



UMZIMVUBU
— LOCAL MUNICIPALITY —

CODE OF CONDUCT FOR COUNCILLORS

MARCH 2014

COUNCILLOR'S CODE OF CONDUCT

1.0 Attendance¹

1.1.0 DUTY OF ATTENDANCE²

1.1.1 A Councillor must attend each Meeting of the Municipal Council or Committee of which that Councillor is a Member, except when:

- (1) a leave of absence is granted in terms of section 1.3.0; or
- (2) that Councillor is required in terms of the Councillor's Code of Conduct to withdraw from the Meeting.

1.2.0 ATTENDANCE REGISTER

1.2.1 Every councillor present at a Meeting shall sign his name in an attendance register which shall be kept available by the Secretary of the Council.

1.2.2 The Secretary of the Council shall at the end of each Financial Year prepare a return showing the attendance of Members at Meetings and shall furnish each Member with a copy of such return.

1.3.0 LEAVE OF ABSENCE

¹ Schedule 1 to Local Government: Municipal Systems Act

² Schedule 1 to Local Government: Municipal Systems Act: Items 3 and 4.

1.3.1 Leave of absence from any Meeting may be applied for:

- (1) by the Member concerned or another Member on his behalf submitting a written application to the Speaker before or at the Meeting concerned or within 48 hours of the closure of the Meeting concerned; or
- (2) verbally by a Member on behalf of an absent Member during consideration of the item referred to in section 1.1.1(2), at the Meeting concerned stating the reason for such absence.

1.3.2 If a Member has been granted leave of absence from a Meeting and he attends any such Meeting, the leave of absence or any unexpired period thereof, shall be deemed to have been cancelled.

2.0 Powers of the Presiding Officer

2.1 The maintenance of the discipline of Councillors is, in the first instance, the responsibility of the Speaker.

2.2 The Presiding Officer shall have all powers necessary to control the conduct of a Meeting and may for such purpose issue directions to any Member.

2.3 Whenever the Presiding Officer speaks or rises during a Meeting, the Member then speaking and all other Members shall be silent so that the Presiding Officer may be heard without interruption.

2.4 In the event of a Member failing to fall silent when the Presiding Officer speaks or rises during a Meeting the Presiding Officer may order such Person to leave the Chamber or Committee room.

2.5 Where, in any Meeting, a Councillor behaves in an inappropriate manner or makes a statement about another Councillor or other Person which would give rise to delictual damages if made outside of a Meeting, the Presiding Officer may order such Councillor to withdraw such statement and/or apologise to that other Councillor or other Person.

2.6 Where:

- (1) in circumstances referred to in section 2.5, where the Councillor does not withdraw and/or apologise; or
- (2) in the circumstances listed in Schedule IB;

and the Presiding Officer is of opinion that a Councillor should leave the chamber or committee room, he shall so order, and the Councillor shall thereupon leave the chamber or room.

- 2.7 If a Member misconducts himself, behaves in an unseemly manner or obstructs the business of any Meeting or challenges any ruling of the Presiding Officer, or indulges in tedious repetition or unbecoming language, or commits any breach of this Code in the face of the Meeting, the Presiding Officer may direct such Member to conduct himself properly and, if speaking, to discontinue his speech.
- 2.8 In the event of a persistent disregard of the directions of the Presiding Officer, the Presiding Officer shall direct such Member to retire from the place where the Meeting is held for the remainder of the Meeting failing which the Presiding Officer may direct that he be removed.
- 2.9 The Presiding Officer may require any Person to take such steps as may be necessary (including the use of reasonable force.) to execute any such order.
- 2.10 Where a Presiding Officer has ordered a Councillor to leave the chamber, the Speaker may conduct a Speaker's Disciplinary Enquiry in terms of this Code.
- 2.11 The Speaker may, on conducting a Disciplinary Enquiry, exclude from any Meetings, for such period not exceeding sixty days as he may determine any Member who, in his opinion, has contravened sections 2.5, 2.6 and 2.8.
- 2.12 If a Member attends any Meeting of a Municipal Council or a Committee in defiance of a decision in terms of section 2.11, the Presiding Officer may direct that he be removed.

3.0 Register of Interests

- 3.1 Where the Municipal Manager is provided with any information referred to in Schedule II, he shall promptly inform the Speaker and the Speaker shall take such steps as may be necessary to record the same in a Register of Interests.
- 3.2 The Speaker shall divide the Register of Interests into two parts:
- (a) Confidential Part;
 - (b) Public Part.
- 3.3 The confidential Part shall include only such information as the Information Officer is obliged not to disclose in terms of the Information Act.
- 3.4 The Public Part shall include all other information, of the kind referred to in Schedules I and II, disclosed by Councillors.
- 3.5 The Public Part of the Register of Interests shall be open to public scrutiny at the Speaker's Office during Office Hours.
- 3.6 Only the Speaker and the Multidisciplinary Team shall have access to the Confidential Part of the Register of Interests: Provided that the Speaker may, with the written agreement of the Councillor concerned, disclose information relating to the Councillor so requesting to any third party named in such agreement.

4.0 Procedure for Infringements

4.1.0 INVESTIGATION

- 4.1.1 If the Speaker, on reasonable suspicion, is of the opinion that an infringement of this Code of Conduct, as listed in Schedules 1A and 1B, has been breached for which breach a sanction is provided, the Speaker shall authorise an investigation of the facts and circumstances of the alleged breach by an appropriate body determined by the Speaker.

4.2.0 CHARGE

4.2.1 In the event of alleged misconduct by a Councillor, which, in the opinion of the body charged by the Speaker with the investigation, would appear to be sufficiently serious as to warrant a sanction more serious than an informal oral warning, the Councillor concerned shall be issued with a Charge by the Speaker detailing:-

- (1) the alleged misconduct; and
- (2) the evidence for such misconduct.

4.2.2 The Charge shall further give the Councillor concerned notice of his right to:

- (1) sight of any affidavits, documents or real evidence discovered as a result of the investigation and of the report of the body charged by the Speaker with the investigation;
- (2) a reasonable opportunity to reply in writing regarding the alleged breach;
- (3) resign;
- (4) the presence of his Party Whip at any sanctioning of a Councillor; and
- (4) demand the hearing of aurally provided (*viva voce*) evidence in a Speaker's Disciplinary Enquiry.

4.2.3 A copy of the Charge shall further be given by the Speaker to the Party Whip of the Councillor concerned (where the Councillor concerned is a member of a Party recognised as such by the Council).

4.3.0 RIGHTS OF COUNCILLORS

4.3.1 A Councillor who receives a Charge shall be entitled to:

- (1) Affidavits, documents or real evidence discovered as a result of the investigation and of the report of the body charged by the Speaker with the investigation;
- (2) resign from the Municipal Council provided that he does so prior to the leading of evidence at a Disciplinary Enquiry;
- (3) reply to the Speaker in writing to the Charge setting out contradicting evidence or evidence in mitigation;
- (4) have his Party Whip present at any sanctioning; and
- (5) demand the hearing of aurally provided (*viva voce*) evidence in a Speaker's Disciplinary Enquiry within such reasonable time as may be set out in the Charge.

4.4.0 SANCTIONING WITHOUT A SPEAKER'S DISCIPLINARY ENQUIRY

4.4.1 Where:

- (1) the Councillor concerned does not demand the hearing of verbal (*viva voce*) evidence in a Speaker's Disciplinary Enquiry in terms of this Code; and
- (2) the Speaker is of opinion that the interests of justice will not be served by holding a Speaker's Disciplinary Enquiry, the Speaker may, of his own accord and in terms of his own powers (*mero motu*), sanction such Councillor in terms of this Code: Provided that he shall report the matter and his conclusions to a Meeting of the Municipal Council in the manner prescribed in the Municipal Systems Act.

4.5.0 SPEAKER'S DISCIPLINARY ENQUIRY

4.5.1 A Speaker's Disciplinary Enquiry shall be held by the Speaker, within a reasonable time of

- (1) the Councillor concerned exercising his right of hearing; or
- (2) the Speaker determining that the interests of justice will be served by holding a Speaker's Disciplinary Enquiry.

4.5.2 The Speaker shall serve Notice of the time and place of a Speaker's Disciplinary Enquiry.

4.5.3 In any Speaker's Disciplinary Enquiry:

- (1) the enquiry shall follow the adversarial format;
- (2) an appropriate Person shall lead the evidence for the Charge;
- (3) the Councillor may be represented at the hearing by his Party Whip, any other Councillor or any other Person;
- (4) the Councillor and/or his representative are entitled to cross-examine the evidence adduced by the Person leading the evidence for the Charge and to produce any evidence;
- (5) the Presiding Officer of the Multi-disciplinary Team is also entitled to cross-examine the evidence adduced by the Councillor and/or his representative;
- (6) the enquiry, once convened, will be recorded in accordance with the requirements of the Secretary of the Council who shall be responsible for the accuracy of the official record.

4.5.4 After having considered the evidence, the Speaker will make his decision.

4.5.5 In the event of the Speaker concluding that there was an Infringement, he will then hear any plea in mitigation and/or extenuation prior to deciding the Sanction.

4.5.6 If the Speaker, after considering both sides, is of opinion that, on the balance of probabilities, a councillor is liable for a Sanction, the Speaker shall impose such Sanction and serve notice on the Councillor of the Sanction in which Notice he shall further set out:

- (1) the rights of the Councillor under the Constitution, the Municipal Systems Act, the Administrative Justice Act and any other law; and
- (2) that the debt (if any) arises from the date the Notice was issued.

4.5.7 The Councillor shall sign a duplicate of the Notice to confirm receipt thereof.

4.5.8 The Speaker will report the fact of the enquiry and his conclusions thereon to a Meeting of the Municipal Council.

4.5.9 A report in terms of Section 4.5.8 is open to the public.

4.5.10 The Speaker shall forward the report to the MEC for Local Government in accordance with the Councillor's Code of Conduct.

4.6.0 INTERNAL APPEALS

4.6.1 A Councillor has the right to appeal to the Special Committee in the event of the Speaker imposing a Sanction on that Councillor: Provided that:

- (1) a letter of appeal is lodged with the Speaker within 5 Days of receipt of the Notice in terms of Section 4.5.6;
- (2) no appeal to the Special Committee shall be permitted in the case of oral or written warnings issued by the Speaker; and
- (3) Appeals will only be heard on the grounds of the appeal submitted by the Councillor concerned in his letter of appeal.

4.6.2 No Sanction shall be executed by the Umzimvubu Local Municipality prior to finalisation of any appeal which is timeously lodged in terms of section 4.6.1(1).

4.6.3 The Special Committee may either rehear all or part of the matter or limit the appeal to argument on the specific grounds of appeal.

4.6.4 The Special Committee may, on appeal, reduce the Sanction imposed by the Speaker or set aside or confirm the decision given at the Speaker's Disciplinary Enquiry.

4.7.0 PROCEDURE

4.7.1 Subject to the provisions of sections 4.6.0, the provisions of section 4.0 shall apply to any hearing by the Special Committee.

5.0 Sanctions

5.1.0 GENERAL

5.1.1 Subject to the requirements of substantive fairness, the Councillors Code of Conduct and the provisions of this Code, the Speaker or the Special Committee (as the case may be), has the right to determine the sanction to be applied, depending on the seriousness of the Infringement.

5.2.0 WARNINGS

5.2.1.0 Informal Oral Warnings

5.2.1.1 Where the Speaker is of opinion that the interests of justice will best be served by issuing an informal oral warning to a Councillor for an Infringement, the Speaker shall:

- (1) issue such warning to the Councillor in private; and
- (2) notify the Party Whips in writing of the issuing of such warning.

5.2.2.0 Formal Warnings

5.2.2.1 Where the Speaker or the Special Committee (as the case may be) is of opinion that the interests of justice will best be served by issuing a Formal Warning to a Councillor for an Infringement, such Sanction shall, after confirmation by the Municipal Council, be:

- (1) expressed in writing; and
- (2) served on the Councillor concerned and on the Party Whips;

and the Speaker shall thereupon enrol the name of the Councillor, the Infringement concerned and the Sanction in the record referred to in section 6.0 and may be further publicised in such manner as the Speaker deems appropriate.

5.2.2.2 Where, as a result of repeated Infringements, the Speaker or the Special Committee (as the case may be) is of opinion that the interests of justice will best be served by issuing a Formal Final Warning to a Councillor, such Sanction shall, after confirmation by the Municipal Council, be:

- (1) expressed in writing;
- (2) state that in the event of the Councillor infringing against the Councillor's Code of Conduct or this Code again, the Special Committee shall consider advising the Municipal Council to request the suspension or removal of such Councillor in terms of the Councillor's Code of Conduct; and
- (2) served on the Councillor concerned and on the Party Whips,

and the Speaker shall thereupon enrol the name of the Councillor, the infringement concerned and the Sanction in the record referred to in section 6.0 and may further publicise the Infringement in such manner as the Speaker deems appropriate.

5.3.0 FORMAL REPRIMAND

5.3.1 Where the Speaker or the Special Committee (as the case may be) is of opinion that the interests of justice will best be served by issuing a Formal Reprimand to a Councillor for an Infringement, the Speaker shall at a Meeting of the Municipal Council call upon:

- (1) the Councillor concerned to stand at the bar of the Municipal Council;
- (2) state the Infringement and reprimand the Councillor in such language as he deems appropriate;

and the Speaker shall thereupon enrol the name of the Councillor, the Infringement concerned and the Sanction in the record referred to in section 6.0 and may further publicise the Infringement in such manner as the Speaker deems appropriate.

5.4.0 SUSPENSION

5.4.1 Where the Special Committee is of opinion that the interests of justice will best be served by the suspension of a Councillor from the Municipal Council for a period for an

Infringement, the Special Committee shall so report to the Municipal Council and the Municipal Council shall report thereon to the MEC for Local Government in terms of the Councillor's Code of Conduct.

5.4.2 In the event of the MEC for Local Government imposing any suspension of a Councillor for a period in terms of the Councillor's Code of Conduct:

- (1) the Councillor shall be suspended without any Remuneration during such period; and
- (2) the Speaker shall enrol the name of the Councillor, the Infringement concerned and the Sanction in the record referred to in section 6.0 and may further publicise the Infringement in such manner as the Speaker deems appropriate.

5.4.3 A suspension shall be regarded as a Sanction more serious than a Formal Final Warning or Formal Reprimand.

5.5.0 CIVIL FINES

5.5.1 Where the Speaker or the Special Committee (as the case may be) is of opinion that the interests of justice will best be served for an Infringement listed in Column I of Schedule IA by imposing a Civil Fine listed in Column 2 of that Schedule on a Councillor, such Sanction shall be:-

- (1) expressed in writing; and
- (2) served on the Councillor concerned and on the Party Whips;

and the Speaker shall thereupon enrol the name of the Councillor, the Infringement concerned and the Sanction in the record referred to in section 6.0 and may further publicise the Infringement in such manner as the Speaker deems appropriate.

5.5.2 Where provision is made in this Code for the fining of any Councillor, and a Councillor is fined, the Umzimvubu Local Municipality may deduct such fine from any monies as may be owing to the Councillor by the Umzimvubu Local Municipality or recover such fine as a civil debt.

5.6.0 EXPULSION

5.6.1 Where the Special Committee is of opinion that the interests of justice will best be served by the expulsion of a Councillor from the Municipal Council for an Infringement, the Special Committee shall so report to the Municipal Council and the Municipal Council shall report thereon to the MEC for Local Government in terms of the Councillor's Code of Conduct.

5.6.2 A Councillor who is absent from three or more consecutive Meetings of the Municipal Council, or from three or more consecutive Meetings of a Committee of which he is a Member shall be removed from office as a Councillor as prescribed in the Councillor's Code of Conduct.

5.6.3 In the event of:

(1) the MEC for Local Government imposing the expulsion of a Councillor in terms of the Councillor's Code of Conduct; or

(2) a Councillor being expelled in terms of sections 5.6.1 or 5.6.2,

the Speaker shall enrol the name of the Councillor, the Infringement concerned and the Sanction in the record referred to in section 6.0 and may further publicise the Infringement in such manner as the Speaker deems appropriate.

6.0 Record of Sanctions

6.1 The Speaker shall keep a record of all Sanctions imposed on any Councillor which record shall be open to public scrutiny at the Speaker's Office during Office Hours.

6.2 The record of Sanctions contemplated in section 6.1 will remain on record and shall be taken into consideration for precedent purposes and for determining the Sanction for a repeated Infringement where Sanctions are imposed on a Councillor.

7.0 General Conditions of this Code

7.1 A Councillor must at all times perform the functions of his office in good faith, honestly and in a transparent way.

7.2 A Councillor must at all time act in the best interests of the Umzimvubu Local Municipality and in such a way that the credibility and integrity of the Municipality are not compromised.

8.0 Non-Payment of Debts Due to the Umzimvubu Local Municipality

8.1 A Councillor shall not remain in arrears on any Municipal debt for a period of longer than three consecutive Calendar Months.

9.0 Offences in terms of this Code of Conduct

9.1 A Councillor is deemed to have committed an offence in terms of this Code of Conduct if he is guilty of any of the infringements listed in Schedules 1A and 1B.

SCHEDULE II

DISCLOSURE DETAIL

1. Companies:

- 1.1 The number, nature and nominal value of shares of any type in any public or private company and the name and principle business of the company concerned.
- 1.2 The names and addresses of the Directors and shareholders in any private company referred to in Item 1.1.
- 1.3 The name and principle business of any company where a directorship is held.
- 1.4 The amount of any remuneration received for such directorship.
- 1.5 The names and addresses of other Directors of any company referred to in Item 1.3.

2. Close Corporations

- 2.1 In respect of any close corporation, the name and principle business of the close corporation concerned and its estimated capital value.
- 2.2 The names and addresses of other members in the close corporation referred to in Item 2.1.

3. Trusts

- 3.1 The name, principle objects and estimated capital value of any trust, foundation or *fideicommissum* (special trust), whether an interest is held as trustee/administrator or as a beneficiary and the estimated value of such interest.
- 3.2 The names and addresses of other Trustees and beneficiaries in the body referred to in Item 3.1.

4. Partnerships

- 4.1 The name, principle objects and estimated capital value of any partnership or joint venture and the estimated value of such interest.
- 4.2 The names and addresses of the other partners in the partnership and business associates in the joint venture.

5. Property

- 5.1 The address and market value of any immovable property owned or in which another ownership like right is held, the description and extent of the property, its physical location and the nature and value of the interest held.
- 5.2 The nature and market value of movable property of a value in excess of R250.00
- 5.3 The name and address of any other Person with an interest in any such immovable or movable property.

6. Securities

- 6.1 In respect of any mortgages, pledges, debentures and like securities held over any property or in respect of any public or private company, the nature and value of the security and the name and address of the debtor.

7. Income

- 7.1 The name, address and business activity of any employer, the position held and any remuneration paid from such employment.
- 7.2 The source of and value of any pension.
- 7.3 The source, a description and the value of any financial sponsorship, grant or subsidy, gift or the like in excess of R 250.00 and the name and address of the benefactor.
- 7.4 Any fees or reward arising from any contract for works done, goods supplied or service provided in excess of R 250.00 and the name and address of any client in any such relationship.

8. Other Financial Interests

- 8.1 The nature and value of any other financial interest in excess of R 250.00 and the name and address of any Person associated in such interest.
- 8.2 Where any doubt exists as to whether any financial interest ought to be disclosed the Councillor concerned shall act in good faith.