

RECOMMENDED BY MAYCOM: 00.00.0000

APPROVED BY COUNCIL: 28.02.2020

ITEM NO. 20/02/MM7

KOUGA MUNICIPALITY

(EC 108)

POLICY ON THE STANDING RULES AND PROCEDURES WITH REGARD TO DISCIPLINARY MATTERS AGAINST KOUGA MUNICIPAL COUNCILLORS

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1. PURPOSE

The purpose of this policy is to establish uniform rules and procedures for investigations and actions in terms of the Standing Rules and Order for the meetings of Council and its Committees By-Law, as approved by Council under Council resolution 18/09/CORP1 (hereinafter referred to as the By-Law) and the Code of Conduct for Councillors, as contained in Schedule 1 of the Local Government: Municipal Systems Act 32 of 2000 (hereinafter referred to as the Code), both as amended or replaced from time to time.

2. COMPLAINT/SUSPICION

2.1 The Speaker must, as soon as possible, after a complaint has been submitted to her/him or when she/he suspects that a councillor has prima facie committed a breach of the By-Law or Code, investigate the complaint or suspicion or institute an investigation into the matter.

2.2 When the Speaker decides to institute an investigation, she/he may request the Municipal Manager to appoint a person or institution to conduct the investigation (hereinafter referred to as the Investigator) or may elect to investigate the matter him-/herself.

3. INVESTIGATION

3.1 The Speaker must give the councillor written notice of the complaint and request that her/his comments may be submitted to the Speaker or Investigator, whichever may be applicable, within 7 calendar days after the date of the notice or such longer period as may be approved by the Speaker.

3.2 If the Speaker, after receipt of the comment from the councillor or Investigator, changes her/his opinion and finds that there are no grounds to continue with a disciplinary hearing, the matter is regarded as finalised.

3.3 If the councillor elects not to comment, or after receipt of the comments of the councillor or Investigator, the Speaker is of the opinion that there are indeed grounds to continue with a disciplinary hearing, she/he must refer the matter to the Rules and Ethics Committee (hereinafter referred to as the Committee) as soon as possible but in any case within 30 calendar days, and inform the Municipal Manager.

4. THE INITIATOR

4.1 The Municipal Manager must appoint the Initiator as soon as possible, but in any case, within 30 calendar days after receipt of the decision of the Speaker, in terms of paragraph 3.3 above. The Initiator may be the same person as the investigator appointed in terms of paragraph 2 above.

4.2 After the appointment of the Initiator, the Chairperson of the Committee must determine the date of the hearing as soon as possible in consultation with the Initiator.

4.3 After the date of the hearing has been determined, the Initiator must compile a charge sheet regarding the alleged contravention which must as soon as possible be served on the councillor.

4.4 In addition to the charge, the charge sheet must contain the following information: -

4.4.1 the time, date and place where the hearing will be held;

4.4.2 the addresses and e-mail detail to which correspondence may be sent;

4.4.3 the right of the councillor to be represented at own cost and to present evidence her-/himself or through witnesses;

4.4.4 the fact that the hearing will take place in her/his absence if the councillor is absent without an acceptable reason;

4.4.5 the fact that the councillor will be entitled to an interpreter if it is requested two working days before the hearing; and

4.4.6 the right of appeal in terms of clause 14(3) of the Code if the councillor is found guilty and against the sanction imposed by the Council.

4.5 The hearing may not take place before expiry of 14 calendar days since the charge sheet was served on the councillor unless the councillor is represented, and it was agreed with the representative of the councillor.

5. DISCIPLINARY COMMITTEE

The Committee must continue with the hearing as soon as reasonably possible but no later than 2 (two) months from date of the appointment of an Initiator as referred to in clause 4 above.

The hearing shall commence within a reasonable time from date of service of the Notice of the hearing, but not earlier than 7 (seven) days and not later than 14 (fourteen) days from date of service of such notice.

6. HEARING

6.1 The hearing must start on the date, time and place as stated in the Notice of the hearing.

6.2 The hearing will be closed to the public.

6.3 The Municipal Manager must ensure that: -

6.3.1 the place where the hearing is to take place is suitable for the purpose;

6.3.2 interpretation services are available if required;

6.3.3 sufficient security measures are in place; and

6.3.4 the necessary administrative support is available, including a sound recorder and operator thereof.

6.6 The Committee determines its own procedure subject to compliance with the rules of natural justice.

7. CO-OPTING/APPOINTMENT

7.1 The Committee may request the Municipal Manager to appoint a person to advise the Committee on legal and other matters regarding the hearing. If the Committee wants to co-opt the person, it has to have been approved by Council.

8. ROLE OF THE CHAIRPERSON OF THE DISCIPLINARY COMMITTEE

8.1 The Chairperson has the following competencies, powers and functions: -

8.1.1 to consider and decide on any requests for postponement before the start of the hearing;

8.1.2 explain the procedure that will be followed at the start of the hearing; and

8.1.3 to decide on any procedural matter during the hearing, which decision will be final unless it is set aside by a competent court.

9. THE PLEA

9.1 If the councillor pleads guilty, the Committee may, after hearing the parties on this aspect, decide whether or not to accept the plea and whether or not further evidence is required.

9.2 If the councillor pleads not guilty, the presentation of evidence must be proceeded with.

9.3 If the councillor refuses to plead or is absent, a plea of not guilty will be noted.

10. BURDEN OF PROOF

10.1 The Initiator bears the burden of proof of the charges on a balance of probabilities, unless facts are agreed between the parties.

11.FINDING

11.1 After the evidence is heard, the Committee consider whether the councillor is guilty or not guilty of the charge/s against her/him.

11.2 If the councillor concerned is found not guilty, the Committee must submit a report to this effect to the Council at its first possible meeting.

11.3 If the Councillor concerned is found guilty: -

11.3.1 the Committee will, if needed, hear evidence and/or arguments by both parties on an appropriate sanction; and

11.3.2 the Committee determines an appropriate sanction for recommendation to Council, taking into account clause 14(2) of the Code and/or fines which have been determined by Council in terms of clause 4 of the Code.

12. RECOMMENDATION TO COUNCIL

12.1 The finding of the Committee and the recommendation on a sanction must be submitted to the Council at its first possible meeting.

12.2 The Council decides on the sanction after consideration of the recommendation of the Committee.

12.3 If the sanction amounts to the councillor being suspended or removed from office, the approval of the Provincial Minister responsible for Local Government must be obtained.

12.4 If the sanction amounts to a fine, either in terms of section 14(2) of the Code, Section 4 of the Code or in terms of the By-Law, then the Committee shall consider the sanction as follows:

Occurrence of offence:	Fine to the maximum of:
1 st offence	10% of monthly salary
2 nd offence	15 % of monthly salary
3 rd offence	20% of monthly salary
4 th offence and beyond	50% of monthly salary

12.5 The Committee can, in its discretion, recommend to Council that the maximum fine be imposed, taking into consideration the seriousness or severity of the offence and or transgression.

13. FINES BY SPEAKER IN COUNCIL MEETINGS

13.1 The Speaker may fine any Councillor in attendance at a Council or Special Council, who, in his/her discretion, is found to be in breach of the Standing Rules and Orders for the meetings of Council and all its Committees. A fine issued by the Speaker in terms of this clause 13, shall be subject to a maximum fine of R350 (Three hundred and fifty Rand).

14. SPEAKER

14.1 If the Speaker is implicated and/or cannot act, these rules should be interpreted as if every reference herein to the Speaker refers to the Mayor.

15. SHORT TITLE AND COMMENCEMENT

This Policy is called the Policy of Standing Rules and Order and takes effect on date of approval hereof



C Du Plessis
Municipal Manager

16/05/20 20
Date of signature