

**Everything You Need
To Know About Being
A Councillor**

**DEPARTMENT OF COOPERATIVE
GOVERNANCE AND
TRADITIONAL AFFAIRS**

DATE: DECEMBER 2011, REVISED IN JULY 2016

GLOSSARY OF ACRONYMS

AFS	Annual financial statements
AG	Auditor-General
ASGISA	Accelerated and Shared Growth Initiative of South Africa
B2B	Back to Basics Programme
CBO	Community-Based Organisation
CBP	Community-Based planning
CCRs	Core Competency Requirements
CDW	Community development worker
CFO	Chief Financial Officer
COGTA	KZN Department of Cooperative Governance and Traditional Affairs
CWP	Community Works Programme
DDMC	District Disaster Management Centre
DG	Director General
DIF	District Intergovernmental Forums
EPWP	Expanded Public Works Programme
EXCO	Executive Committee (of Council)
GDS	Growth and Development Summit (June 2003)
GRAP	Generally Recognised Accounting Practice
GTZ	German Agency for Technical Cooperation
HoD	Head of Department
IDP	Integrated Development Plan
IDS	KZN Industrial Development Strategy
IGR	Inter-Governmental Relations

IGRFA	Inter-Governmental Relations Framework Act, 2005
KPA	Key Performance Area
KPI	Key Performance Indicator
KZN	KwaZulu-Natal
LED	Local Economic Development
LG	Local Government
MEC	Member of the Executive Council (of Province)
MFMA	Municipal Finance Management Act, 2003
MIG	Municipal Infrastructure Grant
MINMEC	Meeting of National Minister and MECs
MM	Municipal Manager
MPRA	Municipal Property Rates Act, 2004
MSA	Municipal Systems Act, 2000
MTEF	Medium-term Expenditure Framework
MTSF	Medium-term Strategic Framework
NEMA	National Environmental Management Act, 1998
NGO	Non-Government Organisation
NIPF	National Industrial Policy Framework
NSDP	National Spatial Development Perspective
PCC	President's Co-ordinating Council
PDA	KZB Planning and Development Act, No. 6 of 2008
PDMC	Provincial Disaster Management Centre
PGDS	Provincial Growth and Development Strategy
PIF	Premier's / Provincial Intergovernmental Forums
PMS	Performance Management System

PR	Proportional Representation
PSEDS	Provincial Spatial Economic Development Strategy
RIDS	Regional Industrial Policy Framework
SALGA	South African Local Government Association
SCOPA	Standing Committee on Public Accounts
SDBIP	Service Delivery Budget Implementation Programme
SETAs	Sector Education and Training Authorities
SMART	Specific, Measureable, Attainable, Realistic and Time-related
SWOT	Strengths, Weaknesses, Opportunities, Threats
WSDP	Water Services Development Plan

TABLE OF CONTENTS

MEC Preface	9
A Guide to the Handbook	11
The Councillor's Mandate	11
1. INTRODUCTION	16
1.1 The Importance of good governance	16
1.2 Context of Governance	16
1.3 Democratic Principles	17
1.4 Principles of good governance	18
1.5 Rule of Law	19
1.6 Ethics/Public Integrity	19
1.7 The Responsibility of Local Government	22
2. NATIONAL AND PROVINCIAL LEGISLATION APPLICABLE TO LOCAL GOVERNMENT	23
2.1 Constitution of the Republic of South Africa, 1996	23
2.2 Municipal Demarcation Act (No. 27 of 1998)	30
2.3 Municipal Structures Act (No. 117 of 1998)	30
2.4 Municipal Systems Act (No. 32 of 2000)	36
2.5 Municipal Finance Management Act (No. 56 of 2003)	43
2.6 Municipal Property Rates Act (No. 6 of 2004)	49
2.7 Intergovernmental Relations Framework Act (No. 13 of 2005)	50
2.8 Legislation Summary	51

3. INSIDE COUNCIL	53
3.1 Structure of Council	53
3.2 Political Parties within Council	55
3.3 Political Administrative Interface	55
3.4 Code of Conduct for Councillors	56
3.5 Determination of Councillors as Full Time	59
4. COUNCILLOR OVERSIGHT	61
4.1 Essential Municipal Oversight Structures	61
4.2 Standard Reporting Formats	61
4.3 Municipal SCOPA	62
5. INTERGOVERNMENTAL RELATIONS	64
5.1 The Constitution and Intergovernmental Relations	64
5.2 Intergovernmental Relations Forums	65
5.3 District Intergovernmental Forum	65
5.4 The Role of Local Government in Intergovernmental Relations	65
5.5 The Role of Each Forum	66
6. MILESTONES	69
6.1 Drafting and Reviewing of IDP	69
6.2 Passing of the Budget	69
6.3 Managing Performance	69
6.4 Municipal Calendar	70
7. SERVICE DELIVERY TRENDS	71
7.1 Helping the Poor (Indigent Policy)	71
7.2 Delivering Housing	71

8. COUNCILLORS AND THE COMMUNITY	74
8.1 Ensuring Public Participation	74
8.2 The Role of Ward Committees	75
8.3 Communicating Regularly	76
8.4 Community Development Workers	77
9. MAJOR PROGRAMMES AND SUPPORT FOR LOCAL GOVERNMENT	80
9.1 The Back to Basics Programme	80
9.2 Expanded Public Works Programme	84
9.3 Rural Development Programmes	85
9.4 Local Economic Development	86
9.5 Disaster Management	87
10. FINANCE	92
10.1 Municipal Finance Management Act	92
10.2 Matters of Specific Importance to the Mayor	93
10.3 Matters of Specific Importance to the Councillors	93
10.4 Auditor General's Reports	95
10.5 Supply Chain Management	98
11. PERFORMANCE MANAGEMENT	105
11.1 Introduction	105
11.2 Legal Framework for Performance Management	105
11.3 Roles and Responsibilities for Councillors	108
11.4 Planning in a Performance Management System	109
11.5 Monitoring in a Performance Management System	113

11.6 Measurement in a Performance Management System	113
11.7 Reporting in a Performance Management System	115
11.8 Performance Review	117
12. MUNICIPAL PLANNING	118
12.1 Strategic Planning	118
12.2 Spatial Planning	120
12.3 Statutory Planning	121
12.4 Development Administration	122
12.5 Development Information Services	125
13. CALENDAR OF MILESTONES	126-133

MEC PREFACE

On behalf of the provincial government of KwaZulu-Natal, I offer you my warmest congratulations on becoming a councillor in this fourth decade of democratic local government. Taking public office is one of the most important civic duties anyone can perform. As elected local government leaders you hold a unique position and have the potential to make a real difference to people's lives.

Councillors are supposed to play an oversight role on the work done by public servants at local government level. Indeed this oversight role is undermined in cases where councillors do not know where to start in playing this role.



As COGTA in line with our mandate to support and capacitate municipalities it is our duty to ensure that this elected cadre of development activists is empowered with the necessary skills and support to lead our communities to a better life.

As the fourth generation of local government councillors you are entering local government at a time of unprecedented challenge and change, and at times you will face difficult decisions as demand for services increases and while the domestic and global economic environment remain constrained impacting on flow of funds from other spheres of government to local government.

From the first council meetings councillors will be required to make important decisions in line with the Back to Basics road map on behalf of their communities and take responsibility for those decisions. Those decisions often involve significant use of public money, resources and assets.

This Councillor Handbook seeks to help councillors to clearly understand their roles and responsibilities and to develop the skills and knowledge to perform their job well and in the best interest of the community they represent. This Councillor Handbook is intended to provide you with the necessary information that will

assist you in discharging your roles and responsibilities. It covers all the essential information about local government. It will enable you to play the oversight role over the administration. It articulates the synergies that are required between councillors and traditional leaders with the common objective of accelerating development. It is a resource that has been packaged for easy reading and can be consulted at any time.

Councillors need to develop skills in areas that are unfamiliar to them. These may include skills in understanding council meeting procedures, the rules of debate or interpreting financial statements, to name just a few. As a councillor you will be at the forefront of these debates and I hope you find it an exciting and positive place to be.

Local government is best placed to respond to the challenges and deliver excellent public services and lead communities to a secure future. This councillor handbook is a tool of your empowerment. Make use of it. It is your compass to help you navigate the at times treacherous local government waters.

As COGTA we are here to support you every step of the way, so please do make best.

I trust that you will benefit immensely from reading and utilising it.

A GUIDE TO THE HANDBOOK

The Councillor's Mandate

The councillor's role is not an easy one and demands expertise and knowledge about the local government system and municipal environment.

Councillors must have an understanding of their mandate. There are many challenges that they face during their five-year term, such as high expectations from the communities they serve, competing interests among different groups of citizens living in the municipality, limited human and financial resources, and tight time frames for delivery of services.

The councillor's mandate must guide councillors in the conduct of their duties.

Three important aspects of the councillor's mandate are:

- *acting as representatives of, and reporting back to, the community they serve;*
- *providing leadership roles in the Council; and,*
- *acting as custodians or guardians of public finances.*

Councillors must work to improve the lives of all the citizens in the municipality. The improvement of people's lives can be achieved through the provision of basic services, the development and growth of the economy, recognising the skills potential of people living in the municipality, mobilising the people to make their own contribution to improve their living conditions, and job creation.

Councillors need to have a thorough understanding and knowledge of the main issues in their municipality.

They are the link between the public and the Council, and owe their primary loyalty to the public. To represent their municipality fully, and, if they are ward councillors, their wards, councillors should know:

- *who the people are in their municipality and/or ward (this would include specific details related to gender, age, employment status and economic status)*
- *what the key issues of the community are (there may be competing issues put forward by different interest groups)*
- *the community's opinions on Council plans, including the municipality's Integrated Development Plan (IDP)*
- *the key infrastructure features of the municipality, such as the housing and health situation, sports and recreation facilities, and access to transport*
- *the socio-political and economic features of the municipality (e.g. political parties, organised civil society, business organisations, investment bodies, etc.).*

Effective representation means that councillors listen to the people that they serve and work towards addressing their concerns and issues in a professional and committed manner. It also requires regular consultation with and reporting back to the communities. It is often at this report-back stage that councillors receive the most criticism. A frequently heard comment is that councillors are only seen every five years when it is time for their re-election.

Acting as representatives requires councillors to undertake the following responsibilities:

- *policy making*
- *decision making*
- *passing by-laws*
- *giving direction to the administration.*

Source: SALGA/GTZ, March 2006, *Handbook for Municipal Councillors*

This handbook is set out to provide useful and accessible information to councillors:

Chapter 1: Introduction

This chapter is all about governance — the obligations and duties of leadership and the art of being a wise and effective councillor. It lays the foundation for this handbook by stating that the essence of being a good councillor is sound ethics and integrity of character in everything you do. It stresses that councillors are there to serve, not to dictate.

Chapter 2: National and Provincial Legislation Applicable to Local Government

Before going any further, it is important to understand the legal background to municipal government. While there are many laws that councillors come across during their term of office, the laws summarised in this chapter are the key pieces of legislation that councillors need to know and understand.

Chapter 3: Inside the Council

This chapter provides a brief summary of the key structures and functions of the Council itself. Councillors have to understand how a council operates and what its powers and the limits to those powers are.

Chapter 4: Councillor Oversight

This chapter deals with accountability, in particular the mechanisms that are in place to ensure that Council business is conducted within the law and that public money is spent cost-effectively for the benefit of all the communities in the municipality.

Chapter 5: Inter-Governmental Relations

It is not only the operations within the Council and municipality that are important, but it is also essential that councillors and Council establish and maintain good relationships with all other spheres of government, including neighbouring local municipalities, the district

municipality, provincial and national government departments as well as Traditional Authorities. This chapter deals with those intergovernmental relationships.

Chapter 6: Municipal Milestones

This is a brief but important chapter dealing with some essential dates that councillors need to be aware of where, in terms of policy and legislation, the Council and its administrative staff need to perform certain functions, submit or receive key Council reports and deal with critical planning, budgeting and financial matters.

Chapter 7: Service-delivery Trends

This chapter describes briefly two of the important service-delivery issues that concern all councils: providing for the poor, and dealing with the provision of housing and associated services. Clearly, there is much more that councillors will have to deal with while in office, and this will be covered during councillor training.

Chapter 8: Councillors and the Community

This chapter has important links with Chapter 1, as it deals with the essential relationship with and responsibility of councillors towards the communities they serve. It stresses the importance of working closely with community representative structures to obtain information on needs and challenges, and the importance of reporting back to the community on Council matters to ensure the openness and transparency that are the basis of a functional and sound democracy.

Chapter 9: Major Programmes and Support for Local Government

This chapter provides information on key development and governance programmes that municipalities are responsible for and that councillors need to know about and understand.

Chapter 10: Finance

A municipality has to manage its finances effectively and efficiently; if it does not, then it will be unable to perform its functions or fulfill its mandate. Councillors play a critical role in ensuring that there is sound Financial Management and Accountability through a system of checks and balances. This chapter sets out the key aspects that councillors need to know about and comply with in terms of legislation.

Chapter 11: Performance Management

Performance management runs through every aspect of Council and municipal operations. This chapter reinforces those performance-management milestones, and sets out specific performance-management tasks and indicators that must be complied with in order to ensure accountability and promote efficient and effective governance.

Chapter 12: Municipal Planning

Underlying all of Council's work and municipal responsibilities in terms of service delivery is good planning. All operations rely on finances and budgets, and the municipal budget is drawn out of a participatory planning process: the strategic Integrated Development Plan for the municipality. This chapter describes briefly the key planning documents that guide the Council and its staff in all their activities.

1. INTRODUCTION

1.1 The importance of good governance

An effective governance framework is essential to the proper functioning of the local sphere of government. Good governance describes the processes through which municipalities set priorities, take decisions, strengthen accountability and communicate with the public.

These processes are intended to enable municipalities to deliver value for money and an improved quality of life through sustainable services, to ensure clean government and to deepen democracy.

A cornerstone of good governance is co-operative governance—ensuring that the different spheres, departments and areas of government work together in a supportive and integrated way.

Governance can be defined as the process of decision making, and the process by which decisions are implemented (or not implemented)

1.2 Context of Governance

All matters concerning governance are drawn from the Constitution of the Republic of South Africa, 1996 which makes this nation a constitutional democracy. It is the supreme law that takes precedence over all other national, provincial and municipal legislation. Any law or conduct inconsistent with the Constitution is invalid.

There are certain democratic principles that are mandatory because they are enshrined in the Constitution. These are:

○ <i>Human dignity</i>	○ <i>Fairness</i>
○ <i>Equality</i>	○ <i>Accountability</i>
○ <i>Non-racialism and non- sexism</i>	○ <i>Supremacy of the Constitution and the Rule of Law</i>
○ <i>Regular elections and a multi-party system of democratic government</i>	

1.3 Democratic Principles

The principle and practice of democracy underpins governance in the sphere of local government. This is because, in a constitutional democracy, the government is subject to, and given legitimacy by, the will and consent of the majority of the governed. This is determined by regular multi-party elections based on universal adult suffrage.

Local government elections determine the will, the choice and the voice of the people at municipal level and inform the majority within a council; it is therefore important that all elected representative parties respect the decisions of the electorate (the people / the governed).

It is important to note that the voice of the minority parties must also be heard through effective participation of the opposition in the decision-making process at local level. The system of governance in KwaZulu-Natal (KZN) is that of a multi-party Collective Executive System / multi-party Plenary Executive System (KZN Determination of Types of Municipality Act, No. 7 of 2000). In practice, most of the decisions are made by the executive committee (Exco) of Council, which, in most cases, is a multi-party collective. However, oversight is exercised by all councillors.

Democracy promotes choice, voice and access to rights

1.4 Principles of Good Governance

The principles of good governance are based on:

Rule of law	Nobody is above the law, due process must be followed and an independent judiciary is essential.
Accountability	Adequate control measures must be in place and enforced so that all officials and councillors are accountable; this requires an accurate reporting system that is open and transparent regarding the activities of the municipality.
Transparency	In a democracy there is no place for secrecy in governmental matters as this is a breeding ground for political and administrative corruption. A lack of transparency results in administrative actions becoming less subject to legal and political control, and corruption is the result.
Participation	The principle of participation is based on an acceptance that people are at the heart of development. Community participation is therefore a fundamental principle of governance.
Responsiveness	The municipality must communicate with people on a continual basis so that various municipal structures are always alert and responsive to the needs, problems, wishes and values of the people
Equality	All members of local communities must have equal access to services provided by, or on behalf of, the municipality and all citizens must have an equal opportunity to participate in decision making in matters that affect their lives

Effectiveness, efficiency and economy	A practical performance-management system is the best way of promoting effectiveness, efficiency and economy within municipalities
Conflict management	Conflict amongst political parties or any other groupings is an unavoidable feature in a democratic system. Good governance will play a major role in the prevention of conflict through the promotion of fair, just and legal processes, and through encouraging community participation and accountability to the electorate

1.5 Rule of Law

The basic principle is that nobody is above the law.

The most important application of the rule of law is the principle that governmental authority is legitimately exercised only in accordance with written, publicly disclosed laws adopted and enforced in accordance with established procedural steps. This is known as “due process”, and ensures that all conduct and decisions must be made within the legal framework. The rule of law means that everyone must be subject to a shared set of rules that are applied universally and which treats all people fairly and equally.

The “separation of powers” doctrine is an essential aspect of the rule of law. This means that the legal system or judiciary is independent of the executive or government.

1.6 Ethics/Public Integrity

Democracy depends on generating and maintaining a strong foundation of trust between the community and those who govern. Good governance must therefore have an ethical base.

People who bear public office are expected to maintain accepted standards. A deviation from standards will bring about resistance, mistrust and a lack of confidence. Members of the community

have a right to demand that the proceedings of Council and its committees are conducted impartially, without prejudice and untainted by personal interest. It is crucial that all public office bearers know the difference between right and wrong.

Test of ethics and public integrity

A useful test of ethics and public integrity is whether one can justify one's decision and would do so if it appeared on the front page of a newspaper.

Ethics is the study of human conduct in respect to its propriety, (its rightness or goodness) when measured against accepted values. Ethics within the local government environment deals with an association of persons for a particular purpose where commonly accepted conduct, codes (see section 3.4) or guidelines of particular behaviour are laid down and encouraged or enforced.

Activities that attract ethical appreciation, evaluation or condemnation at the local government level include the intention, words and actions of councillors in carrying out all their duties.

Moral qualities that are valued in public officials include balanced conduct; thoroughness, honesty, integrity, empathy, loyalty, modesty, optimism (especially about the future), courage (especially to make decision), self-discipline and self-control. All these are related to the trust and faith that the public want and are entitled to have in their officials carrying out public service.

On the one hand, at municipal level ethical conduct starts with individual actions by the employees and councillors of a municipality with the intention of furthering the common good of the municipality, as determined by its policies, procedures and systems. On the other hand, collective ethical conduct denotes how external stakeholders such as suppliers and the community in general, experience local government's commitment to the

common good and how they expect employees and councillors to behave. In this way, excellent ethical conduct by employees and councillors of local government leads to the collective perception of local government as being ethical.

1.7 The Responsibilities of Local Government

The diagram below summarises the key responsibilities of local government.

When municipalities practice good governance,
their communities are more connected and
engaged, better services are provided and more
effective use is made of resources.

Good governance produces better outcomes

Responsibilities of Local Government

Infrastructure and basic services

This includes water and sanitation, electricity reticulation, refuse removal, storm water management, municipal roads, municipal public transport, and street lighting, among others.

Social and welfare services

Primarily provincial responsibility, but municipal functions that fall in this category include: crèches, municipal health services, establishment & maintenance of public parks & other recreational facilities.

Administration and public order

Primarily provincial responsibility, but municipal functions that fall in this category include: crèches, municipal health services, establishment & maintenance of public parks & other recreational facilities.

Municipal planning

Development plans of a municipality are the basis for directing and managing land use and infrastructure provision and planning for public investment. E.g. the housing subsidy programme is provincially implemented but effective implementation relies on municipal planning.

2. NATIONAL AND PROVINCIAL LEGISLATION APPLICABLE TO LOCAL GOVERNMENT

2.1 Constitution of the Republic of South Africa, 1996

The Constitution sets out the founding provisions of the Republic of South Africa, which include the values of the democratic state, the supremacy of the Constitution, citizenship, the national flag and anthem, languages of the country and the Bill of Rights.

The sections of the Constitution that apply most specifically to municipal powers and functions are contained in:

- *Chapter 3: Cooperative Government (section 41)*
- *Chapter 7: Local Government (sections 152, 155, 156, 158 and 160)*
- *Chapter 6: Provinces (section 139 – deals with provincial intervention in local government)*

Section 41: Principles of Co-operative Government and Intergovernmental Relations

This section directs all spheres of government and all organs of state within each sphere to preserve the peace and national unity of the country, to secure the wellbeing of the people of the country and to provide effective, transparent, accountable and coherent government for the country as a whole.

Section 152: Objects of Local Government

The objects of local government are:

- *to provide democratic and accountable government for local communities*
- *to ensure the provision of services to communities in a sustainable manner*
- *to promote social and economic development*

- o to promote a safe and healthy environment, and
- o to encourage the involvement of communities and community organisations in matters of local government.

Municipalities are directed, by this section of the Constitution, to "strive, within [their] financial and administrative capacity, to achieve the objects set out" in the above section.

Section 155: Establishment of Municipalities

This section of the Constitution sets out three categories of municipality:

- o Category A: a municipality that has exclusive municipal executive and legislative authority in its area. These are the metro municipalities.
- o Category B: a municipality that shares municipal executive and legislative authority in its area with a category C municipality within whose area it falls. These are the local municipalities
- o Category C: a municipality that has municipal executive and legislative authority in an area that includes more than one municipality. These are the district municipalities.

Section 156: Powers and Functions of Municipalities

This section sets out the extent of powers and functions of municipalities and states that a municipality has executive authority in respect of, and has the right to administer:

- o Local government matters listed in Part B of Schedule 4 of the Constitution,
- o Local government matters listed in Part B of Schedule 5 of the Constitution, and
- o Any other matter assigned to it by national or provincial legislation.

It also states that municipalities may make and administer by- laws for the effective administration of matters which it has the right to administer; a by-law that conflicts with national or provincial legislation is invalid.

SCHEDULE 4: FUNCTIONAL AREAS OF CONCURRENT NATIONAL AND PROVINCIAL COMPETENCE	SCHEDULE 5: FUNCTIONAL AREAS OF EXCLUSIVE PROVINCIAL LEGISLATIVE COMPETENCE
PART B: LOCAL GOVERNMENT MATTERS (as set out in s.155 (6) (a) and (7)	PART B: LOCAL GOVERNMENT MATTERS As set out for provinces in s. 155 (6) (a) and (7)

Air pollution	Beaches and amusement facilities
Building regulations	Billboards and the display of adverts in public places
Child care facilities	Cemeteries, funeral parlours and crematoria
Electricity reticulation	Cleansing
Fire-fighting services	Control of public nuisances
Local tourism	Control of undertakings that sell liquor to the public
Municipal airports	Facilities for the accommodation, care and burial of animals
Municipal planning	Fencing and fences
Municipal health services	Licensing of dogs
Municipal public transport	Licensing and control of undertakings that sell food to the public.
Municipal public works(as assigned)	Local amenities
Pontoons, ferries, jetties, piers & harbours (excluding the regulation of international and national shipping matters)	Local sport facilities
Storm water management in built- up areas	Markets
Trading regulations	Municipal abattoirs
Water and sanitation services limited to potable water supply systems and domestic waste- water and sewage disposal systems.	Municipal parks and recreation
	Municipal roads
	Noise pollution Pounds
	Public places
	Refuse removal, refuse dumps and solid waste disposal
	Street trading
	Street lighting, Traffic & parking

Section 158: Membership of Municipal Councils

The section stipulates that every citizen who is qualified to vote for a municipal council is eligible to be a member of that council with the exception of:

- anyone who is in the service of the municipality and received remuneration for that appointment or service;
- anyone who is in the service of the state in another sphere and receives remuneration for that appointment or service;
- anyone who is disqualified from voting for the National Assembly or who is disqualified in terms of s.47(1) (c), (d) or (e) from being a member of the National Assembly;
- a member of the National Assembly, a delegate to the National Council of Provinces or a member of the provincial legislature; and,
- a member of another municipal council (but this disqualification does not apply to a member of another municipal council in a different category; i.e. one can be a councillor for both a Category B and Category C municipality).

Section 160 (2): Functions That May Not Be Delegated

Functions that may not be delegated by a municipal council are as follows:

- the passing of by-laws;
- the approval of budgets;
- the imposition of rates and other taxes, levies and duties; and
- the raising of loans.

Section 139: Provincial intervention in local government

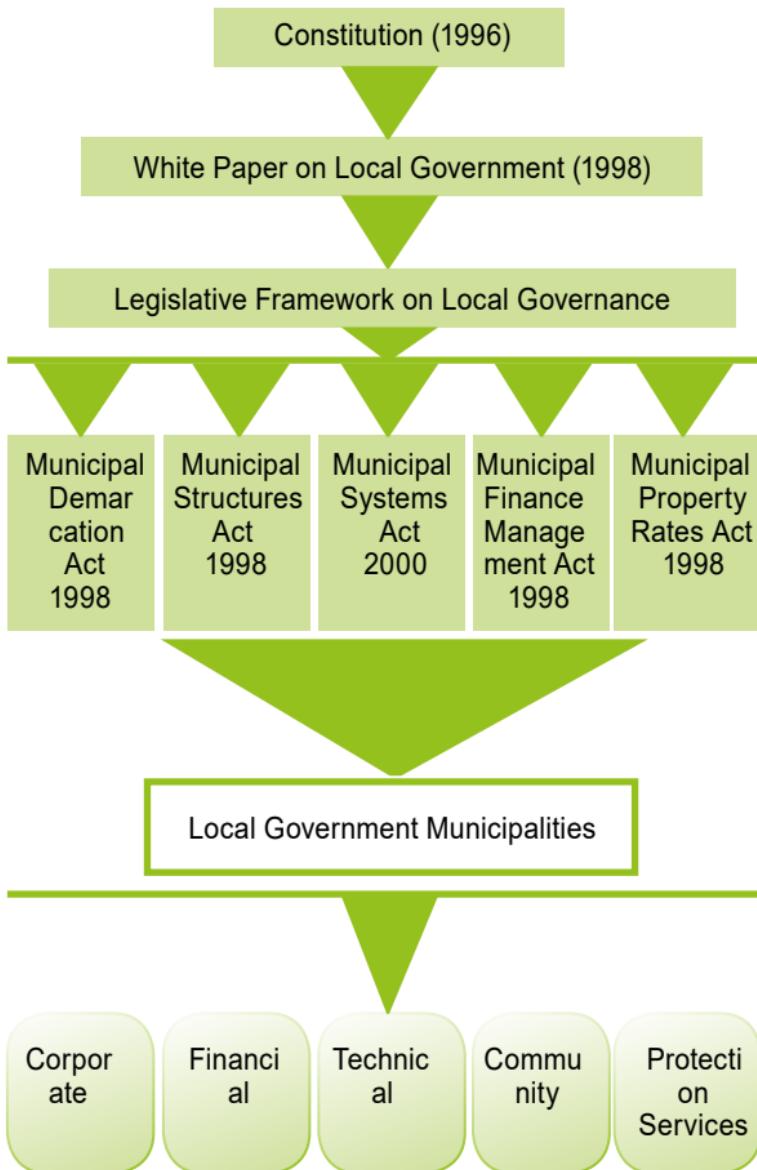
This section applies specifically to municipalities that are not carrying out their duties and functions (their executive obligation) in terms of the Constitution or legislation. The relevant provincial executive may intervene by taking appropriate steps to ensure fulfilment of that obligation. This may mean dissolving the municipal council and appointing an administrator, or assuming responsibility

to ensure that the municipal council does not take unreasonable action that is prejudicial to the interest of another municipality or the province as a whole, and/or to maintain economic unity.

Section 227: Division of Revenue

Section 227 provides for local government to receive a portion of nationally raised revenue. This revenue, which comes in the form of an unconditional grant from the National Treasury, is called the “equitable share” and an “equitable share” allocation is made to all municipalities in terms of the Division of Revenue Act (promulgated annually).

The diagram below illustrates the main pieces of legislation governing local government and outlines the main divisions within a municipality.



2.2 Municipal Demarcation Act (No. 27 of 1998)

This Act was passed in 1998 and resulted in the establishment of the Municipal Demarcation Board. This is an independent authority responsible for demarcating municipal boundaries and for determining wards within municipalities, and for reviewing the capacity of municipalities to exercise powers and perform functions.

The demarcation in 2000 established wall-to-wall municipalities incorporating all parts of the country, including urban, rural and peri-urban areas.

2.3 Municipal Structures Act (No. 117 of 1998)

The Municipal Structures Act of 1998 provides for the establishment of municipalities in accordance with the requirements relating to categories and types of municipality. It sets out criteria for determining the category of municipality to be established in an area and defines the types of municipality that may be established within each category. The Act provides for an appropriate division of powers and functions between categories of municipality, and regulates the internal systems, structures and office bearers of municipalities. It also establishes the appropriate electoral systems and provides for matters connected to elections.

Section 12: Establishment of Municipalities

The MECs for local government in a province, through publication in the Provincial Gazette, must establish a municipality in each municipal area that is demarcated by the Demarcation Board, and must ensure that the establishment of each municipality is consistent with the terms of the Demarcation Act. The MEC must specify the type of municipality to be established (Category A, B or C), the boundaries of the municipal area, the name of the municipality and the number of councillors, as determined in terms of section 20. Section 20 of the Structures Act stipulates that the number of councillors must be based on the number of voters

registered on that municipality's portion of the national common voters roll. The MEC may also determine the number of full-time councillors and may adjust the division of powers and functions between municipalities.

Section 19: Municipal Objectives

Municipalities must strive to achieve the objectives set out in S.152 of the Constitution (see above). In addition, a municipal council must annually review:

- *the needs of the community;*
- *its priorities to meet those needs;*
- *its processes for involving the community;*
- *its organisational and delivery mechanisms for meeting the needs of the community; and*
- *its overall performance in achieving the municipal objectives set out in s.152 of the Constitution.*

A municipal council must also develop mechanisms to consult the community and community organisations in performing its functions and exercising its powers.

Section 24: Term of Municipal Councils

The term of municipal councils is no more than five years as determined by the Minister by notice in the Government Gazette calculated from the day following the date or dates set for the previous election of all municipal councils. Municipal elections must be held within 90 days of the expiry term of municipal councils.

Section 25: By-elections

By-elections must be held under a range of specific circumstances, including: if the Electoral Commission does not declare the result of an election of a municipal council within the period specified in terms of the Electoral Act; if a court sets aside the election of a council; if a council is dissolved; or if a vacancy in a ward occurs. This section sets out the procedures for the calling of by-elections.

Section 29: Meetings of Municipal Councils

The speaker of a municipal council decides when and where the council meets; however, if a majority of the councillors request the speaker in writing to convene a council meeting, then the speaker must arrange the meeting at the time set out in the request.

The municipal manager must call the first meeting of the council of the municipality within 14 days after the council has been declared elected, or if it is a district council, after all the members to be appointed by local councils have been appointed.

Municipal councils must meet on a quarterly basis. Like members of parliament, municipal councillors are immune from criminal and civil proceedings for anything they may say in council or committee meetings.

The Act also states that councils must conduct their business in an open and transparent manner, which means that all municipalities must allow the media and public access to the decision-making process, even if this may cause discomfort. Meetings may only be held in private under exceptional circumstances.

Section 30: Quorums and Decisions

A quorum means that a majority of the total number of councillors allocated to the municipality must be present at a meeting of the council before a vote can be taken on any matter. Thus, a quorum never changes; it is always 50% plus one of the total numbers of councillor seats, irrespective of the number of sitting councillors.

All decisions taken by a municipal council regarding matters set out in section 160(2) of the Constitution (see above) must be decided by the supporting vote of a majority of all of the councillors of the municipality. All other questions before a municipal council are decided by a majority of the votes cast by the councillors present at that meeting, noting that a quorum as referred to above must be present to convene the meeting.

If there is an equality of votes, the councillor presiding must exercise a casting vote, in addition to his or her vote as a councillor.

Before a municipal council takes a decision on the following, it must require its executive committee (Exco) to submit to it a report and recommendation:

- *any matter mentioned in section 160 (2) of the Constitution;*
- *an approval of an IDP for the municipality, and any amendment to that plan; and*
- *the appointment and conditions of service of the municipal manager and a head of department of the municipality.*

Section 36: Election of Speakers

Each municipal council must have a chairperson who will be called the speaker who will be elected at the first meeting of the council following elections, or when necessary to fill a vacancy. The speaker must be elected from the councillors. The municipal manager (or if there is none, a person designated by the MEC for local government) should preside over the election of the speaker. In certain circumstances, prescribed by the Structures Act, the speaker may also be the mayor.

Section 43: Composition of Executive Committees

If the council of a municipality establishes an executive committee (Exco), it must elect a number of councillors necessary for effective and efficient government, provided that no more than 20% of the councillors or 10 councillors (whichever is the least), are elected. An Exco may not have fewer than three members. An Exco must represent all parties and interests of the council in substantially the same proportion that they are represented in council.

Section 48: Election of Mayors

The municipal council must elect a member of its Exco as the mayor, and another member of the Exco may be elected as deputy mayor. The election of a mayor must take place when the Exco is elected, or when it is necessary to fill a vacancy. Schedule 3 of the

Structures Act sets out the procedure for the election of the mayor and deputy mayor.

The mayor and deputy mayor remain in office for the term of the council but vacates office during this term if they resign, or are removed from office as a member of Exco in terms of s.53 of the Structures Act, or if they cease to be a member of the Exco.

No person may hold office as mayor or deputy mayor for more than two consecutive terms. A mayor who has served two terms may not be immediately elected deputy mayor after the expiry of his or her mayoral term of office.

Section 72: Ward Committees

Only Category A and B municipalities may have ward committees (district municipalities do not have ward committees).

The objective of a ward committee is to enhance participatory democracy in local government.

Section 74: Functions and Powers of Ward Committees

A ward committee:

- *makes recommendations on any matter affecting its ward to the ward councillor, or through the ward councillor to the metro or local council; and,*
- *has such duties and powers as the metro or local council may delegate to it in terms of s.32 (Delegation to Committees and Other Internal Functionaries) of the Structures Act.*

Section 79: Establishment of Other Committees

A municipal council may establish one or more committees for the effective and efficient performance of its functions or the exercise of any of its powers. These committees may be appointed from among council members and the council may:

- *determine the functions of the committee;*
- *delegate duties and powers to it in terms of section 32 of the Structures Act;*

- appoint the chairperson and, in the case of portfolio committees, the chair must be an Exco member;
- authorise a committee to co-opt advisory members who are not members of the council, within the limits determined by council;
- determine a committee's procedure; and
- remove a member of a committee at any time, or dissolve a committee at any time.

Section 80: Committees to Assist the Executive Committee

If a municipal council has an Exco, it may appoint, in terms of section 79 of the Structures Act, committees of councillors to assist the Exco. These committees are commonly known as portfolio committees. The members of such committees may not outnumber the members of the Exco or the mayoral committee.

Chapter 5: Functions and Powers of Municipalities

Chapter 5 of the Structures Act deals with the functions and powers of municipalities assigned to them in terms of sections 156 and 229 of the Constitution. The chapter covers the following issues:

- the division of functions and powers between district and local municipalities;
- adjustment of this division of powers by the MEC for local government;
- the resolution of disputes concerning performance of functions or exercise of powers;
- the temporary allocation of functions and powers; and,
- cooperation between district and local municipalities.

DISTRICT MUNICIPALITY

A district municipality must seek to achieve the integrated, sustainable and equitable social and economic development of its area as a whole by:

- *ensuring integrated development planning for the district as a whole;*
- *promoting bulk infrastructural development and services for the district as a whole;*
- *building the capacity of local municipalities in its area to perform their functions and exercise their powers where such capacity is lacking; and*
- *promoting the equitable distribution of resources between the local municipalities in its area to ensure appropriate levels of municipal services in its area.*

Schedules 4 and 5 of the Constitution stipulate the various powers and functions allocated to local government, both district and local municipalities (see section 2.1 above).

2.4 Municipal Systems Act (No. 32 of 2000)

The Local Government Municipal Systems Act (2000) or MSA is one of the founding laws defining South Africa's local government system and sets out the core principles for developmental local governance.

The Municipal Systems Act was amended in July 2011 to outline the process to be followed when appointing municipal managers and managers directly accountable to the municipal manager, with particular reference to sections 54A to 57A.

The Regulations on appointment and conditions of service for senior managers was promulgated on 14 January 2014. Regulation 35 also stipulates that the Minister must annually determine the upper limits of total remuneration packages payable to senior managers.

Of particular importance to councillors are the chapters dealing with community participation, integrated development planning and performance management. The Act also deals with municipal functions and powers, local public administration and human resources, municipal services credit control and debt collection.

Chapter 3: Municipal Functions and Powers

Chapter 3 of the MSA deals with municipal functions and powers and states that a municipality has all the functions and powers conferred by or assigned to it in terms of the Constitution, and must exercise them subject to Chapter 5 (Functions and Powers) of the Municipal Structures Act (see section 2.3 above).

Section 11: Executive and Legislative Authority

The section covers the assignments initiated by the executive to specific municipalities as well as matters of executive and legislative authority. Section 11 (3) sets out how a municipality exercises this authority.

MSA – Section 11(3): A municipality exercises its legislative or executive authority by:

- *developing and adopting policies, plans, strategies and programmes, including setting targets for delivery*
- *promoting and undertaking development*
- *establishing and maintaining an administration*
- *administering and regulating its internal affairs and the local government affairs of the local community*
- *implementing applicable national and provincial legislation and its by-laws*
- *providing municipal services to the local community, or appointing appropriate service providers in accordance with criteria and processes set out in section 78*

- monitoring and, where appropriate, regulating municipal services where those services are provided by service providers other than the municipality
- preparing, approving and implementing its budgets
- imposing and recovering rates, taxes, levies, duties, service fees and surcharges on fees, including setting and implementing policies on tariffs, rates and taxes, and debt collection.
- monitoring the impact and effectiveness of any services, policies, programmes or plans
- establishing and implementing performance-management systems
- promoting a safe and healthy environment
- passing by-laws and taking decisions on any of the above mentioned matters
- and performing other tasks within its legislative and executive competence.

Section 12: Legislative Procedures

This section deals with the ability of a municipality to introduce draft by-laws to council and specifies how the council should proceed with decision-making in terms of adopting by-laws. No by-laws may be adopted or passed by a municipal council unless:

- all the members of the council have been given reasonable notice; and
- the proposed by-law has been published for public comment.

Section 13: Publication of By-laws

It should be noted that a municipality exercises its legislative authority by passing laws, namely by-laws. A by-law that is passed by a municipal council must be published promptly in the Provincial Gazette and, when feasible, also in a local newspaper or in any

other practical way to bring the by-law to the attention of the local community. These by-laws take effect when published or on a future date determined in terms of the by-law. All by-laws must be documented and presented in such a way that they are available to members of the public on request.

Section 17: Mechanisms, Processes and Procedures for Community Participation

Participation by the local community in the affairs of the municipality must take place through:

- *political structures for participation established in terms of the Structures Act;*
- *mechanisms, processes and procedures for participation in municipal governance established in terms of the Structures Act and the MSA;*
- *other appropriate mechanisms, processes and procedures established by the municipality; and, liaising with councillors.*

Section 17 states that the municipality must also provide for the receipt, processing and consideration of petitions and complaints lodged by members of the local community, as well as for notification of public comment procedures (e.g. in relation to budget, IDPs and environmental-impact procedures). The municipality must also provide for public meetings and hearings by the municipal council and other political structures when appropriate, as well as for consultative sessions with locally recognised community organisations and, where appropriate, with traditional authorities. There should also be report-backs to the local community. These public-participation processes, notices, and so on, must take into account those who are illiterate, people with disabilities and other disadvantaged groups.

A municipality may also establish one or more advisory committees consisting of people who are not councillors to advise the council on any matter within the council's competence.

Section 25: Adoption of Integrated Development Plans

Each municipality must adopt a single, inclusive and strategic plan for the development of the municipality which:

- *links, integrates and coordinates plans and takes into account proposals for the development of the municipality;*
- *aligns the resources and capacity of the municipality with the implementation of the plan;*
- *forms the policy framework and general basis on which the annual budgets must be based; and*
- *is compatible with national and provincial development plans and planning requirements binding on the municipality in terms of legislation.*

Section 34: Annual Review and Amendment of IDPs

A municipal council must review its IDP annually in accordance with its performance-assessment measurements, and therefore may amend its IDP in accordance with the prescribed process.

Section 38: Establishment of a Performance-management System

A municipality must establish a performance-management system that is appropriate to its resources and best suited to its circumstances, and that is in line with the priorities, objectives, indicators and targets contained in its IDP. Municipalities should also cultivate a culture of performance management among its political structures, office bearers and councillors, and in its administration.

Section 46: Annual Performance Reports

A municipality must prepare an annual report comprising:

- *a performance report (municipality and/or service providers' performance against set service-development and service-delivery targets);*
- *the financial statements for that financial year;*
- *an audit report on the financial statements; and*

- any other reporting requirements in terms of applicable legislation.
- This report must be advertised so that the annual report can be tabled and discussed at a meeting of the council that is open to the public.

Section 51: Organisation of Administration

A municipality must establish and organise its administration within its administrative and financial capacity in a manner that will enable the municipality to be responsive to the needs of the community, facilitate a culture of public service and accountability among its staff, and be performance-orientated.

The municipality must establish clear relationships and facilitate cooperation, coordination and communication between its political structures, political-office bearers, administration and the local community. It must be able to perform its functions through operationally effective and appropriate administrative units and mechanisms, including departments and other functional or business units. This can be done on a decentralised basis where necessary. Clear responsibilities for the management and coordination of these administrative units and mechanisms must be assigned and the municipal manager is held accountable for the overall performance of the administration.

Section 53: Roles and Responsibilities

A municipality must define the specific role and area of responsibility of each political structure and political-office bearer, and of the municipal manager. In defining these roles and responsibilities, the municipality must also determine the relationships among those structures and offices, with appropriate mechanisms for interaction and accountability.

Section 55: Responsibilities of Municipal Managers (MMs)

Municipal managers (MMs) are the heads of the administration and also the accounting officers of a municipality and are responsible for

an effective, economical, efficient and accountable administration. The MM must make sure that the administration is appropriately equipped to carry out its functions in accordance with the IDP and the performance- management system, and is responsive to the needs of the local community.

Section 57: Employment Contracts for Municipal Managers and Managers Directly Accountable to Municipal Managers

Municipal managers and heads of department reporting directly to them may be appointed to those positions only in terms of a written employment contract that is subject to a performance agreement concluded annually. These employment contracts must include the applicable labour legislation, details of duties, remuneration, benefits and other items and conditions of employment.

Section 59: Delegations

A municipal council must develop a system of delegation of municipal duties that will maximise administrative operational efficiency and provide for adequate checks and balances.

Section 105: Provincial Monitoring of Municipalities

The MEC for local government in a province must establish mechanisms, processes and procedures in terms of section 155(6) of the Constitution to monitor municipalities and monitor the development of local government in the province.

Section 106: Non-performance and Maladministration

If the MEC has reason to believe that a municipality cannot fulfill its statutory obligations or that there is maladministration, fraud, corruption or any other serious malpractice, the MEC must by written notice require the council to provide the MEC with appropriate information so that an investigation can be initiated, or the MEC may designate a person to investigate such matters.

Schedule 1: Code of Conduct for Councillors

Schedule 1 of the MSA contains a Code of Conduct for councillors (see section 3.4 of this handbook).

Schedule 2: Code of Conduct for Municipal Staff Members

Schedule 2 of the MSA contains the Code of Conduct for municipal staff members. This covers general conduct, commitment to serving the public interest, personal-gain issues, disclosure of benefits, unauthorised disclosure of information, undue influence, rewards, gifts and favours, council property, payment of arrears, participation in elections, sexual harassment, reporting duties of staff members and breaches of the Code of Conduct.

2.5 Municipal Finance Management Act (No. 56 of 2003)

The purpose of the Municipal Finance Management Act (No. 56 of 2003) (MFMA) is to secure sound and sustainable management of the financial affairs of municipalities and other institutions in the local sphere of government, to establish treasury norms and standards for the local sphere of government, and to provide for matters connected to this.

It aims to modernise budget and financial-management practices by placing local government finances on a sustainable footing in order to maximise the capacity of municipalities to deliver services to all their residents, customers, users and investors. It also aims to put in place a sound financial governance framework, by clarifying and separating the roles and responsibilities of the mayor, executive and non-executive councillors, and officials.

The Act deals with municipal revenue, municipal budgets, cooperative government, debt, the responsibilities of mayors and municipal officials, the municipal budget and treasury office, supply chain management, financial reporting and auditing, resolution of financial problems, general treasury matters and financial misconduct.

Section 16: Annual Budgets

An annual budget must be tabled by the mayor at a council meeting at least 90 days before the start of the budget year. The annual budget must be approved by the council before the start of a financial year.

Section 21: Budget Preparation Process

The mayor of a municipality must coordinate the processes for preparing the annual budget and for reviewing the municipality's IDP and budget-related policies to ensure that the tabled budget and any revisions of the IDP and budget-related policies are mutually consistent and credible.

When preparing the annual budget, the mayor of a municipality must:

- *take into account the municipality's IDP;*
- *take into account realistic revenue and expenditure projections for future years;*
- *take into account the national budget, the relevant provincial budget, the national government's fiscal and macro-economic policy, the annual Division of Revenue Act and any agreements reached in the Budget Forum;*
- *consult the relevant district municipality and all other local municipalities within the area of the district municipality if the municipality is a local authority;*
- *consult all local municipalities within its area, if the municipality is a district municipality;*
- *consult the relevant provincial treasury, and when requested, the National Treasury; and, consult the national departments responsible for water, sanitation, electricity and any other service as may be prescribed.*

Section 24: Approval of Annual Budgets

The municipal council must approve the budget at least 30 days before the start of a budget year by adopting a resolution as referred to in section 17(3)(a)(i), as may be necessary:

- *imposing any municipal tax for the budget year;*
- *setting any municipal tariff for the budget year;*
- *approving any changes to the municipality's IDP; and*
- *approving changes to the municipality's budget-related policies.*

Section 26: Consequences of a Failure to Approve the Budget before the Start of the Budget Year

If the municipal council has failed to approve the annual budget or any revenue-raising measures necessary to give effect to the budget by start of the budget year, a provincial executive of the relevant province must intervene in the municipality in terms of section 139(4) of the Constitution by taking appropriate steps to ensure that budget or those relevant measures are approved.

The province may take corrective action by dissolving the council, and appointing an administrator until a newly elected council has been declared, and by approving a temporary budget or revenue-raising measures to provide for the continued functioning of the municipality. The temporary budget must be replaced by a budget approved by the newly elected council.

Section 27: Non-compliance with Provisions of this Chapter (Obligations on the Mayor to Inform the MEC of Financial Non- compliance)

The mayor must in writing inform the MEC for Finance and the National Treasury upon becoming aware of any impending or actual non-compliance with the provisions of Chapter 4 of the MFMA, and of remedial action or corrective measures to avoid recurrence. The provincial executive may intervene in terms of the appropriate provisions of section 139 of the Constitution if a municipality cannot or does not comply with a provision of this Chapter, including provisions relating to process.

Section 32: Unauthorised, Irregular or Fruitless and Wasteful Expenditure

The section covers liability and reporting lines of unauthorised, irregular and wasteful expenditure by the political-office bearer, accounting officer and municipal official. The municipal council must take corrective measure and make constructive decisions if such liability occurs.

Section 61: Fiduciary Responsibilities of Accounting Officers

The accounting officer of a municipality is the municipal manager and must:

- *act with fidelity, honesty, integrity and in the best interests of the municipality in managing its financial affairs;*
- *disclose to the municipal council and the mayor all material facts that are available to the accounting officer or reasonably discoverable, and which in any way might influence the decisions or actions of the council or the mayor; and*
- *seek, within the sphere of influence of the accounting officer, to prevent any prejudice to the financial interests of the municipality.*

Section 81: Role of the Chief Financial Officer

The chief financial officer of a municipality:

- *is administratively in charge of the budget and treasury office;*
- *must advise the accounting officer on the exercise of powers and duties assigned to the accounting officer in terms of this Act;*
- *must assist the accounting officer in the administration of the municipality's bank accounts and in the preparation and implementation of the municipality's budget;*

- o must advise senior managers and other senior officials in the exercise of powers and duties assigned to them in terms of section 78 or delegated to them in terms of section 79; and
- o must perform such budgeting, accounting, analysis, financial reporting, cash management, debt management, supply chain management, financial management, review and other duties as may in terms of section 79 be delegated by the accounting officer to the chief financial officer.

Section 111: Supply Chain Management Policy

The municipality must develop, review, approve and implement a supply chain management policy in accordance with the treasury regulations.

Section 121: Preparation and Adoption of Annual Reports

The municipality and municipal entity must prepare an annual report within nine months after the end of financial year.

The purpose of the annual report is to provide a record of the activities of the municipality or municipal entity during the financial year to which the report relates, to provide a report on performance against the budget of the municipality or municipal entity for that financial year, and to promote accountability to the local community for the decisions made throughout the year by the municipality or municipal entity.

Section 122: Preparation of Financial Statements

The municipality must for each year prepare annual financial statements and consolidated annual financial statements that fairly present the state of affairs of the municipality or entity; its performance against its budget; its management of revenue, expenditure, assets and liabilities; its business activities; its financial results; and its financial position at the end of the financial year. The municipality must disclose the information required in terms of sections 123, 124 and 125 of the MFMA.

The annual financial statements and consolidated annual financial statements must be prepared in accordance with generally recognised accounting practice (GRAP).

Section 127: Submission and Tabling of Annual Reports

The annual report must be tabled in the municipal council by the mayor within seven months after the end of the financial year. In accordance with section 21(a) of the Municipal Systems Act, immediately after the annual report is tabled in the municipal council, the accounting officer must make it public, invite the local community to submit presentations in connection with the annual report and submit it to the Auditor-General, the relevant provincial treasury and the provincial department responsible for local government.

Section 129: Oversight Reports on Annual Reports

The council must adopt the oversight report after the oversight committee and council considered the annual report, by no later than two months from the date on which the annual report was tabled. The oversight reports adopted with council's comments on the annual report must include a statement on whether the council:

- *has approved the annual report with or without reservations;*
- *has rejected the annual report; and*
- *has referred the annual report back for revision of those components that can be revised.*

Section 131: Issues Raised by the Auditor-General in Audit Reports

A municipality must address any issues raised by the Auditor-General in an audit report and the mayor must ensure the municipality complies with the mandate. All annual financial statements of municipalities in the province, the audit reports on such statements and any responses of municipalities on such audit reports are assessed by the MEC for local government in the

province and the MEC must report to the provincial legislature any omission by the municipality to address those issues adequately within 60 days.

Section 137: Discretionary Provincial Interventions

It is the responsibility of the municipality to avoid, identify and resolve financial problems and issues that may result in provincial interventions. This section covers the assessment and procedures undertaken by the MEC in applying a provincial intervention in the affected municipality.

2.6 The Municipal Property Rates Act (No. 6 of 2004)

The Municipal Property Rates Act (MPRA) involves the legislation surrounding the valuation of property and the levying of rates on property owners by municipalities. As rates form an important part of municipal financial management, the effective implementation of the Act is of concern to all councillors. The MPRA regulates the power of municipalities to impose rates on properties and ensure that there is uniformity across the country. The main aim is to create economically viable municipalities that can meet their service-delivery responsibilities.

The Basis for Rates

The basis for valuation is the market value — the price a willing buyer would pay for a property to a willing seller on the open market on the date of valuation. The rate itself is levied as the number of cents in the rand on this total market value (also referred to as rate-randage). All owners of immovable property have to pay rates, including the owners of commercial, residential, agricultural and government property. Land tenure rights, such as permission to occupy, are also defined as property. Sectional-title properties will also have to be valued and the individual owners billed for rates, since body corporates cannot be billed. Certain properties are excluded from rating, including land-reform beneficiaries for the

first ten years, provided the property does not change ownership. Places of worship, nature reserves and botanical gardens are also exempt from rates.

Rates Policy

The Act and associated regulations specifies how a municipal rates policy should be developed and what should be included therein. Municipalities are permitted to distinguish between different types and categories of properties for rating purposes. For example, it is common practice to give residential properties a rebate or discount. The Act makes provision for a specific amount of the value of a residential property to be exempt from rates as a way of assisting low-income families. Certain categories of property owners may also receive exemptions including indigent owners, pensioners, owners temporarily without income, owners affected by disasters, or owners experiencing adverse social and economic conditions.

2.7 Inter-Governmental Relations Framework Act (No. 13 of 2005)

The Intergovernmental Relations Framework Act (IGRFA) aims to achieve coherent government and promotes cooperative governance, and aims to ensure the effective provision of services, the effective monitoring of implementation of policy and legislation, and the realisation of national priorities amongst the three spheres of government.

The IGRFA also provides for mechanisms and procedures for the settlement of intergovernmental disputes in an effort to fulfil the Constitutional obligation placed on all organs of state to avoid legal proceedings against one another.

At local level the Act requires that mayors of district and local municipalities must establish an intergovernmental forum to promote and facilitate relations between these two tiers of government. The Act makes it imperative that the three tiers of government work together to tackle poverty, underdevelopment and the legacy of apartheid.

2.8 Legislation Summary

TITLE OF ACT	ACT NO	YEAR	Provincial/ National
The Constitution of South Africa	108	1996	N
The Municipal Structures Act	117	1998	N
The Municipal Systems Act	32	2000	N
The Municipal Finance Management Act	56	2003	N
Remuneration of Public Office- Bearers Act	20	1998	N
Employment Equity Act	55	1998	N
Municipal Demarcation Act	27	1998	N
KZN Determination of Types of Municipality Act	7	2000	P
Municipal Property Rates Act	6	2004	N
KwaZulu-Natal Cemeteries and Crematoria Act	12	1996	P
KwaZulu-Natal Pound Act	3	2006	P
Disaster Management Act	57	2002	N
Intergovernmental Relations Framework Act	13	2005	N
Division of Revenue Act (enacted annually)	-	-	N
KwaZulu-Natal Planning Development Act	6	2008	P
National Building Regulations and Building Standards Act	103	1997	N

There are many more pieces of legislation, national and provincial, that have an impact on municipalities and that municipalities have to take cognisance of. The Housing Act (1997) requires municipalities to develop housing plans as part of the IDP; the National Environmental Management Act (NEMA) (1998) requires municipalities to conduct Strategic Environmental Assessments and Environmental Impact Assessments; the National Water Act (1998) requires municipalities to develop Water Services Development Plans (WSDPs); and the National Land Transport Transition Act (2000) requires each district (with the support of local municipalities) and metro to prepare an Integrated Transport Plan for its entire area.

3. INSIDE THE COUNCIL

3.1 Structure of Council

The Municipal Structures Act (see section 2.3 of this handbook) sets out the structure of the council in terms of the election of the mayor, the speaker and the formation of Exco and other council committees as deemed necessary such as the portfolio committees.

The Constitution makes provision for South Africa's local sphere to consist of wall-to-wall municipalities that must be established for the whole territory of South Africa.

Unlike other spheres of government, the executive and legislative authority of a municipality are both vested in the council. This means that the council as a whole must ratify important decisions, such as the passing of by-laws, the approval of budgets, the imposition of rates and the raising of loans. These cannot be delegated to an executive authority.

The Mayor

The mayor of a municipality presides over meetings of the executive committee and performs the duties, including any ceremonial functions, and exercises the powers delegated to the mayor by the municipal council or Executive Committee.

The Deputy Mayor

The Deputy Mayor exercises the functions and performs the duties of the mayor if the mayor is absent or unavailable or if the office of the mayor is vacant. The mayor may delegate duties to the deputy mayor.

The Executive Committee

Councils of the collective executive type (this refers to mayoral committees in an executive-mayor system) are entitled to elect an executive committee; these are often full-time councillors.

An Executive Committee or Exco is the principal committee of the Council which receives reports from other committees of the Council. The Exco must recommend to the full council strategies, programmes and services to address priority needs through integrated development planning and estimates of revenue and expenditure. It must make recommendations to Council on the best methods and approaches for the delivery of those services and it must evaluate progress against key performance indicators.

The Speaker

The position of speaker takes responsibility for the running of council meetings. The speaker is the chairperson of the Council. In plenary-executive type municipalities, the speaker is called the mayor.

An important aspect of the Council is the committees which can be established in terms of sections 79 and 80 of the Municipal Structures Act. Most municipalities have established committees that correspond to their administrative departments and units, such as housing or finance.

The Chief Whip

The role of the chief whip of a political party is to manage other whips within the council to ensure that its members maintain discipline and good conduct and specifically seeks to ensure that party members speak with one voice on matters of policy.

Thus, one of the chief whip's primary functions is to ensure cohesion between the executive and legislative branches of government. In municipalities the chief whip performs a dual role, encompassing both the executive and legislative domains.

The Portfolio Committees

A municipal council may establish one or more committees necessary for effective and efficient performance of any of its functions or the exercise of any of its powers. The functions of these committees, generally known as portfolio committees, are

to be determined by the council and it is the council that appoints the chairperson and delegates duties and powers to each of these committees (s.79 of the Structures Act).

3.2 Political Parties within Council

South Africa's municipalities represent the multi-party nature of our democracy and represent a wide range of viewpoints. Often municipal councils are more diverse than the provincial legislators and Parliament and may include independent candidates who do not represent a political party at all.

As the only directly elected politicians in the South African political system, ward councillors, while they may represent a specific political party, will also be called upon to represent all residents of a ward and to report back to all of them on matters of general interest. Relations between political parties differ from council to council.

3.3 Political-administrative Interface

The political-administrative interface refers to the relationship between elected politicians or councillors and the officials who staff municipalities. This relationship between councillors and officials is set out in the Code of Conduct and the municipality's Municipal Delegations Framework. It is important that both Councillors and officials handle the municipality's affairs in an ethical manner.

In some instances the political administrative interface is an unhappy one with poor relationships between councillors and officials. This is likely to affect municipal performance. The Code of Conduct for councillors must be adhered to with respect to the relationship and interaction between councillors and officials.

Often officials feel that councillors encroach on their terrain and interfere in the day to day management of the municipality and the councillors may feel that officials are not able to grasp the development challenges that are beyond being merely technical managers. While councillors are elected to set policy, this is also

determined by the availability of resources, budget and expertise. Councillors and staff need to be able to work together to ensure that policy can be implemented within the available resource constraints.

While bitter conflict should be avoided, healthy debate and some tension between the two levels is part of most governance systems, and can also give rise to better decision-making. Conflict can be productive when different views are debated and a policy position is strengthened in response to criticisms concerning issues that may have been overlooked. However conflict can be extremely destructive when it is not institutionalised but allowed to spill over into personal relationships

3.4 Code of Conduct for Councillors

Schedule 1 of the Local Government: Municipal Systems Act sets out a Code of Conduct which regulates the conduct of all councillors. This is in keeping with local and international best practice which requires that elected representatives conduct themselves in an exemplary way at all time. The Code aims to encourage the good conduct of the councillors and states that at all times councillors must act in the best interests of the municipality and ensure that its integrity is not compromised.

PREAMBLE TO THE CODE OF CONDUCT FOR COUNCILLORS

Schedule 1: Local Government Municipal Systems Act,
No. 32 of 2000

Councillors are elected to represent local communities on municipal councils, to ensure that municipalities have structures and 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 order to ensure that councillors fulfill their obligations to communities, and support the achievement by the municipality of its objectives as set out in section 19 of the Municipal Structures Act, a Code of Conduct has been drawn up.

THE CODE OF CONDUCT COVERS		
General conduct of councillors	Disclosure of interests	Council property
Attendance at Meetings	Full-time councillors	Duty of chairperson of council
Sanctions for non- attendance at meetings	Rewards, gifts and favours	Breaches of code
Disclosure of interests	Unauthorised disclosure of information	Application of code to traditional leaders
Personal gain	Intervention in administration	

Determination of Councillors' Salaries, Allowances and Benefits

On an annual basis, the MEC is consulted by the National Minister of Cooperative Governance on the recommendation made by the Independent Commission for the Remuneration of Public Office Bearers. The National Minister of Cooperative Governance then determines the new upper limits that may be payable to councillors by notice in the Government Gazette in terms of section 7(1) of the Remuneration of Public Office Bearers Act No. 20 of 1998.

The MEC is, in terms of this Notice, required to take into consideration the ability of municipal councils to pay any proposed increases.

The KZN MEC responsible for local government published an Affordability Framework in the provincial gazette containing assessment criteria in terms of which municipal councils are assessed before the MEC approves of the level at which municipal councillors of a particular municipality may be remunerated.

Resolutions that municipal councils make will include decisions on:

- *Total Remuneration Package*

Total remuneration package which includes basic salary component, housing allowance and travelling allowances as provided in the specific Government Gazette, the municipal contribution to a pension fund and the municipal contribution to a medical aid scheme.

- *Motor vehicle allowance*

This is an allowance of not more than 25% of the annual total remuneration package of a councillor concerned and which allowance includes running and maintenance costs incurred on official business up to 500 kilometers per month; provision is made for claims in excess of 500 kms/month.

In addition to the allowance referred to above and in addition to the annual total remuneration package of councillor, official distances travelled in excess of 500 kilometers 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. A log book acceptable to the South African Revenue Services is required if claims are to be made.

- *Housing allowance*

A councillor may structure his/her total remuneration packages to include a housing allowance.

- *Subsistence, travel and accommodation when on official business*

A councillor may be reimbursed for actual out-of-pocket expenses incurred during the execution of official and ceremonial duties.

- *Cell phones*

In addition to the annual total remuneration packages provided for, a councillor may obtain a fixed allowance as determined by the council in respect of cell phones, but not exceeding the upper limit amount determined in the government notice issued in terms of Remuneration of Public Office Bearers Act 20 of 1998.

- *Official Motor Vehicle*

The council may provide an official motor vehicle to the mayor, the deputy mayor and the speaker.

3.6 Determination of Councillors as Full-time

Applications are made by municipal councils to the MEC responsible for local government for the positions of speaker, mayor, deputy mayor or any other position on its executive committee (or a chief whip where applicable), or chairperson of a section 79 committee of the council to be determined as full-time in terms of Section 18(4) of the Local Government: Municipal Structures Act (No. 117 of 1998) and the Framework Policy issued by the National Minister in terms of section 18 (4) of the said Act.

After the statutory consultation process, the MEC responsible for local government publishes an amendment to a specific municipality's section 12 establishment notice formalising this determination and the municipality may thereafter designate the councillors holding such positions on council to be full-time.

4. COUNCILLOR OVERSIGHT

4.1 Essential Municipal Oversight Structures

In order to ensure effective and efficient municipal oversight, the following “foundation blocks” have been identified. Every effort must be made to ensure their successful operations:

- *operational portfolio committees;*
- *a functional audit committee;*
- *a regular functioning reporting system;*
- *a reliable admin support system/ committee clerk; and*
- *an effective communication strategy, to engage members of the public and ward committees.*

4.2 Standard Reporting Formats

Municipalities are legally required to compile and consider a number of performance-related reports. This includes a report on the performance of a municipality against its Integrated Development Plan (IDP) objectives, and another on the performance of a municipality against its Service Delivery and Budget Implementation Plan (SDBIP) targets. These reports are based on key performance indicators and performance targets as a means to measure and manage the performance of a municipality both at organisational (IDP) and operational level (SDBIP).

However, not every activity that a municipality undertakes is necessarily reported on for consideration by Council in the two aforementioned performance-related reports. There is therefore a need for the compilation of an additional monthly report on the balance of the activities undertaken by each municipal department. To provide the portfolio committees, Exco and the Council with a comprehensive overview of the performance of a department and its activities, the two performance-related reports and the additional monthly report are integrated into one consolidated monthly report to be submitted per municipal department.

4.3 Municipal SCOPA

Purpose

A municipal Standing Committee on Public Accounts (SCOPA) is a section 79 committee, the primary purpose of which is to assist the council to exercise oversight over the executive and the administration of the municipality, in other words, to assist council in holding the executive and the municipal administration to account.

In a broad sense, it assists council to seek clarity on council matters by asking questions such as:

- *what did we agree to (the actual plan or objective)*
- *how are we going to do it (the intention)*
- *what did we do (what was actually done)*
- *did we do it how we planned it (in the manner or way or time we intended)*
- *did we do what we agreed to (as originally planned and agreed).*

SCOPA has the ultimate responsibility to:

- *hold the municipal executive and administration to account;*
- *ensure that resources are used effectively and efficiently;*
- *review municipal public accounts on behalf of council;*
- *review the AG's reports;*
- *review the action taken on the AG's reports; and make its findings known without fear or prejudice.*

Terms of Reference

The terms of reference that are to be adopted by council, address the principle aspects relating to the establishment, composition and functioning of a municipal SCOPA. These would include background and purpose, functions and powers, membership, chairperson, quorum and decision making, meetings, relationship with other structures, etc.

Composition / Structure and Membership

A municipal SCOPA, similar to other council committees, should solely be comprised of councillors appointed by a full council meeting. The actual size should be determined by the size of a council (i.e. number of councillors), but care should be taken to ensure that members represent a wide range of experience and expertise available in council as well as political representatively.

The size should range from a minimum of five to a maximum of 12, mainly dependent on the size of the council. In keeping with the tradition of oversight function, the council may consider whether a member of an opposition party must chair a municipal SCOPA. The mayor and members of the executive committee may not be members of a municipal SCOPA.

5. INTERGOVERNMENTAL RELATIONS

5.1 The Constitution and Intergovernmental Relations

It should be noted that a municipality exercises its legislative authority by passing laws, namely, by-laws that ensure that Government achieves its mandate and delivers services in an integrated manner to the people of the country through the effective and efficient utilization of resources, Chapter 3 of the Constitution sets out principles for co-operative governance and intergovernmental relations (IGR). The Constitution acknowledges that the national, provincial and local spheres of government are distinctive, interdependent and interrelated.

To promote co-operative governance amongst the three spheres of government, Section 41 of the Constitution states that in order to co-operate with one another in mutual trust and good faith, all spheres of government and organs of state must:

- *foster friendly relations;*
- *assist and support one another;*
- *inform and consult one another on matters of mutual interest;*
- *co-ordinate their actions and legislation with one another;*
- *adhere to agreed procedures; and,*
- *avoid legal proceedings against one another.*

The Constitution further requires that an Act be put into place to provide for appropriate structures and institutions to facilitate intergovernmental relations and to resolve intergovernmental disputes amongst the spheres of government. The Intergovernmental Relations Framework Act, (No. 13 of 2005) or the IGRFA, was promulgated to give effect to this Constitutional requirement (refer to point 2.7 of this handbook).

5.2 Intergovernmental Forums

A range of intergovernmental forums have been established to achieve mutual consultation and co-ordination of policy and legislation. The forums that have been established are:

- *President's Coordinating Council (PCC)*
- *National Intergovernmental Forums (MINMECs)*
- *Premiers Intergovernmental Forums (PIFs) and Provincial Intergovernmental Forums (MUNIMECs)*
- *District Intergovernmental Forums (DIFs)*
- *Inter-municipality Forums*

5.3 The District Intergovernmental Forum

A district intergovernmental forum is established in each district municipality and is made up of the mayor of the district together with the mayors of the local municipalities within the district area. The aim is to serve as a consultative forum to discuss and consult each other on matters of mutual interest which includes the providing input into draft national and provincial policy and legislation; implementation of national and provincial policy and legislation in the district; mutual support; the provision of services; coherent planning and development in the district; co-ordination and alignment of strategic objectives and performance plans and any matter of strategic importance which affects the interests of the municipalities in the district. The district mayor represents the district at the Premier's Intergovernmental Forum.

5.4 Role of Local Government in Intergovernmental Relations

Developmental local government is a key concept in running municipalities, and as the front line of service delivery and development, municipalities must fully participate in intergovernmental processes to ensure that maximum benefit is derived for the communities they serve and this in effect requires active participation from all councillors via their respective mayors.

5.5 Role of Each Forum

5.5.1. THE ROLE OF IGR FORUMS

- *IGR Forums are meetings where development issues are discussed at a strategic level, including the impact of legislation, policies and other matters of mutual interest.*
- *Forums are in place so that the various role players work closely together and that the activities they plan are integrated.*
- *Forums need to have clear channels of communication between them.*

5.5.2. ROLE OF THE DISTRICT MAYORS FORUM

1. The object of the Forum is to promote and facilitate intergovernmental relations and cooperative government between the District Municipality and the Local Municipalities, including:
 - *To seek unity of purpose and coordination of effort around the District's development priorities; and*
 - *To ensure effective and efficient service delivery unhampered by jurisdictional boundaries.*
2. The Forum is a consultative forum for the District Municipality and the Local Municipalities to discuss and consult each other on matters of mutual interest, including:
 - *draft national and provincial policy and legislation relating to matters affecting local government interests in the District;*
 - *the implementation of national and provincial policy and legislation with respect to such matters in the District;*
 - *matters arising in the Premier's Coordination Forum;*
 - *mutual support in terms of section 88 of the Municipal Structures Act (Act 117 of 1998);*
 - *service delivery in the District; and*

- *coherent planning and development in the District.*
- 3. The Forum consists of
 - *The Mayor of the District Municipality; and*
 - *The Mayors of local municipalities in the District.*

5.5.3. ROLE OF THE MUNICIPAL MANAGERS/ TECHNICAL SUPPORT FORUM

- 1. To provide technical support to the District Mayors Forum and to implement resolutions.
- 2. To oversee all the IGR sub Technical structures (planning & development, infrastructure, finance, corporate services, general and social services and communications forum)
- 3. In providing technical support to the Mayors Forum and implementing decisions on matters where authority has been conferred to it, the functions include, amongst others:
 - *Provide advise support and recommendations of agenda items of the Mayors Forum and ensure that reports are prepared and documented accordingly*
 - *Deal with all matters referred to it by the technical sub committees by taking decisions and implementing such decision where authority has been conferred and*

referring matters to the Mayors Forum where such matters require the decision of the Mayors.

- *Deal with technical issues/matters from the Provincial Intergovernmental forums*
- *Submit reports to the Mayors Forum for information on all matters where decision have been taken by it*
- *Monitor and evaluate all the functions of the technical subcommittee as well as the status and progress in the implementation of its resolutions and those of the Mayors Forum.*
- *Deal with legal issues of a district wide nature*
- *Provide IGR status reports including budget reports on IGR matters to the Mayors Forum*
- *Deal will all shared services matters*
- *Ensure effective distribution of resources in building capacity in the entire district to deal timorously with all compliance issues*

4. This forum shall comprise the following Officials from the District and each Local Municipalities

- *Municipal Manager of District Municipality*
- *Municipal Manager of each of the Local Municipalities within the District*

6. MUNICIPAL MILESTONES

6.1. Drafting and Reviewing the IDP

The Integrated Development Plan (IDP) is a key document in the programme and daily operation of the municipality. It is a legal requirement that all municipalities develop an IDP for the five-year term of office and that this is reviewed on an annual basis. One of the most important components of the IDP is the community-participation process that informs the writing of the document. It is intended to be an in-depth participatory process with local communities being directly involved in developing their own IDP and determining the key priority areas for development.

As the IDP is the main strategic driver of the municipal budget, it is critical that there is a programme of action in the drafting and reviewing of the IDP to ensure that the relevant participatory processes take place timeously so that the IDP can be drafted and finalised in time to inform the budget processes.

6.2 Passing the Budget

The municipal budget is developed and approved on an annual basis, but forms part of a longer-term cycle — the Medium Term Expenditure Framework (MTEF). This longer-term allocation of resources helps municipalities plan around multi-year projects and take a more sustainable view of municipal finance.

The focus on the development of the budget and expenditure is far more strategic in nature and councillors oversee the development of the municipal budget, which is responsive to the needs of the community and which supports the implementation of the IDP.

The key milestones for developing and approving the budget, including the public-participation process, are set out in the municipal calendar (Annexure 1).

6.3 Managing Performance

The MSA requires all municipalities to develop and establish a performance-management system. The Act requires municipalities to monitor this performance on an ongoing basis, and to make the system work there needs to be a process of regular reporting to the council, political-office bearers, and officials and the public. As with the IDP and the budget, there is therefore a need to establish a system of targets, and to monitor and review milestones. If this monitoring and reviewing is done properly, it helps councillors and officials — and the public — to understand what causes poor performance and how to address this.

The performance-management cycle should mirror the IDP cycle with term-of-office objectives, as well as targets that can be reached in a calendar year.

6.4 Municipal Calendar

The municipal calendar indicates the key dates on which certain actions should be taken or milestones achieved. It covers the financial, IDP, performance-management and community-participation milestones. The community-participation milestones are largely related to the other three. The calendar is contained in Annexure 1 at the back of this handbook.

7. SERVICE-DELIVERY TRENDS

7.1 Helping the Poor (Indigent Policy)

Alleviating poverty, especially in vulnerable groups such as women and children, must always be a priority for a councillor considering matters of policy and practical implementation. There are two main areas of focus for municipalities: ensuring access to a minimum package of free basic services for those who cannot afford municipal services; and crafting an indigent policy that also takes care of the needs of the poor, the elderly and the disabled in appropriate ways.

By formulating an indigent policy, the council recognises that simply providing a level of free basic services is not enough.

There are also issues such as how to deal with poor people with significant levels of municipal debt; and other benefits, such as rates rebates for poor, elderly and disabled homeowners. While there is still a focus on providing basic services, the challenge for the years ahead will be on how municipalities determine who is indigent and how to focus scarce resources on those who need them most.

Ultimately, the approach of government is to find a way to classify persons or households in such a way that once they have been identified, they benefit from a range of government services without charge — a safety net for the poor.

7.2 Delivering Housing

Despite the widespread provision of new homes, there is still an acute lack of housing available to the poor, especially in urban areas, which have seen people moving from rural areas in search of opportunities.

In some municipalities there has been a tendency to believe that housing is not a local government responsibility. There is an urgent need for all spheres of government to cooperate in the provision of housing in order to meet the ever growing need accompanying urbanisation pressures in the province.

The new plan on speeding up service delivery for sustainable human settlement is aimed at reducing backlogs and upgrading informal settlements, with the active participation of the private sector and NGOs. The view is that efficiency in delivery is best achieved within the sphere of government that is closest to the people, but this can only be done by a properly funded and adequately capacitated sphere of government with the appropriate constitutional mandate.

It was stated by the Minister of Human Settlements:

“We have realised that municipalities have not been given a clear mandate for housing delivery. We have also noted that not enough capacity exists in municipalities to carry housing delivery, simply because we did not build or fund such capacity. Where municipalities have an acute lack of capacity to perform housing functions we need to urgently attend to that”

Thus, a much more substantial role is envisaged for municipalities in developing sustainable communities. The Minister added:

“Through the accreditation of selected municipalities, we are seeking to devolve and assign the housing functions on the basis of sound funding arrangements and accountability, appropriate governance arrangements, as well as systematic capacity-building of provinces and municipalities”.

It is likely that the major metropolitan areas will be the first to be accredited in this way. For councillors, the shift in housing policy is important, because while municipalities have not been directly responsible for providing housing, there are many municipal processes and decisions affecting the prospect for achieving sustainable human settlements that offer a decent quality of life and access to community facilities and opportunities. These include spatial and environmental planning approaches to urban development, access to land suitable for development in such a

way that communities are integrated, and the manner in which service and infrastructure are planned for and provided.

At municipal level, a broad view needs to be taken, one that keeps the need for housing in the forefront as a key issue. The reality is that people without decent homes are not interested in which sphere of government is responsible for housing delivery or how public-sector red tape delays the building of homes. Councillors and mayors will be held accountable for a failure to deliver. Better cooperation between the spheres of government is the only way to overcome these challenges.

8. COUNCILLORS AND THE COMMUNITY

8.1 Ensuring Public Participation

Public participation is the participation of all residents of a country, including citizens and non-citizens, in the decision-making process of all three spheres of government. The importance of ensuring public participation is critical to deepening democracy and improving good governance.

Various pieces of legislation and policy have been developed by both national and provincial government in order to promote the participation of citizens in government processes. Section 152(1) of the Constitution places an obligation on local government “to encourage the involvement of communities and community organisations in matters of local government.” Chapter 4 of the Municipal Systems Act or MSA is devoted to community participation.

Chapter 2 of the MSA addresses the role the councillors, officials and the community must play in community- participation processes. The onus is largely on the municipality to initiate and sustain the participation process.

Chapter 4 of the MSA addresses the following seven main issues:

- *development of a culture of community participation (s.16);*
- *development of mechanisms, processes and procedures for community participation (s.17);*
- *communication of information concerning community participation to the community (s.18);*
- *public notice of meetings of municipal councils (s.19);*
- *admission of public to meetings of the council (s.20)*
- *communications to the local community (s.21); and,*
- *regulations and guidelines that can be issued by the Minister (s.22).*

The KZN Local Government Summit of 2005 affirmed the role of ward committees as the primary structure for community consultation. Additional structures for public participation include the IDP Representative Forum, traditional councils and stakeholder groups or forums.

To put it simply, the municipality must **inform** the community of municipal events, **consult** with them on issues such as services and **involve** them in the decision-making process

8.2 The Role of Ward Committees

The purpose of a ward committee is to enhance participatory democracy in local government, and it is considered the most important mechanism for communication and participation by the community in municipal affairs. The ward committee is made up of ten members of the community (representatives or nominated by community stakeholder bodies) plus the elected ward councillor.

Ward committee members can be drawn from the following sectors:

Youth	Education	Agricultural associations
Women's organizations	Senior citizens	Disabled
Religious groupings	Community Safety forums	NGO's
Sports and cultural organisations	Community based organisation	Employment/organised labour
Health and welfare	Ratepayers associations	Traditional leaders
Business chambers	Environment	Informal traders' associations

*Note: the participation of traditional leaders is critical to ensure the success of ward committee operations

The ward committee's function is to make recommendations on any matter affecting its ward to the ward councillor, or through the ward councillor to the local municipal council, or the executive committee.

Proportional Representation (PR) councillors serve in the first place their political party while simultaneously having the interest of the community at heart. They are accountable to their party in respect of the affairs of the municipality.

The ward councillor's main task on the other hand, is to serve the interests of the ward residents in the municipality. Ward councillors should do this with the cooperation of the ward committee. They cannot serve the interests of any political party but should serve all residents in the ward. This explains why political parties should not serve on the committee. The ward councillor is accountable to the ward residents and should on a regular basis report back to the residents on the affairs of the municipal council.

Due to the diverse membership of the ward committee, it is the ideal vehicle to foster public relations between the council and the community.

8.3 Communicating Regularly

Section 16 of the MSA states that the municipality must develop a culture of community participation that complements formal representative government with a system of participatory governance. It must therefore encourage regular communication with the community and this is done through various formal forums and processes as set out below:

- *the preparation, implementation and review of the Integrated Development Plan in terms of Chapter 5 of the Act;*
- *the establishment, implementation and review of its performance-management system in terms of Chapter 6 of the Act, and the monitoring and review of its*
- *performance, including the outcomes and impact of such performance;*

- *the preparation of the municipal budget; and,*
- *strategic decisions relating to the provision of municipal services in terms of Chapter 8 of the Act.*

The municipality must develop mechanisms to ensure communication during these processes. As a regular means of communication it should:

- *provide for the receipt, processing and consideration of petitions and complaints lodged by members of the community;*
- *indicate how it will notify the community about municipal issues and the procedures to be followed by the*
- *Community when it wishes to comment on municipal issues;*
- *provide for public meetings and hearings by the municipal council and other political structures and*
- *political office bearers of the municipality; and*
- *provide for consultative sessions with locally recognised community organisations, and where appropriate, traditional councils.*

8.4 Community Development Workers

The Community Development Worker Programme (CDWP) was launched nationally in 2003, arising out of the 1997 White Paper on Social Welfare. The then President, Thabo Mbeki, presented the rationale for community development workers (CDWs) in his 2003 State of the Nation address:

“Government will create a public service echelon of multi-skilled community development workers who will maintain direct contact with people where they live. We are determined to ensure that government goes to the people so that we sharply improve the quality of outcomes of public expenditure intended to raise the standards of living of our people. It is wrong that government should oblige people to come to government even in circumstances where people do not know what services the government offers and have no means of transport to reach government offices”

The CDW programme is based on the following objectives:
to improve social equity and justice;

- *to enhance service delivery;*
- *to deepen our democracy; and,*
- *to contribute to citizen education*

Nationally, the Department of Public Service and Administration and the Department of Cooperative Governance (formerly the Department of Provincial and Local Government or DPLG) are responsible for coordination and rollout of the CDWP.

Provincially, in KZN, CoGTA has responsibility for the operation of the programme. Each province has coordinators who work with regional coordinators to make sure that the programme runs smoothly at both provincial and local level.

CDWs must work closely with a range of stakeholders, including health workers, sports developers, NGOs and ward councillors and ward committees. It is anticipated that CDWs will assist in improving service delivery; an ongoing challenge has been to achieve better coordination across departments, agencies and different spheres of government. The training of CDWs is therefore critical in ensuring that they are multi-skilled and able to interact with people across the wide range of government programmes and projects.

The CDWs work in the communities where they live and to whom they have to answer for their activities. They are required to help people in communities improve their own lives and change their circumstances. CDWs are expected to facilitate community participation in policy making and implementation and in service delivery.

A CDW

- *is an information provider to communities on government programmes;*
- *guides and supports community members working in community-based projects;*

- *works collaboratively with other development workers in helping community members obtain information and services; and,*
- *work cooperatively and closely with ward councillors and ward committees.*

A CDW's key responsibilities are:

- *to assist in the smooth delivery of services by identifying and removing obstacles;*
- *to strengthen the social contract between government and communities;*
- *to link communities to government services;*
- *to pass on community concerns and problems to government structures;*
- *to support and nurture the increased exchange of information; and,*
- *to improve government community networks.*

9. MAJOR PROGRAMMES AND SUPPORT FOR LOCAL GOVERNMENT

9.1 The Back to Basics Programme

The core services that local government provides is clean drinking water, sanitation, electricity, waste removal and roads which are basic human rights and essential components of the right to dignity as captured in our Constitution and Bill of Rights. Local Government is where citizens interface with government and its foundational ethos must be about service to people. Therefore the Back to Basics programme was launched with the theme of "Serving Our Communities Better". The programme was officially launched at the Presidential Summit which was held on the 18 September 2014, at which the President, outlined governments' plan of action for the next 5 years which is to ensure a focused and strengthened local government by getting the basics right and together with other spheres of government, providing basic services efficiently and effectively and in a caring manner.

The Back to Basics Strategy is underpinned by the following Five Pillars:

- *Put people and their concerns first and ensure constant contact with communities through effective public participation platforms.*
- *Create conditions for decent living by consistently delivering municipal services at the right quality and standard. This includes:*
- *planning for and delivery of infrastructure and amenities;*
- *maintenance and upkeep, including the budgeting to do this;*
- *ensuring no failures in services and where there are, restore services with urgency.*
- *Be well governed and demonstrate good governance and administration by:*
- *cutting wastage;*
- *spending public funds prudently;*
- *hiring competent staff;*

- *ensuring transparency and accountability.*
- *ensure sound financial management and accounting, and prudently manage resources so as to sustainably deliver services and bring development to communities*
- *build and maintain sound institutional and administrative capabilities, administered and managed by dedicated and skilled personnel at all levels.*

As part of the development of the strategy, all 278 municipalities in South Africa were subjected to a categorisation process. On the basis of the performance indicators the level of performance of municipalities were confirmed and classified according to which category they belong. For each pillars, indicators or measures were drawn up, with actions attached, in order to achieve the Back to Basics objectives

The municipalities categorised as “Functional” are the top group which comprises of municipalities, which, in most cases, have the basics right and are performing their functions adequately, even though they still have much to do to improve. Within this group, there is a small group of top performers that are doing extremely well. In these municipalities the basics are in place, and there are innovative practices to ensure sustainability and resilience. These municipalities should become role models for other municipalities and take on more complex challenges of spatial integration and economic development within their municipalities.

The “Challenged” municipalities are the middle group which comprises of municipalities that are fairly functional, and overall performance is average. While the basics are mostly in place, and the municipalities can deliver on the traditional functions of local government, there are worrying signs of degeneration and decline. These municipalities must aspire towards ensuring that the basics are performed and ensure an acceptable level of service delivery

The municipalities categorised as “Requiring Intervention” form the bottom third of the group and is made up of municipalities that are dysfunctional, and face serious challenges in meeting their

constitutional obligations. These municipalities require urgent intervention and support to enable them to get the basics right. They should aim to reach acceptable levels of performance with regard to service delivery and community engagement practices.

Towards responding to “getting the basics right” and recognizing that there are varying levels of performance amongst different categories of municipalities, the need exists to prioritise the following standards towards improving municipal performance.

The priorities of the Back to Basics approach are:

Priority 1:

- *For those municipalities in a dysfunctional state the objective is to get them to perform at the very least the basic functions of local government.*
- *This will be achieved through the enforcement of current policies and legislation, systematically managing of their performance and accountability and ensuring that there are consequences for underperformance.*
- *Minimum performance requirements include ensuring the proper functioning of council structures and council processes, the provision of basic services, and the appointment of competent staff – these are non-negotiable.*

Priority 2:

- *For those municipalities who are functional but are not doing enough in critical areas of service, a support programme will be developed to progress to a higher path.*
- *Here the focus will be on building strong municipal administrative systems and processes, and to ensure that administrative positions are filled with competent and committed people whose performance is closely monitored.*
- *The oversight system for local government will be improved through creating real-time monitoring systems.*
- *Measures will be taken to ensure that municipalities engage properly with their communities.*

Priority 3:

- *Municipalities that are performing well will be incentivized by giving them greater flexibility and control over their resources and grants.*
- *They will be encouraged to move beyond the basics, as they have the potential to transform the local space economy and integrate and densify their communities*
- *towards a more advanced and sustainable development path*

Priority 4:

- *There will be a targeted and vigorous response to corruption and fraud, and a zero tolerance approach to ensure that these practices are rooted out*
- *Supply chain management practices in municipalities will be closely scrutinized*
- *Where corruption and mismanagement have been identified these will be decisively dealt with through provisions such as asset forfeiture and civil claims*
- *COGTA and its stakeholder partners will also work to change practices in the private sector and enlist the support of civil society to change the national morality.*

KZN COGTA has developed an assessment tool covering indicators from the Back to Basics strategic document, as well as the National COGTA level one indicators and further critical criteria identified by business units at COGTA. This assessment tool is used to assess all municipalities. Following assessments, support plans are devised for each municipality depending on the type of support they require. Further, to the development of support plans there are fundamental matters that municipalities must undertake that have a high visibility such as grass cutting, patching potholes, etc. A process to ensure that municipalities deal with such matters was undertaken to improve public confidence in local government.

Key actions from the Back to Basics strategy were extracted and a Back to Basics implementation plan for each municipality was developed. This plan seeks to ensure that at the very least; municipalities are performing their mandatory basics service.

9.2 EPWP

As part of the government's strategies to address unemployment, the Expanded Public Works Programme (EPWP) attempts to bridge the gap between the growing economy and the large numbers of unskilled and unemployed people who have not reaped the benefits of economic development. The initiative was agreed upon at the Growth and Development Summit (GDS) in June 2003. The EPWP creates temporary work opportunities for the unemployed, using public- sector expenditure. It builds on government infrastructure and social programmes that have been proven successful, by either making them more labour-intensive or by extending them.

The premise is to increase economic growth so that the number of new jobs being created starts to cater for the number of new entrants into the labour market, and to improve the education system so that the workforce is able to take up the largely skilled work opportunities that economic growth will generate.

The emphasis is on relatively unskilled work opportunities since most of the unemployed are unskilled. All these opportunities will combine with training or education or skills development, to increase the ability of people to earn an income once they leave the programme.

The EPWP cuts across all government departments and all spheres of government. Under the Programme all government bodies and parastatals are required to make a systematic effort to target the unskilled and the unemployed. They do this by planning and budgeting in order to draw significant numbers of the unemployed into productive work in such a way that workers gain skills while they work to increase their chances of getting out of the marginalized pool of unemployed people.

Work opportunities are created in the following ways:

- *by the infrastructure sector increasing the labour intensity of government-funded infrastructure projects;*
- *by the environmental sector creating work opportunities in public environmental programmes, e.g. Working for Water;*
- *by the social sector creating work opportunities in public social programmes, e.g. community-based health and social welfare care and early childhood development; and*
- *by the economic sector developing small businesses and co-operatives, including utilising general government expenditure on goods and services to provide the work experience component of small enterprise incubation programmes.*

Funds for EPWP programmes are allocated to national departments, provinces and municipalities through the normal budgeting process. Together with the Sector Training Authorities (SETAs), the Department of Labour co-ordinates the training and skills development aspects of the programme. As the main delivery arms of government, provinces and municipalities are to be the primary bodies that implement projects for the EPWP, supported by the national government departments responsible for sectoral coordination.

9.3 Rural Development Programmes

9.3.1. Thusong Service Centres

Thusong Service Centres, formerly known as Multi-Purpose Community Centres, are one-stop centres providing integrated services and information from government to communities as part of a comprehensive strategy to better their lives. The centres are managed by the local municipality in which they fall forming an extension of municipal offices. Each Thusong Service Centre will reflect an individually tailored range of services well as a number of anchor services that should be present at all service centres. The anchor services are:

- *government social and administrative services;*
- *office services;*
- *education and skills development services;*
- *local economic development services;*
- *business services and community opportunities; and,*
- *information and communication activities.*

9.3.2. Traditional Administrative Centres

The Traditional Administrative Centres are the headquarters for the Amakhosi. Additionally they also provide satellite centres for service delivery — in effect satellite Thusong Centres helping to spread services deeper into the rural areas. The centres are under the control of CoGTA.

9.3.3. Community Work Programme

The Community Work Programme (CWP) should provide a minimum level of regular and predictable work, up to 100 days per year for participants, as an employment safety net. The CWP is intended to complement and not displace or replace other livelihood activities and should target areas of greatest need. The work to be undertaken by the CWP should be identified and prioritised through local consultation and must create public goods and services and contribute to community development. It forms part of the response to the Back to Basics programme.

9.4 Local Economic Development (LED)

Definition

Local Economic Development (LED) is a process in which tripartite partnerships between local government, the private sector and the community are established to manage and utilize resources at the local level in order to stimulate the economy of a well-defined territory which functions within a national economic, policy, regulatory and institutional context.

Role of Local Government in LED

The Constitution of South Africa mandates local authorities to promote social and economic development within their jurisdiction. Thus local government is responsible for the formulation and implementation of LED strategies. The role of local government is detailed below:

Local government must:

- *create well-structured LED support and permanent information and monitoring bodies, which are directly responsible to the executive committee and municipal managers;*
- *ensure that the LED component of IDPs is strengthened through a participatory process with stakeholders from the public and private sectors;*
- *encourage partnerships between the public and private spheres of government; and,*
- *lead the LED process, formulating innovative ways to address the development challenges.*

Provincial LED enablers

- *PSEDS – The Provincial Spatial Economic Development Strategy;*
- *Small Town Rehabilitation Programme; and,*
- *corridor development.*

9.5 Disaster Management

Definitions

Disaster means a progressive or sudden, widespread or localised, natural or human-caused occurrence that causes or threatens to cause death, injury or disease; damage to property, infrastructure or the environment; or disruption of the life of a community; and is of a magnitude that exceeds the ability of those affected by the disaster to cope with its effects using only their own resources.

Disaster management means a continuous and integrated multi-sectoral, multi-disciplinary process of planning and implementation

of measures aimed at preventing or reducing the risk of disasters; mitigating the severity or consequences of disasters; emergency preparedness; a rapid and effective response to disasters; and post-disaster recovery and rehabilitation.

Impact of Climate Change on Disaster Management

Climate change refers to the changes in climate as the result of increasing greenhouse gases in the Earth's atmosphere. Climate change is a natural process that has been happening throughout the Earth's history. However, there is concern that human industrial and development activities as well as lifestyles are impacting on the Earth's natural processes. Climate change is likely to have numerous effects, including increased temperatures, reduced or increased rainfall, changes in the seasons, and an increase in pressure on natural resources as a result of increased natural disasters. In summary, climate change is likely to lead to an increasing number of unpredictable and extreme weather events and thus there is a need to put systems in place to reduce the impact of natural disasters.

Disaster Management Strategic/ Legislative Policy Framework
The Disaster Management Strategic Policy Framework is the legal instrument specified by the Disaster Management Act 57 of 2002, to address such needs for consistency across multiple interest groups, by providing "a coherent, transparent and inclusive policy on disaster management appropriate for the province as a whole". The Disaster Management Act recognises the wide-ranging opportunities in South Africa to avoid and reduce disaster losses through the concerted energies and efforts of all spheres of government, civil society and the private sector.

Early Warning Systems

Early warning systems should focus on natural hazards that are common to a municipal area in an effort to prepare for such events and minimise the impact of such events if they are to occur.

Incident Reporting

When an incident occurs, the following steps must be followed:

- *immediately report the incident to the emergency management call centre, through dialling 10177 for emergency response from services such as ambulance, fire brigade and local police. The incident may also be reported to the Provincial Disaster Management Centre on 0800000953 or 0800000954*
- *inform a ward councillor to assess damage and mobilise resources required through a local municipality;*
- *report to the District Disaster Management Centre (DDMC) to provide emergency relief and recovery; and,*
- *compile an incident report with its beneficiaries and submit it to the Provincial Disaster Management Centre (PDMC).*

Responsibilities in the Event of a Local Disaster

Irrespective of whether a local state of disaster has been declared, the local municipal council is primarily responsible for the coordination and management of local disasters that occur in its area, but it must liaise with the district municipality over the issue of appropriate responsibility.

A district municipality and the relevant local municipality may agree that the council of the local municipality assumes primary responsibility for the coordination and management of a local disaster that has occurred or may occur in the area of the local municipality.

Declaration of a Local State of Disaster

In the event of a local disaster, the council of a municipality having primary responsibility for the co-ordination and management of the disaster may, through a council resolution (after compilation of an assessment report and by notice in the provincial gazette), declare a local state of disaster if:

- *existing legislation and contingency arrangements do not adequately provide for that municipality to deal effectively with the disaster; or*
- *other special circumstances warrant the declaration of a local state of disaster.*

If a local state of disaster has been declared, the municipal council concerned may make by-laws or issue directions, or authorise the issue of directions concerning the release of any available resources of the municipality, including stores, equipment, the release of personnel of the municipality, and so on.

The request for declaration must be submitted to the PDMC together with the relevant incident report/s, beneficiary list/s and submitted to the Provincial Cabinet for approval. A written request for classification is submitted to the National Disaster Management Centre and on receipt of the classification of the disaster from the NDMC it must be published in the provincial gazette by the municipality/province concerned if more than one district municipality is affected.

Contact details – District Municipal Disaster Management Centres

DISASTER MANAGEMENT CENTRE	PHONE NUMBER	CONTACT PERSON	CELL NUMBER
eThekwin Metro	031 367 0001	Mr W. Mkhwanazi	083 441 6396
uThungulu	035 799 2549	Mr S. Kunene	082 677 3718
Zululand	035 874 5510	Mr W. Dhlamini	082 813 2925
Amajuba	034 329 7200	Mr O. Tshabalala	083 604 1904
Harry Gwala	039 834 8700	Ms T. Dzanibe	082 805 7892
UMzinyathi	034 212 2222	Mr M. Hadebe	082 848 2835
uThukela	036 638 2400	Mr B. Hlomuka	076 331 8177
uMkhanyakude	035 573 8600	Mr S. Mngoma	083 731 8381
Ugu	039 682 8241	Ms M. Mgobhozi	082 332 4000
llembe	032 437 9679	Mr S. Ngubane	082 788 4595
uMgungundlovu	033 897 6940	Ms L. Serero	082 886 0747

10. FINANCE

10.1. Municipal Finance Management Act

The principal clauses in the Municipal Finance Management Act (MFMA) that are of importance to local government are covered in section 2.5 of this handbook. This section highlights specific issues pertaining to finance that councillors and the executive must take cognisance of.

10.2 Matters of Specific Importance to the Mayor

The mayor has been allocated numerous functions and in Chapter 7 of the Act the responsibilities of the mayor are set out as follows:

- *the mayor must provide general political guidance over the fiscal and financial affairs of the municipality;*
- *in providing such general political guidance, the mayor may monitor and oversee the exercise of responsibilities assigned in terms of this Act to the accounting officer and the chief financial officer, but may not interfere in the exercise of those responsibilities;*
- *the mayor must take all reasonable steps to ensure that the municipality performs its constitutional and statutory functions within the limits of the municipality's approved budget;*
- *the mayor must, within 30 days of the end of each quarter, submit a report to the council on the implementation of the budget and the financial state of affairs of the municipality; and*
- *the mayor must exercise the other powers and perform the other duties assigned to the mayor in terms of this Act or delegated by the council to the mayor.*

Section 59 of the Act indicates that certain of the powers and duties of the mayor may be delegated.

10.3 Matters of Specific Importance to the Councillors

Councillors can refer to the specific sections of the MFMA mentioned below for more detail on each point.

- *Supply chain management*

S.112. The supply chain management policy of a municipality or municipal entity must be fair, equitable, transparent, competitive and cost-effective, and comply with a prescribed regulatory framework for municipal supply chain management that must cover at least the following:-

- *the invalidation of recommendations or decisions that were unlawfully or improperly made, taken or influenced, including recommendations or decisions that were made, taken or in any way influenced by:*

(i) Councillors in contravention of item 5 or 6 of the Code of Conduct for Councillors set out in Schedule 1 to the Municipal Systems Act.

- *Councillors barred from serving on municipal tender committees*

S.117. No councillor of any municipality may be a member of a municipal bid committee or any other committee evaluating or approving tenders, quotations, contracts or other bids, nor attend any such meeting as an observer.

- *Disclosures concerning councillors, directors and officials*

S.124. The notes to the annual financial statements of a municipality must include particulars of the salaries, allowances and benefits of political-office bearers and councillors as well as any arrears owed by individual councillors to the municipality.

- *Consequences of non-compliance with certain provisions*

S.133. If the accounting officer of a municipality or municipal entity fails to submit financial statements to the Auditor-General, the mayor must promptly table in the council a written explanation setting out the reasons for the failure; and, the municipal council must request the speaker or any other councillor to investigate the reasons for the failure and report to the council.

- *Forbidden activities*

S.164. No municipality or municipal entity may make loans to councillors or officials of the municipality.

- *Audit committees*

S.166. Each municipality and each municipal entity must have an audit committee, which must consist of at least three persons with appropriate experience, of whom the majority may not be in the employ of the municipality or municipal entity, as the case may be. This audit committee must meet as often as is required to perform its functions, but at least four times a year. The members of an audit committee must be appointed by the council of the municipality or, in the case of a municipal entity, by the council of the parent municipality. One of the members who is not in the employ of the municipality or municipal entity, must be appointed as the chairperson of the committee. No councillor may be a member of an audit committee.

- *Offences*

S.173 A councillor of a municipality is guilty of an offence if that councillor:

- *deliberately influences or attempts to influence the accounting officer, the chief financial officer, a senior*

manager or any other official of the municipality to contravene a provision of this Act or to refrain from complying with a requirement of this Act;

- *interferes in the financial management responsibilities or functions assigned in terms of this Act to the accounting officer of the municipality or delegated to the chief financial officer of the municipality in terms of this Act;*
- *interferes in the financial management responsibilities or functions assigned in terms of this Act to the accounting officer of a municipal entity under the sole or shared control of the municipality; or*
- *Interferes in the management or operational activities of a municipal entity under the sole or shared control of the municipality.*

The MFMA Link to the MSA

The MFMA and the Municipal Systems Act (MSA) are very closely linked and aligned. It is important to recognise this early on to better understand, correctly interpret and apply these two pieces of legislation. The two acts complement each other in many areas, and should therefore be read together. Both the MSA and the MFMA deal with internal systems, consultative processes, performance systems and reporting, and mechanisms to enhance accountability. For example, Chapter 5 of the MSA deals with integrated development plans (IDPs) and their preparatory process, while Chapter 4 of the MFMA deals with budgets and their preparatory process. The IDP and the budget must be consistent with each other. This means that the consultative and technical processes should be aligned early so that they become one process.

10.4 Auditor-General's Reports

The Importance of the Auditor-General's Report to Councillors

The goal of the independent audit of the annual financial statements is to assure councillors, officials, and the public and other relevant

stakeholders that the financial statements are fairly presented. The auditor's opinion on the fairness of the presentation of a set of financial statements is critical to discharging public accountability in a transparent manner. The accounting standards will be updated from time to time as government reforms unfold. These standards are applicable to all municipalities. All other entities under the ownership control of a municipality must comply with the new standards in order to facilitate preparation of consolidated financial statements by parent municipalities.

The Auditor-General may use a variety of methods to obtain the evidence needed to determine whether the financial statements are fairly presented. Auditors inspect relevant documentation; observe employee performance; enquire about and review policies, procedures, transactions, and events; confirm balances and transactions with outside parties; and perform analytical procedures to determine the reasonableness of transactions and balances.

The Auditor-General is concerned with determining that the municipality or municipal entity has complied with laws, regulations, and provisions of contracts, grant agreements, or allocations that could have a direct and material effect on the financial statements. The Auditor-General will report any findings of instances of non-compliance with each of the above obligations.

Within three months of receiving the statements, the Auditor-General is required to submit an audit report to the council of the municipality or board of directors of the municipal entity.

The Meaning of an Audit Opinion

The Auditor-General's audit report communicates the Auditor-General's opinion or possibly disclaimer of opinion on whether the financial statements are fairly presented. Generally, this report will indicate the responsibilities of management and the Auditor-General: that management is responsible for the financial statements and the Auditor-General is responsible for determining if those statements are fairly presented. It provides

the scope of the audit, which gives general information about the auditing standards followed, as well as the nature and limitations of a financial statement audit. Lastly, the report will set forth the Auditor-General's considered assessment of whether the financial statements are fairly presented in accordance with the auditing standards applied on a consistent basis.

The audit report may have an unqualified opinion, qualified opinion or disclaimer of opinion:

- **An unqualified opinion** is one in which the Auditor-General can state, without reservation, that the financial statements are fairly presented.
- **A qualified opinion** expresses reservations by the Auditor-General about the fair presentation of the financial statements. One common reason for a qualified opinion may be an insufficiency of the underlying financial records to support some of the data in the financial statements. In this case the Auditor-General may conclude that the financial statements are presented fairly except for the insufficiently supported data.
- **A disclaimer of opinion** is given when the Auditor-General does not have all of the underlying documentation needed to determine an opinion about whether the financial statements are fairly presented. For example, at some point the lack of underlying documentation and the amounts in question may be so great that it is impossible to give any opinion on all or a significant portion of the financial statements.

The Auditor-General is also required to communicate all findings regarding the compliance with laws, regulations or terms of grants and allocations; queried costs that may have resulted from non-compliance; material weaknesses in the system of administrative and internal controls; material weaknesses in the system of performance measurement; an evidence of irregular, fruitless and wasteful expenditures. These findings may or may not have an impact on the decision on the fairness of the financial statements, and are included in the Auditor-General's report.

Internal Municipal Controls

The management of the administration, starting with the municipal manager who is the accounting officer, must establish a comprehensive set of internal controls to ensure that all financial policies and procedures are not at risk, to facilitate communication and to find ways to resolve potential problems that may be identified.

What is the Auditor-General's report on the results of performance measurement?

The Auditor-General also issues a report on the results of the performance measurement of the municipality or municipal entity for the financial year. The Auditor-General provides an assessment of the controls implemented by the municipal manager/accounting officer to develop and manage the municipality's or municipal entity's performance-management system. The Auditor-General may comment on the following activities of a performance-management system:

- *objectives for performance-management purposes have been clearly defined;*
- *the performance management system has been implemented;*
- *key performance indicators have been developed;*
- *targets have been set for the key performance indicators;*
- *internal monitoring and in-year reporting is part of the performance-management system; and*
- *the system has a methodology for evaluation and revision of strategies and objectives.*

10.5 Supply Chain Management

Definition of a Supply Chain Management Policy

Supply chain management refers to the procurement and asset disposal (buying and selling or disposal of assets or goods and services) system of a municipality or municipal entity. The MFMA recognises supply chain management as a crucial component of

municipal financial management. The efficiency and effectiveness of the procurement function has a large impact across a municipality. If goods and services are of poor quality, overpriced or not available when needed, service delivery will suffer. The MFMA aims to eliminate conflicts of interest in the disposal of assets and procurement of goods and services utilising public funds, and provides for open and transparent systems.

The objective for municipalities and municipal entities is to establish a supply chain management policy that is focused on integrity, efficiency, and obtaining the best value for money. This will secure public confidence that public funds are being spent prudently on the public's behalf, and not for the personal benefit of public office bearers, officials or their friends. Diligent care must be taken to establish controls in order to eliminate even the perception of fraud or abuse, which can be just as destructive to the public trust as the real thing.

The MFMA requires every municipality or municipal entity to adopt a supply chain management policy that applies to:

- *procuring goods and services*
- *selecting contractors and other external mechanisms to provide assistance in the provision of municipal services*
- *disposing of assets, including goods no longer needed.*

A municipality or municipal entity may not dispose of an asset that is needed to provide the minimum level of basic services, even if that service has been outsourced.

National Treasury has provided a model supply chain management policy to assist municipalities and municipal entities, which is supported by National Treasury MFMA circular number 22 of 2005. Once the municipal council or the board of directors of a municipal entity has adopted a supply chain management policy, the municipal manager/accounting officer is responsible for implementing it.

The municipal manager/accounting officer of the municipality or municipal entity must take all reasonable steps to ensure that proper procedures and separation of duties in the supply chain management system are in place to minimise the likelihood of fraud, corruption, favouritism, and unfair and irregular practices.

The MFMA prohibits any person from obstructing the accounting officer in fulfilling this responsibility. The accounting officer must ensure that the municipality or municipal entity provides resources or opportunities to train officials and that those officials meet the competency levels required by the MFMA.

The supply chain management policy of a municipality or municipal entity must be fair, equitable, transparent, competitive and cost effective.

Can a councillor or a close family member “do business” with a municipality?

A municipality and municipal entity may not make any award to:

- *a person who is in the service of the state if that person is in a company or business as a director, manager, principal shareholder or stakeholder who is in the service of the state; or*
- *a person who is an advisor or consultant contracted with the municipality or municipal entity.*

“In the service of the state” means to be:

- *a member of any municipal council, any provincial legislature or the National Assembly of the National Council of Provinces;*
- *a member of the board of directors of any municipal entity;*
- *an official of any municipality or municipal entity;*

- *an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act;*
- *a member of the accounting authority of any national or provincial public entity; or*
- *an employee of Parliament or a provincial legislature.*

Councillors should also be aware that notes to the annual financial statements of a municipality or a municipal entity must disclose particulars of any award of more than R2 000 to a person who is a spouse, child or parent of a person in the service of the state, or has been in the service of the state in the previous 12 months, including the name of that person, the capacity in which that person is in the service of the state and the amount of the award.

Does the MFMA require a municipality or municipal entity to consider an unsolicited bid?

An unsolicited bid refers to a proposal received to supply goods or services or to dispose of an asset outside the normal bidding process. This generally implies that the proposal has not been called by the municipality and has not been subjected to a transparent and accountable process. A municipality or municipal entity is not obliged to consider an unsolicited bid and the legislation discourages this.

Can a different tender be approved from that recommended by the tender committee?

If a tender other than the one recommended in the normal course of implementing the supply chain management policy of a municipality or municipal entity is approved, the accounting officer of the municipality or municipal entity must, in writing, notify the Auditor-General, the relevant provincial treasury and National Treasury and, in the case of a municipal entity, also the parent municipality, of the reasons for deviating from such recommendation.

This reporting requirement is to ensure proper transparency and accountability, and the Auditor-General may pay closer attention

to these transactions during audits. This allows for appropriate checks and balances.

What does the MFMA require in terms of contracts and contract management?

A contract or agreement procured through the supply chain management system of a municipality or municipal entity must be in writing and stipulate the terms and conditions for:

- *termination because of unsatisfactory performance'*
- *mechanisms to settle disputes between the parties; and,*
- *procedures for periodic review of the contract or agreement.*

The accounting officer of a municipality or municipal entity is responsible for managing contracts and agreements and must:

- *take all reasonable steps to ensure that a contract or agreement is properly enforced;*
- *monitor on a monthly basis the performance of the contractor under the contract or agreement; and,*
- *establish capacity in the administration to assist in carrying out the duties required by the supply chain management policy.*

The accounting officer is required to report regularly to the council of the municipality or the board of directors of the entity, on the management of contracts or agreements and the performance of the contractors.

Can councillors serve on municipal tender committees?

The MFMA requires a council or board of directors to adopt a supply chain management policy. The MFMA has separated the roles so that councillors and board members are required to concentrate on oversight and not on administrative activities.

Therefore, councillors of municipalities and members of the board of directors of municipal entities are barred from serving as a member of a bid committee or any other committee evaluating or approving tenders, quotations, contracts or other bids.

They are also barred from attending any such meeting as an observer. This principle also applies to councillors serving on land approval committees.

The MFMA further stipulates that no person may interfere with the supply chain management system of a municipality or municipal entity, or amend or tamper with any tenders, quotations, contracts or bids after they have been submitted.

What procedures and structures should be put in place to allow mayors to monitor the performance of the accounting officer and CFO?

The MFMA is aligned with other legislation to ensure that a logical and considered range of tools is available for the mayor and council to monitor the performance of officials regularly. These include the requirement to provide monthly projections for revenue and expenditure, and quarterly projections for service-delivery targets that must be monitored and reported back to council, as part of the Service Delivery and Budget Implementation Plan (SDBIP).

The MFMA requires these performance measures to be linked to the performance objectives contained in the annual performance agreements with the municipal manager and all senior officials, as required by the Municipal Systems Act.

What is the role of councillors in preparation of the annual report?

Councillors should review and adopt the annual report within nine months after the end of financial year.

Summary: Councillors' Role in Supply Chain Management

Supply chain management incorporates both the purchasing of goods and services, and the disposal and letting of assets. A supply chain management policy must be adopted by the council, or board of directors in the case of a municipal entity.

The policy must provide the details on systems and procedures to be followed for supply chain management and include the steps to be taken to combat fraud, corruption and conflict of interest. The municipal manager or accounting officer is responsible for implementing the policy and reporting regularly to the council or board of directors on implementation of the policy.

One of the greatest impacts of the MFMA has been to strengthen governance principles, by separating the roles and responsibilities of key players in supply chain management.

11. PERFORMANCE MANAGEMENT

11.1 Introduction

Each municipality is legally required to develop a performance management system (PMS) that will enhance organisational efficiency and effectiveness, account for the use of municipal resources and indicate the achievement of outcomes. A PMS is also able to act as an early warning mechanism as it reflects non-performance or underperformance, thus allowing for relevant interventions for improvement.

Councillors should not be wary of performance management but view it as a tool that can assist them in better achieving delivery and performance in their work.

A good understanding of performance management will have long term benefits for councillors as they can use it to indicate to their communities the progress as well as challenges that the municipality experiences in the delivery of services and the creation of jobs and development.

11.2 Legal Framework for Performance Management

The requirement that government is performance driven is found in the Batho Pele White Paper, 1997. The Municipal Structures Act (1998) and the Municipal Systems Act (2000) are the two pieces of legislation that give effect to the Batho Pele White Paper.

The Municipal Structures Act (No. 17 of 1998): This Act requires municipalities to review annually:

- *the needs of the community;*
- *its priorities to meet the needs of the community, the processes for involving the community;*
- *its organisational and delivery mechanisms for meeting the needs of the community; and,*
- *the overall performance of the municipality.*

These requirements provide the basis for performance review and assessment, and emphasise the important role that communities have in the process. In practice this translates to communities being part of the development of the PMS and the monitoring, measurement and review processes contained in the PMS. Councillors must ensure that these consultative recommendations contained in the regulations are met when implementing their municipality's PMS.

The Municipal Systems Act (No. 32 of 2000): Chapter 6 of the Act provides the legal framework for performance management in municipalities and requires that it be an intrinsic part of the IDP. The Act requires all municipalities to:

- *develop a performance-management system;*
- *set targets, monitor and review performance based on indicators linked to their IDP;*
- *publish an annual report on performance for the Councillors, staff, other spheres of government, and the public;*
- *incorporate and report on a set of general indicators prescribed nationally by the minister responsible for local government;*
- *conduct an internal audit on performance before tabling the report; and,*
- *involve the community in setting indicators and targets and reviewing municipal performance.*

Who/what must be measured

The following should be measured:

- *performance, including the outcomes and impact, with regard to its development priorities and objectives as set out in its integrated development plan;*
- *any service provider's performance;*
- *performance of the municipal manager and all managers directly accountable to the municipal manager; and,*
- *performance of the staff.*

Performance Regulations

There are two principle sets of regulations that councillors should be familiar with:

- ***Municipal Performance Planning and Management Regulations, 2001:*** Councillors should ensure that they are familiar with these regulations issued by the Minister for Provincial and Local Government, which provide for specific requirements for performance management. These regulations indicate the National Key Performance Indicators that must form part of the council's corporate measurement. The regulations address issues such as the roles and responsibilities of the council and the local community in the functioning of performance management and how PMS should be linked to the IDP.
- ***Municipal Performance Regulations for Municipal Managers and Managers directly accountable to Municipal Managers, 2006:*** These regulations seek to set out how the performance of municipal managers will be uniformly directed, monitored and improved. The regulations address both the employment contract of a municipal manager and managers directly accountable to municipal managers, as well as the performance agreement that is entered into between respective municipalities, municipal managers and managers directly accountable to municipal managers.

11.3 Roles and Responsibilities of Councillors

Responsibility

Councillors are responsible for the following in respect of the council's PMS:

Responsibility	Role
Council	<ul style="list-style-type: none"> ○ <i>Facilitate the development of a long-term vision</i> ○ <i>Develop strategies to achieve the vision</i> ○ <i>Identify priorities</i> ○ <i>Adopt indicators and set targets</i> Review municipal performance quarterly
Executive Committee	<ul style="list-style-type: none"> ○ <i>Give strategic direction and develop strategies and policies for the municipality</i> ○ <i>Manage the development of the IDP</i> ○ <i>Approve and adopt indicators and targets</i> ○ <i>Communicate the plan to other role players</i> ○ <i>Conduct major reviews of municipal performance determining where goals had or had not been met, what the reasons were and to adopt response strategies.</i>

Accountability

The roles and responsibilities mentioned above are set out in the MFMA and Municipal Systems Act (MSA) and the requirements are summarised in the following table.

Specific Sections and Acts	Accountability and Responsibility
Section 38 of the MSA	The municipality MUST establish a PMS in line with its IDP.
Sections 21 and 24 of MFMA	The mayor must coordinate the process of budget and Section 21 IDP formulation as well as ensuring the and 24 of the MFMA development of measurable performance measures for the budget.
Section 39 of the MSA	The Exco or a Committee of Council MUST manage the development of the PMS. Exco can assign responsibilities to the MM Municipal council to adopt the PMS.
Section 51 and 55 of the MSA (also refer to the individual performance agreement section in this table)	Ensuring that the administration is set up and operates within the municipality's PMS. MM is responsible and accountable for implementing and monitoring the municipal IDP.

Section 121 of the MFMA	The municipality must prepare and deal with the annual report (financial and performance) within nine months of financial year end.
Section 45 of the MSA	The municipality MUST audit its performance annually.
	Municipal performance MUST be audited by the Auditor-General by means of submitting an annual performance report.

11.4 Planning in a Performance Management System

Planning is the first phase of an organisational performance management system and the key output is the development of the Integrated Development Plan (IDP). Each municipality must develop an IDP which is utilised to plan future developments in the municipal area to meet the needs of the community.

Facilitate the development of a long-term vision: All planning must start with the development of a vision – where do you see your municipality in 10 to 20 years' time? What is your dream for your municipality? Next would be to develop the mission statement. A mission statement should:

- *create the culture within which future actions and strategic decisions will be taken;*
- *describe the image that the organisation wishes to project;*
- *describe the “heart” of the organisation;*
- *be an everlasting goal and challenge for the organisation, distinguishing it for any other organisation; and,*
- *be accepted enthusiastically by both top management and the workers and indicate “what makes them tick”.*

Develop strategies to achieve the vision: Strategy development will normally take place during a strategic planning session of the council and top management, with inputs from the wards alerting the councillors to their specific needs.

During the strategic planning session, the participants will have to identify:

- *the role-players in strategic management that need to provide inputs;*
- *the present situation of the municipality;*
- *an analysis of the external environment;*
- *an analysis of the internal environment;*
- *a SWOT analysis (strengths, weaknesses, opportunities and threats); and,*
- *develop new strategies based on the above on how to reach the vision and mission and at the same time fulfill the needs of the community.*

Participate in the IDP process: The results of the strategic planning session would be an essential input into the development of the IDP. The IDP assists the municipality as follows:

- *it is a planning process that involves the entire Municipality and its citizens in finding the best solutions to achieve long-term development;*
- *it assists in the coordination of the work of local government and other spheres of government to improve the quality of life for all the people living in an area;*
- *it considers the existing conditions and problems and resources available for development;*
- *it considers the economic and social development needs for the area; and,*
- *it sets a framework for land use, infrastructure, services, and the protection of the environment.*

Adopt the municipality's performance-management system, indicators and targets: The PMS forms part of the IDP process and the developed PMS, including all KPAs, KPIs, weights and targets must be approved by the Council.

- *Key Performance Indicators (KPIs): The regulations state that KPIs must be measurable, relevant, objective and precise. The municipality must develop KPIs for all its units, employees as well as its service providers.*

The KPIs are applicable to the municipality's administrative units and employees, as well as every municipal entity and service provider that the municipality has a service-delivery agreement with. The regulations also require that councillors involve communities when setting their KPIs.

- *Weighting: Since all the projects and/or KPI's are not always equally important, it is imperative that weights be allocated to each one to indicate their relative importance against one another. This prevents an unimportant project having the same effect on the total measurement as that of a very important project.*
- *Performance targets: Once weighted KPIs are available for each KPA, the next step would be to set targets to be reached.*

Performance targets should be SMART (specific, measurable, attainable, realistic, and time-related). The municipality sets out to achieve its performance targets within a given financial year, and its performance can be measured according to whether targets for each indicator were met consistently.

Setting performance targets is particularly useful for internal, contracted-out and privatised services, as it promises the public and the communities a defined quality of service.

11.5 Monitoring in a Performance-management System

Monitoring continuously tracks performance against what was planned by collecting and analysing data on the indicators established for monitoring and evaluation purposes. It provides continuous information on whether progress is being made toward achieving results (outputs, outcomes and goals) through record keeping and regular reporting systems. Monitoring looks at both programme processes and changes in conditions of target groups and institutions brought about by programme activities. It also identifies strengths and weaknesses in a programme. The performance information generated from monitoring enhances learning from experience and improves decision-making.

11.6 Measurement in a Performance-management System

Performance measurement refers to the formal process of collecting and capturing relevant and applicable performance data to enable reporting to take place for each KPI and its related targets. Provision has been made in the organisational scorecard for the name of an official to be made responsible for reporting on each indicator.

Performance should be measured at the following levels:

- *strategic (organisational) performance linked to the integrated development plan (IDP) of a municipality;*
- *operational (departmental) performance linked to the Service Delivery and Budget Implementation Plan (SDBIP) of a municipality; and*
- *individual performance linked to OPMS and the individual's key performance areas and job descriptions.*

Important Provisions in Terms of Employment Contracts

The municipal manager and persons directly accountable to the municipal manager (heads of department) are employed in terms

of s.57 of the Municipal Structures Act in terms of an employment contract. These employment contracts are tied to performance agreements.

Important provisions of the Local Government Municipal Performance Regulations for Municipal Managers and Managers Directly Accountable to Municipal Managers (2006), are shown below:

- *"The parties to the employment contract, in the case of the municipal manager, are the municipality as represented by the mayor and the person to be appointed through the employment contract, referred to as the employee.*
- *The parties to the employment contract in respect of managers directly accountable to the municipal manager, are the municipality as represented by the municipal manager and the person accountable to the municipal manager, referred to as the employee.*

All relevant details pertaining to the employees' conditions of service are contained in the employment contract.

The agreed to performance agreement reflects the following documents, (copies of which must be submitted to the MEC responsible for Local Government in a province as well as the National Minister of Cooperative Governance by 14 August of each year of employment in the municipality as agreed to in the employment contract or period of employment):

- *legal agreements, which specify accountabilities as set out in a performance plan, which forms an annexure to the performance agreement;*
- *a PDP (Personal Development Plan); and*
- *a financial declaration.*

The performance agreement is used as the basis for assessing whether the employee has met the performance expectations

applicable to his or her job. The assessment of the performance must be carried every quarter of the financial year, commencing with the first assessment at the end of September, and then December, March and June.

11.7 Reporting in a Performance-management System

Councillors need to ensure that performance measurement has taken place by insisting that quarterly reports on progress and measurement are submitted to the relevant committees and council.

Areas with no or little progress must be questioned and the administration must supply the council and/or committee with explanations of the blockages, the corrective measures to be taken, the support needed in terms of unblocking and how it can be achieved.

Improving on current performance requires that the municipality take active steps. People would need to be empowered and trained in how to make use of performance-improvement techniques, the power of the group effort, and so on. It would also be very helpful if the municipality could have a central databank where information on steps that others have taken in similar circumstances, could be available.

Annual Reporting

A comprehensive report on the performance of the municipality also needs to be compiled on an annual basis. The requirements for the compilation, consideration and review of such an annual report are set out in Chapter 12 of the MFMA.

It is important to note that the municipal performance report of a municipality is only one element of the annual report. To ensure that the annual report compilation, tabling and review process is completed in time to inform the next cycle of performance planning in accordance with the IDP compilation/review process, it is

recommended that the annual performance report be compiled and completed as soon after the end of each financial year as possible but ideally not later than two months after financial year-end.

The council must establish mechanisms to receive and review representations made by the public on the annual report and also seek inputs from other councillors and council portfolio committees. Such mechanisms could involve all or any combination of the following:

- *producing a user-friendly citizens' report in addition to the annual report for public consumption;*
- *using various forms of media, including radio, newspapers and billboards, to communicate the annual report;*
- *inviting the public to submit comments on the annual report via telephone, fax and email;*
- *holding public hearings in a variety of locations to obtain input on the annual report;*
- *making use of existing structures such as ward and/or development committees to disseminate the annual report and invite comments;*
- *debating the annual report at a meeting of the IDP Representative Forum;*
- *hosting a number of public meetings or road shows at which the annual report could be discussed and input invited;*
- *producing a special issue of the municipal newsletter in which the annual report is highlighted and the public are invited to comment; and,*
- *posting the annual report on the council website and inviting input.*

11.8 Performance Review

Performance review is the process whereby the leadership of an organisation, after the performance of the organisation has been measured and reported to it, reviews the results and decides on appropriate action to be taken. The executive committee, when reviewing the organisational scorecard submitted to it, will have to ensure that the targets committed to in the scorecard have been met, and where they have not, that satisfactory and sufficient reasons for this have been provided by senior management, and that the sufficient and appropriate corrective action has been proposed to address the reasons for poor performance. If the Exco are satisfied with the corrective actions as proposed, these must be adopted as formal resolutions of council and must be recorded in the minutes and implemented accordingly.

Performance reviews must be done quarterly and councillors should then also review the decisions taken by Exco in considering the quarterly performance report.

The establishment of a municipal SCOPA would enhance the oversight role that is required for performance reviews. Councillors should avail themselves of the opportunity to serve on a municipal SCOPA whose task it is, *inter alia*, to fulfil an oversight role over the executive and administration by considering the annual report and adopting an oversight report.

The PMS cannot exist in a vacuum and must be in line with the IDP. Similarly it will not be an effective tool if it has unrealistic budgetary implications. This means that the councillors that are part of the development of the PMS must fully appraise themselves of the municipal budget and the IDP.

Community involvement in the process of monitoring, measuring and reviewing performance is important, as the municipality must, after consultation with the local community, develop and implement mechanisms, systems and processes to monitor measure and review performance.

12. MUNICIPAL PLANNING

12.1 Strategic Planning

Integrated Development Planning is the strategic planning process that is undertaken to produce the Integrated Development Plan (IDP) which covers a five-year period (coinciding with your term of office) and is reviewed annually. The process of preparing the plan covers five key areas:

Analysis:	Strategies:
<ul style="list-style-type: none"> ○ <i>Compiling existing data</i> ○ <i>Community consultation</i> ○ <i>Agreeing on priority issues</i> 	<ul style="list-style-type: none"> ○ <i>Agree on vision</i> ○ <i>Apply policy guidelines</i> ○ <i>Strategy formulation</i>
Projects:	Integration:
<ul style="list-style-type: none"> ○ <i>Formalisation of proposed projects</i> ○ <i>Integration</i> ○ <i>Screening projects</i> ○ <i>Adjusting projects</i> ○ <i>Agreeing on project proposals</i> 	<ul style="list-style-type: none"> ○ <i>Five-year financial plans</i> ○ <i>Five-year capital investment programmes</i> ○ <i>Integrated spatial, environmental, sectoral and other programmes</i> ○ <i>PMS</i>
Approval:	
	<ul style="list-style-type: none"> ○ <i>Invite comments</i> ○ <i>Accommodate comments</i> ○ <i>Adoption of IDP</i>

The IDP is the product of the planning process. It is a strategic plan that gives direction to sectoral, departmental and municipal development initiatives. It identifies development and service delivery priorities and supports optimal allocation of scarce resources. In addition, the IDP forms the basis for national, provincial and municipal project budgeting.

The IDP is a public document that must be easily accessible to a municipality's citizens. The IDP must be taken into consideration for all other municipal planning.

The Municipal Systems Act makes provision for:

- *IDP drafting every five years (broadly covers council term of office); and submission to the MEC for assessment*
- *IDP annual review (4 annual reviews of IDP developed in year 1) and submission to the MEC for assessment; and*
- *Well-motivated amendments as and when required*

Organisational Arrangements



The responsibilities of the councillors are:

- *to consider comments made in the previous IDP review process and adopt a new process plan;*
- *to ensure the consideration of the national and provincial budgeting processes as well as inform the municipal budgeting process;*
- *to ensure the final IDP review is adopted by council by the end of June; and,*
- *to have the council approve sector plans upon their completion.*

12.2 Spatial Planning

Spatial planning in municipalities is inclusive of both spatial development framework and statutory planning functions, and the associated planning materials. A brief overview of these functions and materials is considered in this document with further detail provided in the training manual for councillors prepared by CoGTA (2011).

The municipal Spatial Development Framework (SDF) is the spatial part of the IDP. As such, SDFs are intended to inform municipal decision making in relation to matters of a spatial nature, such as capital investment, infrastructure development, the processing of development applications and the sustainability of such development in terms of the relevant environmental and related legislation. Every municipality must have an up-to-date SDF. The council is bound by their SDF and therefore council decisions should not conflict with the SDF.

While a municipal SDF focuses on the entire area of jurisdiction of the municipality, it also has to be aligned with neighbouring municipalities and aligned with district municipal and provincial SDFs and the National Spatial Development Perspective (NSDP). Furthermore, planners need to take into account a wide range of related sector legislation that has an influence on the SDFs prepared at municipal level (the National Land Transport Transition

Act, the National and Provincial Land Use Management Bill, the Spatial Planning and Land Use Management Bill (2011) and the KwaZulu-Natal Planning and Development Act (No.6 of 2008)).

The role of planning staff in municipalities is to prepare the SDF, review it annually and ensure that all planned development is in accordance with the requirements of the plan. Council, in the municipal context, is required to review and adopt the SDF and then to ensure that all decisions pertaining to spatial developments are made in accordance with the requirements of the SDF.

Councillors (particularly ward councillors) need to be aware of and familiar with the SDF, particularly since they are responsible for ensuring public participation in the preparation of the SDF and providing input into the assessment of development applications.

12.3 Statutory Planning

Statutory planning is a function that municipalities are now required to perform in terms of the Provincial Development and Planning Act (No. 6 of 2008) or PDA. This involves each municipality in the preparation of a scheme (map and clauses) for its entire area of jurisdiction by 2015. The scheme provides the framework for land-use management in the municipality within the context of the SDF. Any development in areas outside of current schemes (prior to 2015) is subject to municipal council consent, including land owned by the Ingonyama Trust Board. Once the scheme extends throughout the municipality, then all areas are subject to its provisions in terms of land use.

Once a scheme is adopted, it becomes law in a municipality; infringement carries with it penalties that have to be upheld by municipalities in terms of the relevant clauses of the Act. Schemes are intended to deal with sub-division and consolidation of all registered land in a municipal area, inclusive of township layout and establishment. It should also be noted that part of the approval process of development applications involves approval of building plans by municipalities in terms of the National Building Regulations and Building Standards Act (No. 103 of 1997).

Implementation of the requirements of the PDA carries with it defined application procedures. Municipalities are required to ensure that such procedures are institutionalised in their planning divisions (development administration) and that applicants follow these procedures. There are clearly defined time lines and associated actions, with each activity envisaged in the PDA. These have to be adhered to by both the applicant and the municipality. Failure by one of the parties can, and does, result in litigation.

Processing of development applications requires the council to have on its staff, or alternatively to have access to, a registered development planner. The role of the planner is to assess all development applications and to make recommendations to council in terms of the SDF, the conditions contained in the legislation related to the scheme, comments and input by provincial departments, and public comment. Council is then required to review the application and the recommendations by the registered planner, and then to make balanced decisions that are in the interest of the long-term sustainable development of the municipality.

12.4 Development Administration

The PDA replaces previous laws that applied in KwaZulu-Natal to govern land-use rights, the establishment of townships and matters associated with that. The previous laws gave these powers to the provincial government through institutions like the Town Planning Commission under the Town Planning Ordinance (No. 27 of 1949) and the Development Tribunal under the Development Facilitation Act (No. 67 of 1995), but under the 1996 Constitution, these functions must be carried out by metropolitan and local municipalities.

The PDA provides that metropolitan and local municipality councils must prepare and adopt a scheme that describes how land throughout the municipal area may be used, e.g. residential, agricultural, commercial, industrial, mixed, conservation and so on. Before a council may adopt a scheme it must consult with all the people in its area so that there is general acceptance by the people.

The scheme will describe land uses that can be applied automatically, land uses that can be applied with the special consent of the municipality and land uses that are totally prohibited. Of course, totally prohibited uses may be allowed if the scheme is amended by the council, which it may do if the all people who are affected agree. Once a scheme is adopted it is a law of the municipality, like by-laws, and has the same force. If anyone ignores it, that person may be guilty of an offence.

The PDA also stipulates that the metropolitan and local municipality councils must consent to the subdivision and consolidation of all registered land in its area and approve the layout and establishment of all townships (township means new town or suburb in planning terms). It can put conditions in place to govern the establishment of a township, for example the size of individual erven, and reserving land for public purposes such as clinics, police stations, roads, religious sites and so on. It can also say whether roads must be tarred and what services must be provided.

By 2013 the whole area of a municipality must be covered by a scheme but it is clear that in the meantime, the use of land continues in those parts of the municipality not covered by a scheme inherited from the past or adopted for specific areas. So the PDA says that, until all parts of the municipal area are covered by a scheme, the council must give its consent before anyone can change the use to which land is put by the erection of any building, or any construction or any engineering work or mining operations or any other thing that changes the use to which land is put. (Note that building plans for any building must be approved by the council before a building can be erected. This is under a national law, the National Building Regulations and Building Standards Act (No. 103 of 1977). Note also that this applies on farms and in the deepest parts of rural KwaZulu- Natal).

Once the layout of a township has been approved by the council, it cannot be changed without the consent of the council. The PDA permits changes but only through formal applications to council.

Many title deeds contain conditions that restrict the way in which land can be used. For example, a condition may stipulate that only one house may be erected on land, or that a neighbour may use part of the land as a driveway and so on. If these prevent the use of the land as permitted by a scheme, or a new township is laid out providing access directly to the neighbour, then these conditions may be cancelled by the council.

The PDA also allows the council to close municipal roads and public places if they prevent better use of the land. (Note that this does not apply to provincial or national roads).

Any person who wants to get the consent of a municipality under the PDA must apply according to the procedures set out in the Act. There are time limits that must be obeyed, both by the applicant and by the council. All applications must be advertised and in some cases, public hearings must be held so that all people affected by an application can comment. The council must take these comments into account. In order to make the PDA work, the council must delegate functions to its officials, although it retains overall responsibility. It must also adopt a tariff of fees and charges to pay for the operation of the PDA.

Every municipality must employ or have access to a registered planner who must check every application that comes to the council, and that registered planner must evaluate the application and certify that it is in accordance with the scheme, other applicable legislation and the PDA. In this way the council can be guided by an expert in making a decision.

The provincial government, in consultation with all municipalities, must adopt province-wide norms and standards that will guide municipalities in applying the above powers so that all municipalities work more or less in the same way.

If any person is not happy with the way a municipality makes a decision, then that person can appeal to an appeals board set up by the provincial government.

The PDA provides mechanisms for the municipality to enforce the provisions of a scheme or any consent it has given on any of the above items. These mechanisms include fines and imprisonment, and the power to demolish buildings. The PDA also imposes penalties on any council, municipal official or registered planner who acts outside the PDA. Interference with the independence of a registered planner will also be penalised.

If a scheme negatively affects a person's rights, then that person may be entitled to compensation.

12.5 Development Information Services

Development Information Services (DIS) provides a GIS and District Information Management System support function to municipalities in the planning and technical services sphere. There is no specific legislation relating to DIS, but the information that these services provide has a major impact on effective planning and on the provision of technical services. These are core functions of municipalities that are regulated.

DIS provides the spatial information and GIS data to municipal staff and council for the following legislated functions:

- *spatial planning;*
- *development application processing and decision making;*
- *project planning, design, budgeting and implementation;*
- *asset operation and maintenance; and,*
- *property rates management.*

Municipal GIS units are generally located in District Municipalities in KwaZulu-Natal and they provide GIS support services to each of the municipalities that form part of the district family that share services.

ANNEXURE 1: MUNICIPAL CALENDAR

MILESTONE	WHO	DAY	JUL	AUG	SEP	OCT	NOV	DEC
Bank a/c details submitted to Provincial Treasury and AG	FIN	3						
If failure to approve budget by 30 June, Council to reconsider budget and adopt	FIN	7						
Monthly budget statements to be submitted to Mayor and provincial treasury	FIN	10						
Performance agreements of MM and senior managers to be made public. Accounting officers to submit draft SDBIP to Mayor	FIN	14						
Latest date for submission of IDPs to COGTA	PLN	10						
Mayors report to Council – SDBIP and financial status. Mayor must approve	FIN	28						
Calculation of revenue to be undertaken monthly	FIN	30						

MILESTONE	WHO	DAY	JUL	AUG	SEP	OCT	NOV	DEC
– Preparation of accounts for service charges.								
Monthly recon of revenue and accounts.	or							
Monitoring of contractors. Mandatory provincial interventions arising from financial crises at municipality – report to MEC for Finance	Mandatory							
Signed S57 Manager's Performance Agreements	PMS	31						
Submission of IDP process plan to CoGTA	PLN	30						
Statement from organ of state to National Treasury – Bulk sales	FIN	15						

MILESTONE	WHO	DAY	JUL	AUG	SEP	OCT	NOV	DEC
Mayor to make public the approved SDBIP	FIN	16						
Budget preparation process (next year) - Review of IDP and Budget related policies of municipality	FIN	4						
Table a consolidated report of all withdrawals from the municipal bank account	FIN	28						
Accounting officer of entities to submit monthly and year to date budget	FIN	10						
Performance Reports twice a year	PMS	15						
Internal audit reports on performance info to be submitted to MM and Performance Audit Cttee	PMS	31						
Quarterly B2B reports using the data sheets	PMS	15						
Schedule Performance Cttee meetings twice a year	Audit	PMS	25					

MILESTONE	WHO	DAY	JUL	AUG	SEP	OCT	NOV	DEC
Complete Datasheet and submit to COGTA	PMS			6				
Draft Annual Performance Report	PMS	20						
Prepare Performance Audit Working Paper File and submit to AG after necessary approvals	PMS	31						

MILESTONE	WHO	DAY	JAN	FEB	MAR	APR	MAY	JUN
Statement from organ of state to National Treasury – Bulk Sales	FIN	15						
Mid-year budget and performance assessment (municipal entity)	FIN	20						
Submission of mid-year budget to the Mayor	FIN	25						
Mayors report to Council – SDBIP and financial status	FIN	30						
Performance Reports twice a year	PMS	15						
Approved organisational scorecard	PMS	30						
Calculation of revenue to be undertaken monthly	FIN	31						
– Preparation of accounts for service charges. Monthly recon of revenue and accounts. Monitoring of contractors. Mandatory provincial interventions arising from financial crises at municipality – report to MEC for Finance								

MILESTONE	WHO	DAY	JAN	FEB	MAR	APR	MAY	JUN
Tabling of Annual Report – Mayor to table 7 months after year end	FIN	31						
Mayor to table mid-year budget in Council	FIN	31						
Monthly budget statements to be submitted to the Mayor and Provincial Treasury	FIN	12						
MEC to report to provincial legislature any failure of a municipality to adequately address issues raised by the auditor	FIN	22						
Mid-year budget and performance assessment	FIN	27						
Submission of draft IDPs to CoGTA	PLN	30						
Table consolidated report of all withdrawals from municipal bank account	FIN	29						

MILESTONE	WHO	DAY	JAN	FEB	MAR	APR	MAY	JUN
Annual report adopted 9 months after year end. Adoption of Oversight reports on annual reports 2 months after tabled annual report	FIN	31						
Post Annual Report on website	PMS	5						
Approval of entities budget by Board of Directors	FIN	31						
Approved Departmental SDBIPs scorecards	PMS	28						
Approval of the Budget. Setting of tariffs for the Budget Year. Setting of measurable performance objectives for each vote in the budget	FIN	30						
Adoption of amendments to the IDP and related budget policies	FIN	30						
Submit approved budget to provincial and national treasury	FIN	30						
IDP adopted by end of June	PLN	30						

MILESTONE	WHO	DAY	JAN	FEB	MAR	APR	MAY	JUN
Internal audit reports on performance info to be submitted to MM and Performance Audit Cttee	PMS	31	20		30			
Quarterly B2B reports using the data sheets	PMS	15						
Schedule Performance Cttee meetings twice a year	Audit	25						
½ yearly B2B Report using the data sheets	PMS	14						
Complete Datasheet and submit to CoGTA	PMS				14			

