

31 July 2023

**The Ethics Institute**

189 Lunnon RD,  
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0083

**EXPOSURE DRAFT ON THE CODE FOR ETHICAL LEADERSHIP IN LOCAL GOVERNMENT**

1. The South African Institute of Chartered Accountants (SAICA) welcomes the opportunity to make submissions to the Ethics Institute on the Code for Ethical Leadership in Local Government (The Code).
2. SAICA is South Africa's pre-eminent accountancy body and is widely recognised as one of the world's leading accounting institutes. The Institute provides a wide range of support services to more than 52 000 members who are chartered accountants [CAs(SA)] and associates [AGAs(SA) and ATs (SA)] who hold positions as chief executive officers, managing directors, board members, entrepreneurs, chief financial officers, auditors, and leaders in their spheres of business operation.
3. It is common cause that ethical leadership promotes good governance. This in turn promotes the effectiveness of an organisation in achieving its objectives, which would be the delivery of basic services in the case of municipalities and municipal entities. Fraud and corruption can often be reduced when the tone at the top is that of ethical leadership.
4. Furthermore, the Auditor-General of South Africa's (AGSA) 2021-22 MFMA general report, reflected the continued deterioration in municipal finance management and audit outcomes in local government as a result of a number of issues including weak preventive controls. This has a negative impact on service delivery to the citizens. It is therefore imperative that there is a need to create a strong system of preventative controls which requires a strong tone from municipal leadership and an ethical culture on which to build strong financial management discipline. As stated by the AGSA, "Municipal leadership, councils and mayors in particular, play a critical role in setting the tone for ethical behaviour, good governance and accountability; and in creating a culture that fosters trust and confidence in local government."
5. SAICA therefore supports the development of the Code as it will go a long way to improving governance within local government.

**Authority of the Code**

6. SAICA understands that the Code will not be enforced through legislation. SAICA further appreciates that acting ethically is a personal choice and therefore the leaders to whom the Code will apply will have to make the choice whether to adhere to it.
7. We would however caution against the Code not being a legislative requirement as this may lead to a lack of adoption by municipalities. Furthermore, consideration can be given to incorporating the principles of the Code into the Code of Conduct for Councilors in terms of the Municipal Structures

Amendment Act (Act No. 3 of 2021) and the Code of Conduct for Municipal Staff Members in terms of the Municipal Systems Act (Act No. 32 of 2000) to assist in enforcing the principles of the Code.

8. Key to the implementation of the Code is its socialisation within the local government ecosystem to ensure that there is adequate buy in to the Code by Councilors and municipal staff. This will need the participation of key stakeholders in the local government ecosystem including the national and provincial Departments of Cooperative Governance and Traditional Affairs, the South African Local Government Association and the national and provincial Departments of Treasury.
9. Specific comments to the Code are included in Annexure A of this letter.
10. We would appreciate the opportunity to engage further, and we would be willing to discuss the comments if required. Please do not hesitate to contact Odwa Benxa ([odwab@saica.co.za](mailto:odwab@saica.co.za)) in this regard.

Kind regards,



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**Natasha Soopal**

**Executive: Ethics Standards and Public Sector**



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**Odwa Benxa**

**Project Director: Public Sector**

## ANNEXURE A: SPECIFIC COMMENTS

No.	Principle	Area affected	Recommendation
1	Principle 1: An ethical municipal leader sets the tone for an ethical culture	Pitfalls that inhibit good governance	The documented pitfall refers to Councillors who sometimes ask for personal donations from suppliers to the municipalities. However, in facilitating corruption within municipalities, officials may also ask for donations (bribes) from service providers to facilitate their appointment when procuring goods and services. We therefore recommend that the pitfall should also refer to municipal officials who ask for donations (bribes) from service providers to facilitate their appointment which subsequently puts the interests of service providers and the municipal officials above those of the community and often leads to service delivery failures due to the service providers not delivering on the contracts.
		How other stakeholders support this principle – political parties	In addition to political parties advocating for the importance of abiding by the Code to the Councillors, we recommend that the Code should also indicate that the political parties should hold Councillors accountable for not abiding by the Code as this will highlight the need for consequence management to be implemented where Councillors act in contravention of the principles of the Code.
2	Principle 2: An ethical municipal leader follows a community-centred approach to governance	Pitfalls that inhibit good governance	Sections 57(f) of the <a href="#">Local Government: Municipal Systems Amendment Act 3 of 2022</a> states that the employment contract of the municipal manager must be for a non-renewable fixed term of employment up to a maximum of five years while section 57(g) of the same Act states that the contract of employment of a manager directly accountable to the municipal manager must be on a permanent basis. Therefore, it is only the municipal manager that has a five-year term and not the rest of senior municipal officials. We therefore recommend the amendment of the current documentation in relation to the term of senior municipal officials in line with the provisions of the <a href="#">Local Government: Municipal Systems Amendment Act 3 of 2022</a> .
3.	Principle 3: An ethical municipal leader respects the boundary between the political and administrative spheres of the municipality	Practical Implementation	SAICA has noted that the Code has learned strongly from the fundamental aspects of the King Report on Corporate Governance for South Africa (2016) (King IV Report). The King IV Report uses the word 'must' to indicate a legal obligation and the word 'should' to indicate an aspiration or an ideal state with reference to the principles.  SAICA therefore recommends that an approach similar to that of the King IV Report be considered with respect to the use of the word 'must' for principles linked to a requirement of an Act or Regulation. The below serve as examples:

No.	Principle	Area affected	Recommendation
	<p>Principle 4: An ethical municipal leader ensures the appointment of staff who have competence and integrity</p>		<ul style="list-style-type: none"> <li>• Under the practical implementation section in principle 3, it is stated that officials should be apolitical in the execution of their duties. Section 71B of the <a href="#">Local Government: Municipal Systems Amendment Act 3 of 2022</a> states that a staff member may not hold a political office in a political party whether in a permanent, temporary or acting capacity. Therefore, consideration can be made to change the wording to 'officials <u>must</u> be apolitical in the execution of their duties'.</li> <li>• Under the practical implementation section in principle 4, it is stated that staff who have been dismissed for misconduct should not be appointed before the expiry of the prescribed sanction period. Section 57A(1) of the <a href="#">Local Government: Municipal Systems Amendment Act 3 of 2022</a> states that any staff member dismissed for misconduct may only be re-employed in any municipality after the expiry of a prescribed period. Therefore, consideration can be made to change the wording to 'staff who have been dismissed for misconduct <u>must</u> not be appointed before the expiry of the prescribed sanction period.</li> <li>• Under the practical implementation section in principle 4, it is stated that political party office-bearers should not be appointed into the administration. Section 71B of the <a href="#">Local Government: Municipal Systems Amendment Act 3 of 2022</a> states that a staff member may not hold a political office in a political party whether in a permanent, temporary or acting capacity. Therefore, consideration can be made to change the wording to 'political party office-bearers <u>must</u> not be appointed into the administration'.</li> </ul>