(4) The chairperson must ensure that each councillor when taking office is given a copy of this Code and that a copy of the Code is available in every room or place where the council meets.

#### Breaches of Code

14. (1) A municipal council may—

(a) investigate and make a finding on any alleged breach of a provision of this Code; or

(b) establish a special committee—

(i) to investigate and make a finding on any alleged breach of this Code; and

(ii) to make appropriate recommendations to the council.

(2) If the council or a special committee finds that a councillor has breached a provision of this Code, the council may—

(a) issue a formal warning to the councillor;

(b) reprimand the councillor;

(c) request the MEC for local government in the province to suspend the councillor for a period;

(d) fine the councillor; and

(e) request the MEC to remove the councillor from office.

(3) (a) Any councillor who has been warned, reprimanded or fined in terms of paragraph (a), (b) or (d) of subitem (2) may within 14 days of having been notified of the decision of council appeal to the MEC for local government in writing setting out the reasons on which the appeal is based.

(b) A copy of the appeal must be provided to the council.

(c) The council may within 14 days of receipt of the appeal referred to in paragraph (b) make any representation pertaining to the appeal to the MEC for local government in writing.

(d) The MEC for local government may, after having considered the appeal, confirm, set aside or vary the decision of the council and inform the councillor and the council of the outcome of the appeal.

(4) The MEC for local government may appoint a person or a committee to investigate any alleged breach of a provision of this Code and to make a recommendation on whether the councillor should be suspended or removed from office.

(5) The Commissions Act, 1947 (Act No. 8 of 1947), may be applied to an investigation in terms of subitem (3).

(6) If the MEC is of the opinion that the councillor has breached a provision of this Code, and that such contravention warrants a suspension or removal from office, the MEC may—

(a) suspend the councillor for a period and on conditions determined by the MEC;

or

(b) remove the councillor from office.

(7) Any investigation in terms of this item must be in accordance with the rules of natural justice.

#### Application of Code to traditional leaders

15. (1) Items 1.2, 5, 6, 9 (b) to (d), 10.11, 12.13 and 14 (1) apply to a traditional leader who participates or has participated in the proceedings of a municipal council in terms of section 81.

(2) These items must be applied to the traditional leader in the same way they apply to councillors.

(3) If a municipal council or a special committee in terms of item 14 (1) finds that a traditional leader has breached a provision of this Code, the council may—

(a) issue a formal warning to the traditional leader; or

(b) request the MEC for local government in the province to suspend or cancel the traditional leader's right to participate in the proceedings of the council.

Act No. 117,1998 LOCAL Government MUNICIPAL STRUCTURES ACT.  
1998

(4) The MEC for local government may appoint a person or a committee to investigate any alleged breach of a provision of this Code and to make a recommendation on whether the right of the traditional leader to participate in the proceedings of the municipal council should be suspended or cancelled.

(5) The Commissions Act, 1947, may be applied to an investigation in terms of subitem (4).

(6) If the MEC is of the opinion that the traditional leader has breached a provision of this Code, and that such breach warrants a suspension or cancellation of the traditional leader's right to participate in the council's proceedings, the MEC may

- (a) suspend that right for a period and on conditions determined by the MEC; or
- (b) cancel that right.

(7) Any investigation in terms of this item must be in accordance with the rules of natural justice.

(8) The suspension or cancellation of a traditional leader's right to participate in the proceedings of a council does not affect that traditional leader's right to address the council in terms of section 81(3).



**SCHEDULE 6*****Identification of traditional leaders for purposes of section 81*****Manner of identification**

1. (1) If it comes to the notice of the MEC for local government in a province that one or more traditional authorities traditionally observe a system of customary law in the area of a municipality, the MEC—

- (a) must inform the provincial House of Traditional Leaders of the maximum number of traditional leaders that may be identified in terms of section 81 to participate in the proceedings of the council of that municipality;
- (b) must request that House of Traditional Leaders to recommend which leaders of that traditional authority or of those traditional authorities can be identified for the purposes of section 81;
- (c) on receipt of the recommendation, or if no recommendation is received within 30 days after the request in terms of paragraph (b) has been made, may identify the leaders of that authority or authorities; and
- (d) if any leaders have been identified in terms of paragraph (c), must submit the names of those leaders to the municipal manager of that council.

(2) In a province in which no provincial House of Traditional Leaders has been established, the MEC must consult the traditional authority concerned before identifying any leader for the purposes of section 81.

**Guidelines for identification**

2. The traditional leader to be identified must—
- (a) hold the supreme office of authority among all the leaders of the traditional authority referred to in item 1; and
  - (b) be ordinarily resident within the area of the municipality concerned.



**ITEM A2360**  
**CODE OF CONDUCT FOR COUNCILLORS**  
**(MC 31-05-2011)**

**INTRODUCTION**

The purpose of the report is to present to Council the Code of Conduct attached as **Annexure (pages 8 - 13)** for Councillors to familiarize themselves with the document in order to ensure compliance.

**DISCUSSION**

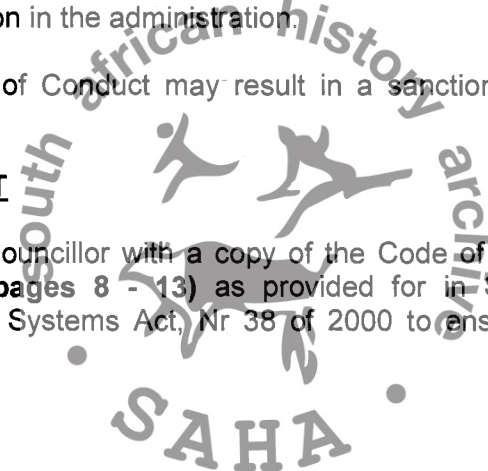
Section 54 of the Local Government: Municipal Systems Act, Nr. 38 of 2000, provides that the Code of Conduct contained in Schedule 1 of that Act applies to every member of a municipal council.

The Speaker is obliged to ensure that each Councillor is given a copy of the Code of Conduct and that a copy is available in every venue where the Council meets. Councillors should pay particular attention to the provisions relating to the obligation to attend meetings, disclosure and declaration of interests, the prohibition on receiving rewards, gifts and favours and on unauthorized disclosure of information, the prohibition on intervention in the administration.

Breaches of the Code of Conduct may result in a sanction including removal from office.

**RECOMMENDED THAT**

Council provide each Councillor with a copy of the Code of Conduct attached to the report as **Annexure (pages 8 - 13)** as provided for in Section 54 of the Local Government: Municipal Systems Act, Nr 38 of 2000 to ensure compliance by each Councillor.



**ITEM A2361**  
**STANDING ORDERS**  
**(MC 31-05-2011)**

**INTRODUCTION**

--- The purpose of the report is to present to Council the Standing Orders attached under **separate cover** which regulate the meeting procedures of Council and its Committees.

**DISCUSSION**

At its meeting held on 30 June 2003, the Council adopted a set of Standing Orders which regulate the proceedings of Council meetings and its committees. All Councillors must be provided with a copy of the said Standing Orders.

**CONCLUSION**

It is recommended that Councillors familiarize themselves with the Standing Orders as this will facilitate the efficient conduct of council business.

**RECOMMENDED THAT**

Councillors familiarize themselves with the Standing Orders, attached as **Annexure (Distributed under separate cover)**.



**ITEM A2362**  
**SALARIES, ALLOWANCE AND OTHER BENEFITS OF COUNCILLORS**  
**(MC 31-05-2011)**

**INTRODUCTION**

The salaries, allowances and benefits of Councilors were amended by Government Gazette Number 33867 of 10 December 2010. Salga issued a circular to clarify the notice under Circular 56 of 2010. Attached as well are the comments by Salga on the determination of upper limits of salaries, allowances and other benefits of the Municipal Councilors draft notice (November 2010). Attached as **Annexure (pages 16 - 26)**.

The MEC of Local Government and Housing gave concurrence in terms of section 7(3) of the Remuneration of Public Bearers Act, 1998, (Act, 1998, (Act No. 20 of 1988 as amended). The letter of MEC is attached as **Annexure (pages 27 - 43)**.

**DISCUSSION**

The grading of the Municipality ranges from 1 – 6, with 6 being the Metro's. The grading is calculated based on the following two criterion:-

**1. The total Municipal Income**

Income includes rates on property, other taxes and duties, interest earned on invested funds, amongst others, but excludes transfers and / or grants from the National Fiscus (eg. MIG Funds, Equitable Share)

**2. The total population of the Municipality**

Based on the latest available official statistics of the population, as determined by the Statistician-General

Total package of full-time Councilors is determined in paragraph 5 of the mentioned Gazette and that of part-time Councilors in paragraph 8.

**Comments of the Chief Financial Officer**

Sufficient provision was made on the 2010/2011 operating budget for the expenditure.

**Comments of the Municipal Manager**

The recommendations are supported.

**RECOMMENDED THAT**

1. it be noted that the determination of **Government Notice 33867 Remuneration of Public Bearers Act, 1998 (Act No. 20 of 1998) determination of the Upper Limits of the Salaries, Allowances and Benefits of Different members of Municipal Councils**, was implemented retrospectively from 01 July 2010 and
2. the implementation was done in respect of definition (1) of the notice and that the attached confirm the Grade of the Emfuleni Local Municipality as a **GRADE 5 (FIVE) Municipality**; with calculations done in accordance with paragraph 2,3 & 4 of this notice:

ASPECT	POINTS
Total Municipal Income	41.67
Total Municipal Population	41.67
<b>Total</b>	<b>83.34</b>





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**GOVERNMENT NOTICE**

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**DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS**

No. 1196

10 December 2010

**REMUNERATION OF PUBLIC OFFICE BEARERS ACT, 1998  
(ACT NO. 20 OF 1998)****DETERMINATION OF UPPER LIMITS OF SALARIES, ALLOWANCES AND  
BENEFITS OF DIFFERENT MEMBERS OF MUNICIPAL COUNCILS**

Under the powers vested in me by sections 7(1), 8(5) (a) and 9(5)(a) of the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998), I, Sicelo Shiceka, Minister for Cooperative Governance and Traditional Affairs, hereby-

- (a) after consultation with the Member of the Executive Council responsible for local government in each province; and
- (b) after taking into consideration the matters listed in paragraphs (a) to (i) of section 7(1) of that Act,

determine the upper limits of the salaries, allowances and benefits of the different members of municipal councils as set out in the Schedule with effect from 1 July 2010 in respect of that municipal council, and repeal Government Notice No. R. 1225 of 21 December 2009 with effect from the same date.

**MR SICELO SHICEKA, MP****MINISTER FOR COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS**

## SCHEDULE

### PREAMBLE

The salary and allowances of a member of a municipal council is determined by that municipal council by resolution of a supporting vote of a majority of its members, in consultation with the member of the Executive Council responsible for local government in the province concerned, having regard to the upper limits as set out hereunder, the financial year of municipal councils, and the affordability of municipal councils to pay within the different levels of remuneration to councillors.

For purposes of implementing this Government Notice, "in consultation with" means that municipalities will require the concurrence of the member of the Executive Council responsible for local government in the province concerned.

### Definitions

1. In this Schedule, unless the context otherwise indicates, a word or phrase to which a meaning has been assigned in the *Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998)* (hereafter "the Act") and the *Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998)* (hereafter "the Structures Act"), has that meaning and -

"**basic salary**" means the component of the salary that excludes a housing allowance as provided in items 6(b) and 9(b), the municipal contribution to a pension fund as provided in item 11(a) and the municipal contribution to a medical aid scheme as provided in item 11(b);

"**full-time councillor**" means a councillor who has been elected or appointed to an office which has been designated as full-time in terms of section 18(4) of the Structures Act;

"**grade**" means the grade of municipal council as determined in terms of item 4;

"**total municipal income**" means in respect of a metropolitan, local or district municipality the sum total of the revenue income for the 2009 / 2010 financial year of the municipality concerned, including rates on property, fees for services rendered by the municipality, or on its behalf by a municipal entity, together with surcharges, other authorised taxes, levies and duties, income from fines for traffic offences and contravention of municipal by-laws or legislation assigned to the local sphere of government, regional services and regional establishment levies (or its replacement) referred to in section 93(6) of the Structures Act, interest earned on invested funds, rental for the use of municipal movable or immovable property, amounts received as agent for other spheres of government, but excluding transfers and / or grants from the national fiscus;

**"out of pocket expenses"** means actual and necessary expenses incurred by a councillor which have been specifically authorised or which are provided for in terms of the municipality's policy, in connection with a specific official or ceremonial duty which has been delegated to the councillor in question;

**"part-time councillor"** means a councillor other than a full-time councillor;

**"total population"** means the latest available official statistics of the population residing in the area of jurisdiction of a metropolitan, local or district municipality, as determined by the Statistician-General in terms of the Statistics Act, 1999 (Act No. 6 of 1999);

*add to G*  
*NB*  
**"salary"** includes a basic salary component, a housing allowance as provided in items 6(b) and 9(b), the municipal contribution to a pension fund as provided in item 11(a) and the municipal contribution to a medical aid scheme as provided in item 11(b); and

**"total remuneration package"** is the total cost to a municipality of a basic salary component, a travelling allowance as provided in items 6(a) and 9(a), a housing allowance as provided in items 6(b) and 9(b), the municipal contribution to a pension fund as provided in item 11(a) and the municipal contribution to a medical aid scheme as provided in item 11(b) to a councillor in a municipal financial year.

#### Allocation of number of points for total municipal income

2. The number of points allocated for the total municipal income of a municipality is as follows:

TOTAL MUNICIPAL INCOME		NUMBER OF POINTS
R 0	- R 10,000,000	8.33
R 10,000,001	- R 50,000,000	16.67
R 50,000,001	- R 200,000,000	25.00
R 200,000,001	- R 1,500,000,000	33.33
R 1,500,000,001	- R 2,000,000,000	41.67
More than R 2,000,000,000		50.00

#### Allocation of number of points for total population

3. The number of points allocated for the total population within a municipality, is as follows:

TOTAL POPULATION		NUMBER OF POINTS
0	- 50,000	8.33
50,001	- 100,000	16.67
100,001	- 250,000	25.00
250,001	- 550,000	33.33
550,001	- 1,800,000	41.67
More than 1,800,000		50.00

### Determination of grade of municipal council

4. (a) The sum of the number of points allocated to a municipal council, other than a municipal council referred to in paragraph (b), in terms of items 2 and 3 respectively, determines the grade of such municipal council in accordance with the following table:

GRADE OF MUNICIPAL COUNCIL	POINTS
1	0 to 16.66
2	16.67 to 33.33
3	33.34 to 50.00
4	50.01 to 66.67
5	66.68 to 83.35
6	83.36 and above

(b) A council that does not have any municipal income is a grade 1 municipal council as envisaged in paragraph (a).

### Upper limits of the annual total remuneration packages of full-time councillors

5. The upper limit of the annual total remuneration package of a full-time councillor is as follows:

GRADE	MAYOR OR EXECUTIVE MAYOR			SPEAKER, DEPUTY MAYOR OR DEPUTY EXECUTIVE MAYOR			MEMBER OF THE EXECUTIVE COMMITTEE OR MAYORAL COMMITTEE, WHIP OR CHAIRPERSON OF A SUBCOUNCIL		
	75% SALARY	25% MOTOR VEHICLE ALLOWANCE	100% TOTAL REMUNERATION PACKAGE	SALARY	MOTOR VEHICLE ALLOWANCE	TOTAL REMUNERATION PACKAGE	SALARY	MOTOR VEHICLE ALLOWANCE	TOTAL REMUNERATION PACKAGE
6	723,191	241,064	964,255	578,552	192,851	771,402	542,393	108,798	723,191
5	531,571	177,191	708,762	425,256	141,752	540,008	398,678	132,893	531,571
4	453,817	151,272	605,089	363,053	121,018	484,071	340,362	113,454	453,816
3	437,069	145,690	582,758	349,653	116,551	466,205	327,801	109,267	437,068
2	409,249	136,416	545,665	327,398	109,133	436,531	306,936	102,312	409,248
1	397,322	132,529	529,763	317,358	105,953	443,810	297,991	99,330	397,321

"salary" includes a basic salary component, a housing allowance as provided in item 6(b), the municipal contribution to a pension fund as provided in item 11(a) and the municipal contribution to a medical aid scheme as provided in item 11(b). Plenary type municipal mayors should be remunerated according to the total remuneration package column of Mayor/Executive Mayor.

### Upper limits of the allowances of full-time councillors

6. The upper limits of the allowances of a full-time councillor, which form part of the total remuneration package, are as follows:

(a) Motor vehicle allowance:

- (i) An allowance of not more than 25% of the annual total remuneration package of a councillor concerned as determined in terms of item 5, and which allowance includes running and maintenance costs incurred on official business up to 500 kilometres per month;

In addition to the allowance referred to in subparagraph (i), and in addition to the annual total remuneration package of a councillor as determined in terms of item 5, official distances travelled in excess of 500 kilometres in a particular month may be claimed in accordance with the applicable tariffs prescribed by the Department of Transport for the use of privately owned vehicles;

- (ii) For the purposes of claiming running and maintenance allowances, a logbook acceptable to the South African Revenue Service reflecting the official and private kilometres travelled per month must be kept;

- (iv) Where a municipal council makes a vehicle available to a councillor, other than an executive mayor or mayor where applicable, for use on official business, the councillor would not be entitled to the motor vehicle allowance as provided for in paragraphs (i) and (ii), and as determined in terms of item 5; and

- (v) Nothing herein contained shall prevent a councillor from making use of a council owned vehicle for attendance at a specific function which that councillor has been delegated to attend.

(b) Housing allowance:

A councillor may structure their salary to include a housing allowance.

Additional  
7 500 km / m

TAKE A  
VEHICLE  
NOT TO  
BE GIVEN  
TRAVEL ALLOW.

(c) Out of pocket expenses:

In addition to the total remuneration package, a councillor must be reimbursed for actual out of pocket expenses incurred during the execution of official and ceremonial duties.

**Upper limit of remuneration or allowance in respect of appointed councillors**

7. The upper limit of the allowance of a councillor who has been appointed to a district council in terms of section 23(1)(b) of the Structures Act, is as follows:

(a) If such councillor is elected or appointed as speaker, mayor, executive mayor, member of a mayoral committee, member of an executive committee or part-time member of a district council, the upper limit of the remuneration to which such councillor is entitled, is equal to the difference between the total remuneration package he or she is receiving as a member of the local council and the total remuneration package allocated to that office in the district council in terms of items 5, 6, 8, 9, 10 and 11 as the case may be.

(b) If the upper limit of the total remuneration package which a councillor is receiving as a member of a local council is equal to or higher than the upper limit of the total remuneration package to which he or she is entitled to as an appointed councillor to the district council, such councillor is entitled to receive, in addition to the total remuneration package, an allowance of not more than R737 per sitting of the district council or any committee of that council: Provided that this allowance is limited to R737 per day, regardless of the number of meetings of the district council or committees of that council that are attended by such councillor on a specific day.

(c) A district council is responsible for –

- (i) the payment of the remuneration or the allowance referred to in paragraphs (a) and (b) respectively; and
- (ii) the reimbursement of travel expenditure incurred by a councillor during the performance of official functions on behalf of that district municipality, in terms of that district council's policy, and not exceeding the applicable tariffs prescribed by the Department of Transport for the use of privately owned vehicles.



### Upper limits of the annual total remuneration packages of part-time councillors

8. (1) The upper limit of the annual total remuneration package of a part-time councillor is as follows:

GRADE	MAYOR / EXECUTIVE MAYOR			SPEAKER, DEPUTY MAYOR OR DEPUTY EXECUTIVE MAYOR			MEMBER OF THE EXECUTIVE COMMITTEE OR MAYORAL COMMITTEE			OTHER PART-TIME MEMBERS		
	SALARY	MOTOR VEHICLE ALLOWANCE	TOTAL REMUNERATION PACKAGE	SALARY	MOTOR VEHICLE ALLOWANCE	TOTAL REMUNERATION PACKAGE	SALARY	MOTOR VEHICLE ALLOWANCE	TOTAL REMUNERATION PACKAGE	SALARY	MOTOR VEHICLE ALLOWANCE	TOTAL REMUNERATION PACKAGE
6	397,754	132,585	530,339	318,203	106,068	424,270	298,315	99,438	397,754	253,116	84,372	337,488
5	292,363	97,454	389,818	233,890	77,963	311,853	219,272	73,091	292,363	159,471	53,157	212,628
4	249,599	83,200	323,799	199,678	66,560	266,238	187,199	62,400	249,599	136,144	45,381	181,525
3	240,388	80,129	320,517	192,310	64,103	256,413	180,290	60,097	240,387	131,120	43,707	174,826
2	225,086	75,029	300,115	180,069	60,023	240,092	168,814	56,271	225,085	122,774	40,925	163,698
1	218,527	72,842	291,370	174,821	58,274	233,095	163,895	54,632	218,526	119,196	39,732	158,928

"salary" includes a basic salary component, a housing allowance as provided in item 9(b), the municipal contribution to a pension fund as provided in item 11(a) and the municipal contribution to a medical aid scheme as provided in item 11(b).  
Plenary type municipal mayors should be remunerated according to the total remuneration package column of Mayor/Executive Mayor.

### Upper limits of the allowances of part-time councillors

9. The upper limits of the allowances of a part-time councillor, which form part of the total remuneration package, are as follows:

(a) Motor vehicle allowance: ●

- (i) An allowance of not more than 25% of the annual total remuneration package of a councillor concerned as determined in terms of item 8, and which allowance includes running and maintenance costs incurred on official business up to 500 kilometres per month;
- (ii) In addition to the allowance referred to in subparagraph (i), and in addition to the annual total remuneration package of a councillor as determined in terms of item 8, official distances travelled in excess of 500 kilometres in a particular month may be claimed in accordance with the applicable tariffs prescribed by the Department of Transport for the use of privately owned vehicles;

- (iii) For the purposes of claiming running and maintenance allowances, a logbook acceptable to the South African Revenue Service reflecting the official and private kilometres travelled per month must be kept;
- (iv) Where a municipal council makes a vehicle available to a councillor, other than an executive mayor or a mayor where applicable, for use on official business, the councillor would not be entitled to the motor vehicle allowance as provided for in subparagraphs (i) and (ii), and as determined in terms of item 8; and
- (v) Nothing herein contained shall prevent a councillor from making use of a council owned vehicle for attendance at a specific function which that councillor has been delegated to attend.
- (b) Housing allowance:
- A councillor may structure their salary to include a housing allowance.
- (c) Out of pocket expenses:

In addition to the total remuneration package, a councillor must be reimbursed for reasonable and actual out of pocket expenses incurred during the execution of official and ceremonial duties.

#### Upper limits of cellphone allowances of councillors

*Additional*

10. In addition to the annual total remuneration packages provided for in items 5 and 8 respectively, a councillor may obtain a fixed allowance of not more than the following amounts in respect of cellphones:

- (a) R2997 per month may be paid to a full-time executive mayor or mayor of a grade 6 municipal council;
- (b) R1496 per month may be paid to a full-time councillor, other than an executive mayor or mayor of a grade 6 municipal council; or
- (c) R933 per month may be paid to a part-time councillor.

**Upper limits of pension fund contributions and medical aid benefits of councillors**

11. (a) The upper limit of the contribution to be made by a municipal council to the pension fund of which a councillor of that council is a member, is 15% of the basic salary of such councillor.

(b) The upper limit of the contribution to be made by a municipal council to the medical aid scheme of which a councillor of that council is a member, is  $\frac{2}{3}$  of the membership fee to a maximum of R1440 per month: Provided that a part-time councillor is not a member of a medical aid scheme by virtue of his or her employment in a capacity other than a councillor.

**Tax allowance for all municipal councillors as permitted by section 8(1)(d) of the Income tax Act, 1962**

12. An amount of R120, 000 per annum determined as the amount to which section 8 (1)(d) of the Income Tax Act, 1962, applies. This amount is included in the basic salary component.



**CIRCULAR 56 / 2010**

**TO :** SALGA PROVINCIAL CHAIRPERSONS  
EXECUTIVE MAYORS / MAYORS  
SPEAKERS  
CHIEF WHIPS  
MUNICIPAL MANAGERS

**CC :** PROVINCIAL EXECUTIVE OFFICERS

**FROM :** XOLILE GEORGE  
CHIEF EXECUTIVE OFFICER

**DATE :** 10 DECEMBER 2010

**RE : DETERMINATION OF UPPER LIMITS OF SALARIES, ALLOWANCES AND BENEFITS OF COUNCILLORS**

With reference to the SALGA Circulars 53 and 55 issued on the 15th of November 2010 and 30 November 2010 respectively, we confirm that following comments received from municipalities on the draft November 2010 Notice, SALGA submitted consolidated comments to the Minister on 3 December 2010. The detailed comments are attached hereto for ease of reference.

We are pleased to advise that the Minister of Cooperative Governance and Traditional Affairs, Mr Sicelo Shiceka has now promulgated the notice to following the Independent Commission's recommendations on 12 November 2010.

The Minister signed the determination and this was promulgated on 10 December 2010 in the Government Gazette No. 33867. The determination notice is attached hereto for ease of reference.

**1. Key features of the Notice**

Certain key features of the notice are the following:

- (a) An across the board percentile increase in salaries, allowances and benefits of 5% per annum effected retrospectively from the 1st of July 2010 and the prior determination (i.e. 21 December 2009) is repealed with effect from the 1st of July 2010;
- (b) Remunerating full-time Plenary Type Mayors similar to full-time Mayors/Executive Mayors effected retrospectively from the 1st of July 2010; and
- (c) Included in the basic salary component, is an amount of R120 000 per annum determined in terms of Section 8(1)(d) of the Income tax Act, 1962.

## 2. Implementation

- 2.1 Municipal managers in particular should note that they **MAY NOT IMPLEMENT** the upper limits before their councils have considered a report on the upper limits and have resolved on the levels of remuneration which will apply in that municipality. This consideration must occur with regard to the financial year (in this instance 2010/11) within which the payments will have to be made, and the affordability thereof for municipalities. This implies that the budget for the year in question must reflect the liability to pay the level of remuneration determined by the council and this must in turn be cash funded.

Further, before implementation, it is necessary for a council to consult with the MEC responsible for Local Government in its province, motivating the affordability and demonstrating that the liability has been budgeted for. Failure to follow the above steps will result in **AN ADVERSE AUDIT OPINION** being expressed by the Auditor General.

- 2.2 In instances where a council has not made the necessary budgetary provisions to support increased remuneration, it will nevertheless be necessary for it to consider the determination and resolve specifically not to increase the remuneration payable. This is necessary because the former Government Notice of the 21<sup>st</sup> of December 2009 was repealed with effect from the 1<sup>st</sup> of July 2010. Accordingly, payment of remuneration to councillors after the 1<sup>st</sup> of July 2009 is now only lawful in terms of the determination published on the 21<sup>st</sup> of December 2009 and councils must consider it accordingly.
- 2.3 It will be necessary for councils to apply the formula contained in paragraphs 2, 3 and 4 of the gazette, in order to determine which grade of municipality they are. It should be noted that this formula applies to local, district and metropolitan municipalities. As was the case with the 21 December 2009 Notice, the one component of the formula is based on total population within the municipal area (defined as the latest available official statistics for population as determined by the Statistician General in terms of the Statistics Act). The other component is "total municipal income" which is fully defined in the definition section. In summary this effectively means own income and exclude transfers and / or grants from the national fiscus, with the exception of those provided in replacement of RSC levies, which are included in municipal income.
- 2.4 The upper limits of the annual total remuneration package of various categories of fulltime councillors are contained in paragraph 5 of the gazette. It should be noted that the amount contained under "total remuneration" in the table in paragraph 5 is the maximum which may be received by a councillor and includes all allowances, save for amounts claimed in terms of paragraph 6 (a)(ii) (travel reimbursement), 6 (c)(Out of pocket expense) and cell phone allowances provided in terms of paragraph 10, which are additional to the total remuneration.
- 2.5 The upper limits for part time councillors are set out in paragraph 8 of the determination.
- 2.6 In light of the introduction of the Section 8 (1)(d) allowance for councillors, SALGA has carefully considered its implications. Below we attempt to guide (by way of examples) municipalities and its councillors on the implementation of the Section 8 (1)(d) allowance, with specific focus on the following:
- i. The allowance as a component of the basic salary;
  - ii. Tax implications of the allowance;
  - iii. Impact on "out of pocket expenses" when councillor receives the allowance;
  - iv. Examples of types of expenses included in the allowance

## 1. ALLOWANCE AS COMPONENT OF BASIC SALARY

The allowance in terms of section 8(1)(d) is a new allowance insofar as municipal councillors are concerned. In terms of the relevant definitions in the Upper Limits Notice provision for the allowance is made in the basic salary component. The "basic salary" is the component of the salary that includes the Tax allowance as permitted by Section 8(1)(d) of the Income tax Act, 1962 but specifically excludes a housing allowance as provided in items 6(b) and 9(b), the municipal contribution to a pension fund as provided in item 11(a) and the municipal contribution to a medical aid scheme as provided in item 11 (b)".

### Example:

The Salary Structure of a Grade 5 part-time Councillor, EXCLUDING DEDUCTIONS (PAYE, etc) would be as follows:-

(NOTE: Figures are reflected as per annum and per month (between brackets))

<b>SALARY (A)</b>		<b>159 471</b>	<b>(13 289)</b>
Housing	0		
Pension Fund (15%)	18 546	(1 546)	
Medical Aid	17 280	(1 440)	
<b>Basic Salary</b>	<b>123 644</b>	<b>(10 306)</b>	
Section 8(1)(d) Allowance	120 000	(10 000)	
<b>VEHICLE (B)</b>		<b>53 157</b>	<b>(4 430)</b>
<b>TOTAL PACKAGE (A + B)</b>		<b>212 628</b>	<b>(17 719)</b>
PLUS: Cellphone		11 196	(933)
<b>TOTAL REMUNERATION</b>		<b>223 824</b>	<b>(18 652)</b>

The total remuneration package of a Grade 5 Full-time Councillor (MMC) would be as follows:-

<b>SALARY (A)</b>		<b>398 678</b>	<b>(33 223)</b>
Housing	0		
Pension Fund (15%)	49 748	(4 146)	
Medical Aid	17 280	(1 440)	
<b>Basic Salary</b>	<b>331 650</b>	<b>(27 638)</b>	
Section 8(1)(d) Allowance	120 000	(10 000)	
<b>VEHICLE (B)</b>		<b>132 678</b>	<b>(11 074)</b>
<b>TOTAL PACKAGE (A + B)</b>		<b>531 571</b>	<b>(44 297)</b>
PLUS: Cellphone		17 952	(1 496)
<b>TOTAL REMUNERATION</b>		<b>549 523</b>	<b>(45 793)</b>

Section 8(1)(d) of the Act must be read together with section 8(1)(a) of the Act and paragraph (c) of the definition of "remuneration" in the Fourth Schedule to the Act. Section 8(1)(a)(i) of the Act provides that an allowance should be included in the taxable income of the recipient (in our case, the municipal councillor). However, the allowance will only be included in the councillor's taxable income to the extent that it is not expended ... by reason of the duties attendant upon his public office.

Paragraph (c) of the definition of remuneration includes 50 % of the amount of any allowance referred to in section 8(1)(d) granted to the holder of the public office.

The effect of section 8(1)(a) and (d), read together with paragraph (c) of the "remuneration" definition is that:

- the allowance will be subject to income tax on the first R60 000 (50%) of the allowance. The rate of tax on this amount will depend on whether the councillor is a full time or part time councillor. If the councillor is part time, the tax will be deducted at a flat rate of 25%. If the councillor is full time, the tax on the allowance will be calculated in accordance with the tax tables issued by the South African Revenue Service (SARS);
- the balance of the allowance i.e. the other R60 000 will be exempt from income tax if it is used for official duties as set out in section 8(1)(d) of the Act (see table below of examples of official duties). What this means is that this allowance will not be subject to income tax at the outset. Whether or not the amount is subject to income tax will depend on the use to which it is put by the councillor. The importance of this is that the amount is not automatically tax exempt; it will be exempt from income tax if it is shown that the councillor used it for official purposes. Therefore, if at the end of the tax year it is found that only a portion of the R60 000 was used for official purposes the balance will be subjected to income tax. The tax will be payable upon assessment by SARS i.e. the councillor will have to pay in an amount to SARS; and
- although only half of the allowance will be taxed upfront, the full amount of the allowance i.e. R120 000 must be reflected on the IRP5 issued to the councillor at the end of the tax year, under code 3708.

**Example**

Using the same example of the total remuneration package of Grade 5 Councillors above, the tax implications on the allowance will be as follows:-

COUNCILLOR	TOTAL ALLOWANCE	TAX FREE AMOUNT (50%)	TAX SAVING PER ANNUM	TAX SAVING PER MONTH
PART TIME	R 120 000	R 60 000	R 15 000	R 1 250
FULL TIME MMC	R 120 000	R 60 000	R 22 800	R 1 900

**3. IMPACT ON OUT OF POCKET EXPENSES**

As has been set out above, municipal councillors had previously not received the section 8(1)(d) allowance. Instead, they are reimbursed via the mechanism of "out of pocket expenses".

These "out of pocket expenses" are not included in the definition of "total remuneration package", nor are they reflected in the Tables contained in the Committee recommendations. This is because such expenses are

execution of his duties and in relation to which he or she is reimbursed.

Interpretation Note 14 of 2008 deals with the South African Revenue Service's interpretation of allowances, advances and reimbursement. An allowance is an amount granted by an employer to an employee where the employer is certain that the employee will incur business-related expenditure on behalf of the employer, but where the employee is not obliged to prove or account for the business expenditure. An amount is a reimbursement where the employee has already incurred the business expenditure out of his own pocket and is subsequently reimbursed for the expenditure by the employer after having proven and accounted for the expenditure.

A reimbursement of the "out of pocket expenses" will not be subject to tax if:

- the reimbursement was or was to be expended by the councillor on the instruction of the municipality in furtherance of the municipality's business;
- and the councillor is required to produce proof to the municipality that the amounts were wholly and actually expended for municipality's business; and
- where the expenditure was incurred to acquire any asset, the ownership in that asset must vest in the municipality.

Therefore, where a councillor incurs expenditure that is not covered under section 8(1)(d), he can still be reimbursed for that expenditure provided that it complies with paragraph above.

#### 4. TYPES OF ALLOWANCES AND EXPENSES TOGETHER WITH EVIDENCE

As indicated above, the importance of the allowance is that it is tax exempt from the outset; but there is an obligation that at the end of the tax period a councillor must show that the allowance was indeed used for official purposes. Therefore, if at the end of the tax year it is found that only a portion of the R60 000 was used for official purposes the balance will be subjected to income tax.

The table below attempts to define some expenses that may be claimed against the allowance.

Type of Allowance	Expenses that are permissible tax-deductions	Description of expense	Record keeping for audit purposes
Public Office Bearer's Allowance	Secretarial services	The amount paid to an agency or individual for secretarial services	<ul style="list-style-type: none"> <li>• Documentary proof of any amount paid to an agency</li> <li>• In the case of an individual:               <ul style="list-style-type: none"> <li>○ Full names</li> <li>○ Residential address</li> <li>○ ID Number</li> <li>○ Description of duties</li> <li>○ Amount of time spent on such duties</li> <li>○ Where the duties were carried out</li> <li>○ Amount paid</li> </ul> </li> </ul>
	Duplicating services; Stationary; Postage;		<ul style="list-style-type: none"> <li>• A schedule of amounts claimed</li> <li>• Documentary evidence must be available upon request</li> </ul>



	Telephone calls;		<ul style="list-style-type: none"> <li>• Statement of full accounts for telephone, mobile and fax</li> <li>• Statement of amount reimbursed by Municipal Council</li> <li>• Statement declaring percentage of private use</li> <li>• Documentary evidence must be available upon request</li> </ul>
	The hire of office accommodation;	This may not be a party office but a constituency office	<ul style="list-style-type: none"> <li>• Address of the office</li> <li>• Name of entity to whom rental is paid</li> <li>• Details of amounts claimed</li> <li>• Documentary proof must be available on request</li> </ul>
	The maintenance of the office accommodation;		
	Hospitality extended at any official or civic function which the Public Office Bearer is normally expected to arrange;		<ul style="list-style-type: none"> <li>• Description of function</li> <li>• Records of expenses incurred</li> </ul>
	Subsistence and incidental costs; and	Where accommodation is provided while you are away from home on official duty you may claim: - R208 per day for meals and incidental costs, or - R63.50 per day where meals and accommodation are provided	<ul style="list-style-type: none"> <li>• Provide a schedule showing:</li> <li>• Dates away from home</li> <li>• Destinations</li> <li>• Reason for trip</li> </ul>
	Travelling	This could include toll or parking fees or drivers' salaries, taxis or hire vehicles	<ul style="list-style-type: none"> <li>• Schedule showing expenses claimed</li> <li>• Drivers' salaries: Name, ID No.</li> <li>• Car Hire: Documentary proof and details of the reason for the car hire</li> </ul>
Travelling Allowance	Travelling Business	on	<ul style="list-style-type: none"> <li>• Accurate data</li> <li>• Logbook of kilometres travelled plus proof of actual motor vehicle expenses</li> </ul>

Any questions regarding the implementation of the upper limits should be directed to Provincial Executive Officers of SALGA (at provincial offices or to Lance Joel ([ljoel@salga.org.za](mailto:ljoel@salga.org.za)) at SALGA National (012 369 8077 / 0829083335).

Yours faithfully

  
**XOLILE GEORGE**  
**CHIEF EXECUTIVE OFFICER**

**COMMENTS ON THE DETERMINATION OF UPPER LIMITS OF SALARIES,  
ALLOWANCES AND BENEFITS OF MUNICIPAL COUNCILLORS DRAFT  
NOTICE (NOVEMBER 2010)**

**3 DECEMBER 2010**

**1. Introduction**

The Independent Commission for the Remuneration of Public Office Bearers ("the Commission"), having considered all the relevant circumstances, on 12 November 2010 recommended that the remuneration levels for all Public Office Bearers must be adjusted upwards by 7% per annum with effect from 1 April 2010.

The President of the Republic, however, on 19 November 2010 gazetted an increase of 5% per annum for all Public Office Bearers, with the exception of councillors.

As it relates to councillors, the Minister for Cooperative Governance and Traditional Affairs, Mr. Sicelo Shiceka on 27 November 2010 issued a draft notice to give effect to the recommendations of the Commission.

**2. Draft Upper Limits Notice Proposals**

The draft November 2010 Upper Limits Notice purports to repeal Government Notice No. R. 1225 of 21 December 2009 by introducing the following:-

- (i) 5% across the board upward adjusted increase on salaries, allowances and benefits of all councillors; and
- (ii) Included in the basic salary component, is an amount of R120 000 per annum determined in terms of Section 8(1)(d) of the Income tax Act, 1962.

**3. Comment on new Proposals in November 2010 Draft Notice**

*DRAFT*

Whilst SALGA is satisfied with the inroads made in extending benefits enjoyed by Public Office-bearers at a national and provincial level to those at a local level, SALGA remains dissatisfied as a greater number of concerns raised in previous detailed submissions remain unresolved. Below we outline specific comments on the new proposals.

**(i) 5% Increase**

The Commission's First and Second Review Reports (30 March 2007 and 17 April 2008 respectively), beyond the annual percentage increment, has been silent on the remuneration of councillors, whilst making substantial recommendations in respect of Public Office Bearers at provincial and national level. In motivating its refusal to make recommendations in respect of the benefits of Municipal Councillors the Commission unfortunately amplified the disjuncture created in that a further differentiation was created between the benefits of public office bearers in national and provincial legislatures compared to those in local government.

**Recommendation:** It is against this backdrop that SALGA is of the view that the 7% increase recommended by the Commission should be retained for councillors, to shorten the gap between remuneration levels of public office bearers at a national and provincial level and those at a local level. As we are moving towards the local government elections it will furthermore have a potentially significant impact on the morale of councillors at a local level, as well as the ability of the municipalities to attract, motivate and retain key skills that may be lost after the elections.

**(ii) Section 8 (1)(d) allowance**

The Commission, as far back as 15 October 2008 recommended that introduction of revised levels of remuneration of councillors with the inclusion of an allowance permitted by section 8(1)(d) of the Income Tax Act, 1962 in the amount of R120 000 per annum in the total remuneration package.

SALGA, welcomes the extension of this allowance, enjoyed by public office bearers at a provincial and national level, to councillors. One of the unfortunate consequences of the delayed implementation of this allowance for councillors was that a disjuncture was created between the remuneration systems of on the one hand public office bearers at national and provincial government level and on the other public office bearers at a local government level. This has a potentially significant impact on the morale of public office bearers at a local level, as well as the ability of the municipalities to attract, motivate and retain key skills.

The allowance in terms of section 8(1)(d) is a new allowance insofar as municipal councillors are concerned. It therefore follows that the following become necessary:-

1. Amending the definition of "basic salary" to include the element of the Section 8 (1)(d) allowance;
2. A provision for such allowance within the definition of "total remuneration package",
3. The impact of this allowance on the reimbursement via the mechanism of "out of pocket expenses" provided for in clause 9 (c) of the draft Notice;

## Recommendations:

1. The definition of "basic salary" to be amended to read ***"means the component of the salary that includes the Tax allowance as permitted by Section 8(1)(d) of the Income tax Act, 1962 but specifically excludes a housing allowance as provided in items 6(b) and 9(b), the municipal contribution to a pension fund as provided in item 11(a) and the municipal contribution to a medical aid scheme as provided in item 11 (b)"***:
2. The definition of "total remuneration package" to be amended to read ***"is the total cost to a municipality of a basic salary component (including the Tax allowance as permitted by Section 8(1)(d) of the Income tax Act, 1962), a travelling allowance as provided in items 6 (a) and 9(a), a housing allowance as provided in items 6(b) and 9(b), the municipal contribution to a pension fund as provided in item 11(a) and the municipal contribution to a medical aid scheme as provide in item 11 (b) to a councillors in a municipal financial year"***.
3. The amount of R120 000 per annum must be paid in addition to the current total remuneration package.
4. Where a councillor incurs expenditure that is not covered under section 8(1)(d), he can still be reimbursed for that expenditure provided that it complies with relevant provisions. This implies that the current provision for "out of pocket expenses" should be retained in the Notice.

## 4. Additional Areas to be considered in the Final Notice

The issues outlined below remain challenges and proposals are made for their rectification

### (i). Mayors in Plenary Type Municipalities

As SALGA we had previously raised concern with the remuneration of Speaker called Mayors in Plenary type municipalities. The 21 December 2009 Uper Limits Notice attempted to rectify this challenge by providing for part-time Plenary Type Mayors to be remunerated as part-time Mayors/Executive Mayors. The Notice is, however, silent on full-time Mayors of plenary type municipalities. There appears to be an incorrect assumption that all Mayors in Plenary Type Municipalities are part-time, the reality dictates otherwise as full-time or part-time councillors are determined by each MEC responsible for local government and in the absence of appropriate guidelines this differs from province to province

**Recommendation:** The draft Notice should, in addition, include provision for full-time Mayors of Plenary Type Municipalities to be remunerated as full-time Executive Mayors and Mayors. This could be done by simply adding under the definition of "salary" in the table under clause 5 of the Notice

***"Plenary type mayors should be remunerated according to the total remuneration package column of Mayor/Executive Mayor".***

**(ii) Pension Fund Contribution**

The Commission's April 2008 report, wherein it expanded its review of public office bearer remuneration by reviewing the pension and medical aid benefits of public office bearers, the Commission declined to make recommendations relating to the pension and medical aid benefits of Municipal Councillors despite having had the benefit of sound advice on the existing benefits in this regard. This unfortunately amplified the disjuncture created whereby the employer's pension fund contribution for public office bearers at national and provincial level are equal to 22.5% of the pensionable salary whilst on the other hand it is 15% for councillors.

**Recommendations:**

- 1. That the upper limit if the contribution to be made by the municipal council to the pension fund of a councillors be increased from 15% to 22.5% to ensure that councillors' pension fund benefits are on par with that of public office bearers at a national and provincial level.**
- 2. Councillors also argue that the pension fund and medical aid contribution allowed should be in additional to the total remuneration package and not included in the salary. Should this principle be accepted, the definitions of basic salary, salary and total remuneration package should be amended.**

**5. Ongoing Challenges**

Having regard to this draft notice, it becomes clear that certain challenges, previously raised by SALGA through its comments to the Minister, will continue to exist in the implementation of the Upper Limits and that the impact of some of those challenges will continue as follows:-

**(i) Grading System**

With the next Census, which will provide the "official population statistics required", only to be conducted in 2011, municipalities continue to use the Census 2001 statistics, which do not take into account the population growth since then.

Most, if not all, municipalities that were downgraded to a lower grade either as result of population or income or as a direct result of independent grading of districts. This has not been corrected and will continue to present a challenge to municipalities.

**RECOMMENDATIONS:**

- 1. In view of the fact that the next census is only to be conducted in 2011, consideration must be given to having some means for determining the population statistics in a fairly accurate manner in municipalities.**
- 2. As district municipalities were the ones mostly affected by being downgraded, it is proposed in the use of income for grading that for district municipalities, national grants or, at least, the equitable share should contribute towards their income.**

**(ii) Retrospectivity**

Where municipal councils are downgraded, as a result of the calculation in terms of the formula, councillors are requested to repay the moneys that are said to have been "overpaid" for the period 1 July to date of the Upper Limits Notice. In addition, the retrospective effect poses a challenge where certain municipalities did not budget accordingly and as such can not afford to implement. Again the 2010 Upper Limits Notice will be backdated to 1 July 2010 and may result in the same challenges.

**RECOMMENDATION:** For future determinations of Upper Limits, cognisance must be taken of the municipal financial year and the budgetary implications for municipalities due to the delayed promulgation of the Upper Limits,

**(iii) Cell phone Allowance**

A clear separation is made in terms of the amount allocated for cell phone allowances to full-time mayors of grade 6 (six), other full-time councillors and part-time councillors. The rationale behind this separation is not clear. For instance, it is proposed that an allowance for a cell phone of R 2997.00 per month is payable to a metro mayor oppose to R 1496.00 per month for all other mayors, similarly R933.00 per month is payable to a part-time councillor. This separation and resultant allocation appears to be in conflict with the realities in practice. A full time councillor, similar to a metro mayor, enjoys the use of an office, land line and infrastructure facilities at the municipality's expense, whereas the part-time councillor needs to rely totally on their personal (home) telephone and cell phone, both of which are paid for at the councillor's expense.

**RECOMMENDATION:** The disparities on cell phone allowances continue to find its presence in the Upper Limits. In the absence of a justification on the disparities of cell phone allowances payable to the different categories of mayors, other councillors and part-time councillors, an upward adjustment of this allowance is clearly warranted. In addition, the following two options must be considered:

- (I) A comparison must be done with cell phone allowances paid to MECs and must be used as a benchmark.
- (II) The Upper Limits could make provision for a cell phone allowance of which the amount could be determined by the municipality having regard to clearly defined guidelines.

#### **(iv) Allowances for District Councillors**

A councillor representing a local municipality in the district municipality, where the local municipality's grade is either equal to or higher than that of the district municipality, is only entitled to a sitting allowance of R737 per sitting of the district council. In many instances these councillors have to travel extensive distances to these council meetings at their own expense, as travel costs to these meetings are not reimbursed.

**RECOMMENDATION:** It is proposed that in addition to the district council paying the R737 sitting allowance a councillor representing a local municipality should also be reimbursed in terms of the district council's travel policy for travel to and from district council meetings.

## **6. Conclusions**

Once the final Notice has been promulgated municipalities are faced with inordinate delays in finalising the implementation of the Upper limits large due to delays in the office of MECs. To ensure the uniform application by MECs of their role in the determination of salaries, allowances and benefits of municipal councillors as well as to ensure that the matter is dealt with the necessary urgency, guidelines must be developed to provide guidance to both municipalities and MEC's after promulgation of the Upper Limits.

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**DEPARTMENT OF LOCAL GOVERNMENT AND HOUSING**

**LEFAPHA LA MMUSO WA SELEHAE LE MATLO**

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Cllr. Greta Hlongwane  
Speaker of Council  
Emfuleni Local Municipality  
P.O. Box 3  
VANDERBIJLPARK  
1900

Dear Councillor Hlongwane,

**Determination of the upper limits of the salaries, allowances and benefits of the different members of municipal councils: Financial year 2010/2011: Emfuleni Local Municipality**

Your letter dated 14 December 2009 has reference.

I wish to inform you that I have given concurrence in terms of section 7(3) of the Remuneration of Public Office Bearers Act, 1998, (Act No. 20 of 1998) as amended, to your council's resolution item A2286 dated 14 December 2010 to remunerate your full and part-time councillors to the affordability of a grade 5 municipality as stipulated in the Gazette No. 33867 of 10 December 2010 without compromising the quality of service delivery.

Yours truly,

H.M.Z. Mmemezi  
MEC: Local Government & Housing  
Date: 17/12/2010

**EMFULENI LOCAL MUNICIPALITY**  
DOCUMENTS RECEIVED AT OFFICE OF MUNICIPAL  
MANAGER  
21. 01. 2011

**OFFICE OF THE MEC**

Private Bag X 79, Marshalltown 2107 Tel: (011) 355-4016. Fax: (011) 838-2116  
Website: [www.housing.gpg.gov.za](http://www.housing.gpg.gov.za)/[www.dlg.gpg.gov.za](http://www.dlg.gpg.gov.za)





# SALGA

South African Local Government Association

## MUNICIPAL ELECTIONS: GUIDELINE ON SALARIES, ALLOWANCES AND BENEFITS OF MUNICIPAL COUNCILLORS

### 1. GENERAL

- 1.1 Section 219 (1)(b) of the Constitution of the Republic stipulates that an Act of Parliament must establish a framework for determining the Upper Limits of salaries, allowances or benefits of members of municipal councils of the different categories. The Remuneration of Public Office Bearers Act (Act 20 of 1998) gives effect to Section 219 (1) (b) by providing a framework for determining salaries of Political Office Bearers, including members of municipal councils.
- 1.2 In terms of Sections 7(1), 8 (5)(a) and 9 (5)(a) of the Remuneration of Public Office Bearers Act, the Minister must determine the Upper Limits of the salaries, allowances and benefits of the different members of Municipal Councils by notice in the Government Gazette (hereafter referred to as the "Upper Limits").
- 1.3 The Minister signed the determination and this was promulgated on 10 December 2010 in the Government Gazette No. 33867, see also SALGA Circular 56/2010 for ease of reference. This Upper Limits Notice's application is with effect from 1 July 2010 and will remain applicable until repealed by a new Notice, only likely to be from 1 July 2011.
- 1.4 The Upper Limits are published annually and deal with the following:
  - (i) Grading of municipalities for purposes of determining the remuneration scales;
  - (ii) Upper Limits of annual total remuneration packages of full-time councillors;
  - (iii) Upper Limits of annual total remuneration packages of part-time councillors;
  - (iv) Upper Limits of allowances of full-time and part-time councillors;
  - (v) Upper limits of remuneration or allowances in respect of appointed councillors;
  - (vi) Upper limits of cellphone allowances of councillors; and
  - (vii) Upper Limits of pension fund contributions and medical aid benefits of councillors.
- 1.5 The Salary and allowances of councillors are determined by that municipal council by resolution of a supporting vote of a majority of its members, in consultation with the MEC for local government in the province concerned, having regard to the Upper limits, the financial year of municipal councils, and the affordability of municipal councils to pay within the different levels of remuneration of councillors.
- 1.6 It is necessary for councils to **apply the formula** contained in paragraphs 2, 3 and 4 of the gazette, in order to **determine which grade of municipality** they are. It should be noted that this formula applies to local, district and metropolitan municipalities. The one

component of the formula is based on **total population within the municipal area** (defined as the latest available official statistics for population as determined by the Statistician General in terms of the Statistics Act). The other component is "**total municipal income**" which is fully defined in the definition section. In summary this effectively means **own income** and **exclude** transfers and / or grants from the national fiscus, with the **exception** of those provided in replacement of RSC levies, which are included in municipal income.

- 1.7 Section 167 of the Municipal Finance Management Act (MFMA) stipulates that political office-bearers may only be remunerated within the framework of the Remuneration of Public Office Bearers Act and Section 219 (4) of the Constitution. It goes further by declaring that any payment, whether in cash or kind, made outside this framework would be regarded as an irregular expense.

## 2. REMUNERATION FRAMEWORK

The effect of Section 167 is that the allowances and benefits as specified hereunder are the only payments to be advanced to councilors:-

### 2.1 Executive Mayor or Mayor

- 2.1.1 Executive Mayors or Mayors are entitled to a total remuneration package, which is a total cost to a municipality, and may structure it to consist of the following components:-

(a) **Travelling Allowance**

An allowance of not more than 25% of the annual total remuneration package and which includes running and maintenance costs incurred on official business up to 500 kilometers per month.

(b) **Salary Component**

The Salary Component of the package may include the following allowances:-

- (i) **Housing allowance**  
A housing allowance.

- (ii) **Pension Fund**  
Contribution of 15% of the basic salary from the municipal council.

- (iii) **Medical Aid**  
A fixed contribution of 2/3 of the membership fee to a maximum amount determined in terms of the Upper Limits.

- (iv) **Basic Salary**  
The "basic salary" is the component of the salary that includes the Tax allowance as permitted by Section 8(1)(d) of the Income tax Act, 1962 but specifically excludes a housing allowance as provided in items 6(b) and 9(b),

the municipal contribution to a pension fund as provided in item 11(a) and the municipal contribution to a medical aid scheme as provided in item 11 (b)".

2.1.2 Executive Mayors or Mayors are in addition to the total remuneration package entitled to the following allowances and benefits:-

**(a) Travel**

- i. Official distances traveled in excess of 500 kilometres in a particular month may be claimed in accordance with the applicable tariffs prescribed by the Department of Transport for the use of privately owned vehicles;
- ii. A vehicle made available by the municipal council for use on official business; and
- iii. Use of a council owned vehicle for attendance at specific functions to which the mayor or executive mayor has been delegated to attend.

**(b) Out of Pocket expenses**

Must be reimbursed for actual out of pocket expenses incurred during the execution of official and ceremonial duties.

**(c) Cellphone Allowance**

A fixed monthly allowance not more than as determined in the Upper Limits.

**2.2 Speaker, Deputy Mayor or Deputy Executive Mayor, Members of Mayoral Committee or Executive Committee, Chairperson of sub-council and Ordinary Councillor**

2.2.1 A Speaker, Deputy Mayor or Deputy Executive Mayor, Members of Mayoral Committee or Executive Committee, Chairperson of sub-council and Ordinary Councillor are entitled to a total remuneration package, which is a total cost to a municipality, and may structure it to consist of the following components:-

**(a) Travelling Allowance**

An allowance of not more than 25% of the annual total remuneration package and which includes running and maintenance costs incurred on official business up to 500 kilometers per month.

**(b) Salary Component**

The Salary Component of the package may include the following allowances

**(i) Housing allowance**

A housing allowance.

**(ii) Pension Fund**

Contribution of 15% of the basic salary from the municipal council.

**(iii) Medical Aid**

A fixed contribution of 2/3 of the membership fee to a maximum amount determined in terms of the Upper Limits.

**(iv) Basic Salary**

The "basic salary" is the component of the salary that includes the Tax allowance as permitted by Section 8(1)(d) of the Income tax Act, 1962 but specifically excludes a housing allowance as provided in items 6(b) and 9(b), the municipal contribution to a pension fund as provided in item 11(a) and the municipal contribution to a medical aid scheme as provided in item 11 (b)".

2.2.2 A Speaker, Deputy Mayor or Deputy Executive Mayor, Members of Mayoral Committee or Executive Committee, Chairperson of sub-council and Ordinary Councillor are in addition to the total remuneration package entitled to the following allowances and benefits:-

**(c) Travel**

- i. Official distances traveled in excess of 500 kilometres in a particular month may be claimed in accordance with the applicable tariffs prescribed by the Department of Transport for the use of privately owned vehicles;
- ii. Use of a council owned vehicle for attendance at specific functions to which the Speaker, Deputy Mayor or Deputy Executive Mayor, Members of Mayoral Committee or Executive Committee and Chairperson of sub-council has been delegated to attend.

**(d) Out of Pocket expenses**

Must be reimbursed for actual out of pocket expenses incurred during the execution of official and ceremonial duties.

**(c) Cellphone Allowance**

A fixed monthly allowance not more than as determined in the Upper Limits.

**3. Example:**

The Salary Structure of a Grade 4 Ordinary Councillor, **EXCLUDING DEDUCTIONS** (PAYE, etc) would be as follows:- (NOTE: Figures are reflected as per annum and per month (between brackets))

<b>SALARY (A)</b>		<b>136 144</b>	<b>(11 345.33)</b>
Housing	<b>0</b>		
Pension Fund (15%)	<b>17 757.91</b>	<b>(1 479.83)</b>	
Medical Aid	<b>0</b>		
Basic Salary	<b>118 386.09</b>	<b>(9 865.50)</b>	
<b>VEHICLE (B)</b>		<b>45 381</b>	<b>(3 781.75)</b>
<b>TOTAL PACKAGE (A + B)</b>		<b>181 525</b>	<b>(15 127.08)</b>
<b>PLUS: Cellphone</b>		<b>11 196</b>	<b>(933.00)</b>
<b>TOTAL REMUNERATION</b>		<b>192 721</b>	<b>(16 060.08)</b>

**ITEM A2363**  
**DECLARATION OF INTERESTS**  
**(MC 31-05-2011)**

In terms of Section 7 of Schedule 1 (Code of Conduct) of the Municipal Systems Act, Act 32 of 2000 provides that when elected or appointed, a Councillor must within sixty days submit a written declaration of interests to the Municipal Manager. See form attached as **Annexure (pages 45 - 48)**.

Item 7 of the Code of Conduct for Councillors reads as follows:

*"7.(1) When elected or appointed, a councillor must within sixty days declare in writing to the municipal manager the following financial interests held by that councillor:*

- (a) shares and securities in any company;*
  - (b) membership of any close corporation;*
  - (c) interest in any trust;*
  - (d) directorships;*
  - (e) partnerships*
  - (f) other financial interests in any business undertaking;*
  - (g) employment and remuneration';*
  - (h) interest in property;*
  - (i) pension; and*
  - (j) subsidies, grants and sponsorships by any organization;*
- (2) Any change in the nature or detail of the financial interests of a councillor must be declared in writing to the municipal manger annually;*
- (3) Gifts received by a councillor above a prescribed amount must also be declared in accordance with sub-item (1); in terms of the attached Annexure (page 48A);*
- (4) The municipal council must determine which of the financial interests referred to in sub-item (1) must be made public having regard to the need for confidentiality and the public interest for disclosure".*

**RECOMMENDED THAT**

1. a declaration of interests form attached as to the report as **Annexure (pages 45 - 48)** be completed by every Councillor and be returned to the Municipal Manager's Office within sixty days calculating from 21 May 2011;
2. all Councillors must update their declaration of interest forms annually and
3. all Councillors must complete the declaration of gifts form on a quarterly basis.

**\* AMENDMENT**



## DECLARATION OF INTEREST BY COUNCILLOR

I, Councillor ..... (full name)  
hereby declare the following in terms of Schedule 1 of the Municipal Systems Act (Act 32 of 2000),  
as amended:

<b>A. Shares and Securities in any Company? Please list in detail below.</b>

<b>B. Membership of any Close Corporation. Indicate Name, CC Number and Percentage of Membership.</b>

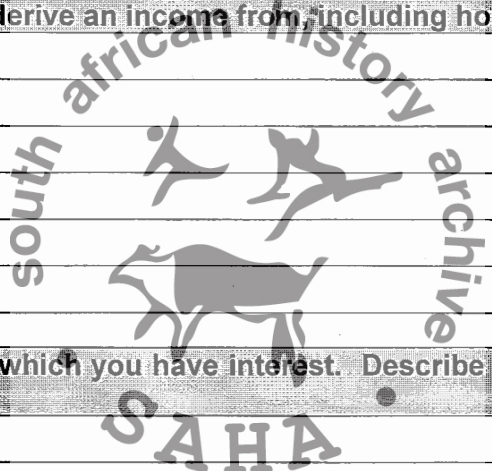
<b>C. Interest in any Trust? Provide full details.</b>

<b>D. Directorships. Provide full details.</b>

**E. Partnerships. Provide full details.**


**F. Other Financial Interest in any Business Undertaking.**


**G. Besides the allowance from this Council, do you have any other employment for which you are paid or derive an income from, including honorariums etc?**

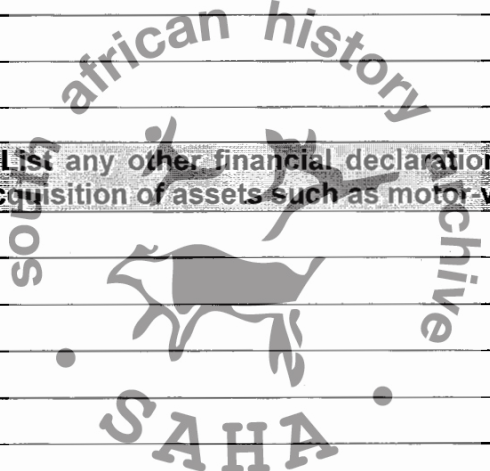
**H. List ALL properties in which you have interest. Describe property and give physical address.**


**I. List all pension funds of which you are a member. Include the current value of the fund.**


**J. List all subsidies, grants and sponsorships that you receive.**


**K. List all gifts received, since December 2005, from any person/s or organisations that have any interest in the Council. Give full details including reasons for the gift and the estimated value of the gift. Gifts would include all items of value, rewards such as vacations, special extra-ordinary discounts while transacting business etc.**


**L. Optional Declaration. List any other financial declarations that you wish to make. This may include the acquisition of assets such as motor vehicles etc.**

It remains in your interest to make full disclosures in regard to the above. Should you be uncertain about what to declare, you are advised to rather err on the side of caution and make disclosures.

All information contained herein is kept as confidential and can only be released to the public in terms of the Municipal Systems Act 32, 2000 Schedule 1 [clause 7(4)] by way of a Council Resolution.

.....  
**DATE OF DECLARATION**

.....  
**SIGNATURE OF COUNCILLOR**





# LOCAL GOVERNMENT: MUNICIPAL SYSTEMS REGULATIONS, 2001

as published in  
GN R459 in GG 22328 of 25 May 2001

## 1 Definitions

In these regulations a word or phrase to which a meaning has been assigned in the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), has that meaning and, unless the context otherwise indicates -

'the Act' means the Local Government: Municipal Systems Act, 2000;

## 2 Prescribed periods

The prescribed period referred to in -

- (a) section 25 (1) of the Act is 15 months and 26 days (i.e. by 31 March 2002);
- (b) section 27 (1) of the Act is seven months and 10 days (i.e. by 16 July 2001); and
- (c) section 28 (1) of the Act is seven months and 10 days (i.e. by 16 July 2001).

## 3 Prescribed amount of gifts received by councillor

(1) Gifts received by a councillor must be declared in terms of item 7 (1) of Schedule 1 to the Act where -

- (a) the value of a gift exceeds R1 000; and
- (b) the value of gifts received from a single source in any calendar year exceeds R1 000.

(2) A declaration of gifts received by a councillor must -

- (a) contain a description of such gift or gifts, as the case may be; and
- (b) indicate the value and source of such gift or gifts, as the case may be.

## 4 Short title and Repeal of Regulations

(1) The Local Government: Municipal Systems Regulations, 2001, Government Notice 135, published in *Government Gazette* 22056 of 9 February 2001, are hereby repealed.



**ITEM A2364**  
**MEDIUM TERM REVENUE AND EXPENDITURE FRAMEWORK (MTREF) BUDGET  
AND IDP  
(MC 31-05-2011)**

**INTRODUCTION**

The 2011/12 MTREF Budget was compiled in accordance with the MFMA, Chapter 4. Due to the Local Government Elections, National Treasury issued MFMA Circular 54, providing guidance on the options available to municipalities in terms of the preparation, tabling and approval of multi-year budgets.

Council approved a Revised IDP/Budget Process Plan for the 2011/12 MTREF, which effectively adopts option one of MFMA Circular 54 which states that the outgoing Council approve the 2011/12 MTREF Budget.

**DISCUSSION**

The Draft Budget and Draft IDP were tabled on 31 March 2011 and underwent public participation processes.

--- The final 2011/12 MTREF Budget and IDP were approved on 28 April 2011. **See Annexures attached under separate cover.**

**RECOMMENDED THAT**

the 2011/12 MTREF Budget and IDP be noted.



**ITEM A2365**

**DELEGATION OF POWERS TO EXECUTIVE MAYOR (MAYOR AND EXECUTIVE COMMITTEE), OTHER POLITICAL STRUCTURES AND/OR ADMINISTRATIVE FUNCTIONARIES  
(MC 31-05-2011)**

**INTRODUCTION**

The purpose of the report is to present to Council the Delegation of Authorities approved by the previous Council for confirmation as an interim working document as attached under **separate cover**.

**DISCUSSION**

Section 59 of the Local Government: Municipal Systems Act, No. 32 of 2000, requires the Council (or other person who has sub-delegated any powers) to review all delegations when a new Council is elected.

However, Section 53 of the aforesaid Act requires the Municipality to define the specific role and area of responsibility of each political structure and political office bearer of the Municipality and of the Municipal Manager, in precise terms by way of separate terms of reference, in writing, which must be acknowledged and given effect to in the rules, procedures, instructions, policy statements and other written instruments of the Municipality, including council's Delegation System and Delegations in terms thereof. Determination of respective roles and responsibilities in terms of Section 53 of the said Act will impact upon delegations (as it is necessary to delegate to the relevant functionary or structure, the powers which are necessary to enable the roles and responsibilities allocated to it to be carried out.

**CONCLUSION**

It is accordingly recommended that as an interim measure, Council resolve that all powers delegated by the outgoing Council, as well as any sub-delegations of such delegations, remain in force until reviewed by Council and further that the Municipal Manager submit a comprehensive report to the next Ordinary Meeting of Council, reporting on the outcome of the process of determination of roles and responsibilities in terms of Section 53 of the aforesaid Act and recommending the relevant delegations to give effect thereto.

**RECOMMENDED THAT**

the Delegations of Authority and its amendments attached hereto as **Annexure (Distributed under separate cover)** remain in force until reviewed by Council.

**ITEM A2366**  
**ESTABLISHMENT OF WARD COMMITTEES**  
**(MC 31-05-2011)**

The Local Government: Structures Act, Act 117 of 1998 as amended, hereinafter referred to as the Structure Act, was enacted by the Parliament of the Republic of South Africa to provide for the establishment of municipalities in accordance with requirements relating to the categories and types of municipalities, to establish criteria for determining the category of municipalities to be established in an area, to define the types of municipalities that may be established in an area, to define the types of municipalities that may be established within each category, to provide for appropriate electoral systems and to provide for matters connected thereto.

The Structures Act makes provision for the establishment of Ward Committees. The Emfuleni Local Municipality is obliged in terms of its founding proclamation promulgated in terms of Section 12 of the aforementioned Act to establish Ward Committees. Section 72 of the Act provides that only metropolitan and local municipalities of types mentioned in Section 8(c), (d), (g), and 9(b), (d) and (f) may have Ward Committees, the object of which is to enhance participatory democracy in local government, and Emfuleni falls within the types mentioned.

In terms of the Local Government: Municipal Demarcation Act, Act No. 27 of 1998, Ward Committees of Emfuleni Local Municipality have been increased from forty three (43) to forty five (45) with effect from 18 of May 2011.

In terms of Section 73(3)(a) of the Act, the Municipality must make rules regulating the procedure for the election of the Ward Committee members, taking into consideration the need for women to be equitably represented in a Ward Committee and the diversity of interests in a ward to be reflected.

The Ward Councillor shall preside over the meetings of the Ward Committees. The Speaker of Council shall be responsible and accountable for the smooth functioning of the ward committees in conjunction with the Ward Councillor.

**RECOMMENDED THAT**

1. the Municipal Council establish forty five (45) Ward Committees within the area of authority of the Emfuleni Local Municipality and
2. the Speaker of Council and the Municipal Manager determine the rules and procedures governing the appointment of Ward Committee members, procedures and role of the Ward Committees, subject to approval by the Municipal Council.

**ITEM A2367**  
**INDUCTION OF ELECTED COUNCIL: STRATEGIC BRIEFING SESSION**  
**(MC 31-05-2011)**

**PURPOSE**

The purpose of the report is to recommend to Council the importance of attending the institutional orientation for all Councillors.

**INTRODUCTION**

The South African Local Government Association (SALGA) issued a "Guide to Municipalities on inaugural Council meeting and various issues which may arise before and after the elections" to assist Councils and Accounting Officers with legal compliance on the inauguration of new Councils after the Local Government Elections on 18 May 2011 as well as to provide assistance with orderly transition in the governance of Councils and municipal business.

The guidelines emphasizes, *inter alia*, the need to ensure effective governance handover through dissemination of information to newly elected Councillors by way of briefings, strategic sessions, induction and provision of a comprehensive set of documentation such as statutes, policies and strategic documents and extended sessions.

**DISCUSSION**

Given the responsibility of elected Councillors as contemplated by Section 26 of the Municipal Structure Act, it is considered prudent that Emfuleni Local Municipality conduct the Institutional Orientation of Councillors, which will concentrate on the broad functioning of the Municipality, governance, legal orientation on Local Government Legislations and Policies, Financial Status of the Municipality and briefings on specific portfolios, to mention a few.

Such orientation is considered to be in the interest of Council in respect of ensuring an effective handover process as well as ensuring continuity in Council business in preparation for further induction as envisaged by SALGA and the Department of Local Government.

This induction excludes the inter political party induction and handover by such political parties.

**CONCLUSION**

As stated above, the induction will assist in the effective and efficient hand over in ensuring continuity within Council and municipal business. It is therefore important that all Councillors must attend the orientation session.

**RECOMMENDED THAT**

Council approve and support the institutional induction of Councillors and make it compulsory for all Councillors to attend.