

IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN

CASE NO.: 11309/2020

In the application of:

PLETTENBERG BAY RATEPAYERS & RESIDENTS
ASSOCIATIONS

First Applicant

PETER GAYLARD

Second Applicant

and

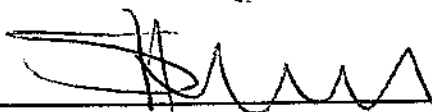
THE BITOU MUNICIPALITY
MSIMBOTI PETER LOBESE
SANDISO GCABAYI

First Respondent
Second Respondent
Third Respondent

FILING NOTICE: FIRST RESPONDENT'S ANSWERING AFFIDAVIT

KINDLY TAKE NOTICE that the First Respondent herein hereby files its Answering Affidavit

DATED at CAPE TOWN on this 3rd day of SEPTEMBER 2020.



HDRS ATTORNEYS INC.
Attorneys for the First Respondent
Docex 2, Plettenberg Bay
Tel: 044 533 4485

E-mail: hardy@hdrs.law.za
c/o MACGREGOR ERASMUS ATTORNEYS
Kay Jay House, 48 Dorp Street
Cape Town
Tel: 021 492 2891
E-mail: stefan@meattorneys.co.za
*we accept service via e-mail

TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT
CAPE TOWN

AND TO: **M A HURWITZ - ATTORNEY**
Attorney for the Applicants
Suite 1 Lion Roars House
82 Longships Drive, Plettenberg Bay
Tel: 044 533 6661
Email: martin.hurwitz@megaweb.co.za
c/o E ROWAN INC.
8th Floor, 74 Short Market Street
Cape Town
Tel: 021 422 4892
E-mail: ella@rowaninc.co.za

E. ROWAN INC.

TIME: 9:50
DATE: 04-09-2020
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IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN

CASE NO: 11309/2020

In the matter between:

PLETTENBERG BAY RATEPAYERS' AND RESIDENTS' ASSOCIATION	First Applicant
PETER GAYLARD	Second Applicant
and	
THE BITOU MUNICIPALITY	First Respondent
MSIMBOTI PETER LOBESE	Second Respondent
SANDISO GCABAYI	Third Respondent

FIRST RESPONDENT'S ANSWERING AFFIDAVIT



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1. INTRODUCTION

I, the undersigned,

LONWABO MNINAWA RONALD NGOQO

do hereby make oath and state that:

1. I am an adult male of full legal capacity, the Municipal Manager of Bitou Local Municipality, with principal offices at 4 Sewell Street, Plettenberg Bay, Western Cape Province.

2. I am duly authorized, as municipal manager, to depose to this affidavit and to oppose this application on behalf of the Municipality, the first respondent.
3. The content of this affidavit is true and correct, and to the best of my knowledge and belief falls within my personal knowledge, save where the contrary is expressly indicated or appears from the context.
4. I have read and considered the Founding Affidavit of Peter Gaylard filed on behalf of the first and second applicants (*'the Applicants'*). I respond thereto as set forth hereunder.

2. THE APPLICATION IS NOT URGENT: Ad paragraphs 28-34

7. Before I deal *ad seriatim* with the specific averments as contained in the Answering Affidavit, I raise a number of threshold issues. The first threshold issue is that the application is not urgent. The application fails to: 1. satisfy the legal requirements for urgency; 2. justify the degree of urgency and of non-compliance with the Uniform Rules of Court. These failures prejudice the respondents' ability to effectively answer the case against them.

8. This application does not justify why the matter should be heard urgently. The urgency is self-created.
- 8.1. The municipal council resolution that is being attacked in the application was passed on 11 June 2020. Should the applicants have any legitimate interest in this Resolution—which is denied—their representative counsellors would have shared this information with them at the time. I accordingly deny that the first applicant ‘first unearthed this resolution in early August’ (*Ad* paragraph 29). One would expect the Applicants, who profess to look after the interests of the ratepayers, to keep themselves up to date regarding the decisions of Council. These decisions are available to the public.
9. This application was only delivered on or about 19 August 2020, more than two months later. No explanation is given for this delay.
10. The application indicates that the matter was to be heard on 26 August 2020. All processes were to be completed within one calendar week. Even with a subsequent one-week extension these timelines are unreasonably truncated, to the disadvantage of the respondents. The respondents gave the applicants an undertaking not to proceed with the transaction in question until such time as



the application could be heard. They suggested reasonable timelines for the proper ventilation of the issues but this offer was declined.

11. The applicants have allowed themselves the luxury of drafting papers over a period of at least two months, yet allowed the respondents no opportunity to file a notice of opposition and only two days to file an answering affidavit. No time was allowed for a replying affidavit or for heads of argument. The application is brought as one of extreme urgency yet without a lawful, factual basis for such urgency and to the detriment of the proper administration of justice by this honourable court.

12. The application amounts to an abuse of the process of this Court and should be removed from the roll for want of urgency. The applicants should also be ordered to pay the respondents' costs.



3. NON-JOINDER

18. The second threshold issue is that there has been non-joinder of parties who have a direct and substantial interest in the relief sought in this application.

19. The decision that the applicants seeks to have reviewed and set aside is a decision taken by the municipal council and not by the municipality. The councillors therefore have a direct and substantial interest in the relief sought and should have been party to these proceedings. The applicants' failure to include the essential parties amounts to non-joinder.

20. The application should accordingly be dismissed with costs on this ground alone.

4. THE APPLICANTS LACK LOCUS STANDI AND THE AFFIDAVIT DOES NOT CONTAIN A CAUSE OF ACTION.

23. The third threshold issue is that the applicants lack *locus standi in judicio* and that, based on the same argument, the application lacks the necessary averments to support the cause of action.



24. The relief sought, namely to review and set aside a municipal council resolution (affecting the decision to lease vehicles for official use by political office bearers), is not relief which the first applicant special interest association has the lawful capacity to challenge, as further elaborated in this section of this affidavit.
25. The municipal council resolution that is being questioned in the application was passed on 11 June 2020. Should the applicants have any legitimate interest in this Resolution—which is denied—their representative counsellors would have shared this information with them at the time. I accordingly deny that the first applicant 'first unearthed this resolution in early August' (*Ad* paragraph 29).
26. The municipal council resolution is not justiciable as administrative action, as defined in section 1 of the Promotion of Administrative Justice Act, No. 3 of 2000, which provides as follows:

“**administrative action**’ means any decision taken, or any failure to take a decision, by-

(a) an organ of state, when-

- (i) exercising a power in terms of the Constitution or a provincial constitution; or

(ii) exercising a public power or performing a public function in terms of any legislation; or

(b) [...]

which adversely affects the rights of any person and which has a direct, external legal effect, but does not include-

(aa) [...];

(bb) [...];

(cc) the executive powers or functions of a municipal council;

[Sub-paragraphs that are not applicable to these parties and these facts have been removed to avoid prolixity.]

27. The council of a municipality is an 'organ of state', as defined in section 239 of the Constitution, 1996.
28. The council resolution complied with internal procedures and relevant legislation (as more fully elaborated below).
29. The resolution of a municipal council approving the lease of vehicles for use by political office bearers amounts to the exercise of executive powers and functions of the council and therefore does not amount to administrative

action subject to review under PAJA. The applicants' reliance on PAJA is therefore misplaced. The provisions of PAJA do not afford the applicants a cause of action.

30. Applying the proviso after sub-paragraph 1(b) of PAJA to these facts, the council resolution does not affect any of the applicants' rights and has no direct external legal effect on any person, including the applicants.
31. It is a fundamental principle of representative constitutional democracy that the applicants' interests be promoted in the municipal council by their elected representatives. The resolution relevant to this application was passed by a majority of votes as provided in s 160 of the Constitution, 1996.
32. The applicants have no justiciable right to challenge what in effect amounts to a line item veto on municipal council resolutions not directly affecting their rights.
33. To the limited extent that this application might legally challenge an executive action on the part of municipal council, the same lack of a direct and substantial interest applies as is the case under PAJA.



34. The founding affidavit contains no averments necessary to sustain a challenge to the impugned municipal council decision on the ground of a principle of legality. Accordingly, the application is ill-conceived.
35. The application should be dismissed with costs on this ground alone.

5. THE MATTER RAISED IN PARAGRAPHS 32 to 34

36. The fourth threshold issue is that vexatious, embarrassing and inadmissible averments are made that have no relevance to the relief sought in this application. These averments are contained in paragraphs 32 to 34 of the founding affidavit and ought, in the ordinary course of things, to be struck out. However, due to the urgent manner in which this application was prosecuted by the applicants, the respondents have been denied the time required for this application.
37. In paragraph 32, the applicants use scandalous language to belittle the council of the municipality, including the scurrilous assertion that the council resolution amounts to a 'gratuitous waste of money' and 'voluptuary self-indulgence'.



38. In paragraphs 33 and 34, the applicants arrogate to themselves the right to speak for the community. The Municipality, as a matter of fact and in law represents the entire Bitou community and not merely the 800 members represented by the first applicant.

39. When the cogency of the Respondents' claim for urgency (which is bolstered by vexatious averments), is assessed against the background of the facts disclosed, the urgent claim is revealed as being hollow and insignificant.

6. THE ALTERNATIVE RELIEF ARGUMENT (*Ad* PARAGRAPH 35)

40. It is incumbent upon the applicants to justify their relief. The alternative relief proposed by the applicants, for the second and third respondent each to put R700 000 in trust, is clear evidence of the frivolous and baseless nature of the application, which may be cured by an appropriate punitive costs order.

41. The second and third respondents were never given R700 000 by the municipality and have no obligation to give back, or put in trust, such a sum of money. On the contrary:

41.1. The second respondent, in terms of a lawful council resolution duly approved, will be given the use of a municipal vehicle to be leased by



the municipality, to perform essential functions as executive mayor of the municipality, for the benefit of the community which he serves.

41.2. The third respondent, in terms of a lawful council resolution duly approved, will be given the use of a municipal vehicle to which the municipality holds an existing lease, to perform essential functions as deputy executive mayor of the municipality, for the benefit of the community which he serves;

42. The council resolution is for the council to enter into a lease for a vehicle to be used by the Mayor for official duties and to renew the current lease for a vehicle currently being used by the Deputy Mayor. The proposed lease and lease renewal are monthly payments and do not constitute an immediate expenditure of R700 000.

43. On the contrary, the proposed 'alternative relief' proceeds from false factual premises and is devoid of practical executability. This stratagem is purposefully proposed to craft a false conclusion that there is no alternative to the relief claimed.



44. As a matter of substance, this application could be heard in the ordinary course, not as urgent relief. That is the genuine alternative to this purportedly urgent application.

45. I now turn serially to the averments in the affidavit, and where necessary I shall refer to the threshold issues raised above.

7. AD SERIALITIM RESPONSE TO THE SUBSTANTIVE CONTENT OF THE FOUNDING AFFIDAVIT

47. **Ad paragraph 1**

I have no knowledge of first applicant's internal processes and delegation of authority to the second applicant, and accordingly deny the second applicant's authority in terms of those processes.

48. **Ad paragraph 2.**

48.1. I am not referred to any particular provision in the Constitution of the first applicant authorizing the second applicant to represent it in these proceedings, and accordingly deny such mandate to bring these proceedings.

48.2. I note Mr Gaylard's averment in this paragraph regarding the legal status of the first applicant Association in terms of the 'common law'.



I am advised that the first applicant is an unincorporated association, which advice I accept.

49. **Ad paragraph 3.** The content of this paragraph is noted.

Ad paragraphs 4 to 7: The Applicants

50. The allegations in these paragraphs are denied. The first respondent is an unincorporated association in terms of its annexed Constitution ('PG2'). Its legal capacity is determined by such status. It is not in law, or in terms of its own Constitution, a 'corporate body', as averred.

51. The content of the Constitution is what it purports to be.

52. I note that the Association has 800 members. That is a small minority of the citizens of Bitou Municipality. Given its small membership, the first applicant is not representative of the community served by all its councillors. Rather, the democratically elected councillors are the representatives of the community.

Ad paragraphs 8 to 10: the Respondents



53. **Ad paragraph 8**

54. Save to clarify that Bitou is a Local Municipality in terms of s 155(1), Category B of the Constitution, 1996, the remainder of the citation of the first respondent is admitted.

55. Bitou Local Municipality is a municipality that shares executive and legislative authority with the Garden Route District Municipality in terms of the definition in the Local Government: Municipal Structures Act, No 117 of 1998.

56. **Ad paragraph 9**

56.1. I deny that an executive mayor is in law the 'chair of the Council', as averred.

56.2. The chairperson of a council is the speaker of the council, applying section 160(1)(b) of the Constitution, 1996.

56.3. Accordingly, I deny the remainder of the content of this paragraph based on this mistaken citation of the second respondent.

57. **Ad paragraph 10**

57.1. I admit that the third respondent, Sandiso Gcabayi, is the deputy executive mayor of Bitou.

58. **Ad paragraph 11**

58.1. The content of this paragraph is denied, for the following reasons.

58.2. The Notice of Motion and Founding Affidavit were not properly served at these premises as averred.

58.3. An emailed copy of the first page of the Notice of Motion was transmitted to the attorneys of record of the first respondent on 18 August 2002, without such irregular service and non-compliance with the Uniform Rules of Court being necessary, justified or agreed.

Ad paragraph 12-14, annexures PG3.1, 3.2: The Resolution and Report

59. **Ad paragraph 12.** The content of the council resolution dated 11 June 2020, Item C/2/183/06/20, annexure **PG3.1** to the founding affidavit, is what it purports to be.

60. **Ad paragraph 13.** The Addendum to the council Resolution includes the Report for consideration, *Procurement of Vehicle Used for Political Office Bearers*, produced by the Chief Financial Officer Mr. Mkhefa, annexure **PG3.2** to the founding affidavit (the 'Report'), is what it purports to be.
61. The Report provides an accurate summary of the legislative provisions empowering the council to approve the resolution.
62. The applicants failed to read and consider the content of the Report, including its summary of the relevant legislative provisions with which the Resolution complied. The applicants precipitously launched this application without reference to the clear authority included in the report.
63. As a result, this application is frivolous and vexatious and should be visited with an appropriate punitive costs order.

8. LEGISLATIVE AUTHORITY: Ad paragraphs 15-22

65. As summarized above in the section of this affidavit treating the threshold issue of the applicants' lack of averments necessary to sustain a cause of action, the applicants' challenge to the municipal council resolution is



incompetently launched on the ground that the resolution is administrative action as defined in section 1 of PAJA or on the ground that it is contrary to the principle of legality.

66. As demonstrated in this section of the affidavit in response to the averments under reference, the municipal council resolution is lawful and rational and therefore not open to a principle of legality challenge.

67. Consequently, there is no substance to any of the relief sought in this application.

68. **Ad paragraph 15.**

68.1. The averment that the municipality provided the mayor and the deputy mayor the use of a vehicle 'over the years' is admitted.

68.2. The consequence of the applicants' surprising claim in this application is that the municipality has 'over the years' acted unlawfully. This conclusion is denied. The opposite is true: the municipality has over the years acted lawfully.

68.3. It is denied that the municipality's council Resolution 'provided a vehicle' in the sense that the vehicle becomes the property of the

executive mayor or deputy executive mayor. Vehicles owned or leased by the municipality were provided for the use of these political office bearers.

69. The legal conclusion in this paragraph is not correct. In Determination 313, *Government Gazette* 40763 dated 3 April 2017 ('Determination 313') the Minister of Co-operative Affairs and Traditional Affairs, as its title suggests, merely set upper limits to salaries, allowances and benefits. For the convenience of this honourable court, the full Determination 313 is annexed hereto for ease of reference as annexure 'A'.
70. In support of such denial, this honourable court is also referred to the Municipal Cost Containment Regulations, 2019, GenN 317, *Government Gazette* 42514 of 7 June 2019 published by the national Minister of Finance in concurrence with the Minister of Cooperative Governance and Traditional Affairs, in terms of section 168(1) of the Local Government: Municipal Finance Management Act, Act No. 56 of 2003. ('Municipal Cost Containment Regulations').
- 70.1. Regulation 6 of the Municipal Cost Containment Regulations was specifically referred to as lawful authority for the Resolution in the Chief Financial Officer's Report, annexure PG3.2 to the founding affidavit in the section titled '*Background/Discussion*'. The full

Municipal Cost Containment Regulations, 2019, for the benefit of this honourable court, are annexed hereto as annexure 'B'.

70.2. Had the applicants read the Report, as all councillors approving the Resolution are presumed to have done, this application would not have been launched, as it lacks lawful ground for the relief sought.

70.3. Regulation 6(1) specifically provides as follows:

'The threshold limit for vehicle purchases relating to official use by political office-bearers must not exceed R700 000 (VAT inclusive) or 70% of the total annual remuneration package'.

70.4. Thus, the municipal council had legislative authority to purchase or lease vehicles for an authorized purpose, namely the official use by political officer bearers.

70.5. The purpose of these regulations is cost containment; this purpose has been fulfilled by the municipal council's resolution *a priori* to comply with the cost containment regulations and determinations. In particular, the lease of the deputy executive mayor's use of a vehicle is limited to the renewal of an existing lease by the municipality.

71. **Ad paragraph 16, annexure PG4.**

71.1. Section 7 of the Remuneration of Public Office Bearers Act, No. 20 of 1998, and GN 475 of 24 April 2020, the *Determination of Upper*

Limits of Salaries, Allowances and Benefits of Different Members of Municipal Councils (the 'Determination') are what they purport to be.

- 71.2. The Determination is irrelevant to the relief sought. No remuneration of a municipal councillor is at issue in the Resolution, or in the cause of action as pleaded.
72. **Ad paragraph 17.** Sub-sections 167(1) and 167(2) of the Municipal Finance Management Act ('MFMA') are what they purport to be. These sections of the MFMA are irrelevant to the cause of action or the relief sought in this application. No remuneration of office-bearers is at issue in the cause of action as pleaded.
73. In particular, the Resolution does not refer to any general 'remuneration' including any 'bonus, bursary, loan, advance or other benefit' (the wording in s 167) provided to the executive mayor or deputy executive mayor.
74. On the contrary, the municipality is specifically authorized to pass the Resolution according to the terms of Regulation 6 of the Municipal Cost Containment Regulations, to allow political officer-bearers the use of municipal vehicles for official purposes within the terms of that Regulation.

75. The Determination also provides similar authority.

76. Clause 9(1)(e) of the Determination provides as follows:

'A councillor may, in exceptional circumstances and upon good cause shown, and with the approval of the Mayor or Speaker, utilise the municipal owned vehicle for official purposes, Provided that the municipal council must, in line with applicable legislation and approved municipal council policy, exercise prudent financial management to ensure that the provision of motor vehicles does not undermine the need to prioritise service delivery and sustain viable municipalities.'

77. This application attacks the lawfulness of a municipal council resolution to lease vehicles for the use of the executive mayor and the deputy executive mayor. Clause 9(1)(e) is predicated upon the lawfulness of the acquisition of *'municipal owned vehicles for official purposes'*. A lesser executive authority than the acquisition of ownership—to lease vehicles as this Resolution approved—is, *a fortiori*, also authorized.

78. The purpose of clause 9(1)(e) Determination is to address the *use* of municipal-owned vehicles. The *use* of municipal-owned vehicles is not the

subject of the impugned Resolution and it is not the basis of the cause of action in this application or the relief sought.

79. Accordingly, the attack on the Resolution on the basis that it is contrary to the Determination, in particular clause 9(1)(e), is ill-conceived and without legal foundation.
80. In these premises, the application should be dismissed with costs.
81. **Ad paragraph 20.** The first applicant's admissions are accepted. For clarity, the applicants and this honourable court are referred to the Municipal Cost Containment Regulations and in particular Regulation 6 as well as Determination 9(1)(e), which authorize municipalities to acquire (*a fortiori*, to lease) vehicles for the official use of political office bearers, such as an executive mayor and a deputy executive mayor.
82. **Ad paragraph 21.** I deny that the Resolution makes reference to 'tools of trade' in the special sense defined in clause 15 of the Determination.. What is meant in the Resolution, read within the context of the Report as a whole which is an Addendum to the Resolution, is that the vehicles would be the 'tools of trade' in their ordinary meaning—thus for use in executing their

official duties (the 'trade') as mayor and deputy mayor respectively. There is no 'trade' other than the execution of official duties in the context of this Resolution and the annexed Report.

83. **Ad paragraph 22.** The legal conclusion in this paragraph is denied. As I have deposed to above, the authority for the Resolution is clearly and unambiguously provided by Regulation 6 of the Municipal Cost Containment Regulations.

84. In the alternative, in the event that this honourable court finds that Regulation 6 does not apply and that this application is directed at declaring unlawful the *use* of municipality-lease vehicles—which is denied, 'exceptional circumstances' exist, 'good cause' exists and council approval by Resolution applies to this use of motor vehicles, and no service delivery or financial viability is compromised, therefore complying with clause 9(1)(e) of the Determination.

85. The reliance by the council on the Municipal Cost Containment Regulations, in particular Regulation 6, as authority for the Resolution, was lawful and rational.



86. In these premises, the challenge to the council's Resolution on PAJA or principle of legality grounds, is without substance.

87. Accordingly, the application should be dismissed with costs.

Remedies: Ad paragraphs 23-24

88. **Ad paragraph 23-24.** The legal conclusions in these paragraphs are denied. In amplification of these denials, I reiterate that neither a PAJA review nor a principle of legality challenge has any merit, as I have deposed in the sections of the affidavit treating the applicants lack of averments necessary to sustain a cause of action above.

89. Even if the council's Resolution was justiciable in terms of PAJA—which is denied since the Resolution is not administrative action as defined in s.1 of PAJA—the municipal council decision is a valid administrative action, since the Resolution:

89.1. was not materially influenced by an error of law;

89.2. did not take irrelevant considerations into account;

89.3. did not contravene any law;



89.4. was not unreasonable.

Demand on the Council: Ad paragraphs 25-26.

90. **Ad paragraph 25, annexure PG5.** The first applicant's letter dated 13 August 2020 is what it purports to be. I deny that the Resolution is unlawful, or that the first applicant's characterization of the Resolution is correct. The Resolution is clearly and unambiguously for the purpose of **PROCUREMENT OF VEHICLE USED FOR POLITICAL OFFICE BEARERS.**
91. It is vexatious and disingenuous to suggest, as this 'demand' does, that the executive mayor or the deputy executive mayor obtained any right or title to vehicles.
- 91.1. In the first place, the council Resolution instructed its officials to procure leases from a successful tenderer;
- 91.2. Secondly, there was no acquisition of a vehicle in the sense of acquisition of ownership by the second or third respondent. The Resolution did not authorize the executive mayor and deputy executive mayor to 'acquire' these vehicles.
- 91.3. Thirdly, the vehicles to be leased were for the use of political office bearers as authorized, within the legislative limits of Regulation 6 of



the Municipal Cost Containment Regulations 2019, which remain in force.

91.4. Accordingly, the Resolution is not unlawful, and the claim is meritless.

92. **Ad paragraph 26, annexure PG6.** The press release by the second applicant on behalf of the first applicant, is designed to be a vexatious and politically motivated piece of propaganda fraught with misstatements of fact and ignorance of the law. I have not been enlightened by the applicants as to which facts in this press release I should answer. I have deposed to specific averments in the founding affidavit and abide by my answers.

93. **Ad paragraph 27.** It is not the policy of this municipality to respond to political diatribes in press releases of special interest groups such as the press release annexed as **PG6** to the founding affidavit.

94. The proper forum for political debate on the resolutions of the council, is the council chambers of the municipality. All parties have an opportunity to be heard and to share their concerns about the welfare of the community on this forum. The applicants may avail themselves of this opportunity to participate in representative democracy.



95. Bitou Municipality is open to suggestions and 'demands' from all sections of the community. The council of the municipality is required to weigh these various interests in arriving at its policy driven council resolutions.
96. The Resolution at issue in this application was made after due consideration of the legality of the Resolution and subject to the cost-containment measures in place.
97. **Urgency: Ad paragraphs 28-34.** The lack of urgency was addressed above as a threshold issue.

Relief claimed: Ad paragraphs 30 to 37

98. It is unclear from the paragraphs under reference what the grounds are for relief and what the grounds are for urgency. The respondents are prejudiced by this lack of precision in the form of pleading.
99. **Ad paragraph 30.** The applicants will suffer no irreparable harm.



100. **Ad paragraph 31.** The first respondent's council has complied with the law. The harmful consequences claimed are therefore speculative. Should the applicants have suffered any harm, which is denied; a claim for damages would have been appropriate. This harm, if any, will be suffered by the municipality, not the applicants.
101. **Ad paragraphs 32-34.** The contents of these paragraphs are scandalous and vexatious. The contents are also denied, as further amplified:
- 101.1. The opinion that the Resolution is a 'waste of money' is denied: the Resolution complies with the Municipal Cost Containment Regulations and therefore is clearly and objectively not a waste of money. This resolution is therefore lawful.
- 101.2. The feigned 'distress' of the 'community' and 'shock and outrage' of the 'residents' are denied: the applicants do not represent the community and do not have such a mandate. The first applicant represents its limited membership. The interests of the first applicant's members were considered in the Resolution. The councillors representing the entire community voted in favour of the Resolution.
- 101.3. The applicants cannot by way of litigation arrogate to themselves the right to upset a lawful, democratic, policy-laden resolution of the



representative council of a municipality where the applicants do not have a direct and substantial interest.

102. The relief sought by the applicants in the Notice of Motion, namely final relief pending an interim interdict, is incompetent. The relief sought in the founding affidavit is final in effect: a declaration of invalidity of a municipal council resolution.
103. The 'interim interdict', 'interdicting the first respondent from concluding leases contemplated in the Resolution of Council', is predicated upon a declaration of illegality, either under PAJA, or under the principle of legality of the council resolution, or 'implementing such Resolution'. The proposed relief, to interdict the conclusion of the vehicle leases, is not severable from the purported illegality of the Resolution. See prayer 1.2 of the Notice of Motion). This interim relief is final in effect, as pleaded and proved.
104. The first respondent denies that the applicants have made out a case for the interim or final interdictory or declaratory relief on the grounds sought in the founding affidavit, for the reasons advanced above in this answering affidavit.

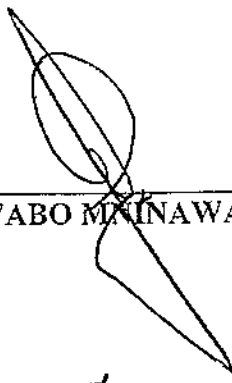
9. CONCLUSION


105. In these premises, the application should be dismissed.



106. Costs are claimed against the first applicant unincorporated association and each of its members jointly and severally each absolving the other, on a scale as between attorney and client, on the ground that the claim is in fact vexatious.

THUS DONE AND SIGNED at Bitou on this 3rd day of September 2020.


LONWABO MXINAWA RONALD NGOQO

 Plettenberg Bay
SIGNED AT JOHANNESBURG on this this 3rd day of September 2020 by the deponent having declared that he knows and understands the contents of this affidavit and that the provisions of Government Notice R 1258 dated 21 July 1972 having been complied with.



COMMISSIONER OF OATHS

Ex Officio

Full Names:

Capacity:

<p>Ferdinand Heuer Commissioner of Oaths (SA) Chartered Accountant (SA) Registration Number: 30675928 Mazars Tel: +27 44 533 0510 86 Longships Drive, Plettenberg Bay</p>



"A"



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DEPARTMENT OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

NO. 313

03 APRIL 2017

**REMUNERATION OF PUBLIC OFFICE BEARERS ACT, 1998
(ACT NO. 20 OF 1998)****AMENDMENT NOTICE NO. 1600 OF 21 DECEMBER 2016****DETERMINATION OF UPPER LIMITS OF SALARIES, ALLOWANCES AND
BENEFITS OF DIFFERENT MEMBERS OF MUNICIPAL COUNCILS**

Under the powers vested in me by sections 7(1), 8(5)(a) and 9(5)(a) of the *Remuneration of Public Office-bearers Act, 1998* (Act No. 20 of 1998), I, David Douglas Des van Rooyen, Minister for Cooperative Governance and Traditional Affairs, hereby –

- (a) after consultation with the member of the Executive Council responsible for local government in each province; and
- (b) after taking into consideration the matters listed in paragraphs (a) to (i) of section 7(1) of the Act,

repeal the determination of upper limits of the salaries, allowances and benefits of the different members of municipal councils as set out in Government Notice No. 1600, published in Government Gazette No. 40519 of 21 December 2016, and replace it with the upper limits of the salaries, allowances and benefits of the different members of municipal councils as set out in the Schedule.



**DES VAN ROOYEN, MP
MINISTER FOR COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS**

SCHEDULE

PREAMBLE

The salary and allowances of a councillor is determined by that municipal council by resolution of a supporting vote of a majority of its members, in consultation with the member of the Executive Council responsible for local government in each province, having regard to the upper limits as set out hereunder, the financial year of a municipality and affordability of municipality to pay within the different grades of the remuneration of councillors, including the austerity measures as approved by national Cabinet.

For purposes of implementation of this Government Notice, "in consultation with" means that a municipal council must obtain concurrence of the MEC for local government prior to the implementation of the provisions of this Notice.

1. Definitions

In this Schedule, unless the context indicates otherwise, a word or phrase to which a meaning has been assigned in the *Remuneration of Public Office-bearers Act, 1998* (Act No. 20 of 1998) (hereinafter referred to as "the Act") and the *Local Government: Municipal Structures Act, 1998* (Act No. 117 of 1998) (hereinafter referred to as "the Structures Act"), has that meaning and --

"basic salary" means the amount payable to a councillor that excludes travel allowance, housing allowance, municipal contribution to a pension fund and municipal contribution to a medical aid scheme as provided for in items 9(1), 9(2), 12(1) and 12(2) of this Notice;

"Demarcation Act" means the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);

"existing municipality" in relation to this Notice means a municipality that existed prior to the 2016 local government elections which was not affected by the boundary re-determination that only came into effect at the commencement of the first election of the new council of that municipality;

"full-time councillor" means a councillor who has been elected or appointed to an office which has been designated as full-time in terms of section 18(4) of the Structures Act;

"grade" in relation to this Notice means the grade of municipal council as determined in terms of item 4;

"new municipality" in relation to this Notice means the municipality established in terms of section 21 of the Demarcation Act consisting of the disestablished areas of an existing municipality that came into effect at the commencement of the first election of the council of that municipality following the 2016 local government elections;

"out of pocket expenses" means actual and necessary expenses incurred by a councillor which have been specifically authorised or provided for in terms of the municipality's policy, in connection with a specific official or ceremonial duty that has been delegated to the councillor in question;

"part-time councillor" means a councillor other than a full-time councillor;

"pension fund" means any fund established and registered in terms of, and subject to, any law governing the registration and control of pension funds in the Republic of South Africa and to which an office bearer contributes or any pension scheme approved by Parliament for such office bearers so approved;

"section 79 committee" means a committee of the municipal council established in terms of section 79 of the Structures Act;

"SETAs" means the Sector Education and Training Authorities established in terms of section 9 of the *Skills Development Act, 1998* (Act No. 97 of 1998);

"special risk cover" means an insurance cover, provided to a councillor by the municipality, which covers the loss of or damage to a councillor's personal fixed or moveable property and assets, excluding property used by such councillor for business purposes, as well as life and disability cover, for any loss or damage caused by riot, civil unrest, strike or public disorder;

"superseding municipality" means an incorporating, merged or split municipality that came into effect at the commencement of the first election of the council of that municipality following the 2016 local government elections;

"tools of trade" means the resources provided by a municipal council to a councillor to enable such councillor to discharge his or her duties in the most efficient and effective manner, and at all times remain the assets of the municipality concerned;

"total municipal income" means gross income in respect of a metropolitan, local or district municipality based on actual income received as stated in the audited financial statements of that municipality for the 2015/ 2016 financial year. The gross income for the municipality will include the following:

- rates on property;
- fees for services rendered by the municipality, or on its behalf by a municipal entity;
- surcharges;
- other authorised taxes;
- levies and duties;
- income from fines for traffic offences and contravention of municipal by-laws or legislation assigned to the local sphere of government;
- regional services council replacement grant for district municipalities;
- interest earned on invested funds other than national and provincial conditional grants;
- rental for the use of municipal movable or immovable property; and
- amounts received as agent for other spheres of government.

The gross income excludes the following:

- transfers and / or grants from the national fiscus, with the exception of regional services council replacement grant for district municipalities; and
- all value added tax (VAT) refunds.

"total population" means the official statistics of the population residing in the area of jurisdiction of a metropolitan, local or district municipality, as published in the Community Survey 2016: Statistical Release No. P0301, in terms of the *Statistics Act, 1999* (Act No. 6 of 1999); and

"total remuneration package" means the annual total cost to a municipality of a basic salary component and housing allowance, payable to a councillor as provided for in

items 9(1), 9(2), 12(1) and 12(2) of this Notice as well as the municipal contribution to a pension fund and a medical aid scheme that is payable by the municipality on behalf of the councillor.

2. Allocation of number of points for total municipal income

The number of points allocated for the total municipal income of a municipality is as follows:

TOTAL MUNICIPAL INCOME		NUMBER OF POINTS
R 0	- R 10,000,000	8.33
R 10,000,001	- R 50,000,000	16.67
R 50,000,001	- R 200,000,000	25.00
R 200,000,001	- R 1,500,000,000	33.33
R 1,500,000,001	- R 2,000,000,000	41.67
More than R2,000,000,000		50.00

3. Allocation of number of points for total population

The number of points allocated for the total population within a municipality, is as follows:

TOTAL POPULATION		NUMBER OF POINTS
0	- 50,000	8.33
50,001	- 100,000	16.67
100,001	- 250,000	25.00
250,001	- 550,000	33.33
550,001	- 1,800,000	41.67
More than 1,800,000		50.00

4. Determination of grade of municipal council

(1) The sum of the number of points allocated to a municipal council, other than a municipal council referred to in terms of items 2 and 3 respectively, determines the grade of such municipal council as follows:

GRADE OF MUNICIPAL COUNCIL	POINTS
1	0 to 16.66
2	16.67 to 33.33
3	33.34 to 50.00
4	50.01 to 66.67
5	66.68 to 83.35
6	83.36 and above

5. Upper limits of the annual total remuneration packages of full-time councillors

The upper limits of the annual total remuneration packages of full-time councillors are as follows:

GRADE	MAYOR OR EXECUTIVE MAYOR	SPEAKER, DEPUTY MAYOR OR DEPUTY EXECUTIVE MAYOR	MEMBER OF THE EXECUTIVE COMMITTEE OR MAYORAL COMMITTEE, WHIP OR CHAIRPERSON OF A SUBCOUNCIL	CHAIRPERSON OF A SECTION 79 COMMITTEE
	TOTAL REMUNERATION PACKAGE	TOTAL REMUNERATION PACKAGE	TOTAL REMUNERATION PACKAGE	TOTAL REMUNERATION PACKAGE
6	1 242 409	1 003 393	940 680	913 086
5	921 912	737 529	691 433	671 152
4	787 061	629 647	590 296	572 979
3	758 012	606 410	568 510	551 832
2	709 765	567 812	532 323	516 708
1	689 087	551 266	516 811	501 651

The mayor of a plenary type municipality should be remunerated according to the total remuneration package column of mayor/ executive mayor.

6. Upper limit of annual total remuneration package or allowance in respect of appointed councillors

(1) A councillor appointed to a district council in terms of section 23(1)(b) of the Structures Act, may be paid the upper limit of the total remuneration package or allowance as follows:

- (a) If a councillor is elected or appointed as speaker, mayor, executive mayor, member of a mayoral committee, member of an executive committee, chairperson of a section 79 committee or part-time member of a district council, such councillor is entitled to an amount equal to the difference between the total remuneration package that a councillor receives as a member of the local council and the total remuneration package allocated to that office in the district council in terms of items 5, 6, 7, 8, 9, 10 and 11, as the case may be.
- (b) If the total remuneration package payable to a councillor as a member of the local council is equal to or higher than the total remuneration package that an appointed councillor to the district council receives, such a councillor is, in addition to the total remuneration package, entitled to a sitting allowance not exceeding R962: Provided

that this allowance is limited to R962 per day, regardless of the number of meetings of the district council or committees of that council that are attended by such councillor on a specific day.

(2) A district municipality is responsible for –

- (a) the payment of the remuneration or the allowance referred to in sub-item (1);
- (b) the reimbursement of travel expenses not exceeding the applicable tariffs prescribed by the national department responsible for transport for the use of privately-owned vehicles incurred by a councillor for the execution of official duties on behalf of that district municipality, in terms of that district council's policy; and
- (c) the payment of cell phone expenses not exceeding 50% of the applicable allowances as prescribed under item 10 incurred by a part-time councillor for the execution of official duties on behalf of that district municipality, in terms of that district council's policy.

7. Upper limit of allowance in respect of councillors serving in the governance and intergovernmental structures of organised local government

(1) (a) A councillor designated to serve in a governance structure of organised local government must, in addition to the total remuneration package applicable to that councillor, be paid an allowance not exceeding R962 per sitting and actual attendance of any meeting: Provided that the allowance is limited to R962 per day, irrespective of the number of meetings attended by such councillor on a specific day.

(b) A councillor designated to represent organised local government at any intergovernmental structure, include national and provincial executive authorities, must in addition to the total remuneration package applicable to that councillor, be paid an allowance not exceeding R962 per sitting and actual attendance of such structure: Provided that the allowance is limited to R962 per day, irrespective of the number of attendances by such councillor on a specific day.

(2) Organised local government is responsible for –

- (a) the payment of the allowance referred to in sub-item (1);
- (b) the payment of accommodation expenses incurred for attending a meeting of governance and intergovernmental structures in terms of applicable organised local government policy; and
- (c) reimbursement of travel expenses, not exceeding the applicable tariffs prescribed by the national department responsible for transport for the use of privately-owned

vehicles, incurred by a councillor for attending a meeting of governance and intergovernmental structures.

8. Upper limits of the annual total remuneration packages of part-time councillors

The upper limits of the annual total remuneration packages of part-time councillors are as follows:

GRADE	MAYOR / EXECUTIVE MAYOR	SPEAKER, DEPUTY MAYOR OR DEPUTY EXECUTIVE MAYOR	MEMBER OF THE EXECUTIVE COMMITTEE OR MAYORAL COMMITTEE OR WHIP	CHAIRPERSON OF SECTION 79 COMMITTEE	OTHER PART-TIME MEMBERS
	TOTAL REMUNERATION PACKAGE	TOTAL REMUNERATION PACKAGE	TOTAL REMUNERATION PACKAGE	TOTAL REMUNERATION PACKAGE	TOTAL REMUNERATION PACKAGE
6	693 101	586 335	519 826	504 578	458 706
5	509 454	407 564	382 091	370 882	288 998
4	434 935	347 947	326 201	316 632	246 725
3	418 883	335 106	314 168	304 945	237 620
2	392 221	313 776	294 166	285 537	222 496
1	380 791	304 632	285 594	277 215	215 753

The mayor of a plenary type municipality should be remunerated according to the total remuneration package column of mayor/ executive mayor.

9. Upper limits of allowances of full-time and part-time councillors

The upper limits of allowances of full-time and part-time councillors, that constitute part of the annual total remuneration package, are as follows:

- (1) Motor vehicle and travel allowance
- (a) A councillor listed in item 5 and 8 of this Notice may structure his or her basic salary to provide for motor vehicle allowance.
- (b) A councillor may in the exercise of his or her official duties utilise a municipal-owned vehicle: Provided that the municipal council must, in line with the approved municipal policy, exercise prudent financial management to ensure that the provision of motor vehicle does not undermine the need to prioritise service delivery and sustain viable municipalities.
- (c) If a councillor structures a vehicle allowance, the councillor must provide proof of ownership of a private vehicle to the municipality and have the vehicle available for official duties: Provided that a councillor may, in exceptional circumstances and upon good cause shown, and with the approval of the Mayor or Speaker, utilise the municipal vehicle.

- (d) A councillor who utilises his or her motor vehicle must, for purpose of claiming kilometres travelled, keep a travel logbook containing the following information relating to actual official and private kilometres travelled per month as may be determined from time to time by the South African Revenue Service:
- (i) Date of travel;
 - (ii) Kilometres travelled; and
 - (iii) Travel details, where to and reason for the trip.
- (e) If a councillor uses a municipal-owned motor vehicle for official purposes, such councillor will not be reimbursed for kilometres travelled.

(2) Housing allowance

A councillor may structure his or her salary to provide for housing allowance as part of the total remuneration package.

(3) Out of pocket expenses

A councillor may, in addition to the total remuneration package, be reimbursed for reasonable and actual out of pocket expenses incurred during the execution of official or ceremonial duties, in accordance with the applicable council policy.

10. Upper limits of cell phone allowance for councillors

A councillor may, in addition to the annual total remuneration packages provided for in terms of items 5 and 8 respectively, be paid a cell phone allowance not exceeding the following amounts:

- (1) R3400.00 per month to a executive mayor or mayor, deputy mayor and speaker of only a grade 6 municipal council;
- (2) R2400.00 per month to an executive mayor or mayor, deputy mayor and speaker of grade 4 and 5 municipal councils; and
- (3) R1900.00 per month to an executive mayor or mayor, deputy mayor and speaker of grade 1, 2 and 3 of a municipal council, including any other councillor.

11. Upper limits of mobile data bundles for councillors

A councillor may, in addition to the annual total remuneration packages provided for in terms of items 5 and 8 respectively, be paid an allowance on the use of data bundles not exceeding R300 per month.

12. Upper limits of pension fund contributions and medical benefits of councillors**(1) Pension contributions**

- (a) A councillor may participate in a pension fund duly established in terms of law.
- (b) If a councillor elects to participate in a pension fund, the municipality shall pay, on behalf of that councillor, the monthly council contributions and councillor's own contributions to a pension fund to which the councillor is a member in accordance with the rules of such pension fund.
- (c) Sub-items (a) and (b) apply to a councillor who –
- (i) was in office prior to 1 July 2016 and who is currently a councillor a municipality and who on 1 July 2016 did not participate in a pension fund scheme;
 - (ii) has reached the retirement age determined in terms of the applicable pension rules, and who does not participate in a pension fund nor receive any pension benefits; and
 - (iii) took office as a councillor after the 2016 Local Government Elections.
- (d) Sub-item (a), (b) and (c) takes effect from 1 June 2017.
- (e) The provisions of sub-items (a) and (b) do not apply to a councillor who was in office prior to 1 July 2016 and who is currently in office and participates in a pension fund scheme.

(2) Medical Aid Scheme

- (a) A councillor may participate in a medical aid scheme duly established in terms of a law and such councillor shall be entitled to receive such medical aid benefits from the medical aid scheme to which the councillor contributes as may be determined by the rules of such medical aid scheme.
- (b) If a councillor elects to participate in a medical aid scheme, the municipality shall pay from his or her monthly salary, councillor's own contributions and council contributions charged against and paid from the budget of the municipality to the medical aid scheme to which the councillor is a member.

13. Special risk cover

- (1) A municipality must, in addition to the annual total remuneration packages provided for in items 5 and 8 respectively, take out risk insurance cover, to provide for an insurance cover, provided to a councillor by the municipality, which covers the loss of or damage to a councillor's personal fixed or moveable property and assets, excluding

property used by such councillor for business purposes, as well as life and disability cover, for any loss or damage caused by riot, civil unrest, strike or public disorder. The special risk insurance on residential property will be limited to R1, 5 million while on vehicles it is limited to R750 000. The life and disability insurance cover is limited to 2 times the total remuneration package of a councillor.

(2) In the event where the residential property of a councillor was damaged or destroyed as a result of riot, civil unrest, strike or public disorder, the municipality may, subject to affordability, provide alternative accommodation to the affected councillor, for a period of 30 days from the date of such an incident.

(3) Notwithstanding sub-item (2), the municipal council may, on good cause shown, provide alternative accommodation for a further period not exceeding 30 days.

(4) A councillor is obliged to submit to the municipality details of property, assets and beneficiaries to be covered by the special risk insurance upon request. A councillor who fails to submit the required details referred to herein will forfeit the benefits associated with the special risk insurance cover.

(5) If a councillor already belongs to another special risk cover, such councillor must declare to the municipality the details of property, assets and beneficiaries to be covered by the special risk insurance.

14. Tools of trade

(1) A municipal council may extend the following tools of trade to a councillor:

	TOOLS OF TRADE	APPLICABLE TO:
(a)	Braille reader	All visually impaired councillors.
(b)	Office space and furniture; Parking bay; Business cards; Calculators; Letter-heads; Stationery; Toner cartridges; Diaries; Postage costs; Office telephone; and Appropriate mobile technology and multi-digital office (excluding cell phones and mobile data card as per item 10 and 11), including laptop and or desktop computer, facsimile, printer, photocopier and scanner.	Full-time councillors, part-time executive mayors or mayor, part-time deputy executive mayors or deputy mayors, part-time speakers, part-time members of mayoral committee or members of executive committee and part-time chairpersons of section 79 committees.
(c)	Business cards; Calculators; Letter-heads;	Part-time councillors and the usage must comply with policy directives of the municipality.

	TOOLS OF TRADE	APPLICABLE TO:
	Stationery; and Diaries.	
(d)	Postage costs; Office telephone; and Multi-digital office, facsimile, printer, photocopier and scanner.	Part-time councillors to have access to these tools of trade at the municipal offices.
(e)	Personal security	All councillors, subject to a threat and risk analysis conducted by the South African Police Service.

(2) If a municipal council makes available tools of trade in terms of sub-item (1), such a municipal council must take into account accessibility, affordability and cost control, equity, flexibility, simplicity, transparency, accountability and value of tools of trade.

(3) The application of sub-tem (1) is subject to concurrence by the MEC for local government in the province.

15. Capacity building

(1) A municipality must make a provision in its budget for the development and implementation of capacity building programme for councillors.

(2) This capacity building programme may include specific training conducted by national departments, associated government agencies and SETAs, provincial departments, municipalities and organised local government.

(3) The training programme must take into consideration the capacity needs to fulfil a councillor' statutory obligations and affordability by a municipality.

16. Overpayment

(1) Any remuneration paid to a councillor of a municipality otherwise than in accordance with section 167(1) of the *Local Government: Municipal Finance Management Act, 2003* (Act No. 53 of 2003) including any bonus, bursary, loan, advance or other benefit, is an irregular expenditure and the municipality –

- (a) must recover that remuneration from the political office bearer or member; and
- (b) may not write-off any expenditure incurred by the municipality in paying or giving that remuneration.

(2) The MEC must report to the Minister –

- (a) any transgression of subsection (1); and

(b) any non-compliance with this Notice.

17. Information to be submitted to the Minister

(1) A municipality must submit to the MEC responsible for local government in the province, by not later than 1 July 2017, a report containing the following information in respect of its serving councillors on an official letterhead of the municipality, signed by the mayor:

- (a) Total number of councillors;
- (b) Designation;
- (c) Part-time or full-time;
- (d) Name of incumbent;
- (e) Gender;
- (f) Total municipal income;
- (g) Total population;
- (h) Grading of municipal council;
- (i) Date concurrence granted by the MEC;
- (j) Total remuneration package; and
- (k) Any allowance(s) payable to a councillor.

(2) Upon receipt of the data referred to in sub-item 1, the MEC must submit a consolidated report to the Minister by not later than 1 August 2017.

18. Transitional measures

(1) A municipality that does not have any municipal income is a grade 1 municipal council as envisaged in item 4(1): Provided that –

- (a) LIM 345, the new municipality in Limpopo Province that was established in terms of section 21 of the Demarcation Act that came into effect at the commencement of the first election of the council of that municipality following the 2016 local government elections, is a grade 3 municipality; and
- (b) superseding municipalities that came into effect at the commencement of the first election of the council of that municipality following the 2016 local government elections with different grading, must utilise the highest total municipal income between one of the superseding municipalities based on the audited financial statements for the 2015 /16 financial year; and
- (c) superseding municipalities that came into effect at the commencement of the first election of the council of that municipality following the 2016 local government elections with the same grading, must utilise the highest total municipal income between one of the superseding municipalities based on the audited financial statements for the 2015 /16 financial year.

(2) If a municipality has no audited financial statements for 2015/16 financial year by the date of publication of this Notice, the audited financial statements for the 2014/15 financial year will apply.

(3) In the event that a municipality bought a mayoral vehicle before the publication of this Notice, the usage of such motor vehicle between the period 1 July 2016 and the date of publication of this Notice will not be considered irregular.

19. Short title and commencement

(1) This Notice is called the Determination of Upper Limits of Salaries, Allowances and Benefits of Different Members of Municipal Councils.

(2) Unless otherwise specified in herein, this Notice takes effect from 1 July 2016.



Municipal Cost Containment Regulations, 2019

You are currently viewing the full notice.

Published under

GenN 317 In GG 42514 of 7 June 2019
[with effect from 1 July 2019]

The Minister of Finance has, acting with the concurrence of the Minister of Cooperative Governance and Traditional Affairs, in terms of section 168(1) of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003), made the regulations as set out in the Schedule.

SCHEDULE

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1 Definitions

In these Regulations, a word or expression to which a meaning has been assigned in the Act has the same meaning as in the Act, unless the context indicates otherwise, and-

'Act' means the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003);

'consultant' means a professional person, individual, partnership, corporation, or a company appointed to provide technical and specialist advice or to assist with a design and implementation of projects or to assist a municipality or municipal entity to perform its functions to achieve the objects of local government in terms of section 152 of the Constitution;

'cost containment' means measures implemented to curtail spending in terms of these Regulations; and

'credit card' means a card issued by a financial services provider, which creates a revolving account and grants a line of credit to the cardholder.

2 Object of Regulations

The object of these Regulations, in line with sections 62(1)(a), 78(1)(b), 95(a) and 105(1)(b) of the Act, is to ensure that resources of a municipality and municipal entity

are used effectively, efficiently and economically by implementing cost containment measures.

3 Application of Regulations

These Regulations apply to all officials and political office bearers in municipalities and municipal entities.

4 Cost containment policies

(1) Each municipality or municipal entity must develop or revise and implement a cost containment policy which must-

- (a) in the case of a municipality, be adopted by the municipal council, and in the case of a municipal entity, by the board of directors as part of its budget-related policies;
- (b) define a municipality or municipal entity's objectives for the use of consultants; and
- (c) be consistent with the Act and these Regulations.

(2) The cost containment policy of a municipality or a municipal entity contemplated in subregulation (1) must-

- (a) be in writing;
- (b) give effect to these Regulations;
- (c) be reviewed annually, as may be appropriate;
- (d) be communicated on the municipality's or municipal entity's website; and
- (e) set out-
 - (i) monitoring measures for ensuring implementation of the policy;
 - (ii) procedures for the annual review of the policy; and
 - (iii) consequences for non-adherence to the measures contained therein.

5 Use of consultants

(1) A municipality or municipal entity may only appoint consultants if an assessment of the needs and requirements confirms that the affected municipality or municipal entity does not have the requisite skills or resources in its full-time employ to perform the function.

(2) An accounting officer must adopt a fair and reasonable remuneration framework for consultants taking into account the rates-

- (a) determined in the 'Guideline on fees for audits undertaken on behalf of the Auditor-General of South Africa', issued by the South African Institute of Chartered Accountants;
- (b) set out in the 'Guide on Hourly Fee Rates for Consultants', issued by the Department of Public Service and Administration; or
- (c) as prescribed by the body regulating the profession of the consultant.

(3) The tender documentation for the appointment of consultants must include a clause that the remuneration rates will be subject to negotiation, not exceeding the applicable rates mentioned in subregulation (2).

(4) When negotiating cost-effective consultancy rates for international consultants, the accounting officer may take into account the relevant international and market-determined rates.

(5) When consultants are appointed, an accounting officer must-

- (a) appoint consultants on a time and cost basis with specific start and end dates;
- (b) where practical, appoint consultants on an output-specified basis, subject to specific measurable objectives and associated remuneration;

- (c) ensure that contracts with consultants include overall cost ceilings by specifying whether the contract price is inclusive or exclusive of travel and subsistence disbursements;
 - (d) ensure the transfer of skills by consultants to the relevant officials of a municipality or municipal entity;
 - (e) undertake all engagements of consultants in accordance with the Municipal Supply Chain Management Regulations, 2005 and the municipality or municipal entity's supply chain management policy; and
 - (f) develop consultancy reduction plans to reduce the reliance on consultants.
- (6) All contracts with consultants must include a fee retention or penalty clause for poor performance.
- (7) A municipality or municipal entity must ensure that the specifications and performance are used as a monitoring tool for the work to be undertaken and are appropriately recorded and monitored.
- (8) The travel and subsistence costs of consultants must be in accordance with the national travel policy issued by the National Department of Transport, as updated from time to time.
- (9) The contract price must specify all travel and subsistence costs and if the travel and subsistence costs for appointed consultants are excluded from the contract price, such costs must be reimbursed in accordance with the national travel policy of the National Department of Transport.

6 Vehicles used for political office-bearers

- (1) The threshold limit for vehicle purchases relating to official use by political office-bearers must not exceed R700 000 or 70% (VAT inclusive) of the total annual remuneration package for the different grades of municipalities, as defined in the Public Office Bearers Act and the notices issued in terms thereof by the Minister of Cooperative Governance and Traditional Affairs, whichever is lower.
- (2) The procurement of vehicles in subregulation (1) must be undertaken using the national government transversal contract mechanism, unless it may be procured at a lower cost through other procurement mechanisms.
- (3) Before deciding to procure a vehicle as contemplated in subregulation (2), the accounting officer or delegated official must provide the council with information relating to the following criteria which must be considered:
- (a) status of current vehicles;
 - (b) affordability of options including whether to procure a vehicle as compared to rental or hire thereof, provided that the most cost-effective option is followed and the cost is equivalent to or lower than that contemplated in subregulation (1);
 - (c) extent of service delivery backlogs;
 - (d) terrain for effective usage of the vehicle; and
 - (e) any other policy of council.
- (4) If the rental referred to in subregulation (3) is preferred, the accounting officer must review the costs incurred regularly to ensure that value for money is obtained.
- (5) Regardless of their usage, vehicles for official use by political office bearers may only be replaced after completion of 120 000 kilometres.
- (6) Notwithstanding subregulation (5), a municipality or municipal entity may replace a vehicle for official use by political office bearers before the completion of 120 000 km only in instances where the vehicle has a serious mechanical problem and is in a poor condition and subject to obtaining a detailed mechanical report by the vehicle manufacturer or approved dealer.



(7) An accounting officer must ensure that there is a policy that addresses the use of municipal vehicles for official purposes.

7 Travel and subsistence

(1) An accounting officer-

- (a) may approve the purchase of economy class tickets for all officials or political office bearers where the flying time for the flights is five hours or less; and
- (b) may only approve the purchase of business class tickets for officials, political office bearers and persons reporting directly to the accounting officer for flights exceeding five hours.

(2) In the case of the accounting officer, the mayor may approve the purchase of economy class tickets where the flying time is five hours or less and business class tickets for flights exceeding five hours.

(3) Notwithstanding subregulation (1) or (2), an accounting officer, or the mayor in the case of an accounting officer, may approve the purchase of business class tickets for an official or a political office-bearer with a disability or a medically certified condition.

(4) The cost containment policy must limit international travel to meetings or events that are considered critical. The number of officials or political office bearers attending such meetings or events must be limited to those officials or political office bearers directly involved in the subject matter related to such meetings or events.

(5) An accounting officer, or the mayor in the case of the accounting officer, may approve accommodation costs that exceed an amount as determined from time to time by the National Treasury through a notice only-

- (a) during peak holiday periods; or
- (b) when major local or international events are hosted in a particular geographical area that results in an abnormal increase in the number of local and/or international guests in that particular geographical area.

(6) An official or a political office bearer of a municipality or municipal entity must-

- (a) utilise the municipal fleet, where viable, before incurring costs to hire vehicles;
- (b) make use of available public transport or a shuttle service if the cost of such a service is lower than-
 - (i) the cost of hiring a vehicle;
 - (ii) the cost of kilometres claimable by the official or political office bearer; and
 - (iii) the cost of parking.
- (c) not hire vehicles from a category higher than Group B or an equivalent class; and
- (d) where a different class of vehicle is required for a particular terrain or to cater for the special needs of an official, seek the written approval of the accounting officer before hiring the vehicle.

(7) A municipality or a municipal entity must utilise the negotiated rates for flights and accommodation as communicated from time to time by the National Treasury through a notice or any other available cheaper flight and accommodation.

8 Domestic accommodation

(1) An accounting officer must ensure that costs incurred for domestic accommodation and meals are in accordance with the maximum allowable rates for domestic accommodation and meals as communicated from time to time by the National Treasury through a notice.

(2) Overnight accommodation may only be booked where the return trip exceeds 500 kilometres.

9 Credit cards

(1) An accounting officer must ensure that no credit card or debit card linked to a bank account of a municipality or a municipal entity is issued to any official or political office bearer, including members of the board of directors of municipal entities.

(2) Where officials or political office bearers incur expenditure in relation to official municipal activities, such officials or political office bearers must use their personal credit cards or cash or arrangements made by the municipality or municipal entity, and request reimbursement in accordance with the written approved policy and processes.

10 Sponsorships, events and catering

(1) A municipality or municipal entity may not incur catering expenses for meetings which are only attended by persons in the employ of the municipality or municipal entity, unless the prior written approval of the accounting officer is obtained.

(2) An accounting officer may incur catering expenses for the hosting of meetings, conferences, workshops, courses, forums, recruitment interviews, and proceedings of council that exceed five hours.

(3) Entertainment allowances of qualifying officials may not exceed two thousand rand per person per financial year, unless approved otherwise by the accounting officer.

(4) A municipality or municipal entity may not incur expenses on alcoholic beverages unless the municipality or the municipal entity recovers the cost from the sale of such beverages.

(5) An accounting officer must ensure that social events, team building exercises, year-end functions, sporting events and budget vote dinners are not financed from the municipality or the municipal entity's budgets or by any suppliers or sponsors.

(6) A municipality or municipal entity may not incur expenditure on corporate branded items like clothing or goods for personal use of officials, other than uniforms, office supplies and tools of trade unless costs related thereto are recovered from affected officials or is an integral part of the business model.

(7) An accounting officer may incur expenditure not exceeding the limits for petty cash usage to host farewell functions in recognition of officials who retire after serving the municipality or municipal entity for ten or more years or retire on grounds of ill health.

11 Communication

(1) A municipality or municipal entity may, as far as possible, advertise municipal related events on its website instead of advertising in magazines or newspapers.

(2) An accounting officer must ensure that allowances to officials for private calls and data costs are limited to an amount as determined by the accounting officer in the cost containment policy of the municipality or municipal entity.

(3) Newspapers and other related publications for the use of officials must be discontinued on expiry of existing contracts or supply orders, unless required for professional purposes and where unavailable in electronic format.

(4) A municipality or municipal entity may participate in the transversal term contract arranged by the National Treasury for the acquisition of mobile communication services.

12 Conferences, meetings and study tours

(1) An accounting officer must establish policies and procedures to manage applications to attend conferences or events hosted by professional bodies or non-

governmental institutions held within and outside the borders of South Africa taking into account their merits and benefits, costs and available alternatives.

(2) When considering applications from officials or political office bearers to attend conferences or events within and outside the borders of South Africa, an accounting officer or mayor as the case may be, must take the following into account-

- (a) the official's or political office bearer's role and responsibilities and the anticipated benefits of the conference or event;
- (b) whether the conference or event addresses relevant concerns of the institution;
- (c) the appropriate number of officials or political office bearers, not exceeding three, attending the conference or event; and
- (d) the availability of funds to meet expenses related to the conference or event.

(3) An accounting officer may consider appropriate benchmark costs with other professional bodies or regulatory bodies prior to granting approval for an official to attend a conference or event within and outside the borders of South Africa.

(4) The benchmark costs referred to in subregulation (3) may not exceed an amount as determined from time to time by the National Treasury through a notice.

(5) The amount referred to in subregulation (4) excludes costs related to travel, accommodation and related expenses, but includes-

- (a) conference or event registration expenses; and
- (b) any other expense incurred in relation to the conference or event.

(6) When considering costs for conferences or events these may not include items such as laptops, tablets and other similar tokens that are built into the price of such conferences or events.

(7) The accounting officer of a municipality or municipal entity must ensure that meetings and planning sessions that entail the use of municipal funds are, as far as may be practically possible, held in-house.

(8) Municipal or provincial office facilities must be utilised for conference, meetings, strategic planning sessions, *inter alia*, where an appropriate venue exists within the municipal jurisdiction.

(9) An accounting officer must grant the approval for officials and in the case of political office bearers and the accounting officer, the mayor, as contemplated in subregulation (2).

(10) A municipality or municipal entity must, where applicable, take advantage of early registration discounts by granting the required approvals to attend the conference, event or study tour, in advance.

13 Other related expenditure items

(1) All commodities, services and products covered by a transversal contract concluded by the National Treasury must be considered before approaching the market, to benefit from savings where lower prices or rates have been negotiated.

(2) Municipal resources may not be used to fund elections, campaign activities, including the provision of food, clothing, printing of agendas and brochures and other inducements as part of, or during election periods or to fund any activities of any political party at any time.

(3) Expenditure on tools of trade for political office bearers must be limited to the upper limits as approved and published by the Cabinet member responsible for local government in terms of the Remuneration of Public Office Bearers Act, 1998.

(4) A municipality or municipal entity must avoid expenditure on elaborate and expensive office furniture.

(5) A municipality or municipal entity may only use the services of the South African Police Service to conduct periodical or quarterly security threat assessments of political office bearers and key officials and a report must be submitted to the speaker's office.

(6) A municipality or municipal entity may consider providing additional time-off *in lieu* of payment for overtime worked. Planned overtime must be submitted to the relevant manager for consideration on a monthly basis. A motivation for all unplanned overtime must be submitted to the relevant manager.

(7) A municipality or municipal entity must ensure that due process is followed when suspending or dismissing officials to avoid unnecessary litigation costs.

14 Enforcement procedures

Failure to implement or comply with these Regulations may result in any official of the municipality or municipal entity, political office bearer or director of the board that authorised or incurred any expenditure contrary to these Regulations being held liable for financial misconduct or a financial offence in the case of political office bearers as defined in Chapter 15 of the Act read with the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings, 2014.

15 Disclosures of cost containment measures

(1) The disclosure of cost containment measures applied by the municipality and municipal entity must be included in the municipal in-year budget reports and annual costs savings disclosed in the annual report.

(2) The measures implemented and aggregate amounts saved per quarter, together with the regular reports on reprioritisation of cost savings and on the implementation of the cost containment measures must be submitted to the Municipal Council for review and resolution. The municipal council can refer such reports to an appropriate Council Committee for further recommendations and actions.

(3) The reports referred to in subregulation (2) must be copied to the National Treasury and the relevant provincial treasury within seven calendar days after the report is submitted to municipal council.

16 Short title and commencement

These Regulations are called the Municipal Cost Containment Regulations, 2019 and take effect on 1 July 2019.

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