



October 2022

The Department of Cooperative Governance and Traditional Affairs (CoGTA).
Attention: Ms Nomonde Aba at NomondeA@cogta.gov.za ; and
Mr Nhlamulo Mathye at NhlamuloM@cogta.gov.za.

Re: Submission on the draft Code of Conduct for Councillors Regulations

This submission is prepared on behalf of the Action for Accountability (A4A) project which is a partnership project between the Ahmed Kathrada Foundation (AKF), Accountability Lab South Africa (ALSA), and the Public Service Accountability Monitor (PSAM). The project is collaborating with four local communities in Lenasia, Finetown, Mondeor and Makhanda.

We welcome the opportunity to submit written comments and recommendations on the [Draft Code of Conduct for Councillor Regulations](#) aimed at enhancing the Municipal Structures Act, 1998 (Act No. 117 of 1998).

Background

South Africa is undergoing an accountability crisis as evidenced by the decimation and looting of state-owned enterprises, the weakening of functioning government institutions, gross violations of procurement policies and the capture of state resources to enrich private interests. And although these may be flighted as issues prevalent at a national level, the impact is most felt by those that are meant to receive the most basic of services from government institutions: those that cannot afford to pay R1 for a litre of clean water, those that still use the bucket system when nature calls, those that have to use candle light in order to prepare for examinations, those that have to walk kilometres just to fill 10L bucket of water; adult dependents that can neither find jobs or move out of home and those that sleep in hospital passages to ensure that they get a bed in time to deliver their unborn babies.

An article noted recently that: "Senior officials from Treasury painted a bleak picture when they appeared before Parliament's Standing Committee on Appropriations in September, noting that 151 municipalities are teetering on the brink of collapse, while 43 have already collapsed and require urgent intervention to rescue them."¹

¹ <https://businesstech.co.za/news/government/631471/new-proposals-to-clean-up-local-government-r1000-at-a-time/>

There is an increasing sense of unease amongst communities over their public representatives' ability or willingness to be responsive to their needs. And while generally accepted and often reiterated that the necessary legislation to ensure accountable local government is in place, the lack of enforcement of this legislation is often cited as the problem.² It is therefore for this reason that our submission focuses on the following key issues:

1. Schedule 7 and the proposed Schedule
2. General conduct of Councillors
3. Voting and attendance at meetings
4. Prescribed value of gifts by councillor
5. Reporting

1. Schedule 7 and the proposed Schedule

At the outset we note that on the cover page of General Notice 1322 of 2022 as contained in Government Gazette 47247, the following is stated:

The draft Regulations are aimed at facilitating the application of Schedule 7 of the Structures Act which provides for the Code of Conduct for Councillors.

There are various overlaps between the current Code of Conduct for Councillors contained in Schedule 7 of the Municipal Structures Act and the proposed Code of Conduct for Councillors Regulations. The proposed Code does not state that it will replace Schedule 7, but there are certain clauses that appear to add to or revise current clauses. We submit that COGTA need to better explain to the public the effects that the proposed Code will have on the existing Code. We encourage the use of a single Schedule containing a comprehensive Code and preferably contained within the Municipal Structures Act rather than the promulgation of further Regulations that may lead duty-bearers and readers to incorrectly assume that the latter is the applicable Schedule and Code when in fact there are additional legal requirements contained elsewhere in another Schedule and Code.

We note that the following definitions and clauses contained in Schedule 7, either do not appear in the proposed new Schedule. Some of these clauses are significant and include:

- the definition of 'partner'
- Sanctions for non-attendance of meetings
- Disclosure of interests;
- Personal gain
- Declaration of interests
- Full time councillors
- Rewards, gifts and favours
- Unauthorised disclosure of information
- Interference in administration
- Municipal property

For the purposes of our submission we have assumed that the clauses in the current Schedule 7 Code of the Municipal Structures Act **will be retained**, because:

- regulations 4, 6, 7 and 9 of the proposed new Schedule refer to clauses and item's contained in Schedule 7; and

² <https://dullahomarinstitute.org.za/multilevel-govt/publications/enforcing-the-code-of-conduct-for-councillors.pdf>

- the proposed new Schedule does not indicate that Schedule 7 is repealed in part or entirely.

2) General conduct of Councillors

We note the introduction of regulation 5(2) that reads as follows:

“If a councillor’s behaviour is unruly, including when he or she assaults or threatens to assault an official or a fellow councillor, the speaker must order the councillor to leave the meeting and, if the councillor fails to obey the order, request the Sergeant-at-Arms to remove the councillor from the meeting.”

We submit that it is conceivable that a councillor’s unruly behaviour could be directed at persons other than an official or fellow councillor and may include but not be limited to a member of the public, a journalist, or a law enforcement officer who is attending or present at a council meeting. We propose that the regulation **be expanded to include such persons**.

3) Voting and attendance at meetings

We note that regulation 6(1) reads as follows:

The municipal council must convene an ordinary meeting for the transaction of business at least once in every three months.

Service delivery should be an everyday business that requires regular reporting and meaningful oversight. We are opposed to the introduction of a regulation that only requires an ordinary meeting to be held every three months, especially considering the widely reported oversight failures within many municipalities and the serious dysfunction prevalent in many municipal administrations. We therefore recommend that a municipal council should be required to convene an ordinary meeting for the transaction of business **at least once a month**. This will hopefully promote more accountability and action by both councillors and municipal staff especially if oversight meetings are thorough, there are detailed and incisive minutes, action items, and reports are produced and publicised to inform oversight, corrective action, service delivery and local development.

For the aforementioned reasons, regulation 6(1) should be revised to read as follows:

The municipal council must convene an ordinary meeting for the transaction of business at least once every month.

4) Prescribed value of gifts received by councillor

7(1) Gifts received by a councillor must be declared in writing to the municipal manager in terms of item 8(1) of the Code where -

(a) the value of gifts exceeds R1000 or a higher amount as may be determined by the Minister from time to time.

We note that the proposed regulation only mentions “gifts” and not, in addition, any hospitality which is included for instance within the Code of Conduct applicable to Members of Parliament. We recommend that the word “gifts” be defined clearly and should include amongst others hospitality.

We do not support the proposed Regulation that would give the Minister the power to determine a higher amount. All gifts above R1000 should be declared. For this reason we are also opposed to the wording of Regulation 7(1)(b) where the words “*or the amount determined by the Minister in terms paragraph (a)*” appear and suggest that they be deleted.

We propose that Regulation 7(3)(a) and (b) be revised to read as follows:

“(a) Full names, address and contact telephone number of the person(s) or organisation(s) making the gift.

(b) value of the amount received for the gift or all gifts to a value greater than R1000 or cumulative gifts received from the same person(s) or organisation(s) over a period of twelve months; and”

We do not support the wording contained within the proposed regulation 7(7) that reads as follows:

“The municipal council must determine which of the financial interests must be made public having regard to the need for confidentiality and the public interest for disclosure.”

It would appear that this proposed Regulation has been partly copied from clause 8(4) of Schedule 7 which relates to Declarations of interest rather than gifts.

We note that the [Code of Conduct for Members of Parliament](#) quite correctly requires the recording of all Gifts and Hospitality received by MPs within the **public** section of its Register that may then be accessed by the public. In order to promote accountability within municipal councils and to support monitoring by the public and other arms of government (and to avoid a scenario where councillors can decide upon matter that they have an interest in and which may place them in a conflicted position) it is recommended that Regulation 7(7) read as follows:

“The municipal manager must ensure that the Gift Register is updated regularly in accordance with regulation 7(5) and is required to upload an updated Gift Register to the website of the municipality on a quarterly basis.”

5. Reporting

In order to promote transparency and accountability it is proposed that regulation 9(2) be revised to read as follows:

“The speaker must submit bi-annual reports on the extent of all councillor’s compliance with the Code to the MEC responsible for local government in the province, within fourteen days of January and July of a calendar year and must upload and publicise these bi-annual reports to the website of the municipality within 15 days of having submitted such reports to the aforementioned MEC. If the Speaker fails to submit such reports and upload them to the website as required, an investigation must be initiated as provided for in item 16 of Schedule 7”

It is also proposed that Regulation 9(4) be revised to read as follows:

“The reports contemplated in sub-regulations (2) and (3) must be in accordance with a reporting template developed by the Department but must at a minimum disclose the full names of all councillors that have not complied with the Code(s) and the extent and nature of their non-compliance.”

Should the Department have any questions regarding this submission please contact the following persons:

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