



REPORT TO COUNCIL

DATE: **25 NOVEMBER 2021**

1. **ITEM NUMBER: C 23/11/21**

2. **SUBJECT**

ELECTION OF CHIEF WHIP

UKONYULWA KOMBHEXESHI OYINTLOKO

VERKIESING VAN HOOFSWEEP

LSU N0163

3. **DELEGATED AUTHORITY**

In terms of delegation

This report is for

Committee name :

The Executive Mayor together with the Mayoral Committee (MAYCO)

Council

4. **DISCUSSION**

To elect the Chief Whip for the Council of the City of Cape Town.

Recent amendments to the Local Government Municipal Structures Act by way of the Local Government Municipal Structures Amendment Act dated June 2021, brought about changes to the process of determining a Chief Whip for Council.

Section 41(A) of the Amendment Act reads as follows:

“41(A) 1: Each municipal council may elect a whip for the council who is also a municipal office bearer as set out in Schedule 3.

41(A) 2: At its first sitting after its election, or when necessary to fill a vacancy, a municipal council may elect its whip from among the councilors.”

The filling of the position of Chief Whip of Council must therefore take place by election in terms of the process set out in Schedule 3 of the Municipal Structures Act.

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In terms of section 41(A) of the Local Government Municipal Structures Amendment Act 2021, each municipal council may elect a whip for the council, who is also a municipal office bearer as set out in Schedule 3.

4.5. Staff Implications Yes No

4.6. Risk Implications Yes No

4.7. POPIA Compliance Yes It is confirmed that this report has been checked and considered for POPIA compliance.

5. RECOMMENDATIONS

It is **RECOMMENDED** that the Chief Whip of the Council of the City of Cape Town be elected in terms of the process set out in Schedule 3 of the Municipal Structures Act, and be designated as a full-time councillor.

KUNDULULWE ukuba makonyulwe yaye makamiselwe kwisikhundla uMbhexeshi oyiNtloko weBhunga lesiXeko saseKapa njengoceca asigxina.

Dit word **AANBEVEEL** dat die hoofswep van die Raad van die Stad Kaapstad verkies word en as a voltydse raadslid verklaar word.

ANNEXURES

Annexure A: Section 41(A) of the Local Government: Municipal Structures Amendment Act, 2021

Annexure B: Schedule 3 of the Municipal Structures Act 117 of 1998

FOR FURTHER DETAILS, CONTACT:

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ACTING ED: CORPORATE SERVICES

NAME	Gareth Morgan	Comment:
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DATE	11 November 2021	

REPORT COMPLIANT WITH THE PROVISIONS OF COUNCIL'S DELEGATIONS, POLICIES, BY-LAWS AND ALL LEGISLATION RELATING TO THE MATTER UNDER CONSIDERATION.

NON-COMPLIANT

LEGAL COMPLIANCE

NAME Sarah Sanders Digitally signed
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Comment:

Certified as legally compliant based on the contents of the report.

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CITY MANAGER

NAME LUNGELO MBANDAZAYO
TEL _____
DATE _____

Comment:

Annexure A**Amendment of section 30 of Act 117 of 1998**

16. Section 30 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) A majority of the number of councillors determined in terms of section 20 must be present at a meeting of the council when a vote is taken on any matter.”; and 5

(b) by the substitution for subsection (4) of the following subsection:

“(4) If on any question, other than a matter mentioned in section 160(2) of the Constitution, there is an equality of votes, the councillor presiding must exercise a casting vote in addition to that councillor’s vote as a councillor.” 10

Amendment of section 36 of Act 117 of 1998

17. Section 36 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) A councillor may not hold office as whip, speaker, mayor or executive mayor at the same time, but in a municipality of a type mentioned in section 9(e) or (f) or 10(c) the speaker must be called the mayor.”. 15

Amendment of section 37 of Act 117 of 1998, as amended by section 14 of Act 51 of 2002

18. Section 37 of the principal Act is hereby amended— 20

(a) by the substitution for paragraphs (e) and (f) of the following paragraphs, respectively:

“(e) must ensure compliance in the council and council committees with the Code of Conduct [set out in Schedule 1 to the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)]; [and] 25

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

(b) by the addition of the following paragraphs:

“(g) must ensure that the legislative authority of the municipality functions effectively; 30

(h) is responsible for the effective oversight over the executive authority of the municipality;

(i) must ensure the effectiveness of the committees of the municipal council established in terms of section 79; 35

(j) is responsible for the ethics and accountability of the municipal council; and

(k) must ensure the effectiveness and functionality of ward committees and the public participation processes.”. 30

Insertion of sections 41A, 41B, 41C, 41D, 41E and 41F in Act 117 of 1998 40

19. The following sections are hereby inserted in the principal Act after section 41:

“Part 3**Whips of municipal councils****Election of whip**

41A. (1) Each municipal council may elect a whip for the council who is also a municipal office bearer as set out in Schedule 3. 45

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

(3) The speaker of the municipality presides over the election of the whip. 50

Wysiging van artikel 30 van Wet 117 van 1998

16. Artikel 30 van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

“(1) ’n Meerderheid van die getal raadslede ingevolge artikel 20 bepaal, moet by ’n vergadering van die raad teenwoordig wees wanneer oor enige aangeleentheid gestem word.”; en 5

(b) deur subartikel (4) deur die volgende subartikel te vervang:

“(4) Indien oor enige vraag, behalwe ’n aangeleentheid in artikel 160(2) van die Grondwet vermeld, daar ’n staking van stemme is, moet die raadslid wat voorsit ’n beslissende stem, benewens daardie lid se stem as ’n raadslid, uitbring.”. 10

Wysiging van artikel 36 van Wet 117 van 1998

17. Artikel 36 van die Hoofwet word hierby gewysig deur subartikel (5) deur die volgende subartikel te vervang

“(5) ’n Raadslid mag nie terselfdertyd die amp van speaker en burgemeester of uitvoerende burgemeester beklee nie, maar in ’n munisipaliteit van ’n soort genoem in artikel 9(e) of (f) of 10(c) word die speaker die burgemeester genoem.”. 15

Wysiging van artikel 37 van Wet 117 van 1998, soos gewysig deur artikel 14 van Wet 51 van 2002 20

18. Artikel 37 van die Hoofwet word hierby gewysig—

(a) deur paragrawe (e) en (f) onderskeidelik deur die volgende paragrawe te vervang:

“(e) moet nakoming in die raad en raadskomitees van die Gedragskode [in Bylae 1 by die Wet op Plaaslike Regering: Munisipale Stelsels, 2000 (Wet 32 van 2000) uiteengesit,] verseker; [en] 25

(f) moet toesien dat raadsvergaderings ooreenkomstig die reëls en orders van die raad verloop[.];”;

(b) deur die volgende paragrawe by te voeg:

“(g) moet verseker dat die wetgewende gesag van die munisipaliteit doeltreffend funksioneer; 30

(h) is verantwoordelik vir doeltreffende toesig oor die uitvoerende gesag van die munisipaliteit;

(i) moet die doeltreffendheid van die komitees van die munisipale raad ingevolge artikel 79 ingestel, verseker; 35

(j) is verantwoordelik vir die etiek en verantwoordbaarheid van die munisipale raad; en

(k) moet die doeltreffendheid en funksionaliteit van die wykskomitees en die openbare deelnameprosesse verseker.”. 40

Invoeging van artikels 41A, 41B, 41C, 41D, 41E en 41F in Wet 117 van 1998 40

19. Die volgende artikels word hierby na artikel 41 in die Hoofwet ingevoeg:

“Deel 3**Swepe van munisipale rade****Verkiesing van sweep**

41A. (1) Elke munisipale raad kan ’n sweep vir die raad verkies wat ook ’n munisipale ampsbektër is soos in Bylae 3 uiteengesit. 45

(2) Tydens die eerste sitting na die verkiesing daarvan, of wanneer dit nodig is om ’n vakature te vul, kan ’n munisipale raad ’n sweep uit die geledere van die raadslede verkies.

(3) Die speaker van die munisipaliteit sit voor oor die verkiesing van die sweep. 50

LOCAL GOVERNMENT STRUCTURES ACT 117 OF 1998

Schedule 3

ELECTION OF MUNICIPAL OFFICE-BEARERS
[Schedule 3 amended by s. 34 of Act 51 of 2002.]

1 Application

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

2 Nominations

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

3 Formal requirements

- (1) A nomination must be made on the form determined by the municipal manager.
- (2) The form on which a nomination is made must be signed by two members of the municipal council.
- (3) A person who is nominated must indicate acceptance of the nomination by signing either the nomination form or any other form of written confirmation.

4 Announcement of names of candidates

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

5 Single candidate

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

6 Election procedure

If more than one candidate is nominated:

- (a) a vote must be taken at the meeting by secret ballot;
- (b) each councillor present at the meeting may cast one vote; and
- (c) the person presiding must declare elected the candidate who receives a majority of the votes.

7 Elimination procedure

- (1) If no candidate receives a majority of the votes, the candidate who receives the lowest number of votes must be eliminated and a further vote taken on the remaining candidates in accordance with item 6. This procedure must be repeated until a candidate receives a majority of the votes.
- (2) When applying subitem (1), if two or more candidates each have the lowest number of votes, a separate vote must be taken on those candidates, and repeated as often as may be necessary to determine which candidate is to be eliminated.

8 Further meetings

- (1) If only two candidates are nominated, or if only two candidates remain after an elimination procedure has been applied, and those two candidates receive the same number of votes, a further meeting must be held within seven days at a time determined by the person presiding.
- (2) If a further meeting is held in terms of subitem (1), the procedure prescribed in this Schedule must be applied at that meeting as if it were the first meeting for the election in question.
- (3) If at the further meeting held in terms of subitem (1) only two candidates are nominated, or if only two candidates remain after an elimination procedure has been applied, and those two candidates receive the same number of votes, the person presiding at such meeting must determine by lot who of the two candidates will hold the office for which the election has taken place.

[Subitem (3) added by s. 34 of Act 51 of 2002.]
