Swartland, South Africa

Rules for the Conduct of Meetings By-law, 2015

Legislation as at 2 October 2015

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Swartland
South Africa

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[Repealed on 19 August 2022 by Conduct of meetings]

Under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996, the Swartland Municipality enacts as follows-

Chapter 1
Interpretation and definitions

1. Interpretation

National and provincial legislation will be given priority in the interpretation of this by-law. Any provision in this by-law that is prohibited by law or unenforceable will not in any way invalidate the validity of these rules to the extent that it is against the law or unenforceable.

2. Definitions

In this by-law, the Afrikaans text prevails in the event of any conflict with the English text, and unless inconsistent with the context –

"**code of conduct**" means the code of conduct for councillors as set out in the Systems Act;

"**committee**" means a committee established by the council in terms of section 79 and 80 of the Structures Act, or any other committee established by council for a specific purpose;

"**Constitution**" means the Constitution of the Republic of South Africa, 1996;

"**council**" means the municipal council of Swartland Municipality;

"**majority of votes**" means the votes cast by the majority of members present during a meeting;

"**mayor**" means the member appointed as executive mayor by the council in terms of the Structures Act or, in his or her absence, the executive deputy mayor;

"**MEC**" means the member of the Executive Council responsible for local government in the Province of the Western Cape;

"**meeting**" means a meeting of the municipal council and any committee established by the council, including the executive mayoral committee;

"**member**" means a member of the municipal council and any committee established by the council;

"**member of the public**" means a person who is not member of the council or any committee established by the council;

"**motion**" means a proposal, recommendation or question on which the council must take a resolution, but excludes a motion as contemplated in rules 44 and 45;

"**municipality**" means the Swartland Municipality established in terms of section 12 of the Structures Act, and includes any political structure, political office-bearer, councillor, duly authorised agent or any employee acting in connection with this by-law 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**" means the person appointed by council in terms of section 54A of the Systems Act or his or her delegatee;

"**party**" means a party as defined in the Structures Act;

"**rules**" mean the provisions of this by-law;

"**speaker**" means the member elected as chairperson of the council and the chairpersons of committees established by the council and members acting as chairperson;

"**supporting vote**" means the vote cast by a majority of the members of the council;

"**Structures Act**" means the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

"**Systems Act**" means the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000); and

"**working day**" means any day of the week, excluding Saturdays or Sundays or public holidays.

Chapter 2
Application of by-law

3. Application

(1) This by-law is applicable to all meetings.

(2) Except where it is clearly inappropriate, a rule applying to members in any proceedings also applies to a member of the public who takes part in those proceedings with the approval of the speaker.

(3) Notwithstanding the provisions of sub rule (1), the rules of this by-law shall not apply to –

(a) committees established in terms of item 14(1) of the code of conduct;

(b) committees established in terms of section 62 of the Systems Act; and

(c) committees established for a specific purpose, where such committee determines its own rules and procedures.

4. Supplementation

(1) The speaker may make a ruling with regard to the application of this by-law and in respect of any procedural eventuality for which this by-law does not provide and no further discussion shall be allowed on the ruling.

(2) Notwithstanding the provisions of rule 53, the speaker may order that the council adjourn for a specific time, not exceeding one hour, should circumstances require this.

(3) The speaker's decision will be final and binding on all members and the public, subject to the rights of the council in terms of sub rules 5 and 6.

(4) The ruling of the speaker shall be entered in the minutes.

(5) If the majority of the members present during a meeting are of the opinion that the speaker has exceeded his or her powers or interpreted the relevant rule incorrectly or has not interpreted the rules of the procedures of the council correctly, the council may –

(a) temporarily suspend the speaker from the position and appoint another member to act as speaker in terms of the Structures Act, for the appointment of a special committee consisting of members; and

(b) immediately thereafter appoint a special committee to investigate the incident and to make recommendations to the council,

after which the speaker will continue to lead the meeting in order to finalise the outstanding items on the agenda.

(6) The special committee referred to in sub rule (5) shall meet as soon as possible to investigate the incident and make recommendations to the council.

5. Duty of speaker, members and members of public

The speaker, members and members of the public must familiarise themselves with these rules.

Chapter 3
Meetings

6. Chairing of meetings

(1) The speaker chairs all meetings of the council.

(2) Should the speaker not be present at a meeting, an acting speaker for that meeting must be elected from the members present by a majority of votes.

(3) Where the office of the speaker becomes vacant, the municipal manager must call a special council meeting for the purpose of electing a speaker, at a date and time determined by him, provided that such special meeting must take place within 14 days after the office became vacant.

(4) If the office of the speaker becomes vacant during a meeting, an acting speaker for that meeting must be elected from the members present at the meeting.

(5) The municipal manager, or in the absence of a municipal manager, a person designated by the MEC, presides over the election of a speaker.

7. Commencement of meeting

Subject to the provisions of rule 16, the speaker must take the chair precisely at the time for which the meeting is convened and must proceed immediately with the business of the meeting.

8. Order of business

(1) The business of meetings will appear on the agenda in the following order –

(a) election of acting speaker, if necessary;

(b) applications for leave of absence;

(c) confirmation of minutes;

(d) statements and communications by the speaker;

(e) statements and communications by the mayor;

(f) interviews with deputations;

(g) consideration of reports;

(h) urgent matters submitted by the municipal manager;

(i) consideration of notices of motions;

(j) consideration of notices of questions;

(k) consideration of motions of exigency; and

(l) consideration of items and matters not finalised.

(2) The speaker may change the order of the business on the agenda.

(3) A member who wishes to have the order of business on the agenda changed must approach the speaker with this request prior to the meeting, but any changes remain the prerogative of the speaker.

9. Urgent matters

The speaker, mayor or municipal manager may, at any time during the meeting and without prior notice, make any statement or introduce urgent matters.

10. Business to be disposed of

Except as otherwise provided in this by-law, no matter not specified in the agenda of a meeting of the council shall be dealt with at such meeting.

11. Meetings

(1) Council must meet at least quarterly.

(2) All meetings must be open to members of the public unless they are excluded in terms of rule 23.

(3) Excluding the first meeting of the council and subject to the provisions of sub rule (1), the speaker decides where and when council meets.

(4) If a majority of the members request the speaker in writing to convene a meeting, the speaker must call a meeting at a time set out in the request.

(5) (a) If the speaker fails to convene a special council meeting referred to in sub rule (4), the majority of members may request the municipal manager to convene such meeting and the municipal manager must convene such meeting at a time set out in the request.

(b) A notice by the majority of members must clearly indicate the business that will be conducted at the meeting. No other business, except with the agreement of a majority of members, may be conducted at the meeting.

(6) On the direction of the speaker, the municipal manager or, in his or her absence, a person designated by the speaker, must

(a) give at least 48 hours notice of each ordinary meeting to each member, together with the agenda set out for that meeting;

(b) give at least 24 hours notice in the case of an urgent or special meeting or such lesser period as the speaker may determine; and

(c) in a manner determined by the council, inform the public of the time, date and venue of each meeting of the council,

except when time restrictions makes it impossible in case of urgent meetings.

(7) The speaker or in his or her absence, the executive mayor, shall determine whether a meeting is urgent or not.

(8) Members must carefully check the agenda with which they have been provided in accordance with rule 11(6) and prepare themselves thoroughly for the scheduled meeting.

(9) On acceptance of his or her office as councillor, a member must provide the municipal manager with a physical address within the municipal area of jurisdiction to which the agendas for meetings can be delivered, and must submit in writing, where possible, an electronic mail address and a mobile telephone number for instant messaging where he or she can receive notification of meetings and other official correspondence.

(10) Electronic notice of a meeting or any other official correspondence to any of the addresses or numbers provided, shall constitute proper notice of meetings.

(11) A councillor must inform the municipal manager without delay of any changes in the information provided in terms of sub rule (9).

12. Attendance of meetings

(1) Every member attending a meeting of the council must sign his or her name in the attendance register kept for this purpose.

(2) A member must attend each meeting of the council and of a committee of which he or she is a member, except when –

(a) leave of absence is granted in terms of rule 13;

(b) the member is required to withdraw in terms of this by-law; or

(c) he or she is suspended temporarily in terms of rule 28(3).

13. Leave of absence

(1) A member who cannot attend a meeting must submit his or her apology at the office of the municipal manager or his or her delegate at least one hour before the meeting commences. However, the speaker, on good cause shown, may grant leave of absence to a member who has been prevented by special circumstances from obtaining leave of absence from the council.

(2) The special circumstances referred to in sub rule (1) may include –

(a) illness of the member;

(b) illness or death in the family of the member; or

(c) a member being on official business of the council.

(3) A member who fails to remain in attendance at a meeting shall be regarded as being absent without leave.

(4) The names of all members to whom leave of absence from any meeting have been granted and those of all members who absent themselves without leave from any meeting or who fail to remain in attendance at a meeting, shall be recorded in the minutes or report(s) relating to such meeting.

14. Sanction for non-attendance

(1) A member who is absent without leave from a meeting or who is deemed absent in terms of rule 13(3), is in breach of this by-law; provided that, if a member is temporarily suspended from meetings or committees in terms of rule 28, he or she is deemed absent with leave for the purposes of this rule.

(2) A member who violates the provisions of sub rule (1) may be fined by an amount as determined by the council, which fine shall be recovered directly from such member's remuneration.

(3) A member who is absent without leave from three or more consecutive meetings of the council or from three or more consecutive meetings of a committee which that member is required to attend, is in breach of the code of conduct for councillors.

(4) The council –

(a) may appoint a special committee comprising of councillors to investigate and make a finding on any repeated violation of sub rule (1) in terms of the code of conduct for councillors; and

(b) must appoint a special committee to investigate and make a finding where a member is in breach of the code in terms of sub rule (3) and to make recommendations to the council.

(5) The special committee must notify the member in writing of his or her alleged breach of the by-law or the code of conduct and must be given at least seven days from date of the written notice to respond in writing regarding the alleged breach.

(6) After receiving a report from the special committee, the council must decide whether or not the rules of the code of conduct have been breached.

(7) If the council finds that a member has breached the rules as contemplated in sub rule (4)(a), the council may –

(a) issue a formal warning to the member;

(b) reprimand the member; or

(c) fine the member, in addition to the fine determined in sub rule (2), an amount equal to 5% of the member's monthly gross salary package, excluding allowances.

(8) If the council finds that a member has breached the code of conduct as contemplated in sub rule (3), the council must request the MEC to remove the member from office.

15. Minutes

(1) Minutes of the proceedings of meetings must be recorded electronically and compiled in printed form and must be confirmed by the council at its next meeting and signed by the speaker.

(2) The municipal manager must keep a record of the signed minutes.

(3) The minutes shall be taken as read, for the purpose of confirmation, if a copy thereof was sent to each member at least 48 hours before the scheduled meeting.

(4) No motion or discussion of the minutes shall be allowed, except in connection with the correctness thereof.

(5) If a member is dissatisfied with the correctness of the minutes, he or she must

(a) state the item with which he or she is dissatisfied; and

(b) propose a motion outlining the alternative wording to amend the minutes.

16. Quorum

(1) A majority of the members shall constitute a quorum and must be present at a meeting of the council before a vote may be taken on any matter.

(2) Notwithstanding the provisions of sub rule (1), a meeting shall only commence once a quorum is present. If there is no quorum at the time for which the meeting is scheduled, the speaker will only take the chair as soon as a quorum is present.

(3) Whenever there is no quorum, the start of the meeting must be delayed for no longer than 30 minutes and, if there is not yet a quorum at the end of that period, the speaker must adjourn the meeting to another time, date and venue at his or her discretion and must record the names of those members present.

(4) Whenever the speaker is not present and there is no quorum, the start of the meeting must be delayed for no more than 30 minutes and, if there is still no quorum at the end of that period, no meeting may take place and the municipal manager must record the names of the members present.

(5) Whenever there is a quorum at the start of a meeting, but a situation arises during the meeting that there is no longer a quorum, the speaker must suspend the proceedings until a quorum is again present, provided that, if there is still no quorum after 10 minutes, the speaker must adjourn the meeting.

(6) Whenever a meeting is adjourned because there is no longer a quorum, the time of such adjournment, as well as the names of the members present and the names of the members who left the meeting without leave, must be recorded in the minutes.

(7) A quorum is not required if a committee merely has to make a recommendation to the council, but in such a case the committee must minute that the recommendation is a recommendation that does not fulfil the quorum requirement.

Chapter 4
Decisions

17. Unopposed matters

Whenever the council is requested to consider a matter before it and there is no opposition from any member, an unanimous vote must be recorded in the minutes.

18. Manner of voting

(1) The speaker must put every opposed motion to the vote by calling upon the members to indicate by a show of hands, unless otherwise prescribed, whether they are for such motion or against it, whereupon he or she must declare the result of such vote and record it in the minutes.

(2) If the majority of the members present request the speaker that a vote should take place by secret ballot, this shall be done accordingly.

(3) If there is an equality of votes in respect of a motion on which voting takes place in accordance with sub rules (1) and (2), the speaker must exercise his casting vote, in addition to his deliberative vote, provided that the speaker may not exercise a casting vote in terms of any matter set out in section 160(2) of the Constitution.

(4) Upon the speaker's declaration of the result of a vote, a member may demand that his or her vote be recorded against the decision concerned and the municipal manager shall ensure that such vote is recorded in the minutes.

(5) A member may abstain from voting without leaving the meeting place and such abstention must accordingly be recorded in the minutes.

19. Decisions

(1) In accordance with the Structures Act, a supporting vote of at least two thirds of the members of the council is necessary to adopt a decision to dissolve the council.

(2) In accordance with the Constitution, the supporting vote of a majority of the members is needed to decide on –

(a) the passing of by-laws;

(b) the approval of the budgets;

(c) the imposition of rates and other taxes, levies and duties; and

(d) the raising of loans.

(3) All questions other than those referred to in sub rules (1) and (2) are decided by a majority of votes.

(4) Before the council can take a decision on the following matters, it must first request the executive mayor to submit a report and recommendation on the matter to the council –

(a) any matter referred to in section 160(2) of the Constitution;

(b) the approval of an integrated development plan for the municipality and amendments of the mentioned plan;

(c) the appointment and conditions of service of the municipal manager and a manager directly accountable to the municipal manager.

20. Unopposed business

(1) When a meeting has been in progress for not less than one hour, the speaker may interrupt the proceedings and order the council to proceed forthwith to dispose of unopposed business.

(2) After the disposal of such business, the proceedings shall be resumed at the point at which they were interrupted, unless all other remaining business has been adjourned until the next meeting.

(3) An item on the agenda shall be deemed to be opposed business if a member signifies his or her intention to discuss such item immediately after the speaker has intimated to the meeting that such item is open for discussion, provided that no item shall be deemed to be opposed by reason only of questions being asked in connection therewith.

21. Rescission of resolutions

(1) If a member wishes to give notice of his or her intention to move the rescission or amendment of a resolution (or part thereof) of the council, he or she shall give such notice by delivery to the municipal manager of a notice of motion in writing, which notice of motion shall be signed and dated by such member and shall state at which meeting of the council it will be introduced, and it shall be delivered to the municipal manager at least six working days before the said meeting. Such notice of motion must state that the mover will move that the existing resolution (or part thereof) be reviewed for the purpose of rescission or amendment, as the case may be, and stating, in the case of an amendment, the exact amendment desired.

(2) If a committee has resolved to recommend to the council that a resolution (or part thereof) of the council be rescinded or amended, notice of intention to move such rescission or amendment shall be given by the inclusion of such recommendation in a report of the committee to the council, and the municipal manager must send a copy of such report to each member, to reach him at least twelve hours before the meeting at which the recommendation will be considered. The copies of such report, or documents which accompany it, must indicate at which meeting it shall be considered.

(3) Except upon the recommendation of a committee, a resolution (or part thereof) shall not be reviewed at any meeting of the council unless the permission of the majority of the members present at such meeting has been obtained.

(4) There shall be no debate on such motion to review, except that the member or the chairman of the committee giving notice, shall have the right to briefly state the reasons therefore.

Repealed

Chapter 5
Public access

22. Admittance of public

The speaker must take reasonable steps to regulate public access to and public conduct at meetings.

23. Exclusion of the public and media from meetings

(1) Whenever the municipal manager has provisionally placed any matter on a part of the agenda which will not be disclosed to the public before the meeting, the public may be excluded from the meeting –

(a) where so directed by the speaker; or

(b) where so decided by council upon a motion from any member to that effect, subject to sub rule (2) .

(2) When a motion in terms of sub rule (1)(b) is considered by council, due regard must be given to the provisions of the Constitution, which requires that the public and the media may only be excluded from being present at a meeting when it is reasonable to do so, having regard to the nature of the business being transacted, including whether –

(a) there might otherwise be unreasonable disclosure of personal information regarding any person;

(b) trade secrets of any person might otherwise be disclosed;

(c) financial, commercial, scientific or technical information, other than trade secrets, of any person might otherwise be disclosed, and the disclosure would likely cause harm to the commercial or financial interests of that person;

(d) information which had been supplied in confidence by any person might be disclosed, and the disclosure could reasonably be expected to put that person at a disadvantage in contractual or other negotiations or to prejudice that person in commercial competition;

(e) information might be disclosed that would give cause for an action for breach of a duty of confidence owed to any person in terms of an agreement;

(f) information might be disclosed that could reasonably be expected to endanger the life or physical safety of any person, or would likely prejudice or impair the security of a building, structure, system, means of transport or any other property;

(g) information might be disclosed which is privileged from production in legal proceedings;

(h) information might be disclosed which contains financial, commercial, scientific or technical information, the disclosure of which –

(i) would likely cause harm to the financial interests of the municipality; or

(ii) could reasonably be expected to put the municipality at a disadvantage in contractual and other negotiations;

(i) information might be disclosed about research being or to be carried out by or on behalf of any person or the municipality and the disclosure of the information would likely expose any person or the municipality or the subject matter of the research to serious disadvantage; or

(j) the relevant item on the agenda pertains to any other matter which could be reasonably withheld from the public.

(3) If a motion to exclude the public from the meeting is seconded, the motion must be put to the vote, after discussion of the reasons but without discussion of the matter.

(4) If a motion to exclude the public is carried, the place of meeting shall be cleared of all members of the public, including the media.

(5) The motivation for the exclusion of the public must be minuted.

(6) Any items from which the public will not be excluded shall be considered directly after the procedure as set out in rule 23(1).

24. Re-admission of public and media to meetings

(1) During the course of a meeting from which the public and the media have been excluded, a member may move "that the meeting again be opened" and state the reasons for such motion.

(2) If such motion is seconded, it shall be put to the vote forthwith and without discussion.

(3) If the motion is carried, the speaker must ensure that members of the public and media are allowed to the meeting again.

25. Invitation to non-member

The speaker may invite a person who is not a member to address the council or to attend a meeting to state his or her views on a matter before the council. A time limit of 10 minutes, or any such time as may be allowed by the meeting, will apply.

26. Deputations

(1) An individual or a deputation seeking an interview with the council must give the municipal manager six working days' written notice of his or her request and must provide details of the presentations that will be made and the source of the deputation.

(2) The municipal manager must submit a notice, together with his or her comments and recommendations, to the speaker, who may decide to grant or refuse a request for such an audience, and if granted, upon which conditions.

(3) A deputation shall consist of no more than ten members.

(4) Except with the consent of the speaker, or in reply to questions from members, only two members of a deputation may address the council.

(5) Except with the consent of the speaker, a member of a deputation or an individual, depending on the case, shall not address the meeting for more than 10 minutes.

Chapter 6
Conduct in meetings

27. Conduct of non-members and members of the public

If a non-member or member of the public misconducts himself or herself, behaves in an unseemly manner or obstructs the business of any meeting, the speaker may order that he or she should leave the meeting or be removed from the meeting.

28. Conduct of members

(1) If a member –

(a) misbehaves, or

(b) behaves in an unseemly manner, or

(c) obstructs the business of any meeting, or

(d) challenges the ruling of the speaker on any point of order or ruling in terms of rule 4(1), or

(e) declines to withdraw any expression when required to do so by the speaker, or

(f) indulges in tedious repetition or unbecoming language, or

(g) commits any breach of this by-law,

the speaker must direct such member to conduct himself or herself properly and, if speaking, to discontinue his or her speech.

(2) In the event of a persistent disregard of the directions of the speaker, the speaker shall direct such member to retire from the place of meeting for the remainder of the meeting and may, if necessary, cause him or her to be removed from the venue.

(3) Where a member is guilty of the conduct in sub rules (1) or (2), the speaker may act against such member in terms of item 13 of the code of conduct.

(4) The use of cellular phones during meetings is prohibited. Cellular phones should be switched off during the meeting unless prior arrangements were made with the speaker. Fines can be imposed should the rule be ignored and fines should also be minuted.

(5) A member may not leave the venue where the meeting is held without the consent of the speaker.

Chapter 7
Rules of debate

29. Member to address chairperson

A member or a member of the public who is recognised to speak at a meeting must address the chairperson and may do so in any one of the three official languages of the Province of the Western Cape.

30. Order of priority

When a member wishes to address the council, he or she must first obtain the permission of the speaker and must raise his or her hand in order to obtain permission to speak.

31. Precedence of speaker

Whenever the speaker addresses the meeting, all members must be silent so that the speaker may be heard without any interruption.

32. Relevance

(1) A member who speaks must direct his speech strictly to the subject or matter under discussion or to an explanation or a point of order.

(2) No discussion shall be permitted –

(a) which will anticipate any matter on the agenda;

(b) on any matter in respect of which a decision by a judicial or quasi-judicial body or a commission of enquiry is pending.

Repealed

33. Right to speak and limitation

(1) A member may speak or proceed to speak at a meeting with approval of the speaker.

(2) A member who is not a member of a committee has the right to speak at that committee meeting, provided that such member has been invited by the chairperson to attend such meeting for a specific item on the agenda.

(3) Members who attend and speak at a committee meeting without being invited, will not be protected by the Western Cape Privileges and Immunities of Members Act, 2011 (Act no 7 of 2011).

(4) A member may only speak once –

(a) on the matter before the council;

(b) on any motion before the council;

(c) on any amendments to the matter before the council;

(d) on a matter or an amendment proposed or to be proposed by himself or herself; or

(e) on a point of order or a question of privilege,

unless authorised by the speaker or as provided for in terms of these rules.

(5) The mover of an original motion may speak to the motion and reply, but in replying he or she shall strictly confine himself or herself to answering previous speakers and shall not introduce any new matter into the debate.

(6) The right of reply shall not extend to the mover of an amendment which, having been carried, has become the substantive motion.

34. Duration of speeches

(1) Except with the consent of the speaker, no member may speak for more than five minutes on any subject or matter.

(2) The mover of an original motion or of any amendment may, however, speak for five minutes on such motion or amendment.

35. Re-introduction of motion or question

No motion which has been rejected by the council and no question asked in terms of these rules and dealt with at any meeting may again be moved or asked within a period of three months of such meeting, except with the consent of the speaker.

36. Notice of motion

(1) The speaker may not accept any motion, except a motion of exigency or a motion of course, unless notice thereof has been given in terms of sub rule (2).

(2) Every notice of intention by a member to introduce a motion shall be in writing, signed and dated and delivered to the municipal manager at least six working days before the date of the meeting at which it is intended to be introduced.

(3) The speaker must either put the motion in the agenda or refer such motion to the committee which is dealing with the matter.

Repealed

37. Notice of question

(1) Subject to rule 42, the speaker may not accept any question unless notice thereof has been given in terms of sub rule (2).

(2) Every notice of intention by a member to introduce a question shall be in writing, signed and dated and delivered to the municipal manager at least six working days before the date of the meeting on which it is intended to be introduced.

(3) The member to whom such question is posed, may answer the question at the meeting referred to in sub rule (2) or, if the member elects to answer the question in writing, he or she may do so within six work days after the meeting.

38. Absence of mover or questioner

In the event of the mover or questioner not being present in his place at the meeting of the council when called upon by the speaker to move a motion or ask a question standing in his name on the agenda, such motion or question shall lapse, unless the original mover or questioner has notified the speaker in writing of a substitute to move the motion or ask the question.

39. Motions or questions on matters dealt with by a committee

(1) A member may not give notice of a motion or question in respect of any matter assigned to a committee, unless such motion or question has previously been submitted to such committee or unless it is in the form of a reference to such committee for consideration and report.

(2) The chairperson of a committee may, if he or she is of opinion that the matter is one of exigency, give notice of his or her intention to introduce a motion or ask a question on a matter assigned to such committee, notwithstanding the fact that such motion or question has not received the prior consideration of such committee.

40. Recommendation of committee regarded as motion

(1) The adoption of a recommendation contained in a report submitted by a committee to the council shall be deemed to have been moved by the chairman of such committee or, in his or her absence or when he or she opposes such recommendation, by a member of such committee deputed by him or her to act at the time when the speaker of the meeting intimates that such recommendation is open for discussion, and no such motion need be seconded, nor shall the chairperson of such committee thereby be precluded from exercising his or her right to speak thereon.

(2) The chairperson referred to in sub rule (1) may, however, speak on the matter and reply, but in replying he or she shall strictly confine himself or herself to answering previous speakers and shall not introduce any new matter into the debate.

41. Questions

(1) After any motion or amendment has been moved and seconded or at the conclusion of any speech thereon, a member may ask any question relevant to such motion or amendment.

(2) No supplementary questions may be asked, except by the member asking the original question, and then only in respect of matters arising out of the reply to such original question.

(3) The speaker may not disallow any such question, provided that the member to whom such question is directed may either reply thereto forthwith or require that notice thereof be given in terms of rule 37.

Repealed

42. Motion of exigency

(1) A member may direct the attention of the council to any matter which does not appear on the agenda and of which no previous notice has been given, by stating briefly the subject of the matter and, without comment thereon, moving "that the motion to which attention has been directed be considered forthwith as a matter of exigency".

(2) Such motion is herein referred to as a motion of exigency.

(3) If such motion is seconded and carried by a majority of the members present, the mover shall be permitted without notice to bring the matter under consideration by way of a motion or question.

43. Motion of course

(1) In addition to those provided for elsewhere in these rules, the following shall be regarded as motions of course –

(a) that precedence be given to the consideration of any particular item appearing on the agenda;

(b) that any report referred to in the agenda be noted, or that it is adopted or referred back or that the report is acted upon;

(c) that any document before the council be acted upon in the manner specified in the motion;

(d) that action be taken in respect of any item submitted for consideration in the manner specified in the motion;

(e) that the speaker must direct that a member or a member of the public withdraw from the meeting; and

(f) any motion referred to in rule 44.

(2) If a motion of course is seconded, it must be put to vote forthwith without debate.

44. Point of order

(1) A member may interject during a meeting to raise a point of order to a breach of these rules or a statutory provision.

(2) A point of order may be raised in relation to –

(a) a procedural matter; or

(b) the conduct of a member, a member of the public, or an employee of the municipality.

(3) A member raising a point of order must immediately be heard, and he or she must –

(a) state the point of order; and

(b) the rule or statutory provision that is being breached.

(4) A member who is speaking when a point of order is raised must immediately stop speaking until the point of order is ruled on by the speaker. All other matters before the meeting must be suspended until the point of order is ruled on.

(5) If ruled to be in order, the member must be allowed to proceed with his or her speech.

(6) If ruled to be out of order, the member must remain silent or must retract or change any remarks so as to comply with the ruling.

(7) The speaker's ruling on a point of order is final and not open to debate, and it must be entered in the minutes.

Repealed

45. Point of explanation

The speaker may allow a member to raise a point of explanation, provided that such explanation shall be confined to some material part of the debate which may have been misunderstood.

46. Withdrawal of motion, amendment or question

(1) A motion or amendment may, without debate and with the permission of the seconder and the council, be withdrawn by the mover.

(2) A member may not speak on such motion or amendment after the council has agreed to the withdrawal of such motion.

(3) A question may be withdrawn by the member intending to put it.

47. Speaker's ruling on a point of order and explanation

(1) The ruling of the speaker on a point of order or an explanation shall be final and will not be open to discussion.

(2) The ruling of the speaker on any point of order raised as to the interpretation of these rules must be entered in the minutes.

48. Order of debate

When a motion is under debate at any meeting of the council, no further motion may be received, except the following –

(a) that the motion be amended;

(b) that the consideration of the matter be postponed;

(c) that the public and the media be excluded;

(d) that the public and the media be readmitted;

(e) that the council now adjourns;

(f) that the council adjourn for a specified time;

(g) that the debate be adjourned;

(h) that the matter be put to the vote;

(i) that the council proceed to the next business.

49. That the motion be amended

(1) Every amendment shall be relevant to the motion on which it is moved.

(2) An amendment shall, if required by the speaker, be in writing, signed by the mover and handed to the speaker.

(3) An amendment shall be read before being moved.

(4) An amendment shall not be discussed or put to the council until it has been seconded.

(5) If there is more than one amendment to a motion, the amendment proposed last shall be put to the vote first and, if carried, the matter shall be resolved accordingly.

(6) If the amendment proposed last is rejected, the amendment proposed immediately prior to the last amendment shall be put to the vote.

(7) No further amendment shall be moved to a motion or amendment after the speaker has commenced to take the vote upon such motion or amendment.

50. That consideration of the matter be postponed

(1) A member may, at the conclusion of a speech, move that the consideration of the matter be postponed to a fixed or undetermined date.

(2) Such motion must be seconded, but this need not be in writing, provided that the seconder shall not be permitted to speak. The mover shall be permitted to speak to the motion for a period not exceeding five minutes and the seconder shall not speak, except for seconding the motion.

(3) Upon such motion being made, the mover of the matter under debate may (without prejudice to his or her ultimate right of reply if the motion that the matter be postponed is not carried) be heard in reply for five minutes, after which the motion shall be put to the vote without further debate.

(4) If the motion is carried, the matter shall be placed first on the agenda of matters to be considered at the meeting to which it has been postponed, provided that rules 8(2) and 8(3) do not apply to such matter.

51. That the council do now adjourn to another date

(1) A member may, at any time except during the course of a speech by another member or while a vote is being taken, move "that the council do now adjourn to another date".

(2) Such motion must be seconded, but this need not be in writing.

(3) The mover shall be permitted to speak to the motion for a period not exceeding five minutes, but the seconder shall not speak, except for seconding the motion.

(4) If the motion is carried, the council shall adjourn forthwith, provided that the speaker may direct that the meeting continue to first dispose of business other than opposed business.

(5) If the motion is not carried, the speaker shall not accept another such motion until a period of half an hour has elapsed.

(6) Except as is provided in rule 34(1) no discussion on such motion shall be permitted, except that a member who has first indicated as such may speak against the motion for not longer than five minutes.

(7) No amendment to such motion may be moved, except with regard to the period of adjournment.

(8) If a motion to adjourn a meeting has been carried during a debate and prior to the conclusion thereof, then the member who moved the adjournment shall be entitled to speak first upon consideration of the matter forming the subject of such debate at the adjourned meeting.

(9) No business shall be transacted at an adjourned meeting except such as is set out in the agenda for the meeting of which it is an adjournment.

52. That the council adjourn for a specified time

(1) A member may at any time, except during the course of a speech by another member or while a vote is being taken, move "that the council now adjourn for a specified time, up to one hour".

(2) Such motion need not be in writing, but must be seconded.

(3) If the motion is carried, the council shall forthwith adjourn for the specified time.

(4) The speaker may limit the number of such motions.

Repealed

53. That the debate be adjourned

(1) A member may, at the conclusion of any speech, move that the debate be adjourned.

(2) Such motion must be seconded, but this need not be in writing.

(3) The mover of such motion may speak to it for five minutes, but the seconder may not speak beyond formally seconding it.

(4) Save as is provided in sub rule (3), no discussion may be permitted on such motion except with reference to the period of adjournment and that the member who first rises in his or her place for that purpose may speak in opposition thereto for five minutes.

(5) If such motion is carried, the meeting proceeds to the next business on the agenda, and the discussion of the adjourned debate, unless otherwise resolved, is resumed at the next meeting.

(6) On the resumption of the adjourned debate, the member who moved the adjournment is entitled to speak first.

(7) If the motion is not carried, the speaker shall not accept another such motion until half an hour has elapsed.

(8) A member may not move or second more than one motion for the adjournment of the debate during the course of that debate.

54. That the matter be put to the vote

A member may, at the conclusion of any speech during a debate, move that the matter be now put to the vote.

55. That the matter be removed from the agenda

(1) A member may, at the conclusion of any speech during a debate, move that the matter be removed from the agenda.

(2) Subject to the provisions of sub rule (3), no motion put in terms of sub rule (1) shall be open to discussion.

(3) The mover of a matter under discussion may, when a motion has been put in terms of sub rule (1), speak on such motion for not more than five minutes, whereupon the said motion shall be put to the vote without any further discussion.

(4) If such a motion is carried, the matter under discussion shall not be discussed further.

Chapter 8
Process for adoption of by-law

56. Submission of draft by-law

A by-law may only be introduced by a member or the executive mayor.

57. First submission to council

(1) A draft by-law submitted by a member or the mayor, must be submitted to council in the following form –

(a) an executive summary of the by-law;

(b) the need to regulate the conduct addressed by the draft by-law;

(c) the content of the draft by-law;

(d) any other by-law that must be repealed or amended if the draft is adopted;

(e) any relevant comments or proposals; and

(f) a recommendation.

(2) After consideration of the report contemplated in sub rule (1) the council must resolve to reject the draft or to adopt it in principle.

(3) When a proposed by-law is adopted in principle, it must be advertised for public comment in terms of rule 59.

58. Submission by executive mayor

(1) The mayor may submit a draft by-law to council on his or her own volition or after consideration of a request submitted by the municipal manager.

(2) If the executive mayor decides to submit a draft by-law on his or her own volition, he or she must obtain the comments of the municipal manager on the contents thereof and may request comment from any person.

(3) The executive mayor must submit a report on the submission of a draft by-law to council as contemplated in rule 57(1).

59. Publication of draft by-laws

(1) The municipal manager must, as soon as possible after a by-law has been adopted in principle and for at least 30 days, publish the draft by-law in such a way that the public will have the opportunity to submit comments in connection therewith.

(2) Publication must be in at least two of the official languages of the province.

60. Consideration of draft by-laws

(1) The municipal manager must as soon as possible after the closing date for public comment referred to in rule 58, submit a report to the executive mayor, together with –

(a) a copy of the draft by-law;

(b) copies of the advertisements in which the public was invited to make representations;

(c) any comment received from the public; and

(d) any other comments or recommendations from the municipal manager.

(2) The executive mayor must consider the report by the municipal manager and must –

(a) submit a report to the council which sets out the following –

(i) an executive summary of the draft by-law;

(ii) the view of the mayor on the need for the draft by-law;

(iii) other by-laws that will have to be repealed or amended if the draft by-law is adopted;

(iv) any relevant comments or proposals; and

(v) a recommendation.

(3) When a by-law has been passed in accordance with sub rule (2)(b) it must be published in accordance with the Systems Act.

Repealed

61. Debating procedure

The provisions regarding debating are also applicable to the legislative process.

Chapter 9
General provisions

62. Privileges and immunities for members

The privileges and immunities of councillors of the municipality are subject to the provisions of the Western Cape Privileges and Immunities of Councillors Act, 2011 (Act 7 of 2011).

63. Municipal employees

(1) Employees of the municipality who attend a meeting must observe the rules and decorum applicable to members.

(2) A municipal employee must attend a meeting if requested to do so by the municipal manager or the speaker.

64. Offences

(1) No person may –

(a) improperly interfere with –

(i) or impede on the proceedings of the council or a committee in exercising its authority or performing its functions; or

(ii) the performance by a member of his or her functions as a member;

(b) threaten or obstruct a member to attend or leave a meeting of the council or a committee;

(c) assault or threaten a member, or deprive a member of any benefit, on account of the conduct of the member in a council or committee;

(d) while the council or a committee is meeting, create or take part in any disturbance within the precincts;

(e) fail or refuse to comply with an instruction by the person presiding at a meeting of the council or a committee regarding the presence of any person at that meeting; or

(f) fail or refuse to comply with an instruction by a duly authorised official of the council regarding –

(i) the presence of persons at a particular meeting of the council or a committee; or

(ii) the possession of any article, including a firearm, in the precincts or any part thereof.

(2) No person may by fraud, intimidation, force, or threat of any kind, or by the offer or promise of any inducement or benefit of any kind, or by any other improper means –

(a) influence a member in the performance his or her functions;

(b) induce a member to be absent from a council or committee meeting or to remain present at such meeting; or

(c) attempt to compel a member to declare himself or herself in favor of or against anything pending before or proposed or expected to be submitted to the council or a committee.

Repealed

(3) A person who contravenes sub rules (1) and (2) is guilty of an offence and on conviction is liable to a fine or to imprisonment or to both the fine and the imprisonment.

65. Repeal of by-laws

The By-law for the Conduct of Meetings of Swartland Municipality as published in Provincial Gazette 6199 of 14 January 2005 is hereby repealed as a whole.

66. Short title and commencement

This by-law shall be known as the By-law relating to the Rules for the Conduct of Meetings of Swartland Municipality and shall come into operation on the date of publication thereof in the Provincial Gazette.