

AGENDA OF THE INAUGURAL MEETING OF THE COUNCIL 17 NOVEMBER 2021

**5.
ELECTION OF SPEAKER**

3/2/2/1

**H van Tonder
4 November 2021**

Manager : Council Support Services

(028) 313 8037

1. Executive Summary

The purpose of the report is to grant Council an opportunity to elect a Speaker.

2. Service Delivery and Budget Implementation Plan - IGNITE

Not applicable

3. Compliance with Strategic Priority

Provision of democratic, accountable and ethical governance

4. Delegated Authority

Not applicable

5. Legal Requirements

- Part 2 of Chapter 3 and Schedule 3 of the Local Government: Municipal Structures Act, 1998 (Act No 117 of 1998) (Structures Act)
- Overstrand Municipality Third Establishment Amendment Notice PN 189/2003 dated 28 May 2003 (Third Amendment Notice)
- Code of Conduct for Councillors: Schedule 7 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998)

6. Background/Discussion

The functions and term of office of Speakers and other relevant matters are addressed in Sections 37 to 41 of the Structures Act.

Section 36 of the Structures Act, *inter alia* provides that each municipal council must have a chairperson who will be called the Speaker.

The procedure to be followed for the election of a Speaker is embodied in Schedule 3 of the Structures Act.

The Municipality's Third Amendment Notice provides that the Municipality may designate the Speaker as full-time councillor.

Item 9 of the Code of Conduct provides as follows:

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“A councillor who is a full-time councillor may not undertake any other paid work except with the consent of a municipal council which consent shall not unreasonably be withheld.”

Should recommendation 2 be adopted and the Speaker to be designated is undertaking any other paid work, Council must consider granting approval for same.

Remark:

The Elected Speaker will take over as Chairperson immediately after his/her election.

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Committee/Offices/Directorates

None

10. Annexures

Annexure A : Part 2 of Chapter 3 of the Structures Act

Annexure B : Schedule 3 of the Structures Act

Annexure C : Nomination Form: Election of Speaker

Annexure D : Overstrand Municipality Third Establishment Amendment Notice

RECOMMENDATION TO THE COUNCIL:

1. that a Speaker **be elected**;
2. that the Speaker **be designated** as a full-time Councillor in terms of Section 3 of the Overstrand Municipality (WC032) Third Establishment Amendment Notice, PN 189/2003 dated 28 May 2003; and
3. that, should recommendation 2 be adopted and the Speaker to be elected is undertaking any other paid work, Council considers **granting approval** for same.

RESPONSIBLE OFFICIAL:

H VAN TONDER

TARGET DATE FOR IMPLEMENTATION:

17 NOVEMBER 2021

36. Election of speakers.—(1) Each municipal council must have a chairperson who will be called the speaker.

(2) At its first sitting after its election, or when necessary to fill a vacancy, a municipal council must elect its speaker from among the councillors.

(3) The municipal manager of the municipality or, if the municipal manager is not available, a person designated by the MEC for local government in the province, presides over the election of a speaker.

(4) The procedure set out in Schedule 3 applies to the election of a speaker.

(5) A councillor may not hold office as speaker and mayor or executive mayor at the same time, but in a municipality of a type mentioned in section 9 (e) or (f) or 10 (c) the speaker must be called the mayor.

(5) A councillor may not hold office as whip, speaker, mayor or executive mayor at the same time.

37. Functions of speakers.—The speaker of a municipal council—

(a) presides at meetings of the council;

(b) performs the duties and exercises the powers delegated to the speaker in terms of section 59 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);
[Para. (b) amended by s. 14 (a) of Act No. 51 of 2002.]

(c) must ensure that the council meets at least quarterly;

(d) must maintain order during meetings;

(e) must ensure compliance in the council and council committees with the Code of Conduct set out in Schedule 1 to the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); and
[Para. (e) amended by s. 14 (b) of Act No. 51 of 2002.]

(e) must ensure compliance in the council and council committees with the Code of Conduct;

(f) must ensure that council meetings are conducted in accordance with the rules and orders of the council.

(f) must ensure that council meetings are conducted in accordance with the rules and orders of the council;

(g) must ensure that the legislative authority of the municipality functions effectively;
(Pending amendment: Para. (g) to be added by s. 18 (b) of Act No. 3 of 2021 with effect from a date to be determined by the President by proclamation in the *Gazette* – date not determined.)

(h) is responsible for the effective oversight over the executive authority of the municipality;
(Pending amendment: Para. (h) to be added by s. 18 (b) of Act No. 3 of 2021 with effect from a date to be determined by the President by proclamation in the *Gazette* – date not determined.)

(i) must ensure the effectiveness of the committees of the municipal council established in terms of section 79;
(Pending amendment: Para. (i) to be added by s. 18 (b) of Act No. 3 of 2021 with effect from a date to be determined by the President by proclamation in the *Gazette* – date not determined.)

(j) is responsible for the ethics and accountability of the municipal council; and
(Pending amendment: Para. (j) to be added by s. 18 (b) of Act No. 3 of 2021 with effect from a date to be determined by the President by proclamation in the *Gazette* – date not determined.)

(k) must ensure the effectiveness and functionality of ward committees and the public participation processes.

(Pending amendment: Para. (k) to be added by s. 18 (b) of Act No. 3 of 2021 with effect from a date to be determined by the President by proclamation in the *Gazette* - date not determined.)

38. Term of office of speakers.—The speaker of a municipal council is elected for a term ending, subject to section 39, when the next council is declared elected.

39. Vacation of office.—The speaker of a municipal council vacates office during a term if that person—

- (a) resigns as speaker;
- (b) is removed from office; or
- (c) ceases to be a councillor.

40. Removal from office.—A municipal council by resolution may remove its speaker from office. Prior notice of an intention to move a motion for the removal of the speaker must be given.

41. Acting speakers.—If the speaker of a municipal council is absent or not available to perform the functions of speaker, or during a vacancy, the council must elect another councillor to act as speaker.

Schedule 3

[Schedule 3 amended by s. 34 of Act No. 51 of 2002.]

Annexure B
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SCHEDULE 3

ELECTION OF MUNICIPAL OFFICE-BEARERS

1. Application.—The procedure set out in this Schedule applies whenever a municipal council meets to elect a speaker, an executive mayor, a deputy executive mayor, a mayor or a deputy mayor.

1. Application.—The procedure set out in this Schedule applies whenever a municipal council meets to elect a speaker, an executive mayor, a deputy executive mayor, a whip, a mayor or a deputy mayor.

2. Nominations.—The person presiding at a meeting to which this Schedule applies must call for the nomination of candidates at the meeting.

3. Formal requirements.—(1) A nomination must be made on the form determined by the municipal manager.

(2) The form on which a nomination is made must be signed by two members of the municipal council.

(3) A person who is nominated must indicate acceptance of the nomination by signing either the nomination form or any other form of written confirmation.

4. Announcement of names of candidates.—At a meeting to which this Schedule applies, the person presiding must announce the names of the persons who have been nominated as candidates, but may not permit any debate.

5. Single candidate.—If only one candidate is nominated, the person presiding must declare that candidate elected.

6. Election procedure.—If more than one candidate is nominated—

(a) a vote must be taken at the meeting by secret ballot;

(b) each councillor present at the meeting may cast one vote; and

(c) the person presiding must declare elected the candidate who receives majority of the votes.

7. Elimination procedure.—(1) If no candidate receives a majority of the votes, the candidate who receives the lowest number of votes must be eliminated and a further vote taken on the remaining candidates in accordance with item 6. This procedure must be repeated until a candidate receives a majority of the votes.

(2) When applying subitem (1), if two or more candidates each have the lowest number of votes, a separate vote must be taken on those candidates, and repeated as often as may be necessary to determine which candidate is to be eliminated.

8. Further meetings.—(1) If only two candidates are nominated, or if only two candidates remain after an elimination procedure has been applied, and those two candidates receive the same number of votes, a further meeting must be held within seven days at a time determined by the person presiding.

(2) If a further meeting is held in terms of subitem (1), the procedure prescribed in this Schedule must be applied at that meeting as if it were the first meeting for the election in question.

(3) If at the further meeting held in terms of subitem (1) only two candidates are nominated, or if only two candidates remain after an elimination procedure has been applied, and those two candidates receive the same number of votes, the person presiding at such meeting must determine by lot who of the two candidates will hold the office for which the election has taken place.

[Subitem (3) added by s. 34 of Act No. 51 of 2002.]



NOMINATION FORM: ELECTION OF SPEAKER

We, the undersigned, hereby nominate the following Councillor:

FULL NAME OF NOMINEE:

Signed at Hermanus this day of20....

NAME OF NOMINATOR:

Nominator 1: Name:

 Signature:

Nominator 2: Name:

 Signature:

I, the undersigned, hereby accept the nomination/do not accept the nomination. *

Signed at Hermanus this day of20....

.....

SIGNATURE OF NOMINEE

** Delete that which is not applicable*

LOCAL GOVERNMENT: MUNICIPAL STRUCTURES ACT, 1998
(ACT 117 OF 1998)

THE OVERSTRAND MUNICIPALITY (WCO32) THIRD ESTABLISHMENT AMENDMENT NOTICE

By virtue of the powers vested in me by section 16 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), as amended by the Local Government: Municipal Structures Amendment Act, 2000 (Act 33 of 2000), the Local Government: Municipal Structures Amendment Act, 2002 (Act 20 of 2002), Local Government Laws Amendment Act, 2002 (Act 51 of 2002) and the Local Government: Municipal Structures Amendment Act, 2003 (Act 1 of 2003), I hereby give notice of the third amendment of the Overstrand Municipality (WCO32) Establishment Notice, Provincial Notice 494 published in Provincial Gazette 5591 dated 22 September 2000 as previously amended in Provincial Notice 680 published in the Provincial Gazette Extraordinary No. 5643 dated 4 December 2000 and Provincial Notice 461 published in the Provincial Gazette Extraordinary No. 5969 dated 19 December 2002 on the terms set out in the Schedule hereto.

Dated this 28th day of May 2003.

J. J. DOWRY, PROVINCIAL MINISTER OF LOCAL GOVERNMENT

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
_____ Words underlined with a solid line indicate insertions in existing enactments.

SCHEDULE

Amendment of section 1 of the principal Notice

1. Section 1 of the Schedule to the Overstrand Municipality Establishment Notice (hereafter referred to as the principal Notice) is hereby amended:—
- (1) by the deletion of the definition "collective executive system" in subsection (3), and
- (2) by the insertion of the following subsections:—
- "(13A) **'mayoral executive system'** means a system which allows for the exercise of executive authority through an executive mayor in whom the executive leadership of the Municipality is vested and who is assisted by a mayoral committee;" and
- "(22A) **'ward participatory system'** means a system which allows for matters of local concern to wards to be dealt with by committees established for wards;"

Amendment of section 6 of the principal Notice

2. Section 6 of the Schedule to the principal Notice is hereby amended by the substitution for section 6 of the following section:—

"Type

6. The Local Municipality is a municipality with a **[collective] mayoral executive system combined with a ward participatory system** as provided for in the Western Cape Determination of Types of Municipalities Act, 2000 (Act 9 of 2000), as amended by the Western Cape Determination of Types of Municipalities Amendment Act, 2002 (Act 4 of 2002)."

Amendment of section 9 of the principal Notice

3. Section 9 of the Schedule to the principal Notice is hereby amended by the substitution for section 9 of the following section:—

"Full-time Councillors

9. The Local Municipality may designate the following councillors as full-time councillors:—
- (a) the executive mayor;
- (b) the members of the mayoral committee, and
- (c) the speaker."

Insertion of section 25B to the text of the principal Notice

4. The Schedule to the principal Notice is hereby amended by the insertion of the following section after section 25A:—

"Executive Deputy Mayor

25B Approval is granted in terms of section 55 of the Municipal Structures Act, as amended, for the election of an executive deputy mayor."

Short title and commencement

5. This Notice is called the Overstrand Municipality Third Establishment Amendment Notice and comes into operation on 10 June 2003.