

PROVINCIAL NOTICE

[NO. 209 OF 2011]

**NOTICE IN TERMS OF SECTION 14(2)(a)(i) OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000:
PUBLICATION: STANDARD WARD COMMITTEE BY-LAW.**

I, M.G Qabathe, Member of the Executive Council responsible for Cooperative Governance, Traditional Affairs and Human Settlement in the Free State Province, after consulting the Minister of Cooperative Governance and Traditional Affairs and the South African Local Government Association: Free State, do hereby in terms of section 14(2)(a)(i) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), make standard by-laws as set out in the Schedule.

SCHEDULE

WARD COMMITTEE BY-LAW

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DEFINITIONS

1. In this by-law, unless the context otherwise indicates, the words/phrases below have been assigned the following meaning -
 - “**CBO**” a community-based organisation;
 - “**Chairperson**” a ward councillor of the Municipality appointed to chair the ward committee meetings in terms of section 73 (2) (a) of the Municipal Structures Act;
 - “**Chief Whip**” a municipal councillor who is appointed to this position by the Council in terms of section 12 of the Municipal Structures Act;
 - “**Community**” residents of a ward, i.e. the ward community;
 - “**Council**” the Municipality's body of elected ward councillors and proportionally representative councillors; (comprising the local government) as established in terms of the Municipal Structures Act;
 - “**Electoral Committee**” a committee established by the Speaker and MEO to conduct the election of members of the ward committee;
 - “**Election Officer**” a person appointed by the Electoral Committee to assist with the election of ward committee members

“IDP” the integrated development plan of the Municipality as adopted by the Council in terms of the Municipal Systems Act;
“IEC” Independent Electoral Commission;
“Interest group or sector” an organised formation that takes an active interest in the affairs of a ward;
“Member” a person elected or co-opted into a ward committee;
“MEO” Municipal Election Officer;
“Municipality” the Local Municipality established in terms of Section 12 of the Municipal Structures Act, 1998 (Act No. 117 of 1998), and includes any political structure, political office bearer, councillor, duly authorised agent thereof or any employee thereof acting in connection with these by-laws by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, councillor, agent or employee;
“Municipal Manager” the head of the administration and accounting officer of the Municipality as appointed by the Council in terms of section 82 of the Municipal Structures Act;
“Municipal Structures Act” the Local Government: Municipal Structures Act, 1998 (Act No 117 of 1998);
“Municipal Systems Act” the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);
“NGO” a non-governmental organization;
“PR Councillor” a proportionally representative municipal councillor appointed in terms of section 22 (1) (a) of the Municipal Structures Act, by a political party to represent that party in the Council;
“Speaker” the chairperson of the Council and a municipal councillor elected to this position by the Council in terms of section 36 of the Municipal Structures Act;
“Ward Committee” a committee of a municipal ward, established in terms of Section 73 of the Municipal Structures Act;
“Ward Coordinator” a member appointed by the ward councillor to assist him/her in ensuring the smooth running of the ward committee and the community's affairs; and
“Ward Councillor” a municipal councillor elected in terms of section 22 (1) (b) of the Municipal Structures Act, to represent a demarcated council ward.

Establishment of Ward Committee System

2. (1) Ward committees for all wards of the Municipality are hereby established in terms of the Municipal Structures Act.
- (2) The ward committees established come into effect once committee members have been elected, as set out below.

Composition of Ward Committees

3. (1) Each ward committee must comprise of the ward councillor, as chairperson, and 10 (ten) elected community members.
- (2) The 10 ward committee members must be residents of the ward to whose ward committee they have been elected.
- (3) Notwithstanding the provisions of section 3(2), any person who is not a resident of that ward, may become a ward committee member: Provided that the person represents an interest group or sector stationed in the ward, or owns a business or property in the ward.
- (4) No person may be a member of more than 1 (one) ward committee at the same time.
- (5) The composition of the ward committee must reflect the following factors:
 - (a) Female representation;
 - (b) Population diversity and interests;
- (6) The elected ward committee members must assume office upon election.
- (7) PR councillors appointed to serve in the Municipality are *ex officio* and non-voting members of the ward committee of the ward they reside in, or any other ward committee assigned to them by the Chief Whip in consultation with the Speaker.
- (8) In the course of the term of office of the ward committee, any person deemed to be necessary for the success of the committee, or who could add value to the ward committee system as a whole, can be co-opted by the committee in consultation with the ward councillor to serve *ex officio* in an advisory capacity on that ward committee without the right to vote.

Political Affiliation in Ward Committees

4. (1) Ward committee members must not be elected to represent political parties, or for the unofficial benefit of any political party.

- (2) Canvassing for election of ward committee members must not be motivated by political party concerns.

Role and Functions of the Electoral Committee

5. (1) The Office of the Speaker must, in collaboration with the Municipal Electoral Officer, form the election body and appoint the Electoral Committee. The Electoral Committee will conduct and oversee the election of members of the ward committee.
- (2) The Electoral Committee will appoint a presiding officer, one or more election officers and counting officers for each of the municipal wards to manage and administer the ward committee elections in their respective wards.
- (3) A person may not be appointed as an officer in a ward committee election if that person -
 - (a) is a ward committee member contesting the election;
 - (b) holds political or executive office in a political party.
- (4) An officer exercises the powers and performs the duties conferred on or assigned to that officer subject to the directions, control and disciplinary authority of the Electoral Committee.
- (5) The Electoral Committee must determine in writing the terms and conditions of appointment of an officer, including remuneration payable to that officer.
- (6) The area agent, presiding, election and counting officers -
 - (a) must manage, co-ordinate and supervise the voting process at the voting station concerned;
 - (b) must take all reasonable steps to ensure orderly conduct at the voting station;
 - (c) may order a member of security services to assist in ensuring orderly conduct of the voting station.
 - (d) may order any person within the boundary of the voting station whose conduct is not conducive to a free and fair election at that voting station, to leave the premises;
 - (e) must count and announce the votes received for each nominee from the ward community members present at the voting station;
 - (f) must secure the number of votes received by each nominee in writing on the relevant nomination form.
 - (g) must declare the voting process open and closed
 - (h) must submit the election results and the report to the Election Committee for submission to the office of the speaker.
- (7) If a person refuses to comply with an order of a presiding, election or counting officers presiding, in ward committee election or counting officers in charge may order member of security services to forcefully remove the person or declare the voting process closed and submit report to the election committee.

Nomination and Election Process

6. (1) (a) The Office of the Speaker must invite all CBOs and NGOs in every ward to nominate individuals as their representatives on the ward committee. Only persons 18 years and older, and representing an interest group or sector stationed in the ward, or owning a business or property in the ward may be nominated.
 - (b) The Electoral Committee must give public notice of the time, venues and mode whereby nominations for ward committee members must be accepted. This notice must be published in at least 1 (one) newspaper of general circulation at least 30 (thirty) calendar days before each ward committee election.
 - (c) Only persons 18 years and older, and who represent an interest group or sector stationed in the ward, or own a business or property in the ward will have the right to nominate candidates for the ward committee of that ward.
 - (d) Nomination forms must be available to the ward residents at the Office of the Speaker or any other municipal office. After completion of each nomination form, it must be handed to the Electoral Committee, which will designate offices for this purpose and formally acknowledge receipt of each nomination.
 - (e) The Electoral Committee must keep a register of the nominations received as well as the completed nomination forms in a safe place until the day of the ward committee election, when they will be handed over to the presiding officer at the voting station.
- (2) (a) The Electoral Committee must, in consultation with the Speaker and the ward councillor, give the ward community written notice of the date, time and venue of the election of ward committee members in each ward at least 30 (thirty) calendar days before the election. This notice must be

- published in at least 1 (one) newspaper of general circulation at least 30 (thirty) calendar days before each ward committee election.
- (b) If an election should be postponed for any reason, a written public notice of the time and venue of the postponed election must be published in at least 1 (one) newspaper of general circulation at least 30 (thirty) calendar days before the new date of the ward committee election.
 - (c) The election must be conducted in accordance with the Council's-approved policy in this regard.
 - (d) Only persons 18 years and older who are residents or owners of businesses and/or property in each ward have the right to vote.
 - (e) The election procedure must ensure that at least 3 (three) of the 10 (ten) community members elected onto the ward committee are women. Should no women be elected, the first 7 (seven) elected male members will qualify to serve on the ward committee and the remaining 3 (three) positions must be reserved for women, to be appointed later by the Electoral Committee after consultation with the ward councillor.
- (3) The Electoral Committee must keep the records of nominations and the ballot papers in a safe place for 1 (one) year after the election.
 - (4)
 - (a) The term of office of the ward committee members is 3 (three) years, unless extended by the Speaker for a period of no more than 6 (six) months.
 - (b) Elected members may not stand for election for more than two consecutive terms.
 - (5) The ward councillor must be the chairperson of the ward committee.
 - (6)
 - (a) The ward councillor must appoint a ward coordinator from among the elected ward committee members.
 - (b) The ward coordinator will be responsible for the administration of the committee and ensure that the committee is functioning in the proper manner.
 - (c) The ward coordinator will oversee the minute taking of the committee and the record keeping of the minutes.

Vacation of Office by a Ward Committee Member

- 7.
 - (1) A ward committee member vacates his or her office if a member -
 - (a) Absents him or herself from 3 (three) consecutive meetings without an apology.
 - (b) Absents him or herself in an *ad hoc* fashion from 6 (six) meetings with an apology.
 - (c) Is proven to be actively involved in campaigns for the removal of the ward councillor without having raised grievances against the ward councillor in the ward committee meeting.
 - (d) Acts in a manner that undermines the authority of the ward councillor, the Council and/or the ward committee.
 - (e) Commits a crime that results in a conviction without the option of a fine.
 - (f) Consistently exhibits violent, abusive and intimidatory behaviour towards other committee members and/or the community.
 - (g) Attends a meeting under the influence of alcohol and/or illegal drugs.
 - (h) Is proven to have accepted a bribe from any party that has an interest in a development project for that particular ward.
 - (i) Is proven to have used his or her membership of the ward committee to extract, or attempt to extract, favours of any kind.
 - (j) Is elected as a councillor in the Municipality.
 - (k) Is appointed as a staff member of the Municipality.
 - (l) Without good cause, acts against the decision(s) of the ward committee.
 - (m) Is involved in party political canvassing or similar activity during ward committee meetings.
 - (n) Resigns.
 - (o) Dies.
 - (p) Is guilty of an infringement of this by-law.
 - (q) If, after being found guilty of an infringement of this by-law, is ordered by the Speaker to vacate his or her office.
 - (r) Is ordered to vacate the office by an order of the High Court of South Africa.

- (2) The Speaker will appoint a disciplinary committee to deal with matters of discipline.

Filling of Vacancies

8. (1) Vacancies of a ward committee will be filled as follows -
 - (a) When a vacancy occurs as a result of the departure of a sectoral representative, the affected sector must be requested to nominate their sectoral replacement. The sectoral nominee will then be part of the ward committee.
 - (b) When a vacancy occurs as a result of the departure of an unorganised sector representative, the ward councillor must nominate 2 (two) people from the affected group, which nomination will be put before the ward committee for a decision. The ward committee must, after deliberations, appoint 1 (one) person who will be part of the ward committee.
 - (c) The ward committee must fill vacancies only if they do not exceed the majority of elected members. In the event of 50% (fifty percent) plus 1 (one) of elected members ceasing to be ward committee members, the ward councillor must notify the Speaker to arrange for the election of a new ward committee.
- (2) It is the responsibility of the ward committee, together with the ward councillor, to fill vacancies on the ward committee.

Powers, Functions, Duties and Obligations of Ward Committees

9. (1) A ward committee has the following powers, functions, duties and obligations -
 - (a) Giving inputs towards the preparation, implementation and review of the integrated development plan (IDP);
 - (b) Participating in the establishment, implementation and review of the Municipality's management system;
 - (c) Monitoring and reviewing the Municipality's performance, including the outcomes and impact of such performance;
 - (d) Participating in the drafting of the Municipality's budget;
 - (e) Giving inputs on strategic decisions relating to the provision of municipal services;
 - (f) Supplying inputs in the form of recommendations to the Municipality through the ward councillor;
 - (g) Making recommendations on matters affecting their ward through the ward councillor;
 - (h) Acting in an advisory capacity to the ward councillor;
 - (i) Acting as a consultative body for the Municipality and its departments and provincial and national government, and canvassing community opinion on any matter;
 - (j) Exercising any power and authority delegated in writing by the Council to the ward committee;
 - (k) Acting as a consultative agent for NGOs and CBOs, without incurring any liability for the Municipality, unless the consultation is part of a specific official municipal project.
 - (l) Co-opting members to the ward committee in the event of vacancies.
 - (m) Co-opting non-voting members with specialist skills to the ward committee.
- (2) The above functions and powers may not be interpreted as to permit interference with the Council's right to govern and to exercise its executive and legislative authority.

Ward Committee Meetings

10. (1) The ward councillor must convene meetings of the ward committee at least once a month, and a list of the meeting dates must be supplied to the Office of the Speaker for inclusion in the official municipal calendar not later than 31 January of the year following the election of ward committees.
- (2) The ward councillor must decide on the place, dates and times of ward committee meetings in consultation with members of the ward committee and the Office of the Speaker.
- (3) Notice of the time and place of every meeting of the ward committee must be served on every member at least 7 (seven) days before the meeting.
- (4) The validity of a meeting is not affected if the notice of the meeting is mistakenly not served on a member.
- (5) Every member attending a meeting must sign his or her name in the attendance register kept for this purpose.
- (6) (a) A quorum of the ward committee must be 50% plus 1 (one) members of the ward committee.
(b) If a quorum is not formed within 10 minutes after the time appointed for a meeting, the meeting will not be held unless it is decided by the chairperson that a further ten minutes should be allowed to enable a quorum to be formed.

- (c) If a quorum is still not formed after the extended time contemplated in paragraph (b), the chairperson may rule to adjourn the meeting until another time.
- (d) Notice of an adjourned meeting must be given in accordance with section 10 (3).
- (7) (a) A ward committee must strive to reach decisions through consensus.
- (b) If a matter remains unresolved after thorough discussion, the matter will be decided by a vote.
- (c) If the votes are equal, the chairperson will have the deciding vote.
- (8) (a) If the ward councillor is unable to attend a ward committee meeting, he or she must appoint a ward committee member to chair the meeting.
- (b) If the ward councillor is unable to appoint a substitute chairperson, the ward committee must do so at the start of the meeting.
- (9) Ward committee meetings are open to interested parties in an observer capacity.

Dissolution of Ward Committees

- 11. (1) The Council may dissolve a ward committee based on the recommendation of the Speaker. Instances that might lead to such a recommendation include, but are not limited to, the failure to fulfil its objectives as set out in legislation, non-adherence to this by-law or resignation of more than 50% (fifty percent) of the members of a ward committee.
- (2) Procedure for dissolution of a ward committee -
 - (a) The Speaker must investigate the circumstances surrounding actions of the ward committee and report his or her findings and recommendations to the Council.
 - (b) After the Council has resolved to dissolve the ward committee, notice of the dissolution of the ward committee must be given to the ward councillor and the ward committee, at which time the ward committee will cease to exist.
 - (c) Notice of the reconstitution of the ward committee will be given in terms of section 6 of this by-law.
 - (d) With the exception of the ward councillor, members of the ward committee that has been dissolved will not be eligible for re-election to the ward committee for a period of one year after its dissolution.

Sub-Committees of Ward Committees

- 12. Each ward committee must form sub-committees to advise the ward committee on special issues, handle sectoral matters or form working groups to research any matter that needs special attention in the ward.

Role of Council Officials on Ward Committees

- 13. (1) No municipal official may stand for election on the ward committee.
- (2) Should a municipal official wish to stand for election as a ward committee member, he or she must first resign his or her position as a municipal official.
- (3) Ward committees must invite municipal officials within their scope of work and other people with specialised knowledge to advise them on matters affecting their wards when deemed necessary.
- (4) When the need arises for municipal officials or their departments to consult with the ward communities, they must arrange these consultations with the Office of the Speaker at least 3 (three) weeks in advance.

Administrative Arrangements, Funding and Reimbursement

- 14. (1) The Municipality must make administrative arrangements to enable ward committees to perform their functions and exercise their powers effectively. In doing so the Municipality must use its resources and allocate funds in its budget to the Office of the Speaker to further the objectives of ward committees.
- (2) All administrative support to enable effective functioning of the ward committees must be located in the Office of the Speaker.
- (3) The Municipality must, through the Office of the Speaker, reimburse ward committee members for travelling and out-of-pocket costs incurred as a result of attendance of ward committee meetings. This reimbursement will be done in accordance with the approved policy of the Municipality.
- (4) Membership and duties of the ward committee members must be regarded as voluntary service for the benefit of the community.
- (5) The ward coordinator appointed by the ward councillor should, as part of the voluntary service to the community, be able and willing to assist in the administration of the ward.

Dispute Resolution Mechanisms for Ward Committees

- 15 (1) Every effort must be made to deal with disputes internally if they do not involve the ward councillor.

- (2) When a dispute arises, the ward councillor should appoint a person or persons to try and resolve the dispute through mediation.
- (3) If the attempt at mediation fails, the ward councillor must arbitrate.
- (4) If one of the parties is still aggrieved, the matter must be referred to the Speaker.
- (5) If the matter involves the ward councillor, it should be referred to the Office of the Speaker, where the Speaker will be the arbiter.
- (6) The Speaker must appoint a disciplinary committee and an appeal committee to deal with matters of discipline.

Vacation of Office by the Ward Councillor

16. (1) When the ward councillor is no longer in office, the ward committee will continue to function for the rest of its term as determined by the Council.
- (2) A temporary chairperson must be appointed by the political party of the original councillor. If the councillor was an independent candidate, the Chief Whip must appoint an interim chairperson from the PR councillors assigned to the ward.
- (3) The new or interim councillor must re-appoint a coordinator for the ward.

Role of Proportional Representative Councillors in Ward Committees

17. (1) The Chief Whip must, in consultation with the Speaker, deploy PR councillors to specific ward committees.
- (2) Ward councillors must allow PR councillors allocated to their ward committees the right to freely participate in the activities of the ward committee.

Declaration of Interests by Ward Committee Members

18. (1) A member must declare his or her interests to the ward committee in those matters that are before the ward committee.
- (2) The ward councillor is responsible for the maintenance of the register of declared interests of members of the ward committee.

Code of Conduct for Ward Committee Members

19. Ward committee members are elected to represent the communities in their respective wards, to ensure that wards have mechanisms of accountability to local communities, and to meet the priority needs of the community on ward matters, including the performance of the Municipality in terms of established indicators. The Code of Conduct contained in the Annexure applies to every member of a ward committee.

Short title and Commencement

20. These By -laws are called the Ward Committee By -laws, 2011.

Annexure

CODE OF CONDUCT FOR WARD COMMITTEE MEMBERS

1. Definition

In this schedule, "partner" means a person who permanently lives with another person in a manner as if married.

2. General conduct of members

A member must -

- (a) perform the functions of office in good faith, honestly and in a transparent manner; and
- (b) at all times act in the best interest of the ward committee and in such a way that the credibility and integrity of the ward committee are not compromised.

3. Attendance of meetings

A member must attend each meeting of the ward except when -

- (a) an apology is rendered before or at the meeting;
- (b) leave of absence is granted by the chairperson of the ward committee;
- (c) a member is required in terms of this Code to withdraw from the meeting.

4. Disclosure of interests

A member must -

- (a) disclose to the ward committee, or to any sub-committee of which that member is a member, any direct or indirect personal or private business interest that that member, or any spouse, partner or business associate of that member may have in any matter before the ward committee; and
- (b) withdraw from the proceedings of the ward committee when the matter is considered by the ward committee.

5. Personal gain

- (1) A member may not use the position or privileges of a ward member, or confidential information obtained as a member, for private gain or to improperly benefit another person.
- (2) Except with the prior consent of the Office of the Speaker, a member may not -
 - (a) be a party to or beneficiary under a contract for -
 - (i) the provision of goods or services to the ward; or
 - (ii) the performance of any work done in the ward.
 - (b) obtain a financial interest in any business of the ward committee.
- (3) If more than one quarter of the members object to consent being given to a member in terms of sub-item (2), such consent may only be given to the member with the written approval of the Speaker of the Council.

6. Rewards, gifts and favours

A member may not request, solicit or accept any reward, gift or favour in return for -

- (a) voting or not voting in a particular manner on any matter before the ward committee;
- (b) persuading the ward committee with regard to the exercise of any power, function or duty; and
- (c) disclosing privileged or confidential information.

7. Unauthorised disclosure of information

- (1) A member may not without the permission of the ward councillor or a committee of the Council disclose any privileged or confidential information of the ward or ward committee to any unauthorised person.
- (2) For the purpose of this item, "privileged or confidential information" includes any information-
 - (a) declared by the Council or ward committee to be privileged or confidential;
 - (b) that would violate a person's right to privacy; or
 - (c) declared to be privileged, confidential or secret in terms of the law.
- (3) This item does not derogate from any person's right of access to information in terms of national legislation.

8. Municipal property

A member may not use, take, acquire or benefit from any property or asset owned, controlled or managed by the Municipality to which he has no right.

9. Duty of chairpersons of ward committees

- (1) If the chairperson of a ward committee, on reasonable suspicion, is of the opinion that a provision of this Code has been breached, the chairperson must -
 - (a) authorise an investigation of the facts and circumstances of the alleged breach;
 - (b) give the member a reasonable opportunity to reply in writing regarding the alleged breach; and
 - (c) report the matter to a meeting of the ward committee after the provisions of paragraphs (a) and (b) have been complied with.
- (2) A report in terms of sub item (1) (c) is open to the public.
- (3) The chairperson must ensure that each member, when taking office, is given a copy of this Code and that a copy of the Code is available in every room or place where the ward committee meets.

10. Breaches of Code

- (1) The Speaker may -
 - (a) investigate and make a finding on any alleged breach of a provision of this Code;
 - (b) establish a special committee or appoint a person -
 - (i) to investigate and make a finding on any alleged breach of this Code; and
 - (ii) to make appropriate recommendations to the Speaker.
- (2) If the special committee finds that a member has breached a provision of this Code, the special committee may -
 - (a) issue a formal warning to the member;
 - (b) reprimand the member;
 - (c) request the Speaker to suspend the member for a period; or
 - (d) request the Speaker to remove the member from the ward committee.
- (3) If the Speaker is of the opinion that the member has breached a provision of this Code, and that such contravention warrants a suspension or removal from office, the Speaker may -
 - (a) suspend the member for a period and on conditions determined by the Speaker; or
 - (b) remove the member from office.
- (4)
 - (a) Any member who has been warned, reprimanded, suspended or removed from office may, within 14 days of having been notified of the decision of the Speaker, appeal to the Speaker in writing, setting out the reasons on which the appeal is based. The Speaker will then convene an appeal committee to finalise the matter.
 - (b) A copy of the appeal must be provided to the Speaker.