

WESTERN CAPE GOVERNMENT

DEPARTMENT OF LOCAL GOVERNMENT

**GUIDELINE FOR MUNICIPAL COUNCILLORS ACTING IN THEIR CAPACITY
AS COMMISSIONERS OF OATHS**

**NOTE: THIS GUIDELINE IS BASED ON AND SUBJECT TO POWERS CONFERRED BY THE
MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT TO COMMISSIONERS
OF OATHS IN TERMS OF THE FOLLOWING:**

- 1. JUSTICE OF PEACE AND COMMISSIONERS OF OATHS ACT, 1963 9ACT NO 16
OF 1963;**
- 2. DESIGNATION OF COMMISSIONERS OF OATHS GOVERNMENT NOTICE 903 IN
GG 19033, DATED 10 JULY 1998; AND**
- 3. REGULATIONS GOVERNING THE ADMINISTERING OF AN OATH OR
AFFIRMATION GN R1258 IN GG 3619 OF 21 JULY 1972**

1. DEFINITIONS

"councillor" means a member of a municipal council as defined in the Local Government: Municipal Systems Act, 2000, (Act No 32 of 2000);

"Ex officio commissioner of oath" means an *ex officio* commissioner of oath designated by the Minister of Justice and Constitutional Development in terms of Section 6 of the Act and as referred to in Item 5(a)(ii) (aa) of the Notice;

"local community" or **"community"** means local community or community as defined in the Local Government: Municipal Systems Act, 200, (Act No. 32 of 2000);

"municipal council" or **"council"** means a municipal council referred to in section 157(1) of the Constitution of the Republic of South Africa, 1996;

"municipality" means a municipality established in terms of Section 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

"Notice" means the Designation of Commissioners of Oaths Government Notice 903 in GG 19033, dated 10 July 1998;

"Regulations" means Regulations Governing the Administering of an Oath or Affirmation GN R1258 in GG 3619 of 21 July 1972; and

"the Act" means the Justice of Peace and Commissioners of Oaths Act, 1963 , (Act No. 16 of 1963).

2. PURPOSE

- 2.1 The purpose of this Guideline is to outline the operational exercise of powers of councillors within the Western Cape: Local Government when acting as commissioners of oaths and the legal implications of the exercise of such powers in accordance with the Act and the regulation issued thereunder.

3. OBJECTIVES

- 3.1 To ensure that councillors are aware of their powers as commissioners of oaths and general rules applicable to them.
- 3.2 To educate councillors about the legal implications as commissioners of oaths including penalties for non-compliance with the relevant legislation.
- 3.3 To outline the roles of councillors as commissioners of oaths in assisting members of the local communities by administering an oath and affirmation or taking a solemn or attested declaration from any person.

4. DESIGNATION OF COUNCILLORS AS COMMISSIONERS OF OATHS

- 4.1 In terms of Section 6 of the Act, the Minister of Justice and Constitutional Development (the Minister) may, by notice in the Gazette, designate the holder of any office as a commissioner of oaths for any area specified in such notice, and may in like manner withdraw or amend any such notice.

- 4.2 Section 6 specifically provides for designation of *ex officio* commissioners of oaths which means “*by virtue of the characteristics inherent in the holding of a particular office without the need of specific authorisation or appointment*” a holder of any office is designated as a commissioner of oaths.
- 4.3 Hence, the Minister has designated commissioners of oaths as published in the Notice as amended. Item 5(a)(ii)(aa) of the Notice designates any council member of a municipality established by or under any law, as an *ex officio* commissioner of oaths.

5. POWERS OF COUNCILLORS AS COMMISSIONERS OF OATHS

- 5.1 According to section 7 of the Act, any commissioner of oath may, within the area for which he is a commissioner of oaths, administer an oath or affirmation to or take a solemn or attested declaration from any person: Provided that he shall not administer an oath or affirmation or take a solemn or attested declaration in respect of any matter in relation to which –
- 5.1.1 he is in terms of any regulation made under section 10 prohibited from administering an oath or affirmation or taking a solemn or attested declaration; or
- 5.1.2 he has reason to believe that the person in question is unwilling to make an oath or affirmation or such a declaration.¹

¹ Section 7 of the Justice of Peace Commissioners of Oaths Act.

- 5.2 The Regulations governing the administering of an oath or affirmation outline the process of the administration of oaths and affirmations.²
- 5.3 The role of a councillor as a commissioner of oaths is to-
- 5.3.1 assist community members in a municipality by administering an oath or affirmation or taking a solemn or attested declaration from any person; and
 - 5.3.2 certify copies of documents as true copies of original documents.

6. RESTRICTIONS OF POWERS OF COUNCILLORS AS COMMISSIONERS OF OATHS

- 6.1 A councillor cannot administer an oath or affirmation to or take a solemn or attested declaration from any person-
- (a) in relation to which he is in terms of any regulation made in terms of section 10 of the Act, prohibited from administering an oath or affirmation or taking a solemn or attested declaration; or
 - (b) if he has reason to believe that the person in question is unwilling to make an oath or affirmation or such a declaration.

² Regulations governing the administering of an oath or affirmation GN R1258 in GG 3619 of 21 July 1972.

- 6.2 A councillor may not force or compel any person to make an oath or to affirm anything or to make any declaration where the person objects to taking the prescribed oath or informs the councillor that he does not consider the oath to be binding on his conscience.
- 6.3 A councillor shall not charge any fee for administering any oath or affirmation or attesting any declaration.³
- 6.4 A councillor shall not administer an oath or affirmation relating to any matter in which he or she has an interest.⁴

7. ADMINISTRATION OF OATH OR AFFIRMATION BY A COUNCILLOR

- 7.1 An oath is administered by causing the deponent to utter the following words: *'I swear that the contents of this declaration are true, so help me God'*.⁵
- 7.2 An affirmation is administered by causing the deponent to utter the following words: *'I truly affirm that the contents of this declaration are true'*.⁶
- 7.3 Before an oath or affirmation is administered by a councillor to any person, such councillor must ask whether such person:
- (a) knows and understands the contents of the declaration;

³ Regulation 6 of the Regulations governing the administering of an oath or affirmation.

⁴ Regulation 7(1) of the Regulations governing the administering of an oath or affirmation.

⁵ Regulation 1(1) of the Regulations governing the administering of an oath or affirmation.

⁶ Regulation 1(2) of the Regulations governing the administering of an oath or affirmation.

- (b) has any objection to taking the prescribed oath; and
 - (c) considers the prescribed oath to be binding on his or her conscience.
- 7.4 If a person acknowledges that he or she knows and understands the contents for the declaration but objects to taking the oath or informs the councillor that he does not consider the oath to be binding on his conscience the councillor shall administer the prescribed affirmation instead (see 6.2 above)⁷.
- 7.5 A councillor must ensure that a person to whom a declaration is administered, signs the declaration in his or her presence.⁸
- 7.6 A councillor must –
- (a) sign the declaration and print his full name and business address below his signature; and
 - (b) state his designation and the area for which he holds his appointment or the office held by him if he holds his *appointment ex officio*.⁹
- 7.7 The councillors must only utilise the commissioner of oath stamps provided to them by the Municipality for this purpose.

⁷ Regulation 2(3) of the Regulations governing the administering of an oath or affirmation
⁸ Regulation 3(1) of the Regulations governing the administering of an oath or affirmation.
⁹ Regulation 4(2) of the Regulations governing the administering of an oath or affirmation.

8. CERTIFYING DOCUMENTS

- 8.1 Before certifying a document, a councillor must ensure that the documents are the same by comparing the copy with the original document.
- 8.2 Once a councillor is satisfied that a copy is the true copy of the original document and no unauthorized amendments have been made, a councillor must write down or affix a stamp that he or she certifies that the document is a true copy of the original document.
- 8.3 A councillor must then append a signature and also print out his or her name, designation, contact particulars and date.
- 8.4 The councillors must only utilise the commissioner of oath stamps provided to them by the Municipality for this purpose.
- 8.5 Subject to what has been provided for in the Electronic Communication and Transaction Act, 2002 (Act No 25 of 2002) (the ECT Act), no document may be certified a true copy of another document which is not an original document.

9. CERTIFYING A PRINT OUT AS A TRUE COPY OF AN ELECTRONIC DOCUMENT

- 9.1 The ECT Act recognizes that an electronic document can, subject to section 14 of the ECT Act, also be confirmed as an original.¹⁰
- 9.2 Whereas, in order to certify that a printed copy is a true original, a councillor needs to see the original document, insofar as an electronic document is concerned, the ECT Act requires that a councillor must satisfy him or herself as to the authenticity of the original electronic document.
- 9.3 A councillor must therefore-
- 9.3.1 check and be sure that the original electronic document is complete and unaltered;
 - 9.3.2 satisfy him or herself that the printed copy that has been presented to him or her is an exact copy of the electronic original; and

¹⁰ Section 14 of the Electronic Communication and Transaction Act, 2002 (Act No. 25 OF 2002) provides:
“(1) Where a law requires information to be presented or retained in its original form, that requirement is met by a data message if-

- (a) the integrity of the information from the time when it was first generated in its final form as a data message or otherwise has passed assessment in terms of subsection (2); and
 - (b) that information is capable of being displayed or produced to the person to whom it is to be presented.
- (2) For the purposes of subsection 1(a), the integrity must be assessed-
- (a) by considering whether the information has remained complete and unaltered except for the addition of any endorsement and any change which arises in the normal course of communication, storage and display;
 - (b) in the light of the purpose for which the information was generated; and
 - (c) having regard to all other relevant circumstances.

Section 1 of the Electronic Communication and Transaction Act defines “data” and a “data message” as follows:

“**data message**” means data generated, sent, received or stored by electronic means and includes—

- (a) voice, where the voice is used in an automated transaction; and
- (b) a stored record;”

“**data**” means electronic representations of information in any form”

9.3.3 consider the purpose for which the information was generated and all other relevant circumstances.

10. LEGAL IMPLICATIONS

10.1 Below are possible scenarios and consequences where there are contraventions of the Act and the regulations (the list is not exhaustive):

10.1.1 If an oath or affirmation is not taken correctly as prescribed, and the matter goes to court, the affidavit may be declared invalid and may lead to the acquittal of the accused;

10.1.2 If a councillor forces a person to take oath, and the matter goes to court, the court may acquit the accused;

10.1.3 Failing to sign the declaration as prescribed, and the matter goes to court, the declaration may be declared invalid by the court;

10.1.4 It is required that a commissioner of oaths must be impartial, unbiased and entirely independent of the office where an affidavit was drawn up, failing which, and if the matter goes to court, the court may order that the affidavit be re-attested before a competent commissioner of oaths;

10.1.5 If a document is certified incorrectly as a true copy of the original, while it is not, a councillor who certified the document, may find him or herself in court as a co-accused for assisting someone to commit fraud or as a witness to give evidence on the falsified document.

11. ISSUING OF STAMPS TO COUNCILLORS

- 11.1 A municipality may decide whether to issue stamp/s to councillors individually or stamp/s may be issued per office.
- 11.2 If stamp/s have been issued per office, they must be used at that particular office.
- 11.3 If stamp/s have been issued individually to a councillor, that councillor may only use the stamp/s within the jurisdiction of a municipality.

12. VACATION OF OFFICE

When a councillor ceases to be a councillor in terms of section 27(a),(b),(c) or (d) of the Local Government: Municipal Structures Act, 1998 (Act No 117 of 1998, and he or she has been provided (a) stamp/s by the municipality, that councillor must return the stamp/s to the municipality within 5 days of him or her ceasing to be a councillor.

13. CONCLUSION

This Guideline serves as a tool for municipal councillors to assist them when exercising their roles as commissioners of oaths. Municipalities have an option to adopt this Guideline with or without amendments, however the provisions of the relevant legislation must always be complied with.