

25 October 2022

Dr Kevin Naidoo

The Director-General
Department of Cooperative Governance
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Dear Dr Naidoo

LOCAL GOVERNMENT: MUNICIPAL STRUCTURES ACT CODE OF CONDUCT FOR COUNCILLORS REGULATIONS FOR PUBLIC COMMENT

The South African Institute of Chartered Accountants (SAICA) welcomes the opportunity to make submissions to the Department of Cooperative Governance (the Department) on the Local Government: Municipal Structures Act, 1998 Code of Conduct for Councillors Regulations published for comments (the Regulations).

SAICA is South Africa's pre-eminent accountancy body which 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 who hold positions as chief executive officers, managing directors, board members, business owners, chief financial officers, auditors, and leaders in their spheres of business operation.

Our work in the public sector goes beyond member support but also includes a significant focus on advocacy and capacity building to support and encourage an improvement in public finance management.

SAICA supports the Department issuing of these Regulations to ensure that Councillors fulfil their obligations to their communities and support the achievement by the municipality of its objectives. SAICA believes that regular reviews and amendments to issued Regulations are key to ensure their relevance.

For ease of reference, we include our responses as follows:

- a) Annexure A - our detailed comments to the amendments to the Code of Conduct for Councillors Regulations.



- b) Annexure B – our general comments on the Code of Conduct for Councillors Regulations.

We would also appreciate the opportunity 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) in this regard.

Regards,

A handwritten signature in black ink, appearing to read 'Natasha Soopal', written over a horizontal line.

Natasha Soopal

Executive: Ethics Standards and Public Sector at SAICA

ANNEXURE A – Comments on the Code of Conduct for Councillors Regulations

No	Paragraph	Comments	Recommendation
1.	<p><u>4. Breach of the Code</u></p> <p>If a councillor is alleged to have breached a provision of the Code, such alleged breach must be investigated in terms of item 16 of the Code.</p>	<p>SAICA acknowledges and welcomes the regulation requiring the investigation the alleged breaches of the Code in terms of item 16 of the Code.</p> <p>Item 16(2) of the Code indicates the sanctions that may be imposed on a councillor who has breached the code as follows:</p> <ul style="list-style-type: none"> a) issue a formal warning to the councillor; b) reprimand the councillor; c) request the MEC for local government in the province to suspend the councillor for a certain period; d) fine the councillor; or e) request the MEC to remove the councillor from office. <p>However, item 16(2) does not specify the conditions under which a warning, reprimand, suspension, fine or removal may be imposed. This may lead to an</p>	<p>SAICA recommends that the Regulations include conditions under which each of the listed sanctions should be applied to ensure a consistent application of the sanctions.</p>



No	Paragraph	Comments	Recommendation
		inconsistent application of the Conde when applying the sanctions.	
2.	<u>5. General conduct of councillors</u> <u>Paragraphs 5(1)(a) and (b)</u> (1) A councillor must – <ul style="list-style-type: none"> a) perform the functions of office in good faith, honestly and in a transparent manner; b) at all times act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised; 	SAICA has noted that these Regulations appear to be a duplication of Items 2(a) and (b) of the Code per Schedule 7 of the Local Government: Municipal Structures Amendment Act, 2021.	SAICA recommends that the Department considers removing Regulations 5(1)(a) and (b) since the Regulations are already included in the Code per Schedule 7 of the Local Government: Municipal Structures Amendment Act, 2021. This may assist in avoiding a duplication of legislation.
3.	<u>5. General conduct of councillors</u>	<u>Overall comments on Regulation 5:</u> SAICA has noted that the Regulation does not appear to address the relationship between the councillors and the members of the administration to specifically address the independence of councillors from the administration where appropriate. Addressing the independence would ensure that there is no doubt (perceived or otherwise) on the independence of councillors in executing their legislated duties.	The Department should consider including Regulations dealing with the independence of councillors, where appropriate, in executing their legislated duties.
4.	<u>5. General conduct of councillors</u> <u>Paragraphs 5(2)</u> (2) If a councillor's behaviour is unruly, including when he or she assaults or threatens to assault an official or a fellow councillor, the speaker must order the councillor to leave the meeting and, if the	SAICA acknowledges the requirement for unruly councillors to be ordered to leave by the speaker and to be removed if they fail to obey the speaker's order.	None.



No	Paragraph	Comments	Recommendation
	councillor fails to obey the order, request the Sergeant-at-Arms to remove the councillor from the meeting.	The Department should also consider the implications of the Criminal Procedure Act, 1977 where there is an assault or threat to assault an official or a fellow councillor.	
5.	<u>6. Voting and attendance at meetings</u>	<u>Overall comments on Regulation 6:</u> SAICA has noted that it may appear that this section does not relate to the conduct of councillors but may be more administrative in terms of general meeting conduct, voting rights, attendance and quorums of council meetings.	SAICA recommends that the administration of meetings is maintained in separate Regulations or the Municipal Systems Act and not in the Code of Conduct for Councillors as it will detract from the principles of a Code Conduct.
6.	<u>6. Voting and attendance at meetings</u> <u>Comments on specific Regulation 6 paragraphs:</u> The Department should consider the following in relation to the current Regulations: <u>Paragraph 6(4)</u> (4) In the event of no quorum for a meeting, the meeting must be suspended for no more than 20 minutes or as provided in the rules of order for meetings of the municipal council concerned, and if at the end of the said period there is still no quorum, the Speaker or Chairperson may suspend the meeting for a further 20 minutes or as provided in the rules of order for meetings of the municipal council concerned and thereafter adjourn the meeting to another date, time and/or venue.	SAICA has noted that Regulation 6(4) indicates that after the further 20 minutes adjournment, the Speaker or Chairperson may adjourn the meeting to another date, time and /or venue. However, the Regulation does not specify the specific timeline for holding the adjourned meeting.	SAICA recommends that Regulation 6(4) should specify the timeline over which the adjourned meeting should be held. This may assist in ensuring that municipal councils and their committees timeously deal with the business of the municipality to ensure that no unnecessary delays are experienced. Also refer to recommendation 5 above.



No	Paragraph	Comments	Recommendation
7.	<u>Paragraph 6(6)</u> (6) If the municipal council resolves to establish a special committee in terms of item 16(1)(b) of the Code concerning an alleged walkout, the municipal council must within seven calendar days appoint such a committee to investigate and make a finding.	<p>SAICA has noted that Regulation 6(6) requires that where there is an alleged walkout the municipal council must within seven calendar days appoint such a special committee to investigate and make a finding. However, Regulation 6(6) is not specific as to how the special committee members are appointed and how many members the special committee is comprised of. Furthermore, these details are not included in Item 16 of the Code in Schedule 7 of the Local Government: Municipal Structures Amendment Act, 2021.</p> <p>In addition to the above, it appears to be unclear as to whether the seven calendar days are for the appointment of the committee only or include the appointment, investigation and making of a finding. Furthermore, it is unclear as to whether the committee will produce a report after the investigation and to whom than report will be submitted and processed.</p>	SAICA recommends the Departments considers including the details of how the special committee members will be appointed, how many members it will comprise of, and the procedures for conducting and reporting on the investigation. This will assist in ensuring that there is a consistent application of the investigation procedures across all municipalities.
8.	<u>Paragraph 6(8)</u> (8) If a councillor votes in favour of or agrees with a proposed resolution that is before the municipal council or a committee which conflicts with any legislation applicable to local government, the municipality must recover from the councillor any loss or damage it has suffered as a result of such vote or agreement.	SAICA notes Regulation 6(8). The Department should however consider that this Regulation may be difficult to implement in decisions that require a secret ballot. The Department should therefore consider including a provision that deals with decisions that may require a secret ballot and how the	None.



No	Paragraph	Comments	Recommendation
		confirmation of those councillors who voted inappropriately would be identified for this Regulation to be applied to them.	
9.	<u>7. Prescribed value of gifts received by councillor</u>	<u>Overall comments on Regulation 7</u> SAICA has noted that the definition of a gift has not been included in both the Code as per Schedule 7 of the Local Government: Municipal Structures Amendment Act, 2021 and these Regulations. This is in contract to a financial interest that has been described in Item 8(1) of the Code as per Schedule 7 of the Local Government: Municipal Structures Amendment Act, 2021.	The Department should consider including a definition of a gift in the Regulations. Alternatively, a non-exhaustive list of examples of what may constitute a gift can be included under Regulation 7. This will assist councillors in identifying the gifts that should be declared and avoid any subjectivity in this regard. The Department should also include gifts that may be received in kind and may not have a monetary value that can be determined. In addition, the Department should consider including a provision that deals with prohibited gifts. Such a provision should also state that the councillors must not accept gifts that are prohibited.
10.	<u>7. Prescribed value of gifts received by councillor</u> <u>Paragraph 7(7)</u> (7) The municipal council must determine which of the financial interests must be made public having	SAICA has noted that there appears to be no Regulation that requires the publication of gifts received by councillors. This contrasts with public as per Regulation 7(7). Furthermore, there appears to be no	SAICA recommends that the Regulations should be specific on the publication and the reporting to council of gifts received by councillors. This will assist in ensuring transparency and councillor



No	Paragraph	Comments	Recommendation
	regard to the need for confidentiality and the public interest for disclosure.	requirement for the gifts received to be reported to the municipal council.	independence is improved at municipalities.
11.	<u>8. Councillor in arrears to the municipality for rates and service charges</u>	<u>Overall comments on Regulation 8</u> SAICA supports the need to deal with non-payments of municipal accounts for rates and services charges by councillors and the public at large. The Department should also consider the below: <ul style="list-style-type: none"> • Similar to any other municipal resident, councillors should be expected settle their municipal accounts in terms of the credit control policies of the municipality and where payment is not made, the normal debt collection processes should be applied. • The requirement for the Municipal Manager to immediately inform the councillor in writing when the councillor is in arrears for a period longer than two months may be seen to be giving special treatment to councillors when compared to other municipal residents where this action is outside the normal credit control policies of the municipality. It may therefore be more appropriate to apply the normal debt collection 	None.



No	Paragraph	Comments	Recommendation
		<p>processes of the municipality where the councillor is in arrears to ensure the same treatment for all debtors of the municipality.</p> <ul style="list-style-type: none">• It may be more appropriate to consider councillors as in breach of the Code immediately when they breach the municipality's credit control policies by failing to pay their municipal accounts within the normal payment terms. This may assist in promoting a good payment culture among the residents of the municipality through the demonstration of consequence management where payments for services are not made timeously.	
12.	<p><u>09. Reporting</u></p> <p>(1) A municipality must ensure that a register is kept for councillors to declare their interests as provided for in item 8 of the Code, and in accordance with the standing rules and orders of the municipality.</p>	<p>SAICA supports the inclusion of conflict of interest register in the Code. However, it appears that the Code does not stipulate what happens to the councillor that has conflict of interest on a specific matter. For example, whether the councillor would be required to recuse themselves from any matter that involves an area where the councillor has a conflict of interest. In addition to the above, it appears that there is no provision that deals with the regular reporting of the conflicts of</p>	<p>The Department should consider including a provision that provides guidance on how matters that councillors have a conflict of interest in should be dealt with. This may include the requirement for a councillor to recuse themselves from any matters that involve an area where the councillor has a conflict of interest.</p>



No	Paragraph	Comments	Recommendation
		interest and gifts received by councillors to the municipal council to ensure the effective management of the conflicts of interest and gifts declared.	

ANNEXURE B – General Comments on the Code of Conduct for Councillors Regulations

No	Comment	Recommendation
1.	9. Reporting (2) The speaker must submit bi-annual reports on the compliance to the Code to the MEC responsible for local government in the province within fourteen <u>ays</u> of January and July of a calendar year.	The underlined and bold word should be corrected to say “ days ”
2.	9. Reporting (2) The speaker must submit bi-annual reports on the compliance to the Code to the MEC responsible for local government in the province within <u>fourteen</u> ays of January and July of a calendar year. (3) The MEC responsible for local government in the province must submit consolidated quarterly reports on the compliance to the Code to the Minister within <u>14</u> days of the commencement of a quarter.	There should be consistency when it comes to writing the number of days, should be all in words or in numeric.