



# GOVERNMENT GAZETTE

OF THE

# REPUBLIC OF NAMIBIA

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No. 470

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## Government Notice

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### OFFICE OF THE PRIME MINISTER

No. 116

1992

### PROMULGATION OF ACT OF THE NATIONAL ASSEMBLY

The following Act which has been passed by the National Assembly and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 23 of 1992: Local Authorities Act, 1992.

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## **ACT**

**To provide for the determination, for purposes of local government, of local authority councils; the establishment of such local authority councils; and to define the powers, duties and functions of local authority councils; and to provide for incidental matters.**

*(Signed by the President on 28 August 1992)*

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BE IT ENACTED by the National Assembly of the Republic of Namibia, as follows:-

### INTRODUCTORY PROVISIONS

Definitions.

1. In this Act, unless the context indicates otherwise -

“approved township” means an approved township as defined in section 1 of the Townships and Division of Land Ordinance, 1963 (Ordinance 11 of 1963);

“buildings” include -

(a) any structure, whether of a permanent or temporary nature, constructed or used for the housing or accommodation of human beings or animals, birds or bees, or for the storage, manufacture or sale of any goods or for the destruction or treatment of refuse of any kind;

(b) a wall of at least 1,2 metres in height, swimming bath, reservoir, tower, bridge, chimney, mast, summerhouse or hothouse or any structure appurtenant thereto;

(c) any boundary fence or wall;

“charitable institution” means a charitable institution as defined in section 1, and registered under section 37, of the Sales Tax Act, 1992 (Act 5 of 1992);

“chief executive officer” means a town clerk or a village secretary;

“combined private sewer” means a conduit constructed for purposes of conveying to a public sewer, cesspit or other receptacle the sewage from two or more private sewers, and includes anything connected therewith;

“deputy mayor” means a deputy mayor of a municipality or town elected in terms of section 11;

“financial year” means the financial year referred to in section 82;

“immovable property” means any land or any building on such land;

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“improvements”, in relation to immovable property, shall, for purposes of Parts XIV and XV, not include any machinery or equipment, whether or not permanently fixed or attached to such immovable property, excluding any storage tanks of any nature whatsoever;

“local authority council” means any municipal council, town council or village council;

“local authority area” means the area declared under section 3 to be a municipality, town or village, as the case may be, or deemed to be so declared;

“magistrate” includes any additional magistrate or assistant magistrate;

“main valuation roll” means the main valuation roll referred to in section 72;

“management committee” means the management committee of a local authority council established by section 21;

“mayor” means the mayor of a municipality or town elected in terms of section 11;

“Minister” means the Minister of Local Government and Housing;

“municipal council” means a municipal council referred to in paragraph (a) of section 6(1);

“municipality” means a municipality declared as such under section 3 or deemed to be so declared;

“owner” in relation to immovable property, means the person in whose name such land is registered, or -

(a) if such person -

(i) is deceased, means the executor in the estate of such person;

(ii) is a person whose estate has been sequestrated, means the trustee in the insolvent estate of such person;

(iii) is under any legal disability, means the legal representative of such person;

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(iv) is a person who is absent from Namibia or whose whereabouts are unknown, includes the authorized representative of such person in Namibia;

(v) is a company which has been wound up, means the liquidator of such person;

(b) if such immovable property -

(i) has been leased under a lease, whether registered or not, for a period of 50 years or longer, means its lessee;

(ii) is occupied by virtue of a servitude or under any other real right in such immovable property, means its occupier;

(iii) has been attached in terms of an order of a court, includes the sheriff, deputy-sheriff or messenger of the court by whom such immovable property has been so attached;

(iv) vests in the Government of Namibia, a regional council or a local authority council -

(aa) which has been leased under a lease which contains an option in favour of a lessee to purchase immovable property so leased, means the lessee who has exercised such option;

(bb) which has been purchased by any person, but which has not yet been registered in his or her name, means such person;

“prescribed” means prescribed by regulation made under section 94;

“private sewer” means a conduit for purposes of conveying to a combined private sewer, public sewer, cesspit or other receptacle the sewage from one immovable property and includes anything connected therewith;

“provisional valuation roll” means the provisional valuation roll prepared in terms of section 67(1);

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“public nuisances” includes any action which is likely to injure the safety, health, peace or convenience of residents in a local authority area, including excessive noise caused by any means whatsoever, the firing of grass, the burning of rubbish and the carrying on of any activity which causes a stench or which is otherwise objectionable;

“public place” means any square, garden, park, recreation ground, show ground, rest camp or other open or enclosed space intended for the use, enjoyment or benefit of residents in a local authority area;

“public sewer” means a conduit acquired or constructed by a local authority council for purposes of conveying sewage discharged or intended to be discharged from private sewers and combined private sewers and of sewage effluent, and includes any pipe, manhole, chamber, ventilation shaft, ejector, sluice or anything connected therewith;

“rateable property” means any immovable property situated within a local authority area, except —

- (a) any land of which the ownership and control vests in the Government of Namibia or a regional council and on which no buildings have been constructed or other improvements have been effected;
- (b) any building, other than a dwelling, of which the ownership vests in the Government of Namibia or a regional council and which is not used or occupied for public purposes, including the land on which any such building is actually constructed and any other land actually occupied for purposes of such building;
- (c) any immovable property used exclusively as -
  - (i) a place of worship;
  - (ii) a school or hostel other than a school or hostel which has been established and is maintained and managed by any person for profit or gain whether directly or indirectly;
  - (iii) a library or museum which has been established and is maintained and managed by the State;

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- (iv) a hospital, an institution as defined in section 1 of the Mental Health Act, 1973 (Act 18 of 1973), an institution for the care of juveniles or similar institution aided by the State or any charitable institution;
- (d) any immovable property of which the ownership vests in a local authority council;
- (e) any immovable property which has been exempted from the payment of rates in terms of section 75 or any other law;

“regional council” means a regional council established by section 2 of the Regional Councils Act, 1992;

“sanitary convenience” means a urinal, water closet or other convenience of such nature;

“sewage works” includes any reservoir, tank, strainer, filter bed, engine, pump, machinery, land, building or such other works (except sewers) as may be necessary to treat and dispose of sewage;

“sewer” means a public sewer, private sewer or combined private sewer;

“stormwater drain” means a conduit acquired or constructed by a local authority council for purposes of conveying stormwater, and includes anything connected therewith;

“street” means any road, thoroughfare, pavement, sidewalk, lane or other right of way set apart for the use and benefit of residents in a local authority area;

“this Act” includes any regulation made under this Act;

“town” means a town declared as such under section 3;

“town clerk” means the town clerk of a municipal council or town council appointed in terms of section 27(1)(a);

“town council” means a town council referred to in paragraph (b) of section 6(1);

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“townlands” means the land within a local authority area situated outside the boundaries of any approved township which has been set aside for the mutual benefit of the residents in its area, and for purposes of pasturage, water supply, aerodromes, explosive magazines, sanitary and refuse deposits or other public purposes or the extension of such township or the establishment of other approved townships;

“valuer” means the person appointed under section 67;

“village” means a village described as such under section 3;

“village council” means a village council referred to in paragraph (c) of section 6(1);

“village secretary” means the village secretary of a village council appointed in terms of section 27(1)(a);

“water-main” includes any conduit, pipeline, valve, valve chamber, meter, meter-house, break-pressure tank, scour chamber, scour pipe, culvert, cut, bridge, tunnel or such other thing as may be necessary in connection with such water-main;

“waterworks” includes any weir, well, borehole, watercourse, dam, pumping station, reservoir, tank, sluice, pipeline, machinery, building, land or such other works as may be necessary to take, impound, discharge, store, treat or filter water or to maintain or carry on any such waterworks.

**PART I  
DETERMINATION AND ESTABLISHMENT OF  
LOCAL AUTHORITY COUNCILS**

Determination of local authority councils.

**2.** For purposes of local government, as contemplated in Chapter 12 of the Namibian Constitution, there shall be local authority councils in respect of -

- (a) municipalities;
- (b) towns;
- (c) villages,

the areas of which are declared as such under section 3 or deemed to have been so declared.

## Act No. 23, 1992

## LOCAL AUTHORITIES ACT, 1992

Declaration of areas of local authorities as municipalities, towns or villages, and existing municipalities.

3. (1) Subject to the provisions of this section, the President may from time to time by proclamation in the *Gazette* establish any area specified in such proclamation as the area of a local authority, and declare such area to be a municipality, town or village under the name specified in such proclamation.

(2) The President shall not declare any area referred to in subsection (1) to be -

(a) a municipality, unless -

(i) an approved township exists in such area;

(ii) its municipal council will in the opinion of the President be able -

(aa) to exercise and perform the powers, duties and functions conferred and imposed upon a municipal council in terms of the provisions of this Act;

(bb) to pay out of its own funds its debts incurred in the exercise and performance of such powers, duties and functions;

(cc) to comply with all its other liabilities and obligations so incurred;

(b) a town, unless -

(i) an approved township exists in such area or a town exists in such area which in his or her opinion complies with the requirements of an approved township;

(ii) its town council will in the opinion of the President be able -

(aa) to exercise and perform the powers, duties and functions conferred and imposed upon a town council in terms of the provisions of this Act;

(bb) to pay, whether with or without any financial or other assistance by the Government of Namibia or any regional council, out of its funds its debts

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incurred in the exercise and performance of such powers, duties and functions;

- (cc) to comply, whether with or without any such assistance, with all its other liabilities and obligations so incurred;

(c) a village, unless -

(i) it consists of a community which in the opinion of the President is in need of the services which are required to be rendered or may be rendered in terms of the provisions of this Act by a village council;

(ii) its village council will in the opinion of the President be able to exercise and perform, whether with or without any assistance by the Government of Namibia or any regional council or other local authority council, the powers, duties and functions conferred and imposed upon a village council in terms of the provisions of this Act.

(3) (a) If the area of any township or village management area established or purporting to have been established by or under any law on the establishment of townships or village management boards on communal land is, in terms of subsection (1), declared to be, or, in terms of subsection (5), deemed to have been declared to be, a municipality, town or village, the assets used in relation to such township or village management area and all rights, liabilities and obligations connected with such assets shall vest in the municipal council, town council or village council of such municipality, town or village, as the case may be, to such extent and as from such date as may be determined by the Minister.

(b) The registrar of deeds shall, in the case of any asset referred to in paragraph (a) consisting of immovable property which vests by virtue of the provisions of that subsection in a municipal council, town council or village council, upon production to him or her of the deed of any such immovable property, endorse such deed to the effect that the immovable property described

**LOCAL AUTHORITIES ACT, 1992**

therein vests in that municipal council, town council or village council and shall make the necessary entries in his or her registers, and thereupon that deed shall serve and avail for all purposes as proof of the title of that municipal council, town council or village council.

- (c) No transfer duty, stamp duty or any other fee or charge shall be payable in respect of any endorsement or entry referred to in paragraph (b).
  - (d) Notwithstanding the declaration of any township or village management area under paragraph (a) to be a municipality, town or village, any provision of any law referred to in that paragraph which relates to any matter which may be determined or prescribed under any provision of this Act shall be deemed to have been so determined or prescribed.
  - (e) Anything done under any law referred to in paragraph (a) by or in relation to a township or village management area so referred to which may be done under any corresponding provision of this Act, shall be deemed to have been done in relation to such municipality, town or village, as the case may be, under such corresponding provision.
- (4) A proclamation referred to in subsection (1) shall -
- (a) in the case of a proclamation declaring an area to be a municipality or town, determine, subject to the provisions of section 6, the number of members out of which the municipal council or town council of such municipality or town shall consist;
  - (b) in the case of a proclamation declaring an area to be a municipality or a town, amend or substitute Schedule 1 or Schedule 2, as the case may be, so as to include such municipality or town and the number of members of the municipal council or town council referred to in paragraph (a);
  - (c) in the case of a proclamation declaring an area to be a village, amend or substitute Schedule 3 so as to include such village;

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- (d) (i) determine a date on which an election of members of the municipal council, town council or village council, as the case may be, shall take place;
- (ii) come into operation on the date on which the election referred to in subparagraph (i) takes place.
- (5) (a) As from the date fixed in terms of subarticle (5) of Article 137 of the Namibian Constitution -
- (i) every municipality which existed immediately before the commencement of this Act and which is specified in column 2 of Part I or II of Schedule 1 shall be deemed to have been declared to be a municipality;
- (ii) every town specified in column 2 of Schedule 2 shall be deemed to have been declared to be a town;
- (iii) every village specified in column 2 of Schedule 3 shall be deemed to have been declared to be a village,

under subsection (1) in respect of the area of which the boundaries have been determined by the first Delimitation Commission, and established in terms of subarticle (4) of the said Article 137 by the President by Proclamation 6 of 1992, and the number of members of the municipal council of such municipality specified in column 3 of Schedule 1, and of the town council of such town specified in column 3 of Schedule 2 shall be deemed to have been determined by the President under section 6.

- (b) As from the date referred to in paragraph (a), the assets, liabilities, rights and obligations which vested in an existing municipality referred to in subparagraph (i) of that paragraph, shall continue to vest in the municipal council of a municipality deemed to have been so declared, and any reference in any law or document, including any deed, to such existing municipality or the council of any such municipality, shall be construed as a reference to the municipal council of such municipality.

Act No. 23, 1992

**LOCAL AUTHORITIES ACT, 1992**Alteration of declaration  
of local authorities.

**4. (1)** Subject to the provisions of this Act, the President may from time to time by proclamation in the *Gazette* by way of the repeal, amendment or substitution of a proclamation issued under section 3 -

- (a) alter a declaration made under subsection (1) of that section;
  - (b) alter the boundaries of any local authority area by excluding any portion from its area or by adding any area thereto;
  - (c) combine the areas of any two or more local authorities so as to form one local authority area;
  - (d) increase or decrease the number of members of a municipal council or town council;
  - (e) include any part of the area of any local authority which is contiguous to the area of any other local authority so as to form part of the area of such last-mentioned local authority;
  - (f) alter the name of such local authority;
  - (g) delete the name of a municipality referred to in Part II of Schedule 1 and include such name in Part I of that Schedule, or delete the name of a municipality referred to in Part I of that Schedule and include such name in Part II of that Schedule.
- (2) A proclamation referred to in subsection (1) -
- (a) shall, if such proclamation affects the constitution of a local authority council, come into operation in relation to the next general election for members of local authority councils held after the date on which the proclamation is published and not earlier;
  - (b) may in addition, if the areas of two or more local authorities are combined under paragraph (c) of subsection (1) or where any part of the area of any local authority has been included in the area of any other local authority under paragraph (e) of that subsection, provide -

**LOCAL AUTHORITIES ACT, 1992**

- (i) that anything done under this Act by or in respect of the local authority council specified in such proclamation, shall, after its area has been combined with the area of any other local authority or any portion of its area has been included in the area of any other local authority, subject to the limitations, qualifications and conditions, if any, as may be so specified, be deemed to have been done by or in respect of such other local authority council;
  - (ii) that the assets, liabilities, rights and obligations of the local authority council in respect of which its area has been combined with the area of any other local authority or which has been included in the area of any other local authority shall, subject to the limitations, qualifications and conditions, if any, as may be so specified, as from a date specified in such proclamation, vest in any other local authority council as may be so specified;
  - (iii) that any person who immediately before the commencement of such proclamation held an appointment as officer or employee of a particular local authority council shall, as from such commencement and subject to such conditions and in accordance with such directives as may be contained in such proclamation, be appointed by any other local authority council specified in such proclamation.
- (3) (a) The registrar of deeds shall, in the case of any asset referred to in subparagraph (ii) of paragraph (b) of subsection (2) consisting of immovable property which vests by virtue of the provisions of that subparagraph in a local authority council, upon production to him or her of the deed of any such immovable property, endorse such deed to the effect that the immovable property described therein vests in that local authority council and shall make the necessary entries in his or her registers, and thereupon that deed shall serve and avail for all purposes as proof of the title of that local authority council.

## LOCAL AUTHORITIES ACT, 1992

- (b) No transfer duty, stamp duty or any other fee or charge shall be payable in respect of any endorsement or entry referred to in paragraph (a).
- (4) If the President intends to alter the area of a local authority under subsection (1), he or she may direct the local authority council in question to cause a survey by a land surveyor of any area determined by the President to be carried out at its own expense, and if that local authority council fails to comply with that direction within a reasonable period the President may cause that survey to be carried out and may recover the costs thereof from the local authority council.
- (5) (a) The President may, at any time after the first elections for members of local authority councils have been held by virtue of the provisions of Article 137(5) of the Namibian Constitution, abolish any village council by proclamation in the *Gazette* if, in the opinion of the President, the requirements contemplated in paragraph (c) of section 3(2) have ceased to exist in respect of the village governed by such village council.
- (b) Notwithstanding the provisions of any other law, a proclamation referred to in paragraph (a) may provide for the declaration of the area of the village council so abolished to be a settlement area as defined in section 1 of the Regional Councils Act, 1992, whereupon the provisions of section 31(2) of that Act shall apply *mutatis mutandis* and to the extent determined in such proclamation, in respect of the settlement area so declared and the regional council of the region within which it is situated, as if such village council were a township or village management board as contemplated in paragraph (a) of the said section 31(2), and as if the reference to the laws contemplated in that paragraph were a reference to this Act.
- (6) A proclamation referred to in subsection (1) or (5) shall amend or substitute Schedules 1, 2 and 3, as the case may be, so as to bring those Schedules in line with the alterations or abolishment effected in terms of those subsections.

Appointment of delimitation commission and division of local authority areas into wards.

5. (1) The President shall from time to time appoint by proclamation in the *Gazette* a delimitation commission consisting of a judge or former judge of the Supreme Court or the High Court of Namibia and two other persons -

- (a) to divide, not later than five years after the date on which the first elections for members of local authority councils have taken place, and thereafter at intervals of not less than five years and not more than 10 years, or, in the case of an area established on or after the date on which the second elections for such members have taken place as the area of a local authority, at the time of such establishment, the area of every local authority into wards, and to determine the boundaries of each one of such wards;
- (b) to re-divide, when the boundaries of the area of any local authority are altered in terms of section 4, such area into wards, and to re-determine the boundaries of such wards.

(2) For purposes of the division or re-division of the area of a local authority into wards in terms of subsection (1), the delimitation commission shall divide or re-divide the area of a local authority into the same number of wards as the number of members of which the local authority council in question consists.

(3) The delimitation commission may in the exercise of its powers and the performance of its duties and functions under this section make such investigations and give a hearing to such persons as it may deem necessary in relation to any matter connected with such powers, duties and functions.

(4) After the delimitation commission has, under this section, divided or re-divided the area of a local authority into wards and determined or re-determined their boundaries, it shall cause -

- (a) a map of the area of the local authority in question on which the wards in question are shown to be laid for inspection for a period of 30 days at a place determined by it;

(b) a notice to be published in the *Gazette* and at least one newspaper in which all interested parties are called upon to submit to it any objections in writing against the proposed division or re-division within the said period of 30 days.

(5) The delimitation commission may in its discretion consider any objections received against the proposed wards, and shall thereafter finally divide or re-divide the local authority area into wards and determine or re-determine their boundaries.

(6) The President shall make known by proclamation in the *Gazette* the names or numbers and the boundaries of the wards, as finally divided or re-divided into and determined or re-determined by the delimitation commission, and thereafter the wards, as specified or numbered and defined, shall be the wards of the local authority in question until a re-division or further re-division has taken place.

Governing bodies of local authorities.

6. (1) The affairs of -

(a) a municipality, shall be governed by a municipal council consisting of such number of members, but not less than seven and not more than 12 members, as may be determined by the President and specified in the proclamation referred to in section 3;

(b) a town, shall be governed by a town council consisting of such number of members, but not less than seven and not more than 12 members, as may be determined by the President and specified in the proclamation referred to in section 3;

(c) a village, shall be governed by a village council, consisting of seven members,

who shall -

(i) in the case of the first elections for members of local authority councils held by virtue of the provisions of Article 137(5) of the Namibian Constitution, or of an area established as the area of a local authority before the date of any general

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election referred to in paragraph (ii), be elected on party lists;

- (ii) in the case of any general elections for such members held after such first elections, or of an area established as the area of a local authority after the date on which any such general elections have taken place, be elected in respect of each ward into which a local authority area has been divided or re-divided in terms of section 5.

(2) A municipal council, town council and village council referred to in subsection (1), shall, under its name, be a juristic person.

(3) For the purposes of any election contemplated in paragraph (i) of subsection (1), each party list shall contain —

- (a) in the case of a municipal council or town council consisting of 10 or fewer members or a village council, at least two; or
- (b) in the case of a municipal council or town council consisting of 11 or more members, at least three,

names of female persons as candidates in respect of such election.

**PART II**  
**QUALIFICATIONS OF, AND DATES FOR ELECTIONS FOR,**  
**MEMBERS OF LOCAL AUTHORITY COUNCILS, AND**  
**MEETINGS OF LOCAL AUTHORITY COUNCILS**

Qualifications of members of local authority councils.

7. (1) Subject to the provisions of Article 17(2) of the Namibian Constitution, no person shall be qualified to be a member of a local authority council -

- (a) unless he or she is qualified to vote, and is registered, in terms of the laws governing elections for members of local authority councils, as a voter, at an election for members of such a local authority council;
- (b) if he or she is a person contemplated in paragraphs (a) to (d) of Article 47(1) of the Namibian Constitution.

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(2) Notwithstanding anything to the contrary contained in any law, but subject to the provisions of subsection (3), any officer or employee of a local authority council may accept nomination as candidate for election as a member of such local authority council, but shall, if he or she is elected as such a member, be deemed to have resigned from the service of such local authority council with effect from the date on which he or she is so elected.

(3) A remunerated member of the public service, contemplated in paragraph (e) of Article 47(1) of the Namibian Constitution, who has been nominated as candidate for election as a member of a local authority council shall be deemed to be on leave until the date on which such election takes place as if such leave were granted to him or her in terms of the laws governing the conditions of employment of members of such public service or any agreement governing the conditions of employment of such member, as the case may be.

(4) Any person who is in terms of the provisions of the Namibian Constitution and this section disqualified to be a member of a local authority council and who, while he or she is so disqualified and knowing or having reasonable grounds for knowing that he or she is so disqualified, sits as a member of such local authority council, shall be liable to a penalty of R500 for each day on which he or she so sits, which may be recovered by such local authority council by action in any competent court for the benefit of the funds of such local authority council.

Dates for elections for members of local authority councils.

**8.** After the election for the first local authority councils held by virtue of the provisions of Article 137(5) of the Namibian Constitution, a general election in terms of the laws governing elections of members of local authority councils, shall be held on a date, not later than five years as from the date on which such election for the first local authority councils has been held, determined by the President by proclamation in the *Gazette*, and thereafter at intervals not exceeding five years on a date so determined.

Periods of office of members of local authority councils.

**9.** A member of a local authority council shall, subject to the provisions of section 13(1), hold office as such a member from the date on which he or she is elected as such a member until the date immediately before the date on which the next election under section 8 is held in respect of that local authority council subsequent to his or her election as a member of the local authority council.

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Oath by, and code of conduct for, members of local authority councils.

**10.** (1) Every member of a local authority council shall, before assuming his or her duties, make and subscribe before the magistrate referred to in section 12 or, if such member assumes his or her duties after a chairperson has been elected, the chairperson of the local authority council, an oath in the following form:

*I, A.B., do hereby swear and solemnly and sincerely promise to be faithful to the Republic of Namibia, to uphold and defend the Namibian Constitution and the laws of the Republic of Namibia and to perform my duties as member of the local authority council of ..... diligently, honestly, fairly and to the best of my ability.*

*So help me God.*

(2) A member of a local authority council may, in lieu of an oath, make and subscribe a solemn affirmation in corresponding form.

(3) The Minister may from time to time by notice in the *Gazette* prescribe a code of conduct for members of local authority councils.

Mayors and deputy mayors of municipalities or towns and chairpersons of local authority councils.

**11.** (1) A local authority council shall elect in the manner provided in section 12 from amongst its members -

(a) in the case of a municipal council or a town council -

(i) one person as mayor and another person as deputy mayor of the municipality or town in question; and

(ii) one person as chairperson and another person as vice-chairperson of the municipal council or town council in question, who may in each case be such mayor or deputy mayor;

(b) in the case of a village council, one person as chairperson and another person as vice-chairperson of such village council.

(2) The election of a mayor, deputy mayor, chairperson and vice-chairperson of a local authority council shall be held -

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- (a) in the case of the first such election after a general election of members of local authority councils or a first election for members of a new local authority council, at the first meeting of such local authority council held after such general elections or such first election before it proceeds to the dispatch of any other business;
- (b) in the case where the office of the mayor or the deputy mayor or the chairperson or vice-chairperson becomes vacant before the expiration of his or her period of office by reason of the death of such mayor or deputy mayor or chairperson or vice-chairperson or the vacation by him or her of his or her office for any other reason, on a date not later than the first meeting of such local authority council after the office so became vacant;
- (c) in the case of the expiration of the period of office of the mayor or deputy mayor or chairperson or vice-chairperson of a local authority council elected in an election held in terms of paragraph (a) or (b), on a date within a period of 30 days before the date on which the period of office of the mayor or deputy mayor or chairperson or vice-chairperson of a local authority council so elected expires.

(3) When the mayor or chairperson of a local authority council is absent or is unable to exercise and perform his or her powers, duties and functions as such mayor or such chairperson, the deputy mayor or vice-chairperson, shall act as mayor or chairperson, as the case may be, during the absence or incapacity of such mayor or chairperson, and if both such mayor or deputy mayor or chairperson shall act as mayor or chairperson, as the case exercise and perform the powers, duties and functions of mayor or chairperson, the local authority council may elect any other member to act as mayor or chairperson, as the case may be, during such absence or incapacity.

- (4) (a) Subject to the provisions of paragraph (b) of this subsection, the mayor and deputy mayor and the chairperson and vice-chairperson of a local authority council shall hold office for a period of one year or, in the case of a mayor or deputy mayor or chairperson or vice-chairperson elected in an election held in terms of paragraph (b) of subsection (2), for the unexpired portion of the

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period of office for which his or her predecessor has been elected, but shall be eligible for re-election.

(b) The mayor or deputy mayor or chairperson or vice-chairperson shall vacate his or her office -

(i) if he or she ceases to be a member of the local authority council;

(ii) if the local authority council resolves by a majority of all its members that it has no confidence in such mayor or deputy mayor or chairperson or vice-chairperson,

and may resign his or her office by writing under his or her hand addressed and delivered to the chief executive officer.

Manner of elections for mayors and deputy mayors of municipalities or towns and chairpersons of local authority councils.

**12. (1)** A magistrate designated by the Minister of Justice upon request of the Minister, shall for purposes of the provisions of this section preside at a meeting of a local authority council during which the election of the mayor, deputy mayor, chairperson and vice-chairperson is held, and during such meeting no debate shall be allowed.

(2) A member of a local authority council, having first obtained the willingness by any instrument in writing of a member whom he or she wishes to propose as the mayor or deputy mayor or the chairperson or vice-chairperson to serve if elected, may upon the submission of such instrument so propose such member, but the proposal shall lapse if it is not seconded.

(3) A member who has already proposed or seconded a candidate for election as the mayor or deputy mayor or the chairperson or vice-chairperson may not propose or second any other such candidate and a member may not propose or second his or her own candidature.

(4) If only one candidate is proposed and seconded, he or she shall be declared duly elected by the magistrate presiding at the meeting.

(5) (a) If more than one candidate is proposed and seconded, a vote shall be taken by secret ballot.

(b) At any voting by secret ballot in terms of paragraph (a) -

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- (i) the magistrate presiding at the meeting shall issue to each member present a ballot paper bearing the names of the candidates and, on the reverse side thereof, an official mark;
- (ii) a member shall record his or her vote by placing a cross on the ballot paper opposite the name of the candidate for whom he or she wishes to vote, and shall fold the ballot paper in such a manner that the cross placed on it by him or her is not visible;
- (iii) the magistrate presiding at the meeting shall call the name of each member, whereupon the member concerned shall proceed to the place where the ballot box is situated and there place his or her ballot paper, folded as aforesaid, into the ballot box;
- (iv) as soon as every member who wishes to vote has done so, the magistrate presiding at the meeting shall examine the ballot papers and determine the number of votes cast for each candidate. and shall announce the result of the voting.

(6) The magistrate presiding at the meeting shall declare the candidate in whose favour the greater or greatest number of votes are recorded duly elected: Provided that the number of votes so recorded shall not be less than the majority of all the members of the local authority council.

(7) If due to an equality of votes or to the proviso to subsection (6), no candidate is declared duly elected as contemplated in that subsection, the meeting shall be adjourned on one occasion to a time during that day or the next day determined by the magistrate presiding at such meeting after consultation with the members of the local authority council present at such meeting, whereupon at such an adjourned meeting a further vote shall be taken in accordance with the provisions of subsection (8).

- (8) (a) At an adjourned meeting contemplated in subsection (7) -
  - (i) the magistrate presiding at such meeting shall call for nominations in respect of any vacancy to be filled;

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- (ii) a member of the local authority council shall have the right to propose a member of the local authority council in respect of each such vacancy *mutatis mutandis* in accordance with the provisions of subsections (2) and (3).
- (b) If only one candidate is proposed and seconded, he or she shall be declared duly elected by the magistrate presiding at the meeting.
- (c) If more than one candidate is proposed and seconded, a vote shall be taken *mutatis mutandis* in accordance with the provisions of subsection (5).
- (d) The magistrate presiding at the meeting shall declare the candidate in whose favour the greater or greatest number of votes are recorded duly elected.
- (e) If two or more candidates have received the same number of votes the candidate to be elected shall be determined by lot.

Vacation of office by members of local authority councils, and filling of casual vacancies.

**13. (1)** A member of a local authority council shall vacate his or her office if he or she -

- (a) becomes disqualified to be a member of a local authority council;
- (b) is convicted of -
  - (i) any offence in terms of section 19(3) or 20(2);
  - (ii) any offence of bribery or any offence of which corruption or dishonesty is an element; or
  - (iii) any offence in respect of which he or she is sentenced to imprisonment without the option of a fine, whether or not such imprisonment is suspended;
- (c) in the case of a member who has been nominated, whether by way of a party list or otherwise, as a candidate by a political party, association or organisation in accordance with the laws governing elections for members of local authority

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councils, ceases to be a member of that political party, association or organization;

- (d) is absent, without the leave of the local authority council or, if authorized thereto by the local authority council, the chairperson of the local authority council, on three consecutive sitting days of the local authority council, and his or her absence is not condoned by the local authority council,

and may resign his or her office as member of the local authority council by writing under his or her hand addressed to the chief executive officer.

(2) When a member of a local authority council has vacated his or her office as such a member in terms of this section or has died, the chief executive officer shall forthwith by notice in the *Gazette* give notice that a vacancy in the membership of the local authority council has occurred, the date on which it occurred, the cause thereof and, in the case of a member elected in respect of a ward, the ward in respect of which it has occurred.

- (3) (a) Subject to the provisions of paragraph (b), a casual vacancy in a local authority council shall be filled within three months after it has occurred -

- (i) in the case of a local authority council elected on party lists, by the nomination by the party, association or organization which nominated the member who has vacated his or her office, of any person on the election list compiled by that party, association or organization in respect of the previous election of the local authority council, or, if there is no such person, by nominating any member of that party, association or organization;

- (ii) in the case of a local authority council elected in respect of the wards into which its area is divided or re-divided, by the election on a date to be determined by the President by proclamation in the *Gazette*, of a member in respect of the ward for which the member who has vacated his or her office was elected.

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- (b) A casual vacancy which occurs within three months of the date on which the period of office of the member who has vacated his or her office expires, shall not be filled until the next general election for members of local authority councils.

(4) In paragraph (d) of subsection (1) "sitting days" mean separate days for which a meeting of the local authority council has been convened and on which the local authority council has actually sat.

Meetings of local authority councils.

- 14.** (1) (a) The first meeting of a local authority council after a general election for members of local authority councils or a first election for members of a new local authority council shall be held at such places situated within its area, and time, being a date not later than seven days after such general election or such first election, as may be determined by the Minister, and meetings thereafter shall be held at such places, so situated, and such times, as may from time to time be determined by the chief executive officer, but not less than 10 times in every year reckoned from the first day of January and at intervals of not more than 10 weeks.
- (b) The chairperson of the local authority council or, if, and for so long as, the office of chairperson is vacant, the chief executive officer may at any time or, at a request in writing signed by not less than half of the members of the local authority council, shall within 14 days after receipt of such request, convene a special meeting of the local authority council.
- (c) A notice signed by the chief executive officer and containing the time, date and place of, and the matters to be dealt with at, every meeting of the local authority council shall be delivered to every member of the local authority council so as to reach such member at least 72 hours before such meeting.
- (2) (a) Every meeting of a local authority council shall be open to the public, except on any matter relating to -
- (i) the appointment, promotion, conditions of employment and discipline of any particular officer or employee of a local authority council;

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- (ii) any offer to be made by the local authority council by way of tender or otherwise for the purchase of any property;
- (iii) the institution of any legal proceedings by, or opposition of any legal proceedings instituted against, a local authority council,

unless the local authority council by a majority of at least two-thirds of its members present at the meeting in question determines such meeting to be so open.

- (b) The local authority council may allow the chief executive officer or any other officer or employee of the local authority council or other interested person to attend any proceedings of the local authority council, and to take part in any such proceedings, but the chief executive officer or such other officer or employee or person shall not have the right to vote in respect of any decision of the local authority council.
- (3) The majority of the members of a local authority council shall form a quorum for a meeting of the local authority council.
- (4) (a) The chairperson of a local authority council or, in his or her absence, the vice-chairperson, shall preside at meetings of the local authority council.
  - (b) If both the chairperson and vice-chairperson are absent from a meeting of a local authority council, the members present shall elect a person other than a person who is a member of the management committee from amongst its members to preside at such meeting, and such person shall, while he or she so presides, have all the powers and shall perform all the duties and functions of the chairperson of the local authority council.
- (5) The decision of the majority of the members of a local authority council present at a meeting thereof shall constitute a decision of the local authority council, and, in the event of an equality of votes relating to any matter, the member presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

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- (6) (a) A local authority council may make standing rules in connection with the convening and holding of, and procedure at, meetings of the local authority council or any committee established by the local authority council, including the conditions on which a language other than the official language may be used by a member during discussions at meetings of the local authority council.
- (b) The Minister shall as soon as possible after the commencement of this Act make standing rules contemplated in paragraph (a) which shall apply in respect of every local authority council until such time as a local authority council by any standing rules made under that paragraph provides otherwise.
- (7) (a) Subject to the provisions of any rules made under subsection (6), there shall be freedom of speech and debate in any meeting of a local authority council.
- (b) No member of a local authority council shall be subject to any legal proceedings by reason of his or her speech or vote in any meeting of the local authority council.

**Minutes of meetings.**

**15. (1)** The chief executive officer or, if he or she is absent from a meeting of the local authority council, the chairperson shall cause minutes to be kept in the official language of all proceedings at meetings of the local authority council, and the chief executive officer shall cause such minutes to be entered in one or more books kept by the chief executive officer for that purpose.

(2) The chief executive officer shall within seven days of any meeting of the local authority council or such longer period as the Minister or the regional council in the area of which such local authority council is situated, may allow, submit a copy of the minutes of such meeting to the Minister and such regional council, together with a copy of the agenda of such meeting and any other connected documents or reports as may be required by the Minister or regional council, as the case may be.

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(3) The minutes of the proceedings at any meeting of a local authority council shall be submitted at the next ordinary meeting of the local authority council for confirmation under the signature of the chairperson and the chief executive officer.

(4) Any document purporting to be certified by or on behalf of the chief executive officer as a true copy of or extract from any minutes of a meeting of the local authority council shall on its mere production by any person at any judicial proceedings be evidence of the taking place of anything which according to that document took place at that meeting.

Inspection of, copies of and extracts from, minutes.

**16. (1)** The minutes of a meeting of a local authority council as confirmed in accordance with the provisions of section 15(3), excluding the minutes or part of such minutes relating to any matter referred to in section 14(2)(a) considered during a period during which a meeting of the local authority council was not open to the public, shall during ordinary office hours be available for inspection by any person.

(2) A local authority council shall at the request of any person and on payment of an amount determined by the local authority council, furnish such person with a copy of or extract from the minutes which may be inspected by such person under subsection (1).

Validity of certain decisions taken by local authority councils and acts performed on authority of local authority councils.

**17. (1)** No decision taken by a local authority council or act performed under the authority of a local council shall be invalid by reason only of a vacancy or of the fact that a person who is not entitled to sit as a member of a local authority council sat as such a member at the time when the decision was taken or the act was authorized, if the decision was taken or the act was authorized by the requisite majority of the members who were present at the time and entitled to sit as members.

(2) No irregularity in the election of any person as a member of a local authority council or of a member as chairperson of a local authority council shall affect the validity of an act performed by such person or member under a provision of this Act or on the authority of the local authority council.

(3) For the purpose of this section "local authority council" shall include its management committee.

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Remuneration, allowances and benefits of members of local authority councils.

**18. (1)** The municipal council of a municipality referred to in Part I of Schedule 1 and, subject to such conditions as the Minister may impose, the municipal council of a municipality referred to in Part II of Schedule 1 or a town council or village council, may pay or provide to its members such remuneration, allowances and other benefits as it may from time to time determine.

(2) Any remuneration, allowances or other benefits paid or provided by the municipal council of a municipality referred to in Part II of Schedule 1 or a town council or village council in terms of subsection (1), shall not exceed such remuneration, allowances or other benefits as the Minister may from time to time determine in respect of the municipal council, town council or village council in question.

(3) Any remuneration, allowances or other benefits determined under subsection (1) or (2) may differ in respect of different members of local authority councils according to -

- (a) the different offices held by them in the local authority council;
- (b) the different powers, duties and functions exercised or performed by them from time to time.

(4) A local authority council may indemnify its members in respect of any harm, damage or loss suffered by them in the course of the exercise or performance of their powers, duties and functions.

Contracts with, and work for, local authority councils in which members are interested.

**19. (1)** If -

- (a) a member of a local authority council; or
- (b) any other person -
  - (i) who is related to such member, whether by affinity or consanguinity;
  - (ii) who is a member of the household of such member;
  - (iii) with whom such member is in terms of the traditional laws and customs a partner in a customary union; or

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- (iv) who is a partner, agent or business associate of such member,

is materially interested or intends to become so interested in any contract which the regional council in question has entered into or considers entering into or in any other matter administered by or under the control of such local authority council, such member shall forthwith and in writing -

- (i) table full particulars of the nature and extent of his or her interest or intended interest; or
- (ii) disclose his or her relation to any such person who is so interested or intends to become so interested, to the extent known to him or her,

at a meeting of the local authority council.

(2) No member of a local authority council shall in his or her capacity of such a member be present if and when any vote takes place at any meeting of the local authority council in connection with any contract or matter referred to in subsection (1).

(3) Any member of a local authority council who contravenes or fails to comply with the provisions of subsection (1) or (2), shall be guilty of an offence and be liable on conviction to a fine not exceeding R4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

(4) No contract entered into or other act done by or on the authority of a local authority council or any member thereof, shall be invalid merely by reason of a contravention of or failure to comply with any provision of subsection (1) or (2), but any such contract or act may, on application by the local authority council concerned, be declared invalid by any competent court on account of any such contravention of failure.

Prohibited practices in respect of members of local authority councils.

**20. (1)** A member of a local authority council shall not accept any commission, remuneration or reward from any person other than the local authority council for or in connection with the performance or non-performance of his or her powers, duties and functions as such a member or in connection with any transaction to which the local authority council is a party.

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(2) Any member of a local authority council who contravenes or fails to comply with the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding R8 000 or to imprisonment for a period of two years or to both such fine and such imprisonment.

(3) Any member of a local authority council who has accepted any commission, remuneration or reward in contravention of the provisions of subsection (1) shall pay to the local authority council an amount equal to the amount of such commission, remuneration or reward together with an amount equal to an amount calculated at the percentage of a rate of interest prescribed in terms of section 1(2) of the Prescribed Rate of Interest Act, 1975 (Act 55 of 1975), on such amount, or where it did not consist of money, the value thereof as determined by the local authority council.

**PART III  
MANAGEMENT COMMITTEES OF LOCAL  
AUTHORITY COUNCILS**

Management committees of local authority councils.

**21. (1)** There shall be a management committee in respect of every local authority council consisting of -

- (a) in the case of a municipal council or town council consisting of nine or fewer members or a village council, three; or
- (b) in the case of a municipal council or town council consisting of 10 or more members, five,

persons elected by the local authority council from amongst its members other than the chairperson of the local authority council in the manner provided in section 22.

(2) An election for members of a management committee shall be held -

- (a) in the case of the first such election after a general election of members of local authority councils or a first election for members of a new local authority council, at the first meeting of such local

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authority council held after such general election or such first election, after the election of the mayor and the deputy mayor and chairperson and vice-chairperson of the local authority council and before it proceeds to the dispatch of any other business;

- (b) in the case of where the office of a member of a management committee referred to in paragraph (a) becomes vacant before the expiration of his or her period of office by reason of the death of such member or the vacation by such member of his or her office for any other reason, on a date not later than the first meeting of the local authority council after the office so became vacant;
- (c) in the case of the expiration of the period of office of a member of a management committee elected in an election held in terms of paragraph (a) or (b), on a date within a period of 30 days before the date on which the period of office of the member concerned so elected expires.

(3) Subject to the provisions of section 23, a member of a management committee shall hold office for a period of one year or, in the case of such a member elected in an election held in terms of paragraph (b) of subsection (2), for the unexpired portion of the period of office for which his or her predecessor has been elected, but shall be eligible for re-election.

Manner of elections for members of management committees.

22. (1) A magistrate designated by the Minister of Justice upon request of the Minister, shall for purposes of the provisions of this section preside at a meeting of a local authority council during which the election of members of its management committee is held, and during such meeting no debate shall be allowed.

(2) A member of a local authority council having first obtained the willingness by any instrument in writing of not more than one member in respect of each vacancy to be filled whom he or she wishes to propose as a member or members of the management committee to serve if elected, may upon the submission of such instrument so propose such member or members, but the proposal shall lapse if it is not seconded.

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(3) A member may not propose or second his or her own candidature.

(4) If not more candidates than the number of vacancies to be filled are proposed and seconded, such candidates shall be declared duly elected by the magistrate presiding at the meeting.

(5) (a) If more candidates than the number of vacancies to be filled are proposed and seconded, a vote shall be taken by secret ballot, each member having one vote in respect of each vacancy.

(b) At any voting by secret ballot in terms of paragraph (a) -

(i) the magistrate presiding at the meeting shall issue to each member present a ballot paper bearing the names of the candidates and, on the reverse side thereof, an official mark;

(ii) a member shall record his or her vote by placing a cross on the ballot paper opposite the name or names of the candidate or candidates for whom he or she wishes to vote, and shall fold the ballot paper in such a manner that the cross placed on it by him or her is not visible;

(iii) the magistrate presiding at the meeting shall call the name of each member, whereupon the member concerned shall proceed to the place where the ballot box is situated and there place his or her ballot paper, folded as aforesaid, into the ballot box;

(iv) as soon as every member who wishes to vote has done so, the magistrate presiding at the meeting shall examine the ballot papers and determine the number of votes cast for each candidate, and shall announce the result of the voting.

(6) The magistrate presiding at the meeting shall declare the candidates equal to the number of vacancies to be filled and in whose favour the greater or greatest number of votes are recorded duly elected: Provided that the number of votes so recorded in respect of each such candidate shall not be less than the majority of all the members of the local authority council.

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(7) If due to an equality of votes or to the proviso to subsection (6), the number of candidates declared duly elected as contemplated in that subsection are less than the number of vacancies to be filled, the meeting shall be adjourned on one occasion to a time during that day or the next day determined by the magistrate presiding at such meeting after consultation with the members of the local authority council present at such meeting, whereupon at such an adjourned meeting a further vote shall be taken in accordance with the provisions of subsection (8).

(8) (a) At an adjourned meeting contemplated in subsection (7) -

(i) the magistrate presiding at such meeting shall call for nominations in respect of any vacancy to be filled;

(ii) a member of the local authority council shall have the right to propose a member of the local authority council in respect of each such vacancy *mutatis mutandis* in accordance with the provisions of subsections (2) and (3).

(b) If not more candidates than the number of vacancies to be filled are proposed and seconded such candidates shall be declared duly elected by the magistrate presiding at the meeting.

(c) If more candidates than the number of vacancies to be filled are proposed and seconded, a vote shall be taken *mutatis mutandis* in accordance with the provisions of subsection (5).

(d) The magistrate presiding at the meeting shall declare the candidates equal to the number of vacancies to be filled and in whose favour the greater or greatest number of votes are recorded duly elected.

(e) If two or more candidates have received the same number of votes, the candidate to be elected shall be determined by lot.

Vacation of office by  
members of management  
committees.

**23.** A member of the management committee shall vacate his or her office as such a member -

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- (a) if he or she ceases to be a member of the local authority council;
- (b) if he or she is absent, without the leave of the management committee or, if authorized thereto by the management committee, the chairperson of the management committee, from three consecutive meetings of the management committee and his or her absence is not condoned by the management committee;
- (c) if the local authority council resolves by a majority of all its members that it has no confidence in such member;
- (d) if he or she is elected as the chairperson of the local authority council,

and may resign from his or her office as member of the management committee by writing under his or her hand addressed and delivered to the chief executive officer.

Meetings of management committees.

**24.** (1) Subject to any rules made under subsection (4), meetings of the management committee shall be held at such places and times as may from time to time be determined by the chief executive officer.

(2) The majority of the members of a management committee shall form a quorum for a meeting of the management committee.

(3) The decision of the majority of the members of the management committee present at a meeting thereof shall be a decision of the management committee, and, in the event of an equality of votes relating to any matter, the person presiding at such meeting shall have a casting vote in addition to his or her deliberative vote.

(4) A management committee may make rules in connection with the convening and holding of, and procedure at, meetings of the management committee.

Chairpersons and vice-chairpersons of management committees.

**25.** A management committee shall as often as it may become necessary elect one of its members as the chairperson and another as the vice-chairperson of the management committee.

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Powers, duties and functions of management committees.

**26. (1) A management committee shall be required -**

- (a) to ensure that the decisions of the local authority council are carried out;
- (b) to consider any matter entrusted to the local authority council by virtue of any provisions of this Act or any other law in order to advise the local authority council on such matter;
- (c) to prepare and compile for the approval of the local authority council the estimates and supplementary estimates of revenue and expenditure of the local authority council;
- (d) to control the expenditure of moneys voted by the local authority council in its approved estimates and additional estimates and all other moneys or funds made available to the local authority council;
- (e) to report at meetings of the local authority council on the exercise of the powers and the performance of the duties and functions of the management committee;
- (f) to exercise any power conferred upon the management committee under any provision of this Act or any other law;
- (g) to exercise any power of the local authority council delegated to the management committee by the local authority council under section 31,

and may establish from time to time such committees as it may deem necessary to advise it on the exercise of any of its powers or the performance of any of its duties and functions and may appoint such members of the management committee or such other persons as it may deem fit to be members of such committees.

(2) A management committee may at any time in writing request a local authority council to reconsider any decision referred to in paragraph (a) of subsection (1) with due regard to such facts or other considerations as may be set out in such request.

**PART IV**  
**CHIEF EXECUTIVE OFFICERS AND OTHER OFFICERS**  
**OR EMPLOYEES OF LOCAL AUTHORITY COUNCILS**

Appointment of town clerks of municipal councils and town councils, village secretaries of village councils and other officers and employees of local authority councils.

**27. (1) Subject to the provisions of this section -**

- (a) a municipal council and a town council shall appoint, on the recommendation of its management committee and after consultation with the Minister, a person as the town clerk of such municipal council or town council, as the case may be, and a village council shall so appoint a person as the village secretary of such village council, who shall in each case be the chief executive officer of the local authority council in question and who shall, subject to the control and directions of the local authority council, be responsible for the carrying out of the decisions of the local authority council and for the administration of the affairs of the local authority council;
- (b) the management committee of a local authority council or such officer or employee of the local authority council as may be designated by the management committee for such purpose, may appoint such other officers and employees of the local authority council in such posts as may be provided for on the fixed establishment of the local authority council approved by the local authority council and as the management committee or such officer or employee so designated may deem necessary for purposes of the performance of the work incidental to the exercise of the powers and the performance of the duties and functions of the local authority council;
- (c) a local authority council may -
  - (i) with the approval of the Minister make such personnel rules as may be necessary in connection with the discipline, discharge or suspension of its chief executive officer or other officers or employees appointed under paragraph (b);

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- (ii) (aa) train its chief executive officer or other officers or employees or cause them to be trained, indemnify them in respect of any harm, damage or loss suffered by them in the course of the performance of their duties and functions;
  - (bb) in the case of the municipal council of a municipality referred to in Part I of Schedule 1, after consultation with the Minister, and, in the case of the municipal council of a municipality referred to in Part II of Schedule 1 or a town council or village council, with the approval of the Minister, determine the remuneration of and provide or give pension and other benefits and housing facilities or benefits for or to its chief executive officer or other officers or employees and make personnel rules in connection therewith after such consultation or with such approval, as the case may be;
- (iii) from time to time on such conditions and against such security as it may deem fit -
  - (aa) provide collateral security, including guarantees, to a financial institution in respect of a loan granted to its chief executive officer or other officers or employees by that financial institution, to enable such chief executive officer or officers or employees to acquire, improve or enlarge immovable property for residential purposes;
  - (bb) build, cause to be built, purchase or rent houses, flats or flat buildings for occupation by its chief executive officer or other officers or employees, and sell or let any such house or flat to such chief executive officer or officers or employees, or otherwise dispose of, let or otherwise deal with such houses, flats or flat buildings;
  - (cc) establish, institute or maintain sports or recreational societies, social and health services, hostels, bursary schemes for purposes of study or other similar

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undertakings or schemes which in its opinion may be beneficial to its chief executive officer or other officers or employees.

- (2) (a) No person shall be appointed under subsection (1) as a chief executive officer, unless he or she is a Namibian citizen.
- (b) The Minister may from time to time determine that, in respect of any such post on the fixed establishment of a local authority council as may be specified by him or her, no person shall be appointed in such post unless it has been advertised in such manner and for such period as may be so determined by the Minister.
- (3) (a) Subject to the provisions of section 29 -
- (i) (aa) a person who is appointed as a chief executive officer or an officer or employee of a local authority council who is promoted to the office of chief executive officer, shall occupy that office for a period as from the date of his or her appointment or promotion until two years after the next general election of members of local authority councils, or an election in terms of section 92(2)(b), as the case may be, has taken place;
- (bb) a town clerk who is deemed to have been appointed as town clerk of a municipal council in terms of subsection (6)(a), shall occupy that office for a period of two years.
- (ii) a period of office referred to in subparagraph (i) may, subject to the provisions of paragraph (b), be extended at the expiry thereof for a further period or successive periods as contemplated in that subparagraph.
- (b) (i) The local authority council shall in writing inform the chief executive officer concerned at least two calendar months before the expiry of the period contemplated in subparagraph (a)(i) or any previously extended period contemplated in subparagraph (a)(ii) of its intention to retain him or her in service for an extended term, or not.

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- (ii) If the local authority council so informs the chief executive officer of its intention to retain him or her in service for an extended term, he or she shall in writing inform the local authority council within one month from the date of that communication of his or her acceptance or not of that extended employment.
- (4) When the chief executive officer is absent or is unable to exercise his or her powers or to perform his or her duties or functions, or the office of chief executive officer is vacant, the powers, duties and functions of the chief executive officer shall be exercised or performed by an officer or employee of the local authority council designated by the management committee for that purpose.
- (5) The powers conferred and the duties and functions imposed upon a chief executive officer by or under the provisions of this Act or any other law may be exercised or performed by the chief executive officer personally or, except in so far as the chief executive officer otherwise determines, by any officer or employee referred to in subsection (1)(b) engaged in carrying out such provisions under the direction and control of the chief executive officer.
- (6) (a) Subject to the provisions of subsection (3)(a)(i)(bb), any person holding on the date immediately before the date fixed in terms of Article 137(5) of the Namibian Constitution office as town clerk or other officer or employee of a municipality referred to in section 3(5) by virtue of an appointment made in terms of the Municipal Ordinance, 1963 (Ordinance 13 of 1963), shall be deemed to have been appointed, in terms of subsection (1)(a) or (b), as town clerk or other officer or employee, as the case may be, of the municipal council in question on conditions of employment which are not less favourable than any conditions of employment which applied to such person immediately before the date so fixed.
- (b) A person referred to in paragraph (a) holding the office of town clerk whose period of office is not extended as contemplated in subsection (3)(a)(ii) shall be -

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- (i) entitled to be appointed in terms of paragraph (b) of subsection (1) as an officer or employee of such municipal council in a post on the fixed establishment of such municipal council or in a post additional to such fixed establishment;
- (ii) appointed on conditions of employment which are not less favourable than the conditions of employment which applied to such person on the date of the expiration of his or her appointment by virtue of the provisions of paragraph (a) of this subsection.

**Departments.**

**28. (1)** A local authority council may for the effective carrying out of its powers, duties and functions establish in its administration two or more departments and charge each department with such duties and functions as may be determined by the local authority council.

(2) A local authority council shall for each department established by it under subsection (1) designate an officer or employee appointed under section 27 as the head of such department.

(3) A head of a department designated under subsection (2) shall be responsible for the administration of the department in respect of which he or she has so been designated and shall perform his or her duties and functions subject to the control and directions of the chief executive officer.

(4) Any department which existed on the date immediately before the date fixed in terms of Article 137(5) of the Namibian Constitution in respect of a municipality referred to in section 3(5) by virtue of an establishment in terms of the Municipal Ordinance, 1963 (Ordinance 13 of 1963), shall be deemed to have been established in terms of subsection (1).

**Discharge of chief executive officers and other officers and employees of local authority councils.**

**29. (1)** The power to discharge the chief executive officer or other officers or employees of a local authority council shall vest -

- (a) in the case of the chief executive officer or a head of a department referred to in section 28, in the local authority council;

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- (b) in the case of any other officer or employee, in the management committee.
- (2) (a) A management committee may delegate the power conferred upon it by subsection (1)(b) to the chief executive officer.
- (b) The references in subsections (5) and (6) to the management committee shall, if the power contemplated in paragraph (a) has been delegated in terms of that paragraph to the chief executive officer, be construed as references to the chief executive officer.
- (3) The chief executive officer or any other officer or employee referred to in subsection (1) may be discharged from the service of the local authority council -
- (a) on account of continued ill-health;
  - (b) owing to the abolition of his or her post or any reduction in or reorganization or readjustment of departments;
  - (c) on account of unfitness for his or her duties or incapacity to carry out such duties efficiently;
  - (d) on account of misconduct as provided in the rules referred to in section 27(1)(c).
- (4) (a) An officer or employee who absents himself or herself, without permission of the chief executive officer from his or her duties for any period exceeding 30 days, shall be deemed to have been discharged from the service of the local authority council on account of misconduct with effect from the date immediately after his or her last day of attendance at his or her place of duty.
- (b) A local authority council may reinstate an officer or employee deemed to have been discharged in terms of paragraph (a), in the service of the local authority council in his or her former or any other post or position on such conditions as may be determined by the local authority council whereupon the period of his or her absence from duty shall be deemed to have been absence on vacation leave without pay or leave on such other conditions as may be determined by the local authority council.

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- (5) (a) If the management committee has reason to believe that any officer or employee in the service of the local authority council is unfit for his or her duties or incapable of carrying such duties out efficiently, the management committee shall designate an officer or officers in the service of the local authority council to inquire into such reasons.
- (b) An officer or employee referred to in paragraph (a) shall be notified in writing of an inquiry so referred to, whereupon, such officer or employee shall have the right -
- (i) to a written statement setting out the grounds on which he or she is alleged to be unfit for his or her duties or incapable of carrying out such duties efficiently;
  - (ii) to be present at such inquiry, to be assisted or represented by any other person, to give evidence and, either personally or through a representative -
    - (aa) to be heard;
    - (bb) to call witnesses;
    - (cc) to cross-examine any person called as a witness in support of his or her alleged unfitness or incapability;
    - (dd) to have access to documents produced in evidence.
- (c) (i) At the conclusion of such inquiry, the officer or employee concerned shall be notified of the finding of the officer or officers conducting the inquiry.
- (ii) If it has been found that the officer or employee concerned is unfit for his or her duties or that he or she is incapable of carrying out such duties efficiently, he or she shall have the right to appeal, within seven days as from the date on which he or she is notified, to the management committee against such finding.

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(d) (i) If the officer or officers conducting the inquiry has found that the officer or employee concerned is unfit for his or her duties or incapable of carrying out such duties efficiently, and such finding has not been set aside upon an appeal in terms of paragraph (c)(ii), the management committee may, having regard to the documents relating to the finding and, after affording the officer or employee concerned an opportunity to make representations in relation to any intended action to be taken against him or her -

(aa) determine that no further action be taken in the matter;

(bb) transfer him or her to any other post;

(cc) reduce his or her remuneration or grade or both his or her remuneration and grade to an extent determined by it; or

(dd) discharge him or her from the service of the local authority council from a date to be fixed by it.

(ii) Subject to the provisions of subparagraph (iii), the officer or employee concerned shall have the right to appeal, within seven days from the date on which he or she is notified of the action contemplated in subparagraph (i)(bb), (cc) or (dd), to the local authority council.

(iii) The right of appeal referred to in subparagraph (ii) shall -

(aa) if the officer or employee concerned has appealed in terms of paragraph (c)(ii), lie against the finding or the action contemplated in that subparagraph;

(bb) if he or she has not appealed in terms of that paragraph, lie only against such action.

