

## CHAPTER 29:15

### URBAN COUNCILS ACT

*Acts 24/1995, 21/1997, 3/2000 (s. 39), 2/ 2001 (s. 4), 13/2002 (s. 142), 6/2005 (s.33), 1/2008, 3/2016 (Part CXVI), 8/2016, 5/2017 (s. 106)*

#### ARRANGEMENT OF SECTIONS

##### PART I

###### PRELIMINARY

###### *Section*

1. Short title.
2. Interpretation.
3. Application of Act.

##### PART II

###### ESTABLISHMENT OF MUNICIPALITIES, TOWN COUNCILS, LOCAL GOVERNMENT AREAS AND LOCAL BOARDS AND MATTERS INCIDENTAL THERETO

4. Provisions relating to establishment, alteration or abolition of municipalities, towns, councils and council areas.
- 4A. Membership of municipal and town councils.
5. Extended systems of local government.
6. Provisions relating to establishment, alteration or abolition of local government areas and local boards.
7. Provisions relating to vesting of administration of local government area in council or person.
8. Provisions relating to divesting of administration of local government area.
9. Promotion of local government.
10. Effect of incorporation of existing local authority in a council area.
11. Advertising of intention to exercise powers under section 4 or 6.
12. Date of coming into being of council and first election.
13. Succession from former local authority to newly-established local authority.
14. Town and city status.

##### PART III

###### PROVISIONS RELATING TO THE INCORPORATION OF RURAL DISTRICT OR TOWN COUNCILS

15. Interpretation in Part III.
16. Application of Part III.
17. [Repealed].
18. [Repealed].
19. Employment of staff of councils which are incorporated.
20. Special vacancies on town council or rural district council which is to be incorporated need not be filled.
21. Rates on supplementary valuations may be collected in respect of period prior to incorporation.

##### PART IV

###### VOTERS AND VOTERS' ROLLS

- 22 to 37 [Repealed].

##### PART V

###### ELECTION OF COUNCILLORS AND APPOINTMENT OF CARETAKERS

38. Governance of council areas.
39. Composition of council and terms of office of councillors.
40. [Repealed].
41. Disqualifications of councillors.
42. [Repealed].
43. [Repealed].
44. [Repealed].
45. [Repealed].
46. [Repealed].

47. Assumption of office by councillor.
48. Assumption of office of mayor.
49. [Repealed].
50. [Repealed].
51. [Repealed].
52. [Repealed].
53. [Repealed].
54. [Repealed].
55. [Repealed].
56. [Repealed].
57. [Repealed].
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72. [Repealed].
73. [Repealed].
74. [Repealed].
75. [Repealed].
76. [Repealed].
77. [Repealed].
78. Special vacancies in office of councillors.
79. [Repealed].
80. Minister may appoint caretakers to act as council.
81. [Repealed].
82. [Repealed].
83. [Repealed].

## PART VI

### PROCEEDINGS AND COMMITTEES OF COUNCIL

84. Meetings and special meetings of council.
85. Quorum at meetings of council.
86. Validity of decisions and acts of council or committee.
87. Meetings open to the public.
88. Minutes of proceedings.
89. Rescission or alteration of resolutions of council and committees.
90. Rescission or alteration of resolutions of other committees.
91. Minister's right of access to records of council.
92. [Repealed].
93. [Repealed].
94. [Repealed].
95. [Repealed].
96. Standing committees of council.
97. Audit committee.
98. Functions of audit committee.
99. [Repealed].
100. Special committees.
101. Meetings and procedure of committees.
102. Standing orders.

## PART VII

### MAYOR, DEPUTY MAYOR, CHAIRMAN, DEPUTY CHAIRPERSON, ALDERMEN AND COUNCILLORS

103. Election of mayor, deputy mayor, chairperson and deputy chairperson.
104. Functions of mayor, deputy mayor, chairperson and deputy chairperson.
105. Allowances for mayor, deputy mayor, chairperson and deputy chairperson.
106. Appointment of aldermen.
107. Disability for voting on account of interest in contract, etc.
108. Mayor and councillors may not provide professional services for or against council.
109. Appearance of mayor and councillors before boards and authorities.
110. Councillors to furnish address to chamber secretary.
111. Exemption of mayor, councillors and other persons from personal liability.
112. Personal allowances for councillors.
113. Power of municipal council to pay pensions to councillors or ex-councillors in special circumstances.
114. Suspension and removal of councillors from office.
- 114A. Independent tribunals: appointment and procedure

## PART VIII

### LOCAL GOVERNMENT BOARD

115. Interpretation in Part VIII.
116. Local Government Board.
117. Terms and conditions of office of members of Local Government Board.
118. Allowances of members of Local Government Board.
119. Vacation of office by members of Local Government Board.
120. Removal of members of Local Government Board from office.
121. Filling of vacancies on Local Government Board.
122. Meetings of Local Government Board.
123. Functions of Local Government Board.
124. Directions on matters of policy.
125. Staff of Local Government Board.
126. Validity of acts and decisions of Local Government Board.
127. Funds of Local Government Board.
128. Local Government Board may direct institution of disciplinary proceedings in respect of employees of councils.
129. By-laws by Local Government Board.
130. Adoption of model by-laws by councils.

## PART IX

### EMPLOYEES OF THE COUNCIL

131. Interpretation of term in Part IX.
132. Appointment of town clerk and secretary.
133. Appointment of chamber secretary.
134. Appointment of other senior officials.
135. Approval by Local Government Board.
136. Functions of town clerk.
137. Functions of chamber secretary.
138. Approval of conditions of service of employees of councils.
139. Conditions of service of town clerk.
140. Conditions of service of other senior officials.
141. Appointment and conditions of service of other employees.
142. Uniformed employees.
143. Disqualifications for appointment of employees.
144. Additional penalties for corrupt practices by employees of council.
145. Delegation of powers to employees.
146. Pension and other benefits on termination of service.
147. Medical aid and funeral expenses.
148. Guarantee of housing loan.

## PART X

### IMMOVABLE PROPERTY

149. Interpretation in Part X.
150. Acquisition of land or interest in land.
151. Expropriation of land.
152. Alienation of council land and reservation of land for State purposes.
153. Exclusion of certain leases from section 152.
154. Conditions of title to land transferred by municipal council.
155. Encroachments.
156. Vesting of land, roads and sanitary lanes.

## PART XI

### CONSTRUCTION OF SIDEWALKS

157. Interpretation in Part XI.
158. Execution of sidewalk works.
159. Charging of expenses of sidewalk works by council.
160. Specifications and apportionment of sidewalk works.
161. Notice of proposed sidewalk works.
162. Objections to proposed sidewalk works.
163. Final apportionment of expenses of sidewalk works.
164. Objection to final apportionment of expenses of sidewalk works.
165. Recovery of costs of sidewalk works.
166. Hypothecation of land for costs of sidewalk works.
167. Owners of non-rateable property not liable.

## PART XII

### SEWERAGE AND DRAINAGE

168. Powers of council in regard to sewerage and drainage.
169. Notice of work on public sewers or public drains.
170. Notice of construction of sewage works outside council area.
171. Objection to proposed sewage works.
172. Owners entitled to connect to public sewer.
173. Council may require connection to public sewer, provision of septic or conserving tank and treatment of trade effluent.
174. Construction, connection and extension of private sewers.
175. Combined private sewers.
176. Responsibility for septic or conserving tank, private sewer or combined private sewer.
177. Council may render services.
178. Council may finance water-borne sanitation and sanitary fittings.
179. Recovery of costs by instalments.
180. Protection of public sewers and public drains.
181. Control of public streams.
182. Saving of rights under contract or servitude.

## PART XIII

### WATER

183. Powers of council in relation to water supply.
184. Council may require connection to water supply system.
185. Removal of obstructions in public stream.
186. Protection of water mains.
187. Emergency water rationing or restriction schemes.
188. Savings of rights under contract or servitude.

## PART XIV

### PARKING, OMNIBUSES AND OTHER TRANSPORT SERVICES

189. Parking places and parking meters.
190. Parking garages.
191. Parking account.

192. Provision of omnibus services and stations.
193. Commuter transport services.
194. Prohibition of omnibus services.
195. Prohibition of certain public service vehicles.
196. Omnibus routes, terminal points and stops.
197. Transport service.

## PART XV

### OTHER POWERS OF COUNCIL

198. General powers.
199. Enforcement of conditions of title.
200. Fire brigade.
201. Powers and duties of fire brigade.
202. Fire brigade operating in area of any local authority.
203. Indemnification in respect of fire brigade.
204. Railway sidings.
205. Estate development.
206. Minister's powers to act on behalf of council regarding estate development.
207. Repayment of loans made in respect of estate development.
208. Security for loans made in respect of estate development.
209. Contracts.
210. Municipal procurement board.
211. Tenders.
212. Numbering of houses and naming of roads.
213. Projections over or under roads or property of council.
214. Closure or deviation of entrances to roads.
215. Prohibition or regulation of use of ramps or similar devices.
216. Electricity undertaking.
217. Street lighting.
218. Owners of land may be charged for services made available.
219. Charges by resolution.
220. Council's right of entry to and use of land.
221. Income-generating projects.
222. Establishment of co-operatives.

## PART XVI

### POWERS TO CO-OPERATE WITH THE STATE, LOCAL AUTHORITIES AND OTHER PERSONS

223. Co-operation through agreement with State, local authorities and persons.
224. Joint committees by agreement and joint boards.
225. Joint committees by Minister's authority and joint boards.
226. Provisions as to members and proceedings of joint committees and joint boards.

## PART XVII

### BY-LAWS AND REGULATIONS

227. Matters for which council may make by-laws.
228. Making of by-laws.
229. Approval of by-laws by the Minister.
230. Model by-laws.
231. Withdrawal or amendment of model by-laws.
232. Model building by-laws.
233. Minister's power to make or adopt by-laws on behalf of councils.
234. Power of the Minister to make general regulations.
235. Minister may make regulations for local government areas.

## PART XVIII

### VALUATION AND ASSESSMENT OF PROPERTY FOR RATING

236. Interpretation in Part XVIII.
237. Appointment of valuation officers and assistants.
238. Valuation officer to disclose his interest in property.

239. Valuation officer's powers of entry.
240. Valuation officer may obtain information.
241. Establishment and constitution of valuation board.
242. Terms of office of members of valuation board.
243. Meetings, decisions and procedure of valuation board.
244. Personal interest of member of valuation board.
245. Clerk of valuation board.
246. Date and place of sittings of valuation board.
247. Valuation of property for rating purposes.
248. Supplementary valuations.
249. Amendment of general valuation rolls.
250. Basis of valuation of non-residential property.
251. Valuation of land only: non-residential property.
252. Assessment of residential property.
253. Particulars to be inserted in the valuation roll.
254. Objections to valuation roll.
255. Notice of sitting of valuation board.
256. Appearance before valuation board.
257. Powers and procedure of valuation board.
258. Record of proceedings of valuation board.
259. Order as to costs.
260. Decisions of valuation board to be final.
261. Application to Supreme Court on point of law.
262. Procedure upon completion of proceedings in relation to objections to valuations.
263. Advertisement of valuation roll.
264. Correction of valuation roll.
265. Amendment of rating zones.
266. Pending application not to interfere with decision of valuation board and pending objection not to interfere with supplementary valuation.
267. Valuation roll may not be challenged or set aside.

## PART XIX

### RATING OF PROPERTY

268. Interpretation for purposes of Part XIX.
269. Rateable property.
270. Property exempt from rates.
271. Determination of exemption from rates.
272. General rate.
273. Special rate.
274. Notice of rate and interest.
275. Abatement of rates and payment by instalments.
276. Payment or refund of rate on supplementary valuation roll.
277. Payment or refund of rate on alteration or correction of valuation roll.
278. Rate to be assessed on valuation in valuation roll.
279. Liability to pay rate.
280. When two or more owners liable to pay rate proportionately.
281. Legal proceedings for recovery of rates.
282. Certificate required for transfer of property.
283. Writing-off of rates.

## PART XX

### FINANCIAL PROVISIONS, AUDIT, LOANS AND ACCOUNTS

284. Interpretation in Part XX.
285. Financial year.
286. Books and accounts.
287. Books and records to be *prima facie* evidence.
288. Estimates.
289. Banking account.
290. Borrowing powers.

291. Short-term borrowing.
292. Salaries of permanent employees to be met from revenue.
293. Security for loans.
294. Illegal borrowing.
295. Repayment of loan.
296. Sinking fund.
297. Consolidated loans fund.
298. Capital development fund.
299. Revenue reserves.
300. Estates account.
301. Housing account.
302. Investment of moneys.
303. Writing-off of bad debts.
304. Appointment of auditors.
305. Council's duties and production of accounts to auditor.
306. Auditor's duties and auditor's report.
307. Council's duty *re* accounts and auditor's report.

## PART XXI

### GENERAL

308. Copy of Act, regulations and by-laws to be available for inspection.
309. Minister to be furnished with reports, etc.
310. Furnishing of particulars of owners, lessees and occupiers.
311. Inquiries by the Minister and appointment of investigators.
312. Hearing of objections and appointment of board.
313. Minister may give directions on matters of policy.
314. Minister may reverse, suspend, rescind resolutions, decisions, etc. of councils.
315. Minister's power to direct certain actions and elimination of deficit.
316. Correction of errors or omissions.
317. Authentication or execution of orders, etc.
318. Ballot or meeting of voters.
319. Obstructing council.
320. [Repealed].
321. Savings and transitional provisions.

## SCHEDULES

First Schedule: Matters to be considered for City Status.

Second Schedule: Powers of Council.

Third Schedule: Matters in respect of which Council may make by-laws.

Fourth Schedule: Rules of independent tribunals.

**AN ACT to provide for the establishment of municipalities and towns and the administration of municipalities and towns by local boards, municipal and town councils; to provide for the conferring of town and city status on growth points, municipalities and towns; to provide for the declaration of local government areas and the administration of local government areas by local boards; to confer functions and powers and impose duties upon municipal and town councils and local boards; to provide for the establishment of the Local Government Board and to provide for the functions thereof; and to provide for matters connected with or incidental to the foregoing.**

[Date of commencement: 22nd December, 1995.]

## PART I

### PRELIMINARY

#### 1 Short title

This Act may be cited as the Urban Councils Act [*Chapter 29:15*].

#### 2 Interpretation

(1) In this Act—

“appointed councillor” means a councillor appointed in terms of section 4A(1)(b);

[Definition inserted by section 5 of Act 2 of 2008.]

“by-election” ...

[Definition repealed by section 16 of Act 21 of 1997.]

“by-law” means any by-law made by a council in terms of this Act or which is continued in force by virtue of section *three hundred and twenty-three*;

“chairperson” means the chairperson of a town council who has been elected in terms of section 103;

[Definition substituted by section 5 of Act 1 of 2008.]

“chamber secretary” means the chamber secretary of a municipal council who has been appointed in terms of section *one hundred and thirty-three*;

“combined private sewer” means a sewer, exclusive of soil pipes, waste pipes and vent pipes, for the purpose of conveying to a public sewer or a conserving tank or other receptacle the sewage from two or more private sewers and includes all other things necessary in connection therewith;

“Commission” means the Zimbabwe Electoral Commission appointed in terms of section 61 of the Constitution;

[Definition inserted by section 5 of Act 1 of 2008.]

“committee” means a committee of a council;

“conserving tank” means any covered tank without overflow which—

(a) is used for the reception and temporary retention of sewage; and

(b) requires emptying at intervals;

“consolidated revenue account” means the account into which all net surpluses and deficits from all accounts of the council, with the exception of all funds as defined in subsection (6) of section *two hundred and eighty-six*, the housing account referred to in section *three hundred and one*, the traditional beer account, the services levy account, the parking account and the capital account of the estates account, are transferred;

“construction”, in relation to a building, includes the alteration, subdivision, conversion or reconstruction of, or the addition to, a building;

“council” means a municipal council or town council;

“council area”, in relation to—

(a) a municipality, means the municipal area;

(b) a town, means the town area;

“councillor” means a member of a council;

[Definition substituted by section 5 of Act 1 of 2008.]

“district administrator”, in relation to a council or proposed council, means—

(a) the district administrator within whose district the council area or proposed council area lies; or

(b) any person appointed by the district administrator referred to in paragraph (a) to exercise his or her functions in terms of this Act in relation to the council or proposed council;

[Definition inserted by section 5 of Act 1 of 2008.]

“elected councillor” means a councillor other than an appointed councillor, and includes a person elected or appointed as a mayor or deputy mayor in terms of section 103;

[Definition inserted by section 5 of Act 1 of 2008.]

“election” ...

[Definition repealed by section 16 of Act 21 of 1997.]

“executive committee” ...

[Definition repealed by section 4 of Act 1 of 2008.]

“finance committee” means a finance committee appointed in terms of subsection (2) of section *ninety-six*;

“general election” ...

[Definition repealed by section 16 of Act 21 of 1997.]

“growth point” means an area declared to be a growth point area in terms of the Income Tax Act [*Chapter 23:06*];

“local authority” means a municipal council, town council, rural district council or local board;

“local authority area” means—

(a) a council area; or

(b) the area for which a rural district council has been established; or

(c) the local government area for which a local board has been established;

“local board” means a local board which has been established or is deemed to have been established in terms of this Act;

“local government area” means any area which has been declared or is deemed to have been declared in terms of this Act to be a local government area;

“Local Government Board” means the Local Government Board established by section *one hundred and sixteen*;

“mayor” means the mayor of a municipality who has been elected by the councillors of that municipality in terms of section 103;

[Definition substituted by section 5 of Act 1 of 2008.]

“Minister” means the Minister of Local Government, Rural and Urban Development or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“municipal area” means the area of a municipality as fixed in terms of this Act or the repealed Act;

“municipal council” means a municipal council which has been established or is deemed to have been established in terms of this Act;

“municipality” means a municipality which has been established or is deemed to have been established in terms of this Act;

“nomination day” ...

[Definition repealed by section 16 of Act 21 of 1997.]

“owner”, in relation to land means—

- (a) the person in whose name the land is registered in a Deeds Registry; or
- (b) a person who is a party to an agreement which, on the fulfilment by him of the conditions fixed in that agreement, entitles him to obtain transfer of the land; or
- (c) a statutory authority or body to which the ownership of the land has been transferred by any Act;

and, save in Part IV, includes—

- (i) the trustee of an insolvent estate or the liquidator of a company being wound up which is so registered as the owner of the land; or
- (ii) the representative recognized by law of a person so registered as the owner of the land who has died or is a minor or of unsound mind or otherwise under disability;

so long as that trustee, liquidator or legal representative is acting within the authority conferred upon him by law;

“polling day” ...

[Definition repealed by section 16 of Act 21 of 1997.]

“private drain” means a conduit for the conveyance of storm-water or any surface, subsoil or spring water from one premises to a public drain;

“private sewer” means a sewer, exclusive of waste pipes, soil pipes and vent pipes, for the purpose of conveying to a combined private sewer, a public sewer or a conserving tank or other receptacle the sewage from one premises and includes all other things necessary in connection therewith;

“provincial administrator” means the provincial administrator appointed in terms of the Provincial Councils and Administration Act [*Chapter 29:11*] for the Bulawayo or Harare metropolitan province;

[Definition inserted by section 5 of Act 1 of 2008.]

“public drain” means a conduit vested in or under the control of or used by a municipality or town for the conveyance or storm-water or any surface, subsoil or spring water and includes all other things necessary in connection therewith;

“public sewer” means a sewer vested in or under the control of or used by a municipality or town into which is discharged or intended to be discharged the sewage from private sewers or combined private sewers and includes pipes, manholes, chambers, ventilating shafts, ejectors, sluices and all other things necessary in connection therewith;

“public stream” bears the meaning assigned thereto in section 2 of the Water Act [*Chapter 20:22*];

“rateable property”, subject to subsection (4), means property on which a rate may be levied in terms of Part XIX;

“rate”, subject to subsection (4), means a rate levied in terms of this Act;

“ratepayer”, subject to subsection (4), means an owner of rateable property who is liable in terms of this Act for the payment of any rate by virtue of such ownership;

“Registrar-General” means the Registrar-General of Voters referred to in section 18 of the Electoral Act [*Chapter 2:13*] (No. 25 of 2004) or, in respect of any particular function vested in the Registrar-General, any person to whom he or she may have delegated that function in terms of subsection (3) of that section;

[Definition substituted by section 5 of Act 1 of 2008.]

“repealed Act” means the Urban Councils Act [*Chapter 214 of 1974*];

“returning officer”, in relation to—

- (a) the first election of a council, means the person appointed by the Minister to be the returning officer for that purpose;
- (b) an election not referred to in paragraph (a) or a ballot held in terms of section *three hundred and eighteen*, means the town clerk;

“road” means any road, street, highway, thoroughfare, sanitary or other lane, cycle track, footpath, sidewalk, alley, subway, passage, square, bridge or other place of a similar nature or any portion thereof, and includes all appurtenances thereto;

“sanitary fitting” means any water closet, urinal, bidet, slopsink, bath, wash basin, sink, shower or other fitting of a like nature from which soil-water or waste water is disposed of into a soil pipe or waste pipe, as the case may be;

“sewage” includes trade effluent;

“sewage works” includes reservoirs, tanks, strainers, filter beds, ponds, engines, pumps, machinery, buildings, lands and all other works and things, except public sewers, which are necessary for the treatment and disposal of sewage;

“special vacancy” means a special vacancy in terms of section *seventy-eight*;

“standing order” means a standing order made in terms of section *one hundred and two* or the corresponding provision of the repealed Act;

“storm-water” means all flow of water directly due to rainfall before such water joins a public stream;

“town” means a town which has been established or is deemed to have been established in terms of this Act;

“town area” means the area of a town as fixed in terms of this Act or the repealed Act;

“town council” means a town council which has been established or is deemed to have been established in terms of this Act;

“town planning scheme” means a master plan, local plan or scheme as defined in section 2 of the Regional, Town and Country Planning Act [*Chapter 29:12*], and “approved”, in relation to a town planning scheme, means such a master plan or local plan which is operative in terms of the Regional, Town and Country Planning Act [*Chapter 29:12*], or an approved scheme as defined in section 2 of that Act;

“trade effluent” means any liquid, with or without particles of matter suspended therein, which is produced either wholly or in part or results from or has been or was intended to be used in any trade or business or commercial, manufacturing or industrial process;

“voter” ...

[Definition repealed by section 16 of Act 21 of 1997.]

“voters’ roll” ...

[Definition repealed by section 16 of Act 21 of 1997.]

“voters’ roll board” ...

[Definition repealed by section 16 of Act 21 of 1997.]

“ward” means a division of a council area which has been fixed in terms of section *four* or the corresponding provision of the repealed Act;

“water main” includes any conduit, pipeline, valve, valve chamber, meter, meter chamber or house, brake pressure tank, scour pipe or scour chamber which—

(a) is vested in, under the control of and used by a municipality or town; and

(b) is used for the conveyance and control of water supplied by the municipality or town;

and includes all other things necessary in connection therewith.

(2) Any reference in this Act to—

(a) “deputy mayor” means—

(i) in the case of a municipality or municipal council, the deputy mayor thereof;

(ii) in the case of a town or town council, the deputy chairman thereof who has been elected in terms of section *one hundred and three*;

(b) “town clerk” means—

(i) in the case of a municipality or municipal council, the town clerk appointed in terms of subsection (1) of section *one hundred and thirty-two*;

(ii) in the case of a town or town council or a local board, the secretary of that council or local board, as the case may be, appointed in terms of subsection (3) of section *one hundred and thirty-two*;

(c) “the total membership of a council” means the number of members which in terms of this Act composes the council, other than appointed councillors.

[Paragraph substituted by section 5 of Act 1 of 2008.]

(3) Where anything is required by this Act to be lodged, posted, open for inspection or otherwise done at the office of a council, such thing shall be lodged, posted, open for inspection or otherwise done at the offices of the town clerk or at such other office as may be notified by the town clerk by notice in a newspaper.

(4) Where any area has been included within a council area and the council has been authorized or required in terms of paragraph (g) of subsection (4) of section *four* the corresponding provision of the repealed Act to impose a levy in terms of the Rural District Councils Act [*Chapter 29:13*], in lieu of rates in respect of any property within that area, any reference in this Act to—

- (a) “rateable property” shall be construed as including a reference to property in respect of which such levy may be imposed;
- (b) “a rate” or “rate income” shall be construed as including a reference to such levy or the income therefrom, as the case may be;
- (c) “a ratepayer” shall be construed as including a reference to a person who is liable for the payment of such levy.

(5) Where in this Act any notice is required to be given or published—

- (a) in a newspaper, such notice shall be given or published in a newspaper circulating in the council area or other area concerned;
- (b) in more than one issue of a newspaper, such notice shall be given or published in weekly consecutive issues of a newspaper circulating in the council area or other area concerned.

(6) Where in this Act any resolution is required to be passed or thing is required to be done or agreed by not less than two-thirds or one-third, as the case may be, of the total membership of a council or committee or of the members present at a meeting of a council or committee and the total membership of the council or committee or the number of members present at the meeting is not an integral multiple of three, such resolution or thing shall be deemed to have been duly passed, done or agreed, as the case may be, if it is passed, done or agreed by the affirmative votes of not less than two-thirds or one-third, as the case may be, of the number next above that of such total membership or of the members present, as the case may be, which is an integral multiple of three, and any other reference in this Act to a thing being done or agreed by, or at the request of, not less than one-third of the total membership of the council or committee or of the members present at a meeting of the council or a committee shall be construed accordingly.

### 3 Application of Act

This Act shall apply to—

- (a) every city or city council which was established before the date of commencement of this Act or which is established in terms of this Act;
- (b) every municipality, municipal council, town or town council which is established or is deemed to have been established in terms of this Act;
- (c) every local government area which is declared or is deemed to have been declared in terms of this Act and every local board which has been established or is deemed to have been established in terms of this Act.

## PART II

ESTABLISHMENT OF MUNICIPALITIES, TOWN COUNCILS, LOCAL GOVERNMENT AREAS AND LOCAL BOARDS AND MATTERS INCIDENTAL THERETO

### 4 Provisions relating to establishment, alteration or abolition of municipalities, towns, councils and council areas

(1) Whenever the President considers it desirable he may, subject to this Act, by proclamation in the *Gazette*, after any local authority concerned has been consulted, establish a municipality or town and—

- (a) shall establish a municipal council or a town council, as the case may be, therefor; and
- (b) shall fix the area of the municipality or town; and
- (c) shall assign a name to the municipality or town; and
- (d) may, after consultation with the Commission, divide the council area into any number of wards.

[Paragraph substituted by section 6 of Act 1 of 2008.]

(2) At any time after the establishment of a council the President may, subject to this Act, by proclamation in the *Gazette* and after consultation with the council and (in relation to the division or redivision of the council area into wards) the Commission—

- (a) alter the name of the municipality or town;
- (b) divide or redivide the council area into any number of wards, create one or more additional wards, alter or abolish one or more wards or abolish the division of the council area into wards;
- (c) alter the boundaries of the council area by adding thereto and additionally, or alternatively, subtracting therefrom any area, determine any question arising therefrom and redefine the council area:

[Paragraph amended by section 17 of Act 21 of 1997]

- (d) abolish the municipality, town or council.

[Subsection amended by section 17 of Act 21 of 1997 and by section 6 of Act 1 of 2008.]

(3) Where a municipality or town is abolished or the whole or any part of the area of a local authority is included in a council area or a separate council is established for that area, the President shall—

- (a) make such transfer, disposal or apportionment of property, assets, rights and liabilities; and
- (b) give such directions as to any matters or things, including the payment of money and the protection of the rights of employees;

as may be necessary or desirable to give effect to any proposals relating thereto which were set out in a notice published in terms of section *eleven* and may, in any other case, make any transfer, disposal or apportionment or give any direction that he considers to be necessary or desirable to ensure the proper dissolution of the municipality or town or to do justice between the council and the local authority, as the case may be.

(4) Where an area, hereinafter called the first-mentioned area, whether such area consists of the whole or part of a local authority area or otherwise, is being included within a council area or a separate council is being established for that area, the President may, by statutory instrument, exercise all or any of the following powers—

- (a) direct that all or any of the by-laws, regulations, rules or orders existing in respect of the first-mentioned area shall remain in force within the whole or any part of such area as if they were by-laws made by the council under this Act;
- (b) empower the Minister to authorize the council to suspend the operation of all or any of its by-laws within the whole or any part of the first-mentioned area;
- (c) authorize the council to make such special by-laws as it considers advisable for the whole or any part of the first-mentioned area or any part of the first-mentioned area;
- (d) declare that any existing valuation roll in respect of the whole or any part of the first-mentioned area which has been prepared in accordance with this Act or any other law shall be deemed a portion of the valuation roll of the council concerned as though it had been prepared in accordance with this Act;
- (e) declare that any existing voters' roll in respect of the whole or any part of the first-mentioned area which has been prepared in accordance with the Electoral Act [*Chapter 2:13*] (No. 25 of 2004) or any other law shall be deemed to be the voters' roll of the council as though it had been prepared in accordance with the Electoral Act [*Chapter 2:01*];

[Paragraph amended by section 40 of Act 21 of 1997 and section 6 of Act 1 of 2008.]

- (e1) direct that an election shall take place, either in the first-mentioned area or in the whole council area, in such manner and within such period as the President may direct;

[Paragraph inserted by section 17 of Act 21 of 1997.]

- (f) authorize the council to waive the collection of any rates or to levy different rates or different reductions in rates in respect of different classes of property and properties of different values within the first-mentioned area as he may consider equitable and, for such purpose, he may fix the method by which each such different rate or reduction in rates shall be assessed from time to time;
- (g) authorize the council in lieu of the collection of rates to levy within the first-mentioned area a levy in terms of such of the provisions of the Rural District Councils Act [*Chapter 29:13*], as he may direct to apply, whether or not such area prior to such inclusion was in the area of a rural district council, and for such purposes he may exercise all or any of the following powers—
  - (i) fix the amount of the unit of levy;
  - (ii) modify any or all of the provisions of the said Act in its application to such area;
  - (iii) declare that an additional unit or units of levy may be levied as aforesaid on improved land;
  - (iv) declare that such provisions of this Act as he may specify shall apply, *mutatis mutandis*, in relation to such levy as if it were a rate;
- (h) declare the first-mentioned area to be a temporary ward or wards for the purpose of elections in terms of this Act, fix the number of councillors to be elected for such temporary ward or wards and define the period for which they are to hold office and authorize the holding of elections of such councillors;
- (i) as to any matter or thing of any description whatsoever, whether or not it is of a similar nature to any matter or thing referred to in paragraphs (a) to (h), give such directions, including the application, non-application, suspension or modification wholly, partly, or subject to any variation or restriction of any provisions of this Act, other than this section, sections *twenty-two*, *twenty-four*, *twenty-five*, *forty* and *forty-one* (with the exception of paragraph (a) of subsection (1)), or any other law, as he may consider equitable and necessary for the proper administration of the first-mentioned area or for the proper merging of the first-mentioned area into the council area.

(5) The President may, by statutory instrument, at the request of a council at any time after the establishment of the council, exercise, *mutatis mutandis*, all or any of the powers referred to in subsection (4) as if any reference therein to the first-mentioned area included a reference to the whole or any part of the council area.

(6) Where the President has—

- (a) in terms of subsection (3) transferred or apportioned any property or assets to a municipality or town, the ownership of such property or assets shall vest in that council with effect from such date as may be specified by the President and, in the case of immovable property, a Registrar of Deeds shall, at the request of that council, cause, free of charge, the name of that municipality or town to be substituted as the owner of the property concerned in the appropriate register in the Deeds Registry and on the deeds relating to that property;
- (b) given any direction in terms of subsection (3), the person to whom that direction has been given shall forthwith comply with that direction.

(7) The necessary costs, charges and expenses which are incurred by a municipality or town under or as a result of or in connection with any declaration or direction issued by the President in terms of this section shall be paid and satisfied out of the funds of the municipality or town, as the case may be.

(8) Any municipality or town established in terms of subsection (1) shall be a body corporate with perpetual succession and shall be capable of suing and being sued and generally of doing, suffering and performing such acts and things as, by this Act and any other law affecting such municipality or town, it may do, suffer and perform.

#### **4A Membership of municipal and town councils**

(1) Subject to this Act, every municipal and town council shall consist of—

- (a) one elected councillor for each ward of the council area; and
- (b) such number of appointed councillors representing special interests, not exceeding one-quarter of the number of elected councillors, as the Minister may fix in respect of the council by statutory instrument, and who shall hold office during the pleasure of the Minister.

(2) Appointed councillors shall participate in the business of the municipal or town council to which they are appointed and perform the same functions and be entitled to the same benefits in every respect as if they were elected councillors, except that they shall not have a vote at meetings of the municipal or town council concerned.

[Section inserted by section 7 of Act 1 of 2008.]

### **5 Extended systems of local government**

(1) Whenever he considers it desirable for the establishment of—

- (a) a system of local government between several local authorities; or
- (b) a system of local government involving the exercise of the functions of a council in relation to one or more areas outside the council area; or
- (c) a system of local government involving features of both systems referred to paragraphs (a) and (b);

the President may, without derogation from the powers conferred upon him by any other provision of this Act and after any local authority concerned has been consulted, by proclamation in the *Gazette*—

- (i) authorize or require a council to exercise any of the functions conferred or imposed upon it in terms of this Act in relation to—
  - A. the area of another local authority to the exclusion of the exercise of those functions by the local authority concerned; or
  - B. any area outside the area of a local authority;
- (ii) make provision for the representation upon the council of the members of another local authority where the council has been authorized or required to exercise functions in relation to the area of the local authority concerned;
- (iii) exercise, *mutatis mutandis*, all or any of the powers referred to in section *four* in relation to any of the local authorities forming part of any system of local government for which provision has been made in terms of this section;
- (iv) give such directions as he may consider just and necessary or expedient to give effect to the establishment and operation of any system of local government for which provision has been made in terms of this section.

(2) The President may, at any time after the establishment of any system of local government referred to in subsection (1) and after any local authority concerned has been consulted, by proclamation in the *Gazette*, exercise, *mutatis mutandis*, all or any of the powers referred to in subsection (1).

### **6 Provisions relating to establishment, alteration or abolition of local government areas and local boards**

(1) Whenever the President considers it desirable he may, subject to this Act, by proclamation in the *Gazette*, after any local authority concerned has been consulted, declare any area which is not within a local authority area to be a local government area and shall assign a name to that area.

(2) Where a local government area has been or is being declared, the President may, subject to this Act, by proclamation in the *Gazette*, after any local authority concerned has been consulted—

- (a) establish a local board for that area and shall assign a name to that board;
- (b) alter the name of the local government area or name of the local board;
- (c) alter the boundaries of the local government area by adding thereto and additionally, or alternatively, subtracting therefrom any area, determine any question arising from the addition or subtraction of such area and redefine the local government area;
- (d) abolish the local government area or the local board established for that area.

(3) The President shall not exercise any power referred to in paragraph (b), (c) or (d) of subsection (2) in relation to a local government area for which a local board has been established, except with the consent of that local board.

- (4) Where a local board is being established for a local government area the Minister shall issue a warrant in which he—
- (a) shall specify the number of members who shall constitute the local board;
  - (b) shall specify that some or all of the members of the local board shall be—
    - (i) appointed by the Minister and shall hold office at his pleasure; or
    - (ii) elected in accordance with such provisions as may be prescribed;
 

[Subparagraph amended by section 18 of Act 21 of 1997.]
  - (c) ...
 

[Paragraph repealed by section 18 of Act 21 of 1997.]
  - (d) may direct that the local board be deemed to be a council for the purposes of any of the provisions of this Act or the Electoral Act [*Chapter 2:13*] (No. 25 of 2004) and in such event the area for which it has been established shall be deemed to be a council area;
 

[Paragraph amended by section 18 of Act 21 of 1997 and section 8 of Act 1 of 2008.]
  - (e) may confer or impose on that local board all or any of the powers, privileges, duties or responsibilities conferred or imposed on a council by or in terms of this Act and shall specify in the warrant, subject to such restrictions or modifications as he thinks fit, the provisions of this Act or regulations made thereunder which shall apply to that local board and that local government area for which it has been established;
  - (f) where a rate is to be levied, may specify that a rate, to be assessed on units of land or otherwise and payable in such manner as may be specified by the Minister, shall be levied on owners or occupiers or that different rates so assessed shall be levied on different classes of owners or occupiers.
- (5) A local board established in terms of subsection (2) shall be a body corporate with perpetual succession and shall be capable of suing and being sued and generally of doing, suffering and performing such acts and things as, in terms of the warrant issued in terms of subsection (4), have been conferred upon that local board and, notwithstanding anything to the contrary contained in any other law, where any other law confers powers on the local board, such powers may only be exercised if the local board has been authorized by a warrant in terms of subsection (4) to exercise such powers.
- (6) The Minister may, at any time after the establishment of a local board, alter the warrant relating thereto at the request or with the consent of the local board.
- (7) Where in any Act functions are conferred or imposed on a town council, the Minister, after consultation with the appropriate Minister responsible for the administration of such Act, may, by statutory instrument, declare that a local board specified in such notice shall be regarded as a town council for the purposes of such Act and that such Act and any statutory instrument made thereunder shall accordingly apply, *mutatis mutandis*, in relation to that local board and the local government area concerned subject to such restrictions or modifications as may be specified in such notice.
- (8) Where a local board includes appointed members, the Minister—
    - (a) may appoint a chairman and deputy chairman of that board; and
    - (b) shall give notice in the *Gazette* of the names of the members appointed by him and of the chairman and deputy chairman if appointed by him.
  - (9) Where any by-laws or regulations are in force in any area immediately before such area is included in or becomes a local government area in respect of which a local board has been or is being established, the by-laws or regulations shall be deemed to be by-laws made by the local board and shall continue in force, *mutatis mutandis*, until amended or repealed by the local board.
  - (10) Whenever a local board is abolished and the administration, control and management of the local government area concerned or any part thereof is not to be vested in any council, person or local authority, the Minister shall—
    - (a) give such directions as to the transfer or disposal of property, assets, rights and liabilities; and
    - (b) give such directions as to any other matters or things, including the payment of money and the protection of the rights of employees;
 as may be necessary or desirable to give effect to any proposals relating thereto which were set out in a notice published in terms of section *eleven* and may, in any other case, give such other directions as he considers to be necessary or desirable to ensure the proper dissolution of the local board concerned.
  - (11) Where the Minister has, in terms of subsection (10)—
    - (a) directed the transfer of property or assets to a local authority, the ownership of such property and assets shall vest in the local authority with effect from such date as may be specified by the Minister and, in the case of immovable property, a Registrar of Deeds shall, at the request of the local authority, free of charge cause the name of the local authority to be substituted as the owner of the property concerned in the appropriate register in the Deeds Registry and on the deeds relating to that property;
    - (b) given any direction, the person to whom the direction has been given shall forthwith comply with that direction.

## 7 Provisions relating to vesting of administration of local government area in council or person

(1) The Minister may, after consultation with a council, by statutory instrument, vest in that council the administration, control and management of a local government area and any services provided by the State in that area, and any regulations in force in that area immediately before such vesting shall be deemed to be by-laws made by the council and shall continue in force, *mutatis mutandis*, until they are amended or repealed by the council.

(2) Where the Minister acts in terms of subsection (1) he may—

- (a) give directions or impose conditions relating to the administration, control and management of the local government area concerned, including the provision of services therein;
- (b) give directions or impose conditions providing for the vesting in the council concerned of property, assets, rights and liabilities connected with the local government area concerned;
- (c) direct that all or any provisions of section *ten* shall, *mutatis mutandis*, apply;
- (d) direct that any moneys payable by the council in connection with any property, asset, right or liability shall be regarded as a loan and that section *two hundred and ninety* shall not apply in relation thereto.

(3) The Minister may, after consultation with the person and any local authority concerned, by statutory instrument, vest the administration, control and management of a local government area and any services provided by the State in that area in any person, and any regulations or by-laws in force in that area immediately before such vesting shall be deemed to be regulations made by the Minister in terms of section *two hundred and thirty-five* and shall continue in force until amended or repealed by the Minister.

(4) The Minister may from time to time, in respect of any local government area the administration, control and management of which are vested in a person other than a council, after consultation with such person, give such directions or impose such conditions as he may think fit with regard to—

- (a) the administration, control and management of such local government area, including the provision of services therein;
- (b) the provision of stands in such local government area for home-ownership purposes;
- (c) the conditions of tenancy to be applied to properties within such local government area.

## 8 Provisions relating to divesting of administration of local government area

(1) The Minister may, after consultation with any council or person concerned, by statutory instrument—

- (a) divest that council or person of the administration, control and management of a local government area;
- (b) vest the administration, control and management of the whole or part of a local government area referred to in paragraph (a) in any other council or person in terms of subsection (1) or (3) of section *seven*, as the case may be.

(2) Where the administration, control and management of the whole or part of a local government area, hereinafter called the first-mentioned area, is divested from a council, hereinafter called the existing council, and vested in another council or a separate local authority is established therefor or the first-mentioned area is included in the area of another local authority, hereinafter, in any such event, called the new authority—

(a) the Minister may—

- (i) give directions or impose conditions relating to the administration, control and management of the first-mentioned area, including the provision of services therein;
- (ii) give directions or impose conditions providing for the vesting in the new authority of property, assets, rights and liabilities connected with the first-mentioned area or providing for such apportionment of such property, assets, rights and liabilities, as may be necessary or desirable to do justice between the existing council and the new authority;
- (iii) direct that all or any provisions of section *ten* shall apply, *mutatis mutandis*;
- (iv) direct that any moneys payable by the new authority in connection with any property, asset, right or liability shall be regarded as a loan and that section *two hundred and ninety* shall not apply in relation thereto;
- (v) direct and authorize the existing council to provide, at cost, to the new authority any service in respect of the first-mentioned area which the existing council was providing immediately before the divesting and any extension thereto which may be requested by the new authority;
- (vi) direct and authorize the existing council to provide, at cost, the services of such of its own employees to the new authority as may be necessary for the proper administration, control and management of the first-mentioned area or for the proper operation of any service and any extension thereto directed to be provided in terms of subparagraph (v);

- (b) any by-laws in force in the first-mentioned area immediately before the divesting shall be deemed to be by-laws made by the new authority and shall continue in force until amended or repealed by that new authority.

(3) Where the Minister has given any direction in terms of subparagraph (v) or (vi) of paragraph (a) of subsection (2)—

- (a) the council to whom the direction has been given shall comply with such direction until requested by the new authority referred to in that subsection, with the approval of the Minister, to discontinue compliance therewith;
- (b) if any dispute arises as to the determination of the relevant cost concerned, the Minister may give directions for the reference of such dispute for settlement to an impartial tribunal constituted by the Minister for the purpose.

(4) Where a request has been made in terms of paragraph (a) of subsection (3), the Minister may give directions relating to—

- (a) such apportionment of property, assets, rights and liabilities as may be necessary to do justice in the circumstances;
- (b) the protection of the rights of any employees concerned including the taking over of such employees;
- (c) the constitution of an impartial tribunal for the settlement of any dispute that may arise relating to the payment of compensation to any employee concerned in respect of the termination of his services and any other dispute that may arise;
- (d) generally as to any other matter or thing which the Minister considers necessary or desirable in the circumstances.

## 9 Promotion of local government

(1) A council, subject to this section, or the Minister after consultation with the council, may promote the establishment of local government in a local government area the administration, control and management of which has been vested in such council.

(2) In the promotion of local government in terms of subsection (1), the council or Minister, as the case may be, may—

- (a) authorize any person to enter the area concerned in order to carry out such duties connected therewith as the council or the Minister, as the case may be, may direct, including, without derogation from the generality of the foregoing—
  - (i) stimulating, advising and assisting the community in the establishment of local government; and
  - (ii) making such inquiries and, subject to any other law, holding such meetings as may be necessary; and
- (b) appoint a commission of residents within the area to make recommendations on such matters concerning local government in that area as the council or the Minister, as the case may be, may direct.

(3) Before a council takes any steps in the promotion of local government in terms of subsection (1) it shall submit to the Minister a scheme setting out its proposals in this connection and the Minister may approve the scheme subject to such variations or conditions as he thinks fit and—

- (a) any such scheme may be amended from time to time with the approval of the Minister; and
- (b) any directions given by a council in terms of paragraph (b) of subsection (2) shall be in accordance with the provisions of a scheme approved in terms of this section.

(4) The council or a person authorized in terms of subsection (2) shall submit a report to the Minister in respect of the work carried out in terms of this section and any recommendations relating to the establishment of local government within the area concerned and shall forward therewith any recommendations made by a commission, if any, appointed in terms of subsection (2).

(5) On receipt of a report submitted in terms of subsection (4), the Minister may give notice in terms of section *eleven* that it is intended to apply to the President for the establishment of a town council or local board, as he considers appropriate, for the area concerned.

(6) If a person authorized by the Minister in terms of subsection (2) requires any facilities to enable him to carry out his duties which the council fails or refuses to provide, the Minister may direct the council to provide such facilities and, if the council fails or refuses to comply with such direction within such time as the Minister may require—

- (a) the Minister may, on behalf of the council, provide the facilities at the expense of the council;
- (b) any expenditure incurred by the Minister in providing such facilities may be recovered by the Minister by proceedings in a competent court against the council, and the Minister's certificate shall be *prima facie* evidence of the amount due by the council.

(7) Where the administration, control and management of a local government area has been vested in a person other than a local council, this section shall apply, *mutatis mutandis*, as if such person were a council.

## 10 Effect of incorporation of existing local authority in a council area

(1) If the whole of a town area, rural district council area or local government area for which a local board has been established is included within the council area of another council, the following provisions shall, in addi-

tion to any declaration, direction, authority or requirement made or given in terms of subsection (3) or (4) of section *four*, apply—

- (a) all rates, taxes, levies and other charges, including surcharges, due or payable to, or recoverable by, the town council, rural district council or local board, as the case may be, shall be vested in and be recoverable by the council concerned;
- (b) all works and undertakings authorized to be executed and all rights, liabilities and engagements existing by or against or in respect of the town council, rural district council or local board, as the case may be, shall be vested in and attached to and be enforced, carried on and prosecuted by, or against that council and no action, suit or proceeding shall abate or be discontinued or prejudicially affected by the inclusion of the said area within the council area;
- (c) all creditors of the town council, rural district council or local board concerned shall have the same rights and remedies against the council concerned as it had against the town council, rural district council or local board, as the case may be, before the inclusion of the area;
- (d) all property, movable or immovable, and all moneys of, or vested in, the town council, rural district council or local board concerned shall become the property of, or vest in, the municipality or town with effect from the date of the inclusion of the area;
- (e) all resolutions, directions, licences, permits, registrations, acts and other things passed, given, issued, made, commenced or done by the town council, rural district council or local board, as the case may be, including any delegation of powers, shall be treated for the purposes of this Act as though they were resolutions, directions, licences, permits, registrations, acts or things passed, given, issued, made, commenced or done, as the case may be, by the council concerned;
- (f) any financial accounts and records of the town council, rural district council or local board which have not been balanced and audited in terms of this Act or the Rural District Councils Act [*Chapter 29:13*] as the case may be, shall be balanced, audited or otherwise dealt with by the council concerned in terms of this Act as though they were the accounts and records of such council:

Provided that where the town council, rural district council or local board had previously appointed an auditor to audit its accounts, the council concerned shall reappoint such auditor for the purposes of the final audit of those accounts if he is willing to accept such appointment.

(2) In the case of immovable property the ownership of which has vested in the municipality or town in terms of paragraph (d) of subsection (1), the Registrar of Deeds shall, at the request of the council, cause, free of charge, the name of that municipality or town to be substituted as the owner of the property concerned in an appropriate register in the Deeds Registry and on the deeds relating to that property.

## **11 Advertising of intention to exercise powers under section 4 or 6**

(1) Before the exercise by the President of his powers in terms of subsection (1) or (2) of section *four* or subsection (1) or (2) of section *six*, the Minister shall publish notices in not less than three issues of a newspaper stating that—

- (a) it is intended to recommend to the President that he exercise such powers and setting out the nature of the proposals and in particular to the extent applicable—
  - (i) the proposals in relation to the name of the council, local board or local government area concerned;
  - (ii) the proposed area or areas concerned;
  - (iii) the proposals in relation to the wards concerned;
  - (iv) the proposals in relation to the councillors involved;
  - (v) the proposed apportionment of any property, assets, rights and liabilities, including the proposed payment of any moneys and the protection of the rights of employees;
  - (vi) the nature of any powers proposed to be exercised in terms of subsection (4) of section *four*;
- (b) any person who wishes to make representations concerning the proposal may lodge them with the Minister within such period as may be stated in the notice, being not less than thirty days from the date of the last publication of the notice.

(2) When any recommendation is submitted to the President concerning the exercise of any powers referred to in subsection (1) there shall be submitted to him, together with such recommendation, the substance and number of any representations which have been lodged with the Minister in terms of paragraph (b) of subsection (1).

(3) In the case of a proposal to establish a council for any area, to declare a local government area or to alter the boundaries of a council area or local government area the President may, after considering any representations made as a result of any notice given in terms of subsection (1), declare the council area or local government area or alter the boundaries, as the case may be, to a lesser extent than that indicated in that notice without further notice being given in terms of subsection (1).

(4) In the case of a proposal to alter the boundaries of any ward in a council area, the President may, after considering any representations made as a result of any notice given in terms of subsection (1), and taking into

account the views of the Commission, alter the area of the ward to a lesser extent than that indicated in the notice without further notice being given in terms of subsection (1).

[Subsection amended by section 9 of Act 1 of 2008.]

## 12 Date of coming into being of council and first election

(1) In any proclamation establishing a council in terms of section *four* the President shall fix a date for the coming into being of the council.

(2) ...

[Subsection repealed by section 19 of Act 21 of 1997.]

(3) ...

[Subsection repealed by section 19 of Act 21 of 1997.]

## 13 Succession from former local authority to newly-established local authority

(1) Where a town is abolished and a municipality is established in place thereof the municipality shall be the successor of the town and—

(a) section *ten* shall apply, *mutatis mutandis*; and

(b) section *twelve* shall not apply unless the President otherwise directs;

[Paragraph substituted by section 20 of Act 21 of 1997.]

(c) sections 116 and 121(1) of the Electoral Act [*Chapter 2:13*] (No. 25 of 2004) shall not apply unless the President otherwise directs, in which case those sections shall apply to the extent directed by the President.

[Paragraph substituted by section 10 of Act 1 of 2008.]

(2) Where a local board is abolished and a municipality or town is established in place thereof the municipality or town shall be the successor of the local board and—

(a) section *ten* shall apply, *mutatis mutandis*; and

(b) section *twelve* shall not apply unless the President otherwise directs;

[Paragraph substituted by section 20 of Act 21 of 1997.]

(c) sections 116 and 121(1) of the Electoral Act [*Chapter 2:13*] (No. 25 of 2004) shall not apply unless the President otherwise directs, in which case those sections shall apply to the extent directed by the President.

[Paragraph substituted by section 10 of Act 1 of 2008.]

## 14 Town and city status

(1) A growth point, unincorporated urban area, local board or council may apply to the Minister in the form and manner prescribed for a change of its status.

(2) Subject to subsections (3) to (6), the Minister shall consider any application made to him in terms of subsection (1) and, if he decides to grant the application, shall take the necessary steps under this Act to effect the change of status applied for.

(3) On receipt of an application in terms of subsection (1) in which a municipal council applies for city status, the Minister shall—

(a) appoint, at the expense of the municipality concerned, a commission consisting of such number of persons as the Minister may determine to consider the matter and make recommendations to him:

Provided that no member of the commission shall be a councillor or employee of the municipality concerned;

(b) after the appointment of the commission, publish in the *Gazette* and in three issues of a newspaper of the appointment of the commission and calling upon any person who wishes to make representations to submit them to the commission before a date specified in that notice, being not less than thirty days after the date of the first publication of the notice in the newspaper.

(4) A commission appointed in terms of paragraph (a) of subsection (3) shall consider those matters set out in the First Schedule in addition to any other matters which it considers to be relevant and shall thereafter submit its report to the Minister, and any such report shall refer to the substance and number of any representations made to it as a result of the notice published in terms of paragraph (b) of subsection (3).

(5) The Minister shall, as soon as practicable after receiving the report of the commission, lay it before Parliament.

(6) If, in pursuance of a resolution of Parliament, an address is presented to the President requesting him to accord city status to the municipality specified in the address, the President may, by proclamation in the *Gazette*, declare that the status of the municipality concerned shall be altered to that of a city.

(7) Where a municipality has been declared in terms of subsection (6) to be a city—

(a) the title of the council concerned shall be altered to “city council” instead of “municipal council”;

(b) wherever in any law, enactment, deed, contract, agreement or other document reference is made to the municipal council or the municipality concerned, such reference shall be construed as a reference to the city council or city, as the case may be.

(8) Any reference in any law or enactment in force in Zimbabwe, whether enacted or made before or after the date of commencement of this Act, to a municipality or municipal council shall be construed as including a reference to a city or city council, as the case may be.

### PART III

#### PROVISIONS RELATING TO THE INCORPORATION OF RURAL DISTRICT OR TOWN COUNCILS

#### 15 Interpretation in Part III

In this Part—

“enrolment date” ...

[Definition repealed by section 21 of Act 21 of 1997.]

“incorporation” means the inclusion of a rural district council area or town area within a municipality in terms of paragraph (c) of subsection (2) of section *four*.

“initial election” ...

[Definition repealed by section 21 of Act 21 of 1997.]

#### 16 Application of Part III

(1) This Part shall apply where the whole of a rural district council area or town area has been or is about to be incorporated within a municipality, whether or not any other area is included or to be included within the municipality at the same time.

(2) Where there is any conflict or inconsistency between this Part and any other Part—

(a) this Part shall prevail; and

(b) such other Part shall be construed as though it had been modified accordingly.

#### 17 - 18...

[Sections repealed by section 22 of Act 21 of 1997.]

#### 19 Employment of staff of councils which are incorporated

Where prior to an incorporation the President has directed in terms of subsection (6) of section *four* that any employee of a rural district council or town council which, or a portion of which, is about to be incorporated shall be employed or offered employment by the municipality, notwithstanding the provisions of any agreement, award determination or regulations in force or binding in terms of the Labour Relations Act [*Chapter 28:01*], the municipality and any such employee shall not, in respect of such employment, be subject to such provisions until such employee has accepted or is deemed to have accepted an offer of employment made by the municipal council in a post or occupation which is covered by such agreement, award, determination or employment regulations and such employee has taken up such employment.

#### 20 Special vacancies on town council or rural district council which is to be incorporated need not be filled

If, at any time after the publication of a notice in terms of section *eleven* that it is intended to apply to the President for the exercise of the powers conferred upon him by section *four* for the purpose of including a rural district council area or town area within a municipality in terms of paragraph (c) of subsection (2) of that section, a special vacancy occurs among the councillors of that rural district council or town council, the Minister may direct that, notwithstanding section 121 of the Electoral Act [*Chapter 2:13*] (No. 25 of 2004), that special vacancy shall not be filled.

[Section amended by section 40 of Act 21 of 1997 and section 11 of Act 1 of 2008.]

#### 21 Rates on supplementary valuations may be collected in respect of period prior to incorporation

Notwithstanding anything to the contrary contained in section *two hundred and seventy-six*, where any supplementary valuation is made or any valuation roll is amended by a municipal council after an incorporation in respect of property which was within the rural district council area or town area incorporated, the municipal council may cause the appropriate rates to be collected in terms of that section, notwithstanding that such rates are assessed with effect from a date prior to that on which the incorporation took effect.

### PART IV

#### VOTERS AND VOTERS' ROLLS

[Whole Part – sections 22 to 37 – repealed by section 23 of Act 21 of 1997.]

### PART V

#### ELECTION OF COUNCILLORS AND APPOINTMENT OF CARETAKERS

#### 38 Governance of council areas

Every council area shall be governed by a council.

[Section substituted by section 12 of Act 1 of 2008.]

### 39 Composition of council and terms of office of councillors

- (1) On the establishment of a council the Minister shall, by statutory instrument, determine—
- (a) the number of councillors, being not less than six, which shall compose the council; and
  - (b) if the council area is divided into wards, the number of councillors to be returned for each ward, and in so doing he may—
    - (i) determine that only one councillor shall be returned for a ward;
    - (ii) fix different numbers of councillors for different wards.
- (2) The Minister may—
- (a) after the exercise of powers in terms of subsection (2) of section *four* and after consultation with the council concerned, exercise the powers conferred upon him by subsection (1) for the purpose of altering the number of councillors on the council or for a ward so as to give effect to any proposals relating thereto which were set out in a notice published in terms of section *eleven*;
  - (b) at any time after the establishment of a council, in circumstances not referred to in paragraph (a) and at the request of the council, exercise the powers conferred upon him by subsection (1) for the purpose of altering the number of councillors on the council or for a ward.
- (3) In the event of—
- (a) a council area being divided or redivided into wards or the boundaries of one or more wards being altered; or
  - (b) the number of wards in a council area being altered in circumstances not provided for in section *seventy-nine*; or
  - (c) the division of a council area into wards being abolished; or
  - (d) the number of councillors assigned to a council or ward being reduced;

the Minister shall determine which of the existing councillors shall represent each ward or remain in office, as the case may be, and shall determine any question arising in connection therewith and, without derogation from the generality of the foregoing, the Minister may for such purposes, notwithstanding anything to the contrary contained in this Act, curtail or extend the term of office of any or all of the councillors:

Provided that the Minister shall not make a determination in terms of this subsection curtailing the terms of office of all councillors until—

- (a) he has given notice of his intention in two issues of a newspaper inviting representations on such proposals; and
- (b) a period of twenty-one days has elapsed since the first publication of the notice.

### 40 ....

[Section repealed by section 24 of Act 21 of 1997.]

### 41 Disqualifications of councillors

- (1) ... [Subsection repealed by section 25 of Act 21 of 1997.]
- (2) ... [Subsection repealed by section 25 of Act 21 of 1997.]
- (3) ... [Subsection repealed by section 25 of Act 21 of 1997.]
- (4) ... [Subsection repealed by section 25 of Act 21 of 1997.]
- (5) ... [Subsection repealed by section 25 of Act 21 of 1997.]
- (6) ... [Subsection repealed by section 25 of Act 21 of 1997.]

(7) A councillor who is convicted of an offence and sentenced to imprisonment for a period of six months or more shall forthwith cease to exercise his functions or to be entitled to any remuneration as a councillor and, subject to subsection (8), he shall cease to be a councillor at the expiry of thirty days from the date of such sentence.

(8) If, during the thirty-day period referred to in subsection (7), the councillor concerned applies for a free pardon or notes an appeal against the conviction and additionally, or alternatively, the sentence, the question whether he is to continue in office as a councillor shall not be determined until the abandonment or final disposal of the application or appeal, whereupon he shall forthwith cease to be a councillor unless—

- (a) he is granted a free pardon; or
  - (b) his conviction is set aside; or
  - (c) his sentence is reduced to a term of imprisonment of less than six months; or
  - (d) a punishment other than imprisonment is substituted.
- (9) For the purposes of subsections (7) and (8)—
- (a) two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of such term;

- (b) two or more terms of imprisonment that are required to be served concurrently shall be regarded as a single term of imprisonment for the period of the longest of such terms;
  - (c) a person shall be regarded as sentenced notwithstanding that the execution of the sentence or any part thereof has been suspended;
  - (d) no account shall be taken of any sentence of imprisonment imposed as an alternative to, or in default of, the payment of a fine.
- (10) ...

[Subsection repealed by section 25 of Act 21 of 1997.]

#### 42 - 46 ....

[Sections repealed by section 26 of Act 21 of 1997.]

#### 47 Assumption of office by councillor

(1) A person who is deemed to have been elected as a councillor at the close of the nomination court in terms of section 125 of the Electoral Act [*Chapter 2:13*] (No. 25 of 2004), or who is declared to have been elected in terms of section 126 of that Act following the withdrawal of a candidate, shall assume office—

- (a) in the case of a first election of councillors, on the date on which the council comes into being;
- (b) in the case of a by-election to fill a special vacancy on the council, at the time at which the Registrar-General posts a notice at his or her office in terms of section 125 of the Electoral Act [*Chapter 2:13*] (No. 25 of 2004), notifying his or her election or, as the case may be, declares him or her to have been elected in terms of section 126 of that Act;
- (c) in the case of a general election of councillors, on the day following polling day.

[Subsection substituted by section 13 of Act 1 of 2008.]

(2) Any person who is elected as a councillor as a result of a poll shall assume office—

- (a) in the case of a first election, on the date of the coming into being of the council;
- (b) in the case of any subsequent general election or by-election, on the day following polling day.

(3) Before undertaking any duty as such, a councillor shall take and subscribe before the town clerk of the council such oath of loyalty and office as may be prescribed.

[Subsection inserted by section 27 of Act 21 of 1997.]

#### 48 Assumption of office of mayor

(1) A person elected as mayor shall take office on the date on which he is declared or deemed to have been elected mayor:

Provided that, if his predecessor's term of office has not yet expired, he shall take office on the expiry of that term.

(2) Before undertaking any duty as such, a mayor shall take and subscribe before the town clerk such oath of loyalty and office as may be prescribed.

[Section substituted by section 28 of Act 21 of 1997.]

#### 49 - 50 ....

[Sections repealed by section 29 of Act 21 of 1997.]

#### 51 - 54 ...

[Sections repealed by section 14 of Act 1 of 2008.]

#### 55 - 62 ....

[Sections repealed by section 33 of Act 21 of 1997.]

#### 63 - 65....

[Sections repealed by section 14 of Act 1 of 2008.]

#### 66 - 77 ...

[Sections repealed by section 34 of Act 21 of 1997.]

#### 78 Special vacancies in office of councillors

(1) In this section—

“calendar month” means one of the twelve periods into which the year is divided in the calendar.

(2) Subject to subsection (3) if a councillor—

- (a) dies; or
- (b) resigns his office; or
- (c) ceases to be qualified for election as a councillor or becomes disqualified for such election in terms of section 119 of the Electoral Act [*Chapter 2:13*] (No. 25 of 2004); or

[Paragraph substituted by section 15 of Act 1 of 2008.]

(c1) ceases to be a councillor in terms of subsection (7) of section *forty-one*; or

[Paragraph inserted by section 35 of Act 21 of 1997.]

(d) is absent without leave of the council—

- (i) from the ordinary meetings of the council during a period of two consecutive calendar months; or
- (ii) from the meetings of any committee of the council to which he has been appointed during a period of two consecutive calendar months, if the committee has held at least one meeting in each

of those calendar months or from two consecutive meetings of the committee which are not held in the same calendar month or in consecutive calendar months;

or

- (e) is absent from the ordinary meetings of the council during a period of six consecutive calendar months, whether or not leave of the council has been obtained; or
- (f) ceases in terms of paragraph (b) of subsection (1) of section 22 of the Provincial Councils and Administration Act [*Chapter 29:11*], to be a councillor; or
- (g) has been suspended in terms of section *one hundred and fourteen* for a period longer than thirty days;

his seat shall become vacant and such vacancy shall be deemed to be a special vacancy.

(3) Where a vacancy in the seat of a councillor would occur, but for this subsection, through the councillor's absence from meetings, the Minister may, on application by the council concerned and on good cause shown, excuse the councillor's absence for such period or periods and on such terms and conditions as he may fix.

(4) ...

[Subsection repealed by section 35 of Act 21 of 1997.]

(5) ...

[Subsection repealed by section 35 of Act 21 of 1997.]

(6) A councillor elected at a by-election shall hold office for the remainder of the term for which the councillor whom he is replacing would otherwise have remained in office.

(7) ...

[Subsection repealed by section 35 of Act 21 of 1997.]

(8) A council shall designate for the purposes of subsection (2) which meetings of the council shall be regarded as ordinary meetings and shall ensure—

- (a) that at least one meeting of the council in each calendar month is designated an ordinary meeting; and
- (b) that each committee of the council, other than a special committee, holds at least one meeting in each calendar month:

Provided that this paragraph shall not apply in respect of any calendar month in which the town clerk or secretary certifies to the council that there is no business, other than confirmation of the minutes of the previous meeting, for the committee to transact during that month.

**79** ....

[Section repealed by section 36 of Act 21 of 1997.]

## **80 Minister may appoint caretakers to act as council**

(1) If at any time—

- (a) there are no elected councillors for a council area; or
- (b) all the elected councillors for a council area have been suspended or imprisoned or are otherwise unable to exercise all or some of their functions as councillors;

the Minister may appoint not more than three persons as caretakers, whether or not such persons are qualified through residence or ownership of property to become councillors, to act as the council in accordance with this section.

(2) Subject to any directions the Minister may give him or her, a caretaker appointed for a council area in terms of subsection (1) shall exercise—

- (a) all the functions of the council, where there are no elected councillors for the council area; or
- (b) such of the functions of the elected councillors as they are unable to exercise, where there are elected councillors for the council area:

Provided that—

- (i) the caretaker shall not, without the approval of the Minister, exercise any power conferred on the council to levy rates or taxes or to alienate any land or interest in land or to increased any charge fixed or levied by the council or to fix any new charge;
- (ii) where there are any elected councillors who are able to exercise some of their functions as councillors the care taker shall consult them before exercising any function.

(3) A caretaker appointed in terms of subsection (1) shall hold office during the pleasure of the Minister, but his or her office shall terminate—

- (a) as soon as there are any councillors for the council area who are able to exercise all their functions as councillors; or
- (b) ninety days after the date of his or her appointment; whichever occurs sooner:

Provided that if the period of ninety days expires within three months before the date of the next succeeding general election, the caretaker shall continue to hold office until such general election.

(4) Before the termination of office of a caretaker appointed in terms of subsection (1), otherwise than at a general election or in the circumstances referred to in subsection (3)(a), the Commission shall cause an election to be held on such date as may be fixed in terms of the Electoral Act [*Chapter 2:13*] (No. 25 of 2004), to fill the vacancies on the council as if they were special vacancies.

(5) On appointing a caretaker in terms of this section the Minister may authorise the payment from the funds of the council to the caretaker, for so long as he or she holds office as such, of a monthly salary at such rate as the Minister may determine.

[Section substituted by section 16 of Act 1 of 2008.]

## PART VI

### PROCEEDINGS AND COMMITTEES OF COUNCIL

#### 84 Meetings and special meetings of council

(1) A council shall hold its first meeting on such date and at such place as the Minister may fix and thereafter the council shall, subject to this Act, meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and proceedings as it thinks fit:

Provided that the council shall hold an ordinary meeting—

- (a) as soon as is practicable after each general election; and
- (b) at least once in each month.

(2) Save as otherwise provided in this Act, at any meeting of a council—

- (a) all the councillors present at that meeting shall vote on every matter which is put to the vote;
- (b) voting shall be by show of hands or by any mechanical means approved by the council;
- (c) all the questions coming or arising before that meeting shall be decided by a resolution passed by a majority of the votes cast and, in the event of an equality of votes, the mayor shall have a casting vote in addition to a deliberative vote.

(3) The mayor may, at any time, and at the request in writing of not less than one-third of the total membership of the council or of six councillors, whichever is the less, shall, within fourteen days of such request, call a special meeting of the council.

(4) Written notice of any special meeting called in terms of subsection (3) shall be sent to each councillor at least twenty-four hours before the meeting and shall specify the object of the meeting, and no matters, other than those specified in that notice, shall be discussed at that special meeting.

(5) Meetings of a council shall be held—

- (a) in the case of an ordinary meeting, at such time and place as the council may determine;
- (b) in the case of a special meeting, at such time and place as the mayor may determine:

Provided that no meeting of the council shall commence before half-past four o'clock in the afternoon unless—

- (a) at least two-thirds of the total membership of the council have agreed that the meeting may commence earlier; or
- (b) in view of exceptional circumstances, the mayor has directed that the meeting should commence earlier.

(6) Save as otherwise provided in this Act or in any other law, all acts, matters or things authorized or required to be done by a council may be decided by a majority of councillors voting at a meeting of the council at which a quorum is present.

#### 85 Quorum at meetings of council

(1) One-third of the total membership of a council, together with one other councillor, shall form a quorum at a meeting of the council.

(2) In the case of a council the total membership of which is not an integral multiple of three, the reference in subsection (1) to one-third shall be construed as a reference to one-third of the number next above that of such total membership which is an integral multiple of three.

#### 86 Validity of decisions and acts of council or committee

(1) No proceedings of a council or of any committee shall be invalid or illegal solely on account of a vacancy in the membership of the council or committee, as the case may be, at the time of such proceedings.

(2) No proceedings of a council or any committee and no action taken by any person acting as mayor, chairman, councillor, town clerk, treasurer or auditor, as the case may be, shall be invalid or illegal solely on account of some defect in the election, appointment or qualification of any such person.

#### 87 Meetings open to the public

(1) Subject to subsection (2), every meeting of a council shall be open to the public and the Press.

(2) If at any meeting a council considers that any matter to be discussed at that meeting can be more conveniently and advantageously discussed in private, the council may, subject to subsection (4) of section *three hundred and seven*, resolve itself into committee and exclude the public and the Press, and any resolution adopted whilst in committee shall have full effect as a resolution of the council:

Provided that the council in committee may invite representatives of any authority or board concerned with local government functions to attend meetings of the council in committee as observers.

## 88 Minutes of proceedings

(1) The chamber secretary, in the case of a municipal council, and the secretary, in any other case, shall keep or cause to be kept minutes in the English language of all proceedings of the council and of the council's committees, and shall cause to be recorded in the minutes the names of the chairman and of all councillors or members attending the meeting.

(2) The minutes kept in terms of subsection (1) shall be recorded in a book kept for the purpose or on loose sheets of paper which shall subsequently be bound into a book.

(3) The minutes of a meeting of a council or committee shall, if in order, be confirmed as soon as possible and, when so approved, shall be signed by the chairman of the meeting at which they are confirmed.

(4) A document purporting to be—

(a) the minutes of a meeting of a council or committee and signed as provided in subsection (3); or

(b) a copy of or extract from any minutes referred to in paragraph (a) and certified by the town clerk as correct;

shall, on its production in any court, be *prima facie* proof of the facts set out therein, and all matters relating to the meeting of which the minutes purport to be the record shall be presumed to have been done and executed with the due formalities until the contrary is proved.

(5) Subject to subsection (6), the minutes of the proceedings of a council or any committee shall be open to inspection at all reasonable times by any person and any person may obtain a copy thereof or an extract therefrom on payment of such fee, not exceeding such amount as may be prescribed, as is fixed by resolution of the council.

(6) Subject to subsection (7) and to section *ninety-two*, there shall be no right to inspect or to obtain copies of or extracts from—

(a) any document referred to in any minutes of the proceedings of a council or of a committee thereof;

(b) any minutes of a meeting of a council whilst in committee in terms of subsection (2) of section *eighty-eight* or of a meeting of a committee in so far as they relate to—

(i) staff matters or matters of internal or national security; or

(ii) matters referred to in subsection (7) of section *two hundred and eleven* relating to the acceptance of a tender; or

(iii) any other matter where the council or the committee, as the case may be, has resolved that the minutes should not be open to inspection.

(7) Subsection (6)—

(a) shall not be construed as precluding the right—

(i) to inspect or obtain a copy of any resolution passed by a council or committee in relation to a matter referred to in subparagraph (ii) or (iii) of paragraph (b) of subsection (6); or

(ii) to inspect or obtain copies of or extracts from any minutes of a committee in relation to a matter referred to in subparagraph (iii) of paragraph (b) of subsection (6) if the council has resolved that the minutes relating to that matter should be open to inspection;

(b) shall not apply to a councillor, other than a councillor who—

(i) in terms of section *one hundred and seven* has withdrawn or would have been required to withdraw from the meeting whilst the matter concerned was under consideration; or

(ii) has been suspended in terms of by-laws referred to in paragraph 6 of the Third Schedule during the period he has been so suspended.

(8) If, at any meeting of a council or committee, a councillor or other member of the committee who has voted against any resolution passed at that meeting so requests, the town clerk or the secretary, as the case may be, of such meeting shall record—

(a) the name of that councillor or member; and

(b) the reasons why that councillor or member voted against the resolution:

Provided that the town clerk or secretary shall not refer in such reasons, whether by name or designation of office, to any other councillor or member.

## 89 Rescission or alteration of resolutions of council and committees

(1) A resolution passed at a meeting of a council shall not be rescinded or altered at a subsequent meeting of the council—

(a) unless—

(i) a committee has recommended that the resolution be rescinded or altered; or

(ii) a notice of motion to rescind or alter that resolution has been given at least seven days before the subsequent meeting to the chamber secretary and the notice of motion has been signed by not less than one-third of the membership of the council;

and

(b) if the rescission or alteration occurs within six months from the date of the passing of the original resolution and the number of councillors present at such subsequent meeting does not exceed the number of

councillors present when the original resolution was passed, unless at least two-thirds of the councillors or members, as the case may be, present at the subsequent meeting vote in favour of that rescission or alteration.

(2) The chamber secretary to whom any notice of motion has been given in terms of subsection (1) shall send a copy of the notice to each councillor at least two days before the subsequent meeting at which the motion is to be moved.

(3) Nothing in subsection (i) shall be construed as precluding a council from rescinding or altering a resolution passed at a previous meeting in a manner other than that recommended by the committee or specified in a notice of motion, as the case may be.

(4) A resolution passed at a meeting of a committee of a council may be rescinded or altered at any subsequent meeting of that committee.

[Section substituted by section 17 of Act 1 of 2008.]

## **90 Rescission or alteration of resolutions of other committees**

A resolution passed at a meeting of a committee of a council, other than an executive committee, may be rescinded or altered at any subsequent meeting of that committee.

## **91 Minister's right of access to records of council**

(1) The Minister shall have unrestricted access to all council records, minutes and any documents in the possession of any council which relate to the council's meetings, resolutions and affairs.

(2) If required to do so by the Minister or by a person authorized by the Minister, the Council shall without delay submit to the Minister or that person, as the case may be, a copy of any record, minute or document referred to in subsection (1).

## **92 - 95 ....**

[Sections repealed by section 18 of Act 1 of 2008.]

## **96 Standing committees of council**

(1) Subject to this section and section *ninety-seven* for the better exercise of its functions, a council may appoint one or more standing committees and vest in the committees such of its functions as it thinks fit.

(2) Every council shall appoint a finance committee which shall be responsible for regulating the financial affairs of the council in accordance with the standing orders and by-laws of the council.

(3) Every council shall appoint a health and housing committee which shall be responsible for health and housing matters relating to the council.

(4) Every council shall appoint an environmental management committee which shall be responsible for environmental matters relating to the council.

(5) Where a council has appointed a health committee in terms of section 15 of the Public Health Act [*Chapter 15:09*], subsections (5) to (10) of this section and section *one hundred and four*, and any by-laws made by the council that are applicable to its committees generally, shall apply in relation to that health committee, subject to any regulations made in terms of section 15 of the Public Health Act [*Chapter 15:09*].

(6) Every standing committee shall, at its first meeting after the appointment of the members thereto, elect one of its members to be chairman and one of its members to be vice-chairman thereof, and may at any time, if the person elected as chairman or vice-chairman ceases to be a member of that committee, elect a member to replace him.

(7) A member of a standing committee shall cease to be a member thereof forthwith—

- (a) after the general election held for the council; or
- (b) if he ceases to be councillor.

(8) At every meeting referred to in subsection (1) of section *one hundred and three* a council shall which has appointed standing committees review the work of each standing committee during the previous year and shall reappoint such standing committees or appoint different standing committees in terms of subsection (1).

(9) A standing committee shall consist of such number of members, being not less than three, as the council may determine.

(10) Subject to subsection (11), no person, other than the members of, and the secretary to, a standing committee and the town clerk shall be present at a meeting of that standing committee:

Provided that if—

- (a) the attendance of any employee of the council is required by the town clerk; or
- (b) the chairman of the standing committee has invited an employee or other person to attend a meeting in connection with the consideration of any matter;

that employee or other person may attend the meeting.

(11) If the mayor is not a member of a standing committee he or, in his absence, the deputy mayor or acting mayor shall be entitled to attend and to participate in any discussion at a meeting of a standing committee but he shall not be entitled to vote on any matter before that standing committee.

## 97 Audit committee

(1) Every council shall appoint an audit committee.

(2) The mayor, the deputy mayor and chairperson of every committee of council shall not be a member of, nor be entitled to attend any meeting, of the audit committee.

[Subsection substituted by section 19 of Act 1 of 2008.]

(3) No person other than the members of the audit committee and the external auditors of council shall attend any meeting of the audit committee:

Provided that if the audit committee requires the attendance of any employee or other person at its meeting, that person or other person shall attend the meeting.

(4) Where an employee or any other person fails, without just cause, to comply with any requirement to attend an audit committee meeting in terms of subsection (3), he shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]

## 98 Functions of audit committee

(1) The functions of the audit committee shall be—

- (a) to inquire into and report upon the manner in which the finances of the council, its assets and human resources are being used;
- (b) to ascertain whether the funds and assets of the council are applied to the purposes intended and are consistent with any regulations and standing orders issued by the council, or the Minister, as the case may be;
- (c) to call for information, explanations and evidence in respect of any matters in respect of which the auditors have made observations;
- (d) to receive and consider reports of internal and external auditors and make appropriate recommendations to the council;
- (e) to recommend to the council appropriate methods of investment of moneys, and custody of any other properties of the council.

(2) The audit committee shall report its proceedings only to the council:

Provided that where the Minister requests a report of such committee, the committee shall comply with such request.

(3) The council shall pay due regard to any recommendation made by the audit committee in terms of paragraph (e) of subsection (1), but shall not be obliged to act in accordance with any such recommendation.

## 99 ....

[Section repealed by section 18 of Act 1 of 2008.]

## 100 Special committees

(1) A special committee may at any time be appointed by a council subject to the following provisions—

- (a) that committee shall be appointed for a specific task and once that committee has submitted a report thereon it shall be dissolved unless reconstituted by the council for further investigation or consideration in connection with the original task;
- (b) that committee shall be composed of councillors or councillors and persons who are not councillors and any such member of that special committee shall be entitled to exercise a vote;
- (c) the chairperson of that committee shall be a councillor;
- (d) the quorum at any meeting of that committee shall be formed by such number of members as the council may determine;
- (e) a person who is not a councillor shall not be appointed or continue in his or her appointment as a member of that committee if he or she would, if he or she were a councillor, be disqualified in terms of section 4 1(1) (b) to (f) from being nominated as or continuing in office as a councillor;
- (f) no powers shall be delegated by the council to that committee.

(2) A special committee shall consist of such number of members, being not less than three, as the council may determine.

(3) A special committee—

- (a) at its first meeting after the appointment of the members thereto—
  - (i) shall, subject to subsection (1)(c), elect one of its members to be chairperson; and
  - (ii) may elect one of its members to be vice-chairperson; and
- (b) may at any time, if the person elected as chairperson or vice-chairperson ceases to be a member of the special committee, elect a member to replace him or her.

(5) No person, other than the members of, and the secretary to, a special committee appointed in terms of subsection (1) and the town clerk, shall be present at a meeting of that committee:

Provided that if the chairperson of that committee has invited an employee or other person to attend a meeting in connection with the consideration of any matter, that employee or other person may attend the meeting.

[Section substituted by section 20 of Act 1 of 2008.]

### **101 Meetings and procedure of committees**

(1) A committee appointed in terms of this Part shall hold its first meeting on such date and at such place as the council, as the case may be, may fix and thereafter that committee shall meet for the dispatch of business and adjourn, close or otherwise regulate its meetings and procedure as it thinks fit, subject to the provisions of this section any standing order or by-law of the council:

Provided that no meeting of the council shall commence before half-past four o'clock in the afternoon unless—

- (a) at least two thirds of the total membership of the council have agreed that the meeting may commence earlier; or
- (b) in view of exceptional circumstances, the mayor has directed that the meeting should commence earlier.

[Subsection amended by section 21 of Act 1 of 2008.]

(2) No business shall be transacted at any meeting of a committee appointed in terms of this Part unless the quorum of members or, if no quorum is fixed, not less than one-third of the total membership or two members, whichever is the greater, are present, and subsection (2) of section *eighty-five* shall apply, *mutatis mutandis*, in calculating one-third of the membership of the committee.

(3) Subject to subsection (5) of section *ninety-six*, the chairman or, if he is absent, the vice-chairman shall preside at any meeting of the committee concerned and, if both the chairman and the vice-chairman are absent, the members present shall elect one of their member to preside at that meeting as chairman.

(4) All acts, matters or things authorized or required to be done by a committee appointed in terms of this Part may be decided by a majority vote at a meeting of the committee at which a quorum is present.

(5) At all meetings of a committee each member present shall have one vote on a question before the committee and, in the event of an equality of votes, the person presiding at that meeting shall have, in addition to a deliberative vote, a casting vote:

Provided that the person presiding shall not have a casting vote where the question concerns the rescission or alteration of a previous resolution of the council.

(6) No meeting of a committee may invite representatives of any authority or board concerned with local government functions to attend meetings of the committee as observers.

### **102 Standing orders**

(1) A council may make standing orders not inconsistent with this Act in relation to any matter specified in paragraph 5, 6, 7, 8 or 12 of the Third Schedule or any matter for which in terms of this Act provision may be made in standing orders.

(2) The council may vary or rescind any standing order if the proposal to vary or rescind the standing order receives the affirmative votes of not less than two-thirds of the total membership of the council.

(3) A standing order may be suspended if the proposal to suspend the standing order is agreed to by a majority of the total membership of the council.

(4) Standing orders shall not be published in the *Gazette*.

## **PART VII**

MAYOR, DEPUTY MAYOR, CHAIRPERSON, DEPUTY CHAIRPERSON, ALDERMEN AND COUNCILLORS

### **103 Election of mayor, deputy mayor, chairperson and deputy chairperson**

(1) At the first meeting of a council after it has been established and thereafter at the first meeting held—

- (a) after the general election of councillors; or
- (b) after an initial election of councillors referred to in section 17(1)(c); or

the councillors present at that meeting shall, under the chairmanship of the district administrator, or, in the case of the Harare and Bulawayo municipal councils, the provincial administrator within whose province the municipal council lies, elect—

- (c) in the case of a municipal council, one councillor or other person to be mayor and thereafter another councillor to be deputy mayor;
- (d) in the case of a town council, one councillor to be chairperson and thereafter another councillor to be deputy chairperson.

(2) A person elected in terms of subsection (1) shall forthwith enter upon his or her office and shall hold office until the election or appointment of his or her successor in office.

(3) A person elected in terms of subsection (1) shall cease to hold office as such when his or her successor is elected in terms of that subsection:

Provided that—

- (i) if a deputy mayor is elected in terms of subsection (4) to be mayor, he or she shall cease to hold office as deputy mayor with effect from that election;
- (ii) if a deputy chairperson is elected in terms of subsection (4) to be chairperson, he or she shall cease to hold office as deputy chairperson with effect from that election;
- (iii) if a mayor, chairperson, deputy mayor or deputy chairperson resigns, by notice in writing addressed to the town clerk, he or she shall cease to hold office as such with effect from the date the notice is received by the town clerk;
- (iv) if the seat of the councillor who is a mayor, chairperson, deputy mayor or deputy chairperson becomes vacant by virtue of section 78(2) (b), (c), (d), (e), (f) or (g), he or she shall cease to hold office as such with effect from the date that seat becomes vacant.

(4) Where the office of mayor, chairperson, deputy mayor or deputy chairperson becomes vacant before a meeting referred to in subsection (i), the councillors present at a meeting of the council held not later than thirty days after such vacancy shall elect a successor who shall serve for the unexpired term of office of his or her predecessor.

(5) If, at any meeting at which a mayor, chairperson, deputy mayor or deputy chairperson is to be elected, more than one candidate is nominated for that office, the election shall be by secret ballot and, if there is an equality of votes between two or more candidates and the addition of one vote would entitle any of the candidates to be declared elected to the office, there shall be a second election by secret ballot and, if that second election there is again an equality of votes such as is referred to above, the candidate to whom the additional vote shall be deemed to have been given shall be determined by the drawing of lots at that meeting.

(6) At a meeting of the council referred to in subsection (4) at which a mayor, chairperson, deputy mayor or deputy chairperson is to be elected, the proceedings during that election shall be presided over by the person who, immediately before the election, held the office of mayor or chairperson or, failing him or her, by the person who at that time held the office of deputy mayor or deputy chairperson or, in the absence of both such persons, by a councillor elected by the councillors present to preside at that meeting.

(7) If the person presiding over a meeting to elect a mayor, chairperson, deputy mayor or deputy chairperson is not a member of the council, he or she shall have no vote in the election.

[Section substituted by section 22 of Act 1 of 2008.]

#### **104 Functions of mayor, deputy mayor, chairperson and deputy chairperson**

(1) The mayor shall preside at all meetings of the council at which he or she is present and, in the event of an equality of votes on any matter before the council, he or she shall, subject to sections 103(7) and 290(2)(a), have, in addition to a deliberative vote, a casting vote.

(2) Whenever the office of mayor or chairperson is vacant or the mayor or chairperson is absent or incapacitated or fails to act, the deputy mayor or deputy chairperson, as the case may be, shall perform the functions of the mayor or chairperson in terms of this Act or any other law or any resolution of the council.

(3) Save as otherwise provided in section 103(7), whenever the offices of both the mayor or deputy chairperson and the deputy mayor or deputy chairperson are vacant or both the mayor or deputy chairperson and the deputy mayor or deputy chairperson are absent or incapacitated or fail to act, their functions in terms of this Act or any other law or any resolution of the council shall be exercised by a councillor appointed by the council for the purpose or, failing such appointment, by a councillor appointed by the Minister, and such councillor shall, while performing his or her duties, be designated—

- (a) in the case of a municipal council, the acting mayor;
- (b) in the case of a town council, the acting chairperson.

(4) For the purposes of this section, a certificate under the hand of the town clerk as to the existence of a vacancy in the office, or the absence or incapacity of the mayor, chairperson, deputy mayor or deputy chairperson or the failure of the mayor, chairperson or deputy mayor or deputy chairperson to act shall be *prima facie* evidence of that fact.

[Section substituted by section 22 of Act 1 of 2008.]

#### **105 Allowances for mayor, deputy mayor, chairperson and deputy chairperson**

(1) Subject to subsection (2)—

- (a) a municipal council shall pay to the mayor and deputy mayor; and
- (b) a town council shall pay to the chairperson and deputy chairperson;

an allowance at a monthly rate fixed by the council, not exceeding such rate as may be prescribed, to cover the general and personal expenses incidental to the office of mayor, deputy mayor, chairperson or deputy chairperson, as the case may be.

(2) Where the deputy mayor or deputy chairperson, or a councillor, is required in terms of section 104(2) to perform the functions of the mayor, or chairperson for a period exceeding fourteen days, he or she shall be paid an allowance fixed by the council for the period he or she so performs such duties:

Provided that no allowance payable to the deputy mayor in terms of subsection (1) shall be paid to him or her in terms of subsection (1) in respect of any period for which he or she is paid an allowance in terms of this subsection.

[Section substituted by section 22 of Act 1 of 2008.]

## **106 Appointment of aldermen**

(1) A municipal council may appoint to the dignity of alderman any person who has held office as mayor or councillor on that council for a period of, or for periods which in the aggregate amount to, “eight years or more in the case of mayor, or ten years or more in the case of a councillor.”

(2) An alderman may retain the title of alderman and use the crest and armorial bearings designated by the council for aldermen, whether he is a councillor or not.

## **107 Disability for voting on account of interest in contract, etc.**

(1) If a councillor or member of a committee has any pecuniary interest, direct or indirect, in any contract or proposed contract or other matter and is present at a meeting of the council or committee at which that contract or other matter is the subject of consideration, he shall at that meeting, as soon as practicable after the commencement of the discussion of the item in which he has a pecuniary interest, disclose his interest and shall withdraw from that meeting while that item is under consideration and shall not vote at that or any other meeting on any question relating to that contract or other matter:

Provided that this subsection shall not apply in relation to—

- (a) an interest in a contract or other matter which a councillor or other member of a committee may have as an inhabitant of the council area or as an ordinary consumer of electricity or water; or
- (b) an interest in a matter relating to the terms on which the right to participate in any service, including the supply of goods, is offered by the council to members of the public; or
- (c) any case where the disability has been removed in terms of subsection (4) and any conditions imposed in terms of that section are complied with.

(2) For the purposes of subsection (1), a person shall be regarded as having an indirect pecuniary interest in a contract or any other matter if—

- (a) he or any nominee of his is a member of a company or other body with which the contract is made or is proposed to be made or which has a direct pecuniary interest in such other matter; or
- (b) he is a partner or is in the employment of a person with whom the contract is made or is proposed to be made or who has a direct pecuniary interest in such other matter:

Provided that—

- (i) this subsection shall not apply to membership of or employment by a statutory body or commission;
- (ii) a member of a company or other body shall not, by reason only of his membership, be regarded as having a pecuniary interest in any contract or other matter if he has no beneficial interest in any shares or stock issued by that company or other body.

(3) In the case of married persons living together, an interest of one spouse shall, if known to the other, be deemed, for the purposes of this section, to be also an interest of that other spouse.

(4) The Minister may, subject to such conditions as he may think fit to impose, remove any disability imposed by subsection (1) in any case in which—

- (a) the number of councillors or members of the committee so disabled at any one time would be so great a proportion of the total membership of the council or committee as to impede the transaction of business by the council or the committee; or
- (b) it appears to the Minister that it is in the interests of the inhabitants of the council area that the disability should be removed.

(5) Any councillor who knowingly contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]

(6) A councillor shall not be prosecuted for an offence under subsection (1) without the authority of the Attorney-General.

## **108 Mayor and councillors may not provide professional services for or against council**

(1) Subject to this section, no mayor or councillor shall act for reward—

- (a) as a legal practitioner on behalf of or against the council or on behalf of any person who has been charged with having contravened any by-laws of the council; or
- (b) for the council as a medical practitioner, veterinary surgeon, architect, engineer, surveyor, accountant, auditor, estate agent, auctioneer, valuer or appraiser or in any other professional capacity;

and any mayor or councillor or partner, employer or employee of such mayor or employee who contravenes this subsection shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]

(2) Nothing in subsection (1) shall apply to the payment to any medical practitioner of such fee as is fixed by any law for the rendering to the council of a certificate or of a notification of any case of an infectious disease.

(3) A person referred to in subsection (1) may act as medical practitioner for the council if requested to do so by the affirmative votes of not less than two-thirds of the total membership of the council and the Minister agrees thereto.

(4) Subject to subsections (2), (3) and (4), no mayor or councillor shall, directly or indirectly—

(a) sell or let on hire any goods to the council, municipality or town concerned; or

(b) for reward, provide any service to the council, municipality or town concerned;

unless he has notified the council in writing of the extent of his interest in the matter.

(5) For the purposes of subsection (4), if goods are let on hire or services are provided to a council, municipality or town by —

(a) a partner, employee or spouse of a mayor or councillor; or

(b) a company or private business corporation of which a mayor or councillor is a member;

the mayor or councillor shall be deemed indirectly to have sold or let the goods on hire or provided the service, as the case may be.

(6) The Minister may, subject to such conditions as he may think fit to impose, remove any disability imposed by subsection (1) in any case in which it appears to the Minister that it is in the interests of the inhabitants of the council area that the disability should be removed.

### **109 Appearance of mayor and councillors before boards and authorities**

No mayor or councillor and no partner, employer or employee of a mayor or a councillor shall act as agent or representative for any other person —

(a) before a valuation board established in terms of section *two hundred and forty-one*; or

(b) before a board appointed by the Minister in terms of section *three hundred and twelve*; or

(c) before a licensing authority constituted in terms of the Shop Licences Act [*Chapter 14:17*] within whose area of jurisdiction the council area or part of the council area falls.

### **110 Councillors to furnish address to chamber secretary**

(1) A councillor or other member of a committee shall furnish to the chamber secretary, in writing, an address within the council area to which official communications intended for him shall be sent.

(2) Where a councillor or other member is absent from a meeting of a committee or council on account of the fact that he has not received any communication sent to the address furnished in terms of subsection (1), such absence shall not affect the validity of any meeting or any proceedings of the council or any committee thereof of which he is a member.

### **111 Exemption of mayor, councillors and other persons from personal liability**

No—

(a) matter or thing done or omitted or contract entered into by the council or any committee thereof; or

(b) matter or thing done or omitted by a mayor or councillor or other member of a committee or by an employee or other person acting under the specific or general directions of the council or of a committee thereof;

which was done or omitted or, in the case of a contract, entered into in good faith and without recklessness for the purposes of this Act shall subject the mayor or any councillor or other member of a committee, employee or other person to any action, liability, claim or demand whatsoever and any expenses incurred by the council or a councillor or other member of a committee, employee or other person as a result of such action, claim or demand shall be paid by the council.

### **112 Personal allowances for councillors**

(1) Subject to subsection (2), with the written approval of the Minister, a council may, in accordance with any by-law or standing order of the council, pay to all councillors a monthly personal allowance at a rate fixed by the council not exceeding such sum as may be prescribed.

(2) A personal allowance in terms of subsection (1) shall not be paid to a councillor—

(a) in respect of the whole or any period of leave of absence from the council which exceeds a continuous period of thirty days;

(b) in circumstances where any by-law or standing order of the council prohibits such payment.

### **113 Power of municipal council to pay pensions to councillors or ex-councillors in special circumstances**

(1) If a municipal council considers that there are special circumstances which warrant the payment of a pension or allowance to a person who has attained the age of sixty years and has held office as a councillor on that council for a period of, or periods in the aggregate which amount to, twenty years or more, that council may apply to the Minister for authority to pay such pension or allowance.

(2) On receipt of an application in terms of subsection (1) the Minister shall, if he is satisfied that there are special circumstances which warrant the payment of the pension or allowance, grant authority for its payment, subject to such terms and conditions as he may determine, and it shall be lawful for the council to pay the pension or allowance in accordance with that authority.

(3) The Minister may at any time, after the council concerned has been consulted, withdraw any authority given in terms of subsection (2) or vary any terms and conditions subject to which it was given, if in the Minister's opinion the circumstances prevailing at the time the authority was given have altered.

### **114 Suspension and removal of councillors from office**

(1) In accordance with section 278 of the Constitution the mayor chairperson or councillor of a council shall only be removed from office on the grounds of—

- (a) inability to perform the functions of his or her office due to mental or physical incapacity; or
- (b) gross incompetence; or
- (c) gross misconduct; or
- (d) conviction of an offence involving dishonesty, corruption or abuse of office; or
- (e) wilful violation of the law, including a local authority by law.

(2) Subject to this section, if the Minister has reasonable grounds for suspecting that a mayor, chairperson or councillor—

- (a) is unable to perform the functions of his or her office due to mental or physical incapacity; or
- (b) is guilty of any misconduct referenced in subsection (1)(b), (c), (d) or (e);

the Minister shall, by written notice to the mayor, chairperson or councillor and the council concerned—

- (c) suspend the mayor, chairperson or councillor from exercising all or any of his or her functions in terms of this Act; and
- (d) specify the reasons for the suspension and the nature of the allegations against the mayor, chairperson or councillor; and
- (e) afford an opportunity to the mayor, chairperson or councillor to respond to the allegation within seven days of receiving the notice.

(3) Any allowance that is payable to mayors, chairpersons or councillors in terms of this Act shall continue to be paid to a mayor, chairperson or councillor who has been suspended in terms of subsection (1) for so long as he or she is suspended, unless the misconduct in question involves—

- (a) dishonesty in connection with the funds or other property of the council; or
- (b) gross negligence resulting in the loss of any funds or property of the council; or
- (c) gross mismanagement of the funds, property or affairs of the council;

whether or not the mayor's, chairperson's or councillor's responsibility for such dishonesty, negligence or misconduct is shared with other councillors or with any employees of the council.

(4) Not earlier than fourteen days after the Minister has suspended a mayor, chairperson or councillor in terms of subsection (2), and in any event within forty-five days, the Minister shall, if no response is made to a notice in terms of subsection (2)(e), or if that response is not satisfactory to the Minister, cause a thorough investigation where necessary to be conducted with all reasonable dispatch to determine whether sufficient evidence, exists for the issue of the removal of the mayor, chairperson or councillor on any of the grounds specified in subsection (1) to be referred to an independent tribunal.

(5) This section applies, with such changes as may be necessary, to any allegation of inability on the part a mayor, chairperson or councillor unable to perform the functions of his or her office due to mental or physical incapacity.

[Section substituted by Act 8 of 2016]

### **114A Independent tribunals: appointment and procedure**

(1) An independent tribunal referred to in section 278(2) of the Constitution shall be constituted whenever the issue of the removal of a mayor, chairperson or councillor on any of the grounds specified in section 114(1) needs to be referred to it.

(2) An independent tribunal shall, consist of—

- (a) a chairperson appointed by the Minister from a list of at least three and not more than nine registered legal practitioners with at least five years' experience in private or public practice, who shall be nominated by the Law Society of Zimbabwe referred to in section 51 of the Legal Practitioners Act [Chapter 27:07] (if the original list consists of fewer than nine nominees, the Minister may request an additional

nominee or list of nominees so that the total number of nominees including those in the original list does not exceed nine); and

- (b) two other members appointed by the Minister from a list of at least three and not more than nine persons nominated by the Civil Service Commission, who shall, be persons experienced in local government administration, whether as former councillors or as administrators (if the original list consists of fewer than nine nominees, the Minister may request an additional nominee or list of nominees so that the total number of nominees including those in the original list does not exceed nine).

(3) If the case to be determined by the tribunal involves financial impropriety, one of the members of the tribunal must be a person registered under the Public Accountants and Auditors Act [*Chapter 27:12*], in which event the Civil Service Commission shall submit to the Minister two lists of nominees of which one list shall consist at least three and not more than six persons qualified as provided in subsection (2)(b), and the other list shall consist of at least three and not more than six persons registered under the Public Accountants and Auditors Act [*Chapter 27:12*]:

Provided that if either of the original lists consists of fewer than six nominees, the Minister may request an additional nominee or list of nominees so that the total number of nominees including those in the original list does not exceed six.

(4) In accepting nominations for appointment to the tribunal in terms of subsections (2) and (3), the Minister shall notify the Law Society of Zimbabwe and Civil Service Commission of the names of at least one alternate for the office of chairperson of the tribunal (drawn from the list of nominees for that post) and one alternate for each of the other two appointees of the tribunal (drawn from the list of nominees supplied for those posts) who shall assume the chairpersonship or membership of the tribunal in case any such office becomes vacant in the course of the tribunal's proceedings.

(5) In nominating or appointing members or alternates to a tribunal the Law Society of Zimbabwe and the Civil Service Commission, as the case may be, must be mindful of the requirement that the tribunal should consist of members of both sexes.

(6) A person shall not be eligible for appointment to an independent tribunal if—

- (a) he or she is not a citizen of Zimbabwe ordinarily resident in Zimbabwe; or
- (b) he or she has, in terms of a law in force in any country—
  - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
  - (ii) he or she has, within the period of five years immediately preceding the date of his or her proposed appointment, been sentenced in any country to a term of imprisonment of six months or more, imposed without the option of fine, and has not received a free pardon.

(7) Members of the tribunal shall be paid such sitting and other allowances from the funds of the local authority affected by the suspension of the mayor, chairperson or council by whose removal from office they are considering, at such rate as shall be fixed in a statutory instrument:

Provided that the local authority concerned is entitled (in terms of paragraph 6 of the Fourth Schedule) to seek from the tribunal an order of reimbursement of all or part of the costs it incurred under this subsection if the mayor, chairperson or councillor is removed from office.

(8) The head of the Ministry shall provide such secretarial and support services as may be required by the tribunal.

(9) A member of a tribunal may resign his or her office at any time by giving the chairperson, or the Minister in the case of a chairperson, at least fourteen days' notice of his or her intention to resign, whereupon the next available person on the appropriate list of alternates shall assume office in his or her stead.

(10) The Minister may, after consulting the Law Society of Zimbabwe and the Civil Service Commission, as the case may be, remove a member from a tribunal on the grounds of—

- (a) inability to discharge the functions of his or her office, whether arising from infirmity of mind or body or any other cause; or
- (b) negligent or improper conduct in connection with the discharge of his or her duties as a member of the tribunal.

(11) On the death of, or the vacation of office by, a member of the tribunal, the next available person on the appropriate list of alternates shall assume office in his or her stead.

(12) Subject to paragraph 4(5) of the Fourth Schedule, the office of a member of a tribunal shall terminate on the day that a determination is made whether to remove a mayor, chairperson or councillor from office.

(13) In the course of its hearings—

- (a) the tribunal shall be bound by the rules of natural justice, and otherwise by the rules set forth in the Fourth Schedule; and
- (b) any contempt of the tribunal by any person before the tribunal shall constitute the crime of contempt of court in terms of section 181 of the Criminal Law Code.

(14) Any person aggrieved by the proceedings or decision of the tribunal may appeal to the High Court or take the matter on review to the High Court, but any decision of the tribunal shall stand pending the appeal or review.

(15) The Minister may in consultation with the Minister responsible for justice, amend the Fourth Schedule by statutory instrument:

Provided that no such statutory instrument shall be published and come into force until a draft thereof is laid before Parliament, and no resolution nullifying the same is made by either House within the first seven sitting days after the draft is laid before the House concerned.

[Section inserted by Act 8 of 2016]

## PART VIII

### LOCAL GOVERNMENT BOARD

#### 115 Interpretation in Part VIII

In this Part —

“member” means a member of the Local Government Board and includes the chairman;

“senior official” means a town clerk, a chamber secretary, a head or deputy-head of a department or such employee of a council as may be prescribed.

#### 116 Local Government Board

(1) There is hereby established a board to be known as the Local Government Board.

(2) The Local Government Board shall consist of seven members appointed by the Minister, of whom—

(a) one shall be chosen from a list of not less than three names submitted by the Urban Councils Association; and

(b) one shall be chosen from a list of not less than three names submitted by the town clerks; and

(c) one shall be chosen from a list of not less than three names submitted by the Municipal Workers Union; and

(d) one shall be a member of the Public Service Commission chosen from a list of not less than three names submitted by the Minister responsible for the Public Service; and

(e) two shall be appointed for their ability and experience in public administration and who are or have been employed by a local authority or the Public Service for a period of not less than five years in a senior post.

(3) If any person or organization referred to in subsection (2) fails or refuses to nominate a person to the Local Government Board when required to do so by the Minister, the Minister may appoint any person to represent that organization, and the person so appointed shall hold office as a member in all respects as if he had been duly nominated and appointed in terms of subsection (1).

(4) If any organization referred to in subsection (2) ceases to exist, the Minister shall obtain nominations for the purposes of that subsection from such other organization as the Minister recognizes as the successor to the first-mentioned organization.

(5) The Minister shall appoint one member as chairman of the Local Government Board and another member as vice-chairman of the Board and the vice-chairman shall exercise the functions of the chairman during any period that the chairman is unable to exercise his functions.

(6) A person shall not be eligible for appointment to the Local Government Board if—

(a) he is neither a citizen of Zimbabwe nor permanently resident in Zimbabwe; or

(b) he is a member of Parliament; or

(c) he has, in terms of a law in force in any country —

(i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or

(ii) made an assignment to, or arrangement or composition with, his creditors which has not been rescinded or set aside;

(d) he has, within the period of five years immediately preceding the date of his proposed appointment, been sentenced in any country to a term of imprisonment of six months or more, imposed without the option of a fine, and has not received a free pardon.

#### 117 Terms and conditions of office of members of Local Government Board

(1) Subject to this Part, a member shall hold office for such period, not exceeding four years, as the Minister may fix at the time of his appointment.

(2) Subject to section *one hundred and eighteen*, a member shall hold office on such conditions as the Minister may fix at the time of his appointment or otherwise.

(3) A retiring member shall be eligible for reappointment as a member.

### **118 Allowances of members of Local Government Board**

A member shall be paid such allowances, if any, as the Minister may fix for members from time to time for members generally.

### **119 Vacation of office by members of Local Government Board**

(1) A member may resign his office at any time by giving the Minister such notice of his intention to resign as may be fixed in his conditions of service in terms of section *one hundred and seventeen* or, if no such period has been fixed, after the expiry of thirty days after the date he gives such notice or after the expiry of such other period of notice as he and the Minister may agree.

(2) A member shall be deemed to have resigned his office as a member and his office shall become vacant if—

- (a) he accepts nomination for election to Parliament or becomes a member of Parliament; or
- (b) he becomes ineligible in terms of paragraph (a), (c) or (d) of subsection (6) of section *one hundred and sixteen* for appointment to the Local Government Board.

### **120 Removal of members of Local Government Board from office**

(1) A member shall not be removed from office except in terms of this section.

(2) The Minister may remove a member from office on the grounds of—

- (a) inability to discharge the functions of his office, whether arising from infirmity of mind or body or any other cause; or
- (b) misconduct; or
- (c) failure to comply with any of the conditions of his office fixed by the Minister in terms of section *one hundred and seventeen*.

### **121 Filling of vacancies on Local Government Board**

On the death of, or on the vacation of office, by a member, the Minister shall appoint a person to fill the vacancy in accordance with subsection (2) of section *one hundred and sixteen*.

### **122 Meetings of Local Government Board**

(1) The chairman of the Local Government Board shall, whenever he considers it to be necessary, convene a meeting of the Board.

(2) The quorum at any meeting of the Local Government Board shall be four members.

(3) If, at a meeting of the Local Government Board, both the Chairman and the vice-Chairman are absent, the members present may appoint another member to preside at that meeting.

(4) Any question arising at a meeting of the Local Government Board shall be decided by a majority of the members present and voting and, in the event of an equality of votes, the member presiding shall have a casting vote in addition to a deliberative vote.

(5) The chairman of the Local Government Board may, with the approval of the other members, invite any person with special knowledge or experience of any matter under consideration to attend a meeting of the Board, but such person shall not vote on any question before the Board.

(6) The Local Government Board may regulate the proceedings at its meetings as it thinks fit, and shall keep minutes of such proceedings.

### **123 Functions of Local Government Board**

(1) The functions of the Local Government Board shall be—

- (a) to provide guidance for the general organization and control of employees in the service of councils; and
- (b) to ensure the general well-being and good administration of councils staff and the maintenance thereof in a high state of efficiency; and
- (c) to make model conditions of service for the purposes stated in paragraphs (a) and (b) for adoption by councils; and
- (d) to make model regulations stipulating the qualifications and appointment procedures for senior officials of councils; and
- (e) to approve the appointment and discharge of senior officials; and
- (f) to conduct inquiries into the affairs and procedure of councils; and
- (g) to exercise any other functions that may be imposed or conferred upon the Board in terms of this Act or any other enactment.

(2) In the exercise of its functions in terms of this Act, the Local Government Board may or, where so directed by the Minister, shall—

- (a) require any council or any councillor, employee or agent of a council to produce any document, book or other record;
- (b) summon and examine any witness who the Board considers may be able to assist it in the conduct of any inquiry; and
- (c) obtain information and advice from any council or any employee or agent of any council.

(3) For the purposes of any inquiry carried out by it in terms of this Act, the Local Government Board shall have the same powers as are conferred upon commissioners in terms of the Commissions of Inquiry Act [*Chapter 10:07*], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 19 of that Act shall apply, *mutatis mutandis*, in relation to such an inquiry and to any person summoned to give or giving evidence at that inquiry.

(4) Any inquiry conducted by the Local Government Board may be conducted in an informal manner and the rules of procedure and evidence applicable in criminal or civil proceedings need not be observed at the inquiry:

Provided that the person presiding over the inquiry shall ensure that substantial justice is done.

#### **124 Directions on matters of policy**

The Minister may give to the Local Government Board such directions of a general character as to the policy to be observed by it in the exercise of its functions as the Minister considers requisite in the national interest.

#### **125 Staff of Local Government Board**

The Local Government Board, in consultation with the Minister, shall appoint, on such terms and conditions as it may determine, such employees as are necessary to enable the Board to discharge its functions, and the Board may suspend, discipline or discharge any such employees.

#### **126 Validity of acts and decisions of Local Government Board**

No decision or act of the Local Government Board or act done under the authority of the Board shall be invalid solely because—

- (a) a person who was not entitled to do so acted as a member when the decision was taken or the act was done or authorized; or
- (b) there were one or more vacancies on the Board when the decision was taken or the act was done or authorized.

#### **127 Funds of Local Government Board**

The funds of the Local Government Board shall consist of—

- (a) such moneys as may be payable to the Board from moneys appropriated for the purpose by Parliament; and
- (b) any moneys to which the Board may be entitled from time to time.

#### **128 Local Government Board may direct institution of disciplinary proceedings in respect of employees of councils**

(1) The Local Government Board may, if it considers that there are grounds to suspect that an employee of a council has committed misconduct in terms of his conditions of service, direct the council concerned to institute disciplinary proceedings, and sections *one hundred and thirty-nine*, *one hundred and forty* and *one hundred and forty-one* shall apply, *mutatis mutandis*, in respect of such proceedings.

(2) The council concerned shall comply with any direction given to it by the Local Government Board in terms of subsection (1).

#### **129 By-laws by Local Government Board**

The Local Government Board may, with the approval of the Minister, make by-laws providing for matters which in its opinion are necessary or convenient for the better carrying out of or giving effect to its functions in terms of this Act.

#### **130 Adoption of model by-laws by councils**

A council may, in accordance with sections *two hundred and twenty-eight* and *two hundred and twenty-nine*, make by-laws adopting by reference, wholly or in part and with or without modifications, any model by-laws made in terms of section *one hundred and twenty-nine*, and the model by-laws as adopted shall have effect as if they were by-laws made by the council.

### **PART IX**

#### EMPLOYEES OF THE COUNCIL

#### **131 Interpretation of term in Part IX**

In this Part—

“senior official” means a town clerk, a chamber secretary, a head or deputy head of a department or such other employee of a council as may be prescribed.

#### **132 Appointment of town clerk and secretary**

(1) Subject to this Part, a municipal council shall appoint a person approved by the Local Government Board to be the town clerk of the municipality.

(2) The municipal council concerned shall recommend to the Local Government Board the names of suitable candidates for appointment to the post of town clerk.

[Subsection amended by section 23 of Act 1 of 2008.]

(3) Subject to this Part, a town council shall appoint a person approved by the Local Government Board to be the secretary of the council.

(4) The town council concerned shall recommend to the Local Government Board the names of suitable candidates for appointment to the post of secretary.

### **133 Appointment of chamber secretary**

(1) The municipal council shall, in addition to any other departments of the council, establish a department responsible for the provision of administrative and secretarial services to the council, and such department shall be headed by a chamber secretary.

[Subsection amended by section 23 of Act 1 of 2008.]

(2) Subject to this Part a municipal council shall appoint a person approved by the Local Government Board to be the chamber secretary in respect of a department of council established in terms of subsection (1).

(3) The council shall recommend to the Local Government Board the names of suitable candidates for the post of chamber secretary.

### **134 Appointment of other senior officials**

(1) Subject to this Part, a council shall appoint persons approved by the Local Government Board to be senior officials of the council:

Provided that the appointment of a medical officer of health shall be subject to the approval of the Local Government Board and of the Minister responsible for health in terms of section 7 of the Public Health Act [*Chapter 15:09*].

(2) The council concerned shall recommend to the Local Government Board the names of suitable candidates for appointment as senior officials.

### **135 Approval by Local Government Board**

(1) The Local Government Board shall interview every person whose name has been submitted to it by a council in terms of this Part and may—

- (a) approve a person recommended by the council concerned; or
- (b) refuse to approve any person recommended by the council concerned.

(2) Where the Local Government Board refuses to approve a person recommended by a council, it shall give its reasons therefor in writing to such council.

(3) Where, after a period of two months has elapsed since the Local Government Board notified the council of its refusal to approve a person for appointment, the council fails to recommend any other person who meets the approval of the Board, the Board shall submit a report to the Minister setting out the full details of the matter for his consideration.

(4) The decision of the Minister on any matter referred to him in terms of subsection (3) shall be final.

### **136 Functions of town clerk**

(1) The town clerk shall be responsible for—

- (a) the proper administration of the council; and
- (b) managing the operations and property of the council; and
- (c) supervising and controlling the activities of the employees of the council in the course of their employment.

(2) For the purposes of subsection (1), the town clerk, in addition to any other duties that may be assigned to him by the council, shall—

- (a) direct, supervise, appraise, develop and report on the work and conduct of all council employees and take appropriate measures to ensure efficiency, and discipline among all council employees; and
- (b) where so authorised by the council, sign orders, notices, or any document requiring authentication, or execution on behalf of the council; and

[Paragraph substituted by section 25 of Act 1 of 2008.]

- (c) recommend to the council the measures necessary to safeguard the finances and assets of the council; and

[Paragraph substituted by section 25 of Act 1 of 2008.]

- (d) take such steps as he or she considers to be necessary for the purpose of giving effect to any resolution of the council: and

[Paragraph substituted by section 25 of Act 1 of 2008.]

- (e) account to the council for the performance of any tasks entrusted through him or her to the employees of the council; and

[Paragraph substituted by section 25 of Act 1 of 2008.]

- (f) make such recommendations to the council or any committee of the council as he or she considers to be necessary or desirable to effect economies, improve co-ordination and, generally, to improve the operations of the council or committee concerned; and

[Paragraph substituted by section 25 of Act 1 of 2008.]

- (g) introduce, implement and monitor adequate control systems; and
- (h) be responsible for the effectiveness and efficiency of the organization of the council and the co-ordination and, where necessary, the integration of its activities and, for such purposes, he may, after consultation with the head of the department concerned, inspect, inquire into and investigate the working and administration of any department or section thereof, either by himself or through any person authorized by him:

Provided that—

- (i) nothing in this subsection shall be deemed to derogate from the personal responsibility of a head of department for the proper, efficient and effective management of his department;
- (ii) where a head of a department disagrees with any directive of the town clerk, he shall carry out such directive, and record any reservations he may have, in writing, and lodge them with the town clerk and the mayor;
- (iii) where a head of department lodges his reservation in terms of proviso (ii), the town clerk shall lodge his reply, in writing with the mayor.

[Subsection amended by section 25 of Act 1 of 2008.]

(3) The town clerk may delegate to any other employee of the council any functions conferred or imposed upon him in terms of this Act, and such employee shall exercise the powers or carry out the duties in accordance with such directions as the town clerk may give him.

### **137 Functions of chamber secretary**

(1) The chamber secretary shall be responsible for—

- (a) preparing and distributing minutes of the proceedings of a council and its committees; and
- (b) preparing and distributing agendas and notices of any mayoral, council or committee meetings; and
- (c) any other duties which may be assigned to him from time to time by the town clerk.

(2) Whenever the office of town clerk is vacant or the town clerk is absent or incapacitated or fails to act, the chamber secretary shall perform the functions conferred or imposed upon the town clerk by this Act or any other law or by any resolution of the council.

### **138 Approval of conditions of service of employees of councils**

Notwithstanding anything to the contrary contained in any other law, no council shall fix or alter the conditions of service of its employees except with the approval of the Minister responsible for the administration of the Labour Relations Act [*Chapter 28:01*]

### **139 Conditions of service of town clerk**

(1) Subject to subsection (2) and to the conditions of service of a town clerk, a council may at any time discharge a town clerk—

- (a) upon notice of not less than three months; or
- (b) summarily on the ground of misconduct, dishonesty, negligence or any other ground that would in law justify discharge without notice.

(2) A council shall not discharge a town clerk unless the discharge has been approved by the Local Government Board.

(3) If it appears to the mayor or chairman, as the case may be, that the town clerk of the council has been guilty of such conduct that it is desirable that the town clerk should not be permitted to carry on his work, he—

- (a) may suspend the town clerk from office and require him forthwith to leave his place of work; and
- (b) shall forthwith notify the council in writing, of such suspension and cause the suspension to be reported to the council at the first opportunity.

[Paragraph amended by section 26 of Act 1 of 2008.]

(4) Where a council has received a report of a suspension in terms of subsection (3), the council shall without delay—

- (a) conduct an inquiry or cause an inquiry to be conducted into the circumstances of the suspension; and
- (b) after considering the results of the inquiry, decide whether or not—
  - (i) to lift the suspension; or
  - (ii) to do any one or more of the following—
    - A. reprimand the town clerk;
    - B. reduce the salary or any allowance payable to the town clerk;
    - C. impose a fine not exceeding three thousand dollars or three months' salary, which fine may be recovered by deductions from the salary of the town clerk;
    - D. subject to subsection (2), discharge the town clerk; and shall inform the town clerk accordingly.

(5) Where a town clerk has been suspended in terms of subsection (3)—

- (a) his suspension, unless earlier lifted, shall terminate when the council has decided not to discharge him or after six months has elapsed, whichever occurs the sooner;

- (b) during the period of his suspension he shall not be entitled to his salary or wages in respect of that period, but he may be paid such allowance, not exceeding the amount of his salary or wages, as the council may fix;
- (c) if he is not subsequently discharged, he shall be entitled to the full amount of his salary or wages and any allowances that would otherwise have been paid to him in respect of the period of his suspension, less any allowance paid to him in terms of paragraph (b).

#### **140 Conditions of service of other senior officials**

(1) Subject to subsection (2) and to the conditions of service of the senior official concerned, a council may at any time discharge a senior official—

- (a) upon notice of not less than three months; or
- (b) summarily on the ground of misconduct, dishonesty, negligence or any other ground that would in law justify discharge without notice.

(2) A council shall not discharge a senior official unless the discharge has been approved by the Local Government Board:

Provided that the discharge of a medical officer of health shall in addition be subject to the approval of the Minister responsible for health in terms of section 11 of the Public Health Act [*Chapter 15:09*].

(3) If it appears to a town clerk that any other senior official of the council has been guilty of such conduct that it is desirable that that official should not be permitted to carry on his work, he—

- (a) may suspend the official from office and require him forthwith to leave his place of work; and
- (b) shall forthwith notify the mayor or chairman of the council, as the case may be, in writing, of such suspension.

(4) Upon receipt of a notification of suspension in terms of subsection (3) the mayor or chairperson shall cause the suspension to be reported at the first opportunity to the council.

[Subsection substituted by section 27 of Act 1 of 2008.]

(5) Where a council has received a report of a suspension in terms of subsection (4), the council shall without delay—

- (a) conduct an inquiry or cause a inquiry to be conducted into the circumstances of the suspension; and
- (b) after considering the results of the inquiry, decide whether or not—
  - (i) to lift the suspension; or
  - (ii) to do any one or more of the following—
    - A. reprimand the senior official concerned;
    - B. reduce the salary any allowance payable to the senior official;
    - C. transfer the senior official to another post or grade, the salary of which is less than that received by him or her at the date of the imposition of the penalty;
    - D. impose a fine not exceeding level five or three months' salary, which fine may be recovered by deductions from the salary of the senior official;
    - E. subject to subsection (2), discharge the senior official.

[Subsection substituted by section 27 of Act 1 of 2008.]

(6) ....

[Subsection repealed by section 27 of Act 1 of 2008.]

#### **141 Appointment and conditions of service of other employees**

(1) Employees of a council, other than senior officials, shall be appointed by the council—

- (a) on the recommendation of the town clerk in the case of a municipal council;
- (b) on the recommendation of the secretary in the case of a town council.

[Subsection substituted by section 28 of Act 1 of 2008.]

(2) Subject to the conditions of service of the employee concerned, a council may at any time discharge an employee other than a senior official—

- (a) upon notice of not less than three months; or
- (b) summarily on the ground of misconduct, dishonesty, negligence or any other ground that would in law justify discharge without notice.

[Subsection amended by section 28 of Act 1 of 2008.]

(3) ....

[Subsection repealed by section 28 of Act 1 of 2008.]

Provided that the discharge of a health inspector shall in addition be subject to the approval of the Minister responsible for health in terms of section 11 of the Public Health Act [*Chapter 15:09*].

(4) If it appears to a head of department that any employee of the council who is not a senior official has been guilty of such conduct that it is desirable that that employee should not be permitted to carry on his work, he—

- (a) may suspend the employee from office and require him forthwith to leave his place of work; and
- (b) shall forthwith notify the town clerk or secretary of the council, as the case may be, in writing, of such suspension.

(5) Upon receipt of a notification of suspension in terms of subsection (4) the town clerk or secretary, as the case may be, shall cause the suspension to be reported at the first opportunity to the council.

[Subsection substituted by section 28 of Act 1 of 2008.]

(6) Where a council has received a report of a suspension in terms of subsection (5), the council shall without delay—

- (a) conduct an inquiry or cause an inquiry to be conducted into the circumstances of the suspension; and
- (b) after considering the results of the inquiry, decide whether or not—
  - (i) to lift the suspension; or
  - (ii) to do any one or more of the following—
    - A. reprimand the employee concerned;
    - B. reduce the salary or any allowance payable to the employee concerned;
    - C. transfer the employee concerned to another post or grade, the salary of which is less than that received by him or her at the date of the imposition of the penalty;
    - D. impose a fine not exceeding level five or three months salary, which fine may be recovered by deductions from the salary of the employee concerned;
    - E. subject to subsection (3), discharge the employee concerned;

[Subsection substituted by section 28 of Act 1 of 2008.]

and shall inform the employee and his head of department accordingly.

(7) Where an employee has been suspended in terms of subsection (4)—

- (a) his suspension, unless earlier lifted, shall terminate when the council has decided not to discharge him or after six months has elapsed, whichever occurs the sooner;
- (b) during the period of his suspension he shall not be entitled to his salary or wages in respect of that period, but he may be paid such allowance, not exceeding the amount of his salary or wages, as the council may fix;
- (c) if he is not subsequently discharged, he shall be entitled to the full amount of his salary or wages and any allowances that would otherwise have been paid to him in respect of the period of his suspension, less any allowance paid to him in terms of paragraph (b).

#### 142 Uniformed employees

(1) Without derogation from section *one hundred and forty-one*—

- (a) a council may appoint in terms of that section employees for the purpose of assisting in the control and protection of the property under the control of the council;
- (b) a municipal council may appoint in terms of that section parking supervisors to assist the police in the enforcement of any enactment to which the Municipal Traffic Laws Enforcement Act [*Chapter 29:10*] applies.

(2) An employee appointed for the purposes specified in paragraph (a) or (b) of subsection (1) may, when in uniform or upon proof of his appointment, demand the name and address of any person reasonably suspected by him of having committed any offence in relation to any property of or service or amenities provided by the council.

(3) An employee appointed for the purposes specified in paragraph (b) of subsection (1) may, when in uniform and upon proof of his appointment, demand the name and address of any person reasonably suspected by him of having committed any offence in terms of any enactment to which the Municipal Traffic Laws Enforcement Act [*Chapter 29:10*] applies.

(4) A person who—

- (a) when demand is made to him in terms of subsection (2) or (3) fails to furnish his name and address or furnishes a false name and address; or
- (b) hinders or obstructs or uses foul, abusive or insulting language towards or at an employee appointed for the purposes specified in subsection (1) whilst that employee is engaged upon the execution of his duties;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment

[Subsection amended by section 4 of Act 22 of 2001.]

#### 143 Disqualifications for appointment of employees

(1) A person who approaches a mayor or councillor with a view to securing the vote of the mayor or councillor in favour of his appointment as an employee of the council concerned shall be disqualified from such appointment.

(2) A person who is convicted of any of the following offences—

- (a) extortion, bribery or a contravention of the Prevention of Corruption Act [*Chapter 9:16*]; or
- (b) theft or receiving stolen property knowing it to have been stolen; or
- (c) fraud, forgery or uttering; or
- (d) possession or supply of any habit-forming or other drug in contravention of any enactment; or

(e) any offence for which he is sentenced to imprisonment for a period of six months or more without the option of a fine, whether or not any part of such imprisonment is suspended; or

(f) an attempt, conspiracy or incitement to commit an offence specified in paragraph (a), (b), (c) or (d);

shall be disqualified from appointment as an employee of any council for a period of three years from the date of such conviction.

#### **144 Additional penalties for corrupt practices by employees of council**

Without prejudice to any other penalty to which he may become liable in terms of any other law, if any employee of a council—

(a) solicits, exacts or accepts or agrees to accept or attempts to obtain any fee or reward whatsoever, other than any remuneration or allowance paid to him by the council, as an inducement or reward for doing or forbearing to do or for having done or forborne to do anything in connection with his employment or the affairs of the council; or

(b) negotiates or enters into any contract on behalf of the council without disclosing to the council any financial or other interest he may have in the subject-matter of the contract or any personal relationship he may have with the parties to the contract; or

(c) steals any money or property of the council;

and is discharged in terms of section *one hundred and thirty-nine, one hundred and forty* or *one hundred and forty-one* on account of such conduct, such employee shall not afterwards be capable of being employed in any capacity whatsoever by that council or by any other local authority, unless the Minister, by notice in writing to the council or local authority concerned, permits such employment.

#### **145 Delegation of powers to employees**

(1) A council may delegate, subject to such conditions as it may impose, to an employee of the council such of the powers vested in it by or under this Act or any other law as it considers to be necessary or desirable and may in like manner amend or withdraw any such delegation:

Provided that—

(i) the council shall not delegate to an employee the powers conferred by any Act, other than this Act, or any statutory instrument made under such other Act upon the council, unless the proposed delegation has been approved by the appropriate Minister responsible for the administration of the Act concerned in its application to the council area and any conditions fixed by the Minister in granting his approval are complied with;

(ii) ....

[Proviso repealed by section 29 of Act 1 of 2008.]

(iii) the council or executive committee shall not delegate to an employee any power conferred by model building by-laws, which have been adopted by or on behalf of the council, to grant a relaxation or waiver referred to in subparagraph (2) of paragraph 47 of the Third Schedule, unless the by-laws concerned expressly provides that the power may be delegated to such employee or the Minister has consented to the delegation of the power to the employee;

(iv) the power conferred by subsection (2) to review the exercise of any power by an employee shall not itself be delegated to an employee;

(v) the amendment or withdrawal of any delegation shall not invalidate anything done in pursuance of a decision lawfully taken by the employee before the date of such amendment or withdrawal.

(2) Any person who feels aggrieved by a decision of an employee acting under powers delegated to him in terms of subsection (1) shall have the right to bring the matter in writing to the attention of the appropriate head of department in the first instance and, failing satisfaction, to the council through the town clerk for review.

(3) The delegation in terms of subsection (1) of any powers to an employee shall not preclude the council from itself exercising the powers so delegated and the council may amend or rescind any decision of an employee in the exercise of the powers so delegated to him.

[Section amended by section 29 of Act 1 of 2008.]

#### **146 Pension and other benefits on termination of service**

Subject to such terms and conditions as the Local Government Board, in consultation with the Minister and the Minister responsible for finance may fix, a council may provide pecuniary benefits for its employees on their retirement, resignation, discharge or other termination of service or in the event of their sickness, injury or death, including the payment of the whole or part of any funeral and death-bed expenses, and for their dependants and for that purpose may effect policies of insurance, establish and maintain or contribute towards pension or provident funds or make such other provision as may be necessary to secure for such employees and their dependants any or all of the pecuniary benefits to which this subsection relate.

#### **147 Medical aid and funeral expenses**

Subject to such terms and conditions as the Local Government Board, in consultation with the Minister and the Minister responsible for finance, may fix, a council may—

- (a) contribute to any medical aid society, sick fund or similar institution in respect of—
  - (i) any of its employees or former employees; or
  - (ii) the spouses, surviving spouses or other dependants of any of its employees or former employees;
- (b) establish and maintain a sick fund for any persons such as are referred to in paragraph (a) or make such other provision as may be necessary to secure for such persons the benefits normally provided by a medical aid society;
- (c) pay the medical expenses or the expenses of the funeral of any employee of the council who suffers injury or dies as a result of an accident arising out of or in the course of his employment or as a result of illness contracted in consequence of his employment.

#### **148 Guarantee of housing loan**

(1) The Local Government Board, with the approval of the Minister, may determine the terms and conditions on which a council may guarantee the repayment of any loan made to an employee or the spouse of an employee or an employee and his spouse jointly—

- (a) by the Local Authorities Pension Fund maintained in terms of the Local Authorities Employees (Pension Schemes) Act [*Chapter 29:09*]; or
- (b) by a building society registered in terms of the Building Societies Act [*Chapter 24:02*]; or
- (c) from the provident fund of the council; or
- (d) by or from any other person or fund approved by the Minister;

for the purpose of purchasing land and building a dwelling thereon or of building a dwelling on land owned by such employee or his spouse or the employee and his spouse jointly or of purchasing an existing dwelling.

(2) With the approval of the Minister, a council may purchase any property in respect of which it has given a guarantee referred to in subsection (1) where it considers that the circumstances are such that it is necessary to purchase that property in order to protect the interests of the council.

### **PART X**

#### IMMOVABLE PROPERTY

#### **149 Interpretation in Part X**

In this Part—

“land” means land with or without improvements.

#### **150 Acquisition of land or interest in land**

(1) Subject to this Act and any other law, a council may acquire land inside or outside the council area or any interest in such land for the purpose of carrying out any function of the council or exercising any power or performing any duty which is conferred or imposed on the council by law.

(2) An acquisition of land or an interest in land in terms of subsection (1) may be—

- (a) by way or purchase, donation, lease or other agreement with the owner thereof; or
- (b) in the case of land, by expropriation in accordance with section *one hundred and fifty-one* or of any other law:

Provided that where a council is empowered by any other enactment to compulsorily acquire any land or interest in land for a particular purpose specified in that law, the council shall comply with that enactment in compulsorily acquiring land or an interest in land for that purpose.

(3) A council may not acquire the ownership of any land or the lease for a period of three years or more of any land which is not situated within the area of an approved town planning scheme unless the approval of the Minister has been obtained.

#### **151 Expropriation of land**

(1) A proposal to expropriate land shall be deemed not to have been passed by a council unless the proposal is passed by a majority of the total membership of the council at a meeting—

- (a) of which at least fourteen days’ notice has been given; or
- (b) at which the proposal is brought forward as a recommendation of a committee of the council.

(2) Where a council has passed in accordance with subsection (1) a proposal to expropriate land, it shall apply to the Minister for his approval of the proposal giving —

- (a) full particulars of the land proposed to be expropriated; and
- (b) the reasons for and the purpose of the proposed expropriation; and
- (c) such other information in connection with the proposed expropriation as the Minister may require.

(3) On receipt of an application in terms of subsection (2) the Minister may, subject to subsection (4)—

- (a) refuse to approve the proposed expropriation; or
- (b) approve the proposed expropriation and may grant such approval subject to such conditions as he may think fit.

(4) The Minister shall not approve any proposed expropriation unless he is satisfied, after consideration of a report by the council, that—

- (a) the council is unable to acquire such land upon reasonable terms by agreement with the owner; and
- (b) it is necessary or desirable that such land be acquired by the council for the purposes specified by the council; and
- (c) the owner of the land to be expropriated has been given an opportunity to make representations on the matter to the Minister, either in writing or verbally as he may wish:

Provided that this paragraph shall not apply in relation to representations relating to the amount of compensation payable or, where relevant, the acquisition of the remainder of the piece of land concerned.

(5) The Land Acquisition Act [*Chapter 20:10*] shall apply, *mutatis mutandis*, to the expropriation of land by a council.

(6) Not less than forty-five days before applying to the Minister in terms of subsection (2), the council shall notify the owner of the land concerned of his right to make representations, either personally or through an agent, to the Minister.

(7) In granting his approval for the expropriation of any land, the Minister may approve the expropriation of all or part of the land to which the application applies.

(8) Where a council has expropriated any land in terms of this section, the council shall not—

- (a) use the land for any purpose other than that for which it was expropriated; or
- (b) sell, exchange, lease, donate or otherwise dispose of the land;

without the consent in writing of the Minister.

## **152 Alienation of council land and reservation of land for State purposes**

(1) Subject to any rights which have been acquired by a miner of a registered mining location in terms of section 178 of the Mines and Minerals Act [*Chapter 21:05*], a council may, subject to section *one hundred and fifty-three*, sell, exchange, lease, donate or otherwise dispose of or permit the use of any land owned by the council after compliance has been made with this section.

(2) Before selling, exchanging, leasing, donating or otherwise disposing of or permitting the use of any land owned by it the council shall, by notice published in two issues of a newspaper and posted at the office of the council, give notice—

- (a) of its intention to do so, describing the land concerned and stating the object, terms and conditions of the proposed sale, exchange, lease, donation, disposition or grant of permission of use; and
- (b) that a copy of the proposal is open for inspection during office hours at the office of the council for a period of twenty-one days from the date of the last publication of the notice in a newspaper; and
- (c) that any person who objects to the proposal may lodge his objection with the town clerk within the period of twenty-one days referred to in paragraph (b).

(3) The council shall submit a copy of the notice referred to in subsection (2) to the Minister not later than the date of the first publication of that notice in a newspaper.

(4) A council may not, subject to section *one hundred and fifty-three*, sell, exchange, lease, donate or otherwise dispose of or permit the use of any land owned by the council which lies within an area for which—

- (a) there is no approved town planning scheme, unless —
  - (i) a copy of the proposal and of the notice published in terms of subsection (2), together with any objections which have been lodged and the comments of the council on such objections, have been transmitted to the Minister; and
  - (ii) the Minister has consented to the sale, exchange, lease, donation or other disposition or permission to use, as the case may be :

Provided that the Minister shall not consent unless he is satisfied that an adequate area of land, suitable for the purpose, has, where necessary, been reserved for State purposes or for postal and telecommunication services;

or

- (b) there is an approved town planning scheme, unless —
  - (i) the period of twenty-one days referred to in subsection (2) has expired; and
  - (ii) if any objections have been lodged they have been considered by the council.

(5) Notwithstanding subsection (2), modifications or amendments to the proposal advertised in terms of that subsection may be made if they are of a minor nature and are not opposed to the true spirit and intent of such proposal—

- (a) where the consent of the Minister is required in terms of paragraph (a) of subsection (4), by the Minister after consultation with the council; or
- (b) by the council;

without re-advertising the proposal.

(6) Where, in granting his consent in terms of paragraph (a) of subsection (4) the Minister has imposed any terms or conditions, the council shall ensure that those terms and conditions are observed in any contract, lease or other instrument entered into in connection with the sale, exchange, lease, donation or other disposition of or permission to use the land, as the case may be.

(7) Any land reserved for State purposes, whether in terms of an approved town planning scheme or in terms of the approval of the Minister in terms of subparagraph (ii) of paragraph (a) of subsection (4), which is required for the purposes of a police station or school shall, upon the sale, exchange, lease, donation or other disposition of land in terms of this section and upon request of the Minister, at the cost of the council, be transferred to the President and the council shall not be entitled to any payment or compensation for any such land so transferred but shall be entitled to recover the costs incurred by the council in surveying such land:

Provided that—

- (i) where the reservation is situated on township land granted to the council in trust for the inhabitants of the council area in terms of a deed which stipulates that a certain percentage of such township land shall be surrendered free of cost for State purposes, any land transferred to the President in terms of this subsection shall, if the balance of the percentage of land remaining is equal to or greater than the land transferred, be deducted from that percentage;
  - (ii) the exhaustion of the percentage referred to in proviso (i) shall not prevent the operation of this subsection.
- (8) If land which has been acquired by the State in terms of subsection (7) or any portion thereof—
- (a) is to be used for purposes other than for a police station or school, there shall be paid to the council from moneys appropriated for the purpose by Act of Parliament an amount equal to the value, calculated on the basis set out in subsection (1) of section *two hundred and fifty*, of the land or portion thereof, as the case may be, as at the date on which it was acquired by the State:

Provided that, if the land was deducted from the percentage referred to in proviso (i) to subsection (7), no payment shall be made to the council;

- (b) is not to be used for State purposes, the land or portion thereof, as the case may be, shall be transferred free of charge to the council and any costs incurred in such transfer shall be paid from moneys appropriated for the purpose by Act of Parliament:

Provided that, if the land was deducted from the percentage referred to in proviso (i) to subsection (7), the percentage shall be appropriately restored.

### **153 Exclusion of certain leases from section 152**

(1) Subject to subsection (2), a council may lease or permit the use of any land owned by it for a period garage referred not exceeding twelve months without compliance with section *one hundred and fifty-two*.

(2) A municipal council may lease or permit the use of any particular shop or other premises in a parking to in section *one hundred and ninety* without compliance with section *one hundred and fifty-two* if it publishes a notice in two issues of a newspaper inviting applications for the lease or use of that shop or other premises within such period as the council may determine, being not less than twenty-one days from the date of the first publication of that notice in the newspaper.

### **154 Conditions of title to land transferred by municipal council**

In the case of land granted to a municipality in trust for the inhabitants of the municipality, such area being known as municipal township land, which was granted subject to the conditions that—

- (a) the British South Africa Company or the Governor of Southern Rhodesia shall have the right to resume ownership of and to retake possession of the said land or any portion thereof on payment of such compensation as may be mutually agreed upon or, failing such agreement, as may be determined by arbitration; and
- (b) the right to all minerals in or the power to make grants of the right to prospect for minerals on that land was reserved, either to the British South Africa Company or the Governor of Southern Rhodesia;

any such land which is or has been transferred, whether before or after the date of commencement of this Act, by the municipality or by any successor in title to the municipality shall be deemed to have been transferred and shall be held, notwithstanding anything to the contrary in any other law, subject to the conditions referred to in paragraphs (a) and (b) which were applicable to the municipal township land concerned, save that any reference to the British South Africa Company or the Government shall be construed as a reference to the President, and subject to any other conditions that may have been imposed by the municipality or any subsequent owner of the land.

### **155 Encroachments**

(1) Notwithstanding anything to the contrary in this Part, where any land which is owned by a municipality or town or is under the control of a council is encroached upon, the council may take such steps as it considers necessary to remove or regularize the encroachment and, without derogation from the generality of the foregoing, the council may—

- (a) sell the land concerned to the person owning the land on which the building causing the encroachment is situated; or
- (b) grant a servitude over the land concerned; or
- (c) require the removal of the encroachment.

(2) Where agreement cannot be reached between the council and the person concerned as to the steps to be taken to remove or regularize the encroachment or the amount to be paid to the council in respect of the sale of or the granting of a servitude over the land concerned, either party may refer the matter to the Administrative Court, which may make such order as it thinks fit, including an order as to the payment of costs.

### **156 Vesting of land, roads and sanitary lanes**

The property of and in all lands, roads and sanitary lanes or any part thereof within a council area to which the inhabitants of the municipality or town have or acquire a common right shall be vested in the municipality or town, and sections 56 and 57 of the Regional, Town and Country Planning Act [*Chapter 29:12*] shall apply, *mutatis mutandis*, in relation to any such road or sanitary lane.

## **PART XI**

### CONSTRUCTION OF SIDEWALKS

### **157 Interpretation in Part XI**

In this Part—

“sidewalk” means the whole or any portion of a footway and includes the curbing and channelling thereto;

“works”, in relation to a sidewalk, means all or any one or more of the following works when executed for the first time—

- (a) the forming and grading of the sidewalk;
- (b) the foundations of the sidewalk;
- (c) the paving of the sidewalk with stone blocks, cement, asphalt seal coat or other suitable preparation as a wearing and water-proofing surface;
- (d) the curbing to the sidewalk;
- (e) the channelling to the sidewalk.

### **158 Execution of sidewalk works**

Subject to section *one hundred and sixty-one*, a council may execute any sidewalk works, whether or not it has received a request for such works from owners of land that would be affected by the execution of the proposed works.

### **159 Charging of expenses of sidewalk works by council**

(1) Subject to this Part, a council may charge an amount not exceeding one-half of any expenses incurred by it in executing any sidewalk works in terms of section *one hundred and fifty-eight* to the owners of land abutting on the portion of the proposed sidewalk upon which such works are to be executed.

(2) The council may include as part of the expenses incurred by it in executing any sidewalk works any indirect costs incurred by the council:

Provided that if such indirect costs exceed ten *per centum* of the other expenses referred to in subsection (1), the council may not include such excess.

(3) Any portion of a road which abuts on to a sidewalk or proposed sidewalk shall not be regarded, for the purposes of this section, as land abutting on that sidewalk or proposed sidewalk.

### **160 Specifications and apportionment of sidewalk works**

(1) In respect of any proposed sidewalk works in respect of which a council intends to charge part of its expenses in terms of section *one hundred and fifty-nine* the council shall prepare—

- (a) a specification of the works; and
- (b) an estimate of the probable expenses of the works; and
- (c) a provisional apportionment of the expenses estimated in terms of paragraph (b) among the owners who are liable to be charged therewith in terms of section *one hundred and fifty-nine*.

(2) In making a provisional apportionment in terms of paragraph (c) of subsection (1) between the owners of the land referred to in that paragraph the apportionment of the estimated expenses shall be made according to the area or to the frontage of the land abutting on the proposed sidewalk as provided in subsection (1) of section *one hundred and fifty-nine*:

Provided that the council may vary the apportionment in terms of this subsection according to—

- (a) the degree of benefit to be derived by the owner of the land concerned by the execution of the sidewalk works; or
- (b) the amount or value of any sidewalk works executed by the owner or occupier or a previous owner or occupier of the land concerned.

## 161 Notice of proposed sidewalk works

(1) Where a council resolves to execute any sidewalk works in respect of which it intends to charge part of its expenses in terms of section *one hundred and fifty-nine*, it shall, unless all the owners who are liable in terms of that section to bear a portion of the expenses have agreed to such works and the apportionment of expenses, publish in two issues of a newspaper notice of its intention to execute such sidewalk works.

(2) A copy of a notice in terms of subsection (1), together with the provisional apportionment of the estimated expenses in terms of section *one hundred and sixty*, shall be served where possible on every owner of land who is liable in terms of section *one hundred and fifty-nine* to be charged with such expenses.

(3) The notice in terms of subsection (1) shall state that the specifications, estimate of probable expenses and provisional apportionment of probable expenses shall be open at the office of the council for inspection during office hours for a period of twenty-one days from the date of first publication of that notice.

## 162 Objections to proposed sidewalk works

(1) An owner referred to in subsection (2) of section *one hundred and sixty-one* may, not later than twenty-one days after the first publication of the notice in terms of subsection (1) of that section, by notice in writing served on the council, object to the proposals of the council on any one or more of the following grounds—

- (a) that work is included in the proposed works which is not necessary for or in connection with the making up of the sidewalk;
- (b) that the proposed works are not works in relation to a sidewalk;
- (c) that there has been some defect or error in or in respect of the notice, plans, specifications or estimates relating to the proposed works;
- (d) that the proposed works are insufficient or excessive in the circumstances;
- (e) that the estimated expenses are excessive;
- (f) that the owner of any land should be excluded from or included in the provisional apportionment in terms of section *one hundred and sixty*;
- (g) that the provisional apportionment in terms of section *one hundred and sixty* is incorrect in respect of—
  - (i) the basis used for the apportionment or some other specified matter; or
  - (ii) where the provisional apportionment takes into consideration factors other than area or frontage, the degree or benefit likely to be derived by the owner of any land or the amount or value of any work already done by the owner or occupier or a previous owner or occupier of the land.

(2) Where an objection in terms of subsection (1) has been lodged with the council and the council is unable to resolve the objection, the council shall notify the Minister who shall appoint a board in terms of section *three hundred and twelve* for the determination of all objections lodged in terms of subsection (1) which have not been resolved by the council.

(3) Where a board has been appointed as provided in subsection (2), the council shall, after the period for objections in terms of subsection (1) has expired, apply to the chairman of the board to appoint a time and place for hearing and determining all objections lodged in terms of subsection (1) which have not been resolved by the council and shall serve notice of the time and place so appointed on all owners of land affected by the provisional apportionment of expenses in terms of section *one hundred and sixty*.

## 163 Final apportionment of expenses of sidewalk works

(1) When any sidewalk works have been executed and the expenses thereof ascertained, the council shall make a final apportionment of those expenses by dividing the expenses in the same proportions in which the estimated expenses were divided in the original provisional apportionment in terms of subsection (1) of section *one hundred and sixty* or the provisional apportionment as determined by a board in terms of section *one hundred and sixty-two*, as the case may be, and such final apportionment shall, subject to section *one hundred and sixty-four*, be conclusive for all purposes.

(2) Notice of the final apportionment of expenses in terms of subsection (1) shall be served on the owners liable to pay such expenses.

## 164 Objection to final apportionment of expenses of sidewalk works

(1) Within thirty days after notice has been served in terms of subsection (2) of section *one hundred and sixty-three*, any owner charged with expenses under that apportionment may, by notice in writing to the council, object to the final apportionment on any of the following grounds—

- (a) that the actual expenses have, without sufficient reason, exceeded the estimated expenses by more than fifteen *per centum* of the estimated expenses;
- (b) that the final apportionment has not been made in accordance with section *one hundred and sixty-three*;
- (c) that there has been an unreasonable departure from the specifications of the works.

(2) Subsections (2) and (3) of section *one hundred and sixty-two* shall apply, *mutatis mutandis*, in relation to any objection lodged in terms of subsection (1).

(3) If the board appointed as provided in subsection (2) is satisfied that any objection in terms of subsection (1) has been substantiated it may amend the final apportionment as it thinks just.

### 165 Recovery of costs of sidewalk works

(1) The expenses apportioned in terms of section *one hundred and sixty-three* and *one hundred and sixty-four* shall be recoverable from the owners of the land concerned or their successors in title.

(2) The payment of any expenses referred to in subsection (1) may be made in one sum or in instalments over a period of twenty-five years or such lesser period as may be agreed between the council and the owner:

Provided that where the total amount of the expenses payable by any one owner is such that the repayment period calculated in terms of this subsection would result in an amount of less than two hundred and fifty dollars per annum being paid in respect of expenses and interest calculated in terms of subsection (3), the council may determine that the period for repayment of such expenses and interest shall be such that a maximum amount of two hundred and fifty dollars shall be paid each year.

(3) Interest shall be payable on any expenses outstanding at such rate as may be fixed by the council, being a rate which is not more than one *per centum* per annum above the rate of interest charged at the date of the final apportionment by the State in respect of loans made to local authorities.

(4) Where the payment of expenses is over a period—

(a) the first instalment shall be payable immediately after the final apportionment has been made;

(b) if at any time during that period the owner wishes to make a payment in full settlement of the expenses, he may pay the full amount of the outstanding expenses for which he is liable, together with any interest charges which are due as at the date of such payment.

### 166 Hypothecation of land for costs of sidewalk works

(1) Where any final apportionment has been determined in terms of sections *one hundred and sixty-three* and *one hundred and sixty-four* and has not been paid, the council may send a notice in writing to the Registrar of Deeds specifying—

(a) each piece of land the owner of which is liable to pay any expenses; and

(b) the amount payable by the owner of the land.

(2) On receipt of a notice in terms of subsection (1) the Registrar of Deeds shall make an entry thereof in the appropriate registers in respect of the land concerned and such entry shall constitute an hypothecation of the land ranking from the date on which the entry was made and for the amount stated therein, together with interest thereon until such time as all sums due have been paid.

(3) The Registrar of Deeds shall not pass transfer of land hypothecated in terms of subsection (2) unless—

(a) the transferee agrees in writing that any sums due and unpaid, together with interest thereon, shall remain and be registered as a charge against the land subsequent to the transfer; or

(b) the council has released the portion of land which is to be transferred from the hypothecation; or

(c) the council has furnished the Registrar of Deeds with a certificate stating that the hypothecation may be cancelled.

### 167 Owners of non-rateable property not liable

The owner of any land which in terms of this Act or any other law is not rateable or is exempt from rates shall not be liable to pay any expenses in connection with sidewalk works as the owner thereof, but the proportion of the expenses which would otherwise be payable by the owner of that land shall be borne and paid by the council.

## PART XII

### SEWERAGE AND DRAINAGE

### 168 Powers of council in regard to sewerage and drainage

Subject to this Part, a council may, whether inside or outside the council area, take such measures and construct such works as it considers necessary for the collection, conveyance, treatment and disposal of sewage or stormwater:

Provided that the council shall not discharge or permit the discharge of any sewage in contravention of Part X of the Water Act [*Chapter 20:22*].

### 169 Notice of work on public sewers or public drains

(1) Before a council undertakes the construction of any public sewer or public drain or work in connection therewith, not being maintenance, repair, renewal or the provision of a sewer connection, on property within the council area which is not owned by the municipality or town or under the control of the council, the council shall give to the owner or occupier of that property reasonable notice of the intended work.

(2) Before the council undertakes any work which would involve the discontinuance of the use, the closing up or the destruction of a public sewer the council shall cause to be served on every owner and occupier of property, the private sewers of which discharge, either directly or indirectly, into that public sewer or the portion thereof proposed to be discontinued, closed up or destroyed, as the case may be, a notice describing the nature of the proposed work and stating that objections thereto may be lodged with the town clerk in writing before a specified date, being not less than thirty days after the date of the service of that notice.

## **170 Notice of construction of sewage works outside council area**

(1) Before a council—

- (a) constructs any sewage works outside the council area or any other area under the administration and control of the council; or
- (b) constructs, alters, enlarges, diverts, discontinues the use of, closes up or destroys a public sewer outside the council area or any other area under the administration and control of the council;

the council shall cause a notice in terms of subsection (2) to be published in two issues of a newspaper.

(2) A notice in terms of subsection (1) shall—

(a) give such of the following information as is applicable to the proposed work—

- (i) the nature, course and place or termini of the proposed work; and
- (ii) the properties across, through or on which the proposed work is to be done;

and

(b) state that—

- (i) a plan of the proposed work is lying for inspection at the office of the council and will be open to inspection during office hours for a period of twenty-one days from the date of the last publication of the notice; and
- (ii) objections to the proposed work may be lodged with the town clerk in writing before a specified date, being not less than thirty days after the date of the last publication of the notice.

(3) A copy of the notice referred to in subsection (2) shall be served—

- (a) on every owner or occupier of property which is referred to in subparagraph (ii) of paragraph (a) of subsection (2); and
- (b) if the proposed work involves the discontinuance of the use, the closing up or the destruction of a public sewer, on every owner or occupier of property the private sewers of which discharge, either directly or indirectly, into that public sewer or the portion thereof proposed to be discontinued, closed up or destroyed, as the case may be; and
- (c) on any local authority having jurisdiction in the area where the proposed work is to be done; and
- (d) if any road will be affected by the proposed work, on the road authority concerned.

## **171 Objection to proposed sewage works**

If any objection is lodged in terms of subsection (2) of section *one hundred and sixty-nine* or section *one hundred and seventy* and the council is unable to resolve the objection the council shall notify the Minister who shall appoint a board in terms of section *three hundred and twelve* for the purpose of determining the objections so lodged and the council shall carry out the proposed work in accordance with any decision of that board.

## **172 Owners entitled to connect to public sewer**

Subject to section *one hundred and seventy-five*, an owner of premises within the council area shall be entitled to have the private sewer of such premises connected directly or indirectly to a public sewer if the public sewer—

- (a) has been constructed to a point which, in the opinion of the council, is as near to the premises as is in the circumstances reasonably practicable and expedient; and
- (b) is, in the opinion of the council, of such design and capacity as to permit of the connection thereto of that private sewer.

## **173 Council may require connection to public sewer, provision of septic or conserving tank and treatment of trade effluent**

(1) In this section—

“septic tank” means a covered tank, complete with effluent overflow, intended to receive sewage and designed to retain such sewage for such a time and in such a manner as to secure adequate decomposition of organic solids by bacterial action.

(2) A council may, by notice in writing, require the owner of any premises within the council area which—

- (a) do not have a private sewer sufficient for the effectual conveyance of sewage therefrom to a public sewer, to construct a private sewer for that purpose to the limits of his property; or
- (b) do not have adequate sanitary fittings, to provide adequate sanitary fittings which discharge into the private sewer or combined private sewer serving those premises; or
- (c) are connected, directly or indirectly, to a public sewer, to cause any sanitary fitting to discharge its foul or waste water into the private sewer or combined private sewer serving those premises; or
- (d) are not connected with a public sewer, to construct a private sewer to the limits of his property which can be connected to a public sewer;

and the owner of the premises shall comply therewith within such reasonable time, being not less than thirty days, as is specified in the notice for the compliance therewith.

(3) In the case of premises within a council area where paragraph (a) or (b) of section *one hundred and seventy-two* do not apply, the council may, by notice in writing, require the owner of the premises—

- (a) to provide a septic or conserving tank therefor and sanitary fittings which shall discharge into that tank; or
- (b) if the premises are connected to a septic or conserving tank, to cause any sanitary fitting to discharge its foul or waste into that tank;

and the owner of the premises shall comply therewith within such reasonable time, being not less than thirty days, as is specified in the notice for the compliance therewith.

(4) A council may, by notice in writing, require the owner or occupier of any premises from which trade effluent is discharged to subject that effluent to such treatment as the council may determine and to discharge it into a public sewer, and the owner or occupier of the premises shall comply therewith within such reasonable time, being not less than thirty days, as is specified in the notice for the compliance therewith.

(5) If an owner or occupier of premises fails to comply with the terms of a notice given to him under subsection (2), (3) or (4) within the time specified therein or within such extension of time as the council may allow, the council may do or complete the work on behalf of the owner or occupier and the owner or occupier shall be liable to pay the expenses incurred by the council—

- (a) in doing or completing the work; and
- (b) in the case of a failure to comply with the terms of a notice given under subsection (4), in removing the trade effluent concerned from a public sewer and repairing and making good any damage done by that effluent to that sewer.

#### **174 Construction, connection and extension of private sewers**

No person other than a council shall—

- (a) construct a combined private sewer; or
- (b) construct any portion of a private sewer extending beyond the boundary of the property in respect of which it is required; or
- (c) make a connection from a private sewer to a public sewer or combined private sewer;

unless authorized by the council and in compliance with any requirements specified by the council.

#### **175 Combined private sewers**

Where, in the opinion of a council, it is desirable to do so in the interests of economy or efficiency, the council may—

- (a) construct a combined private sewer for the purpose of connecting two or more private sewers thereto, and the cost of such construction shall be borne by the owners of the premises connected thereto in such proportions as may be fixed by the council; or
- (b) connect a private sewer to an existing private sewer or combined private sewer, and the owner of the premises so connected shall be liable to pay such proportion of the cost of the construction of the existing private sewer or combined private sewer as may be fixed by the council to such person or persons as may be determined by the council.

#### **176 Responsibility for septic or conserving tank, private sewer or combined private sewer**

(1) A council shall not be responsible for—

- (a) any expenses incurred in connection with the construction of any septic or conserving tank, private sewer or combined private sewer or the connection of such sewer to a public sewer; or
- (b) the maintenance of any septic or conserving tank or private sewer; or
- (c) the maintenance of any combined private sewer.

(2) The expenses incurred in the construction, connection or maintenance of a combined private sewer shall be shared amongst the owners of the premises served thereby in such proportions as may be determined by the council.

#### **177 Council may render services**

A council may, by agreement with the owner or occupier of any premises—

- (a) undertake to render any services in connection with the sanitation of the premises concerned; or
- (b) undertake any maintenance referred to in section *one hundred and seventy-six*.

#### **178 Council may finance water-borne sanitation and sanitary fittings**

A council may, at the request of the owner of any premises, assist him in providing water-borne sanitation and sanitary fittings for the premises—

- (a) by having the employees of the council execute the necessary work at the expense of that owner; or
- (b) by paying a contractor engaged by that owner, after completion of the work to the satisfaction of the council and recover the costs thereof from the owner; or
- (c) by lending to that owner the amount of any expenses incurred or to be incurred in providing his premises with water-borne sanitation and sanitary fittings.

#### **179 Recovery of costs by instalments**

(1) A council may agree to accept—

(a) payment of any expenses incurred by it in terms of section *one hundred and seventy-three, one hundred and seventy-five* or *one hundred and seventy-eight* on behalf of the owner or occupier of any premises; or

(b) repayment of any loan made in terms of paragraph (c) of section *one hundred and seventy-eight*; by such instalments over such period and under such conditions as may appear to the council to be reasonable, together with interest on the amounts outstanding from time to time at such rate as may be fixed by the council, being a rate which is not more than one *per centum* per annum above the rate of interest charged at the time the council incurred the expenses or made the advance, as the case may be, by the State in respect of loans made to local authorities:

Provided that, if at any time during that period the owner or occupier wishes to make a payment in full settlement of the expenses or full repayment of the loan, he may pay the full amount of the outstanding expenses or balance of the loan for which he is liable, together with any interest charges which are due as at the date of such payment.

(2) The council shall keep at its offices a register of all expenses incurred by it in connection with any work for which any person is liable in terms of this Part and shall show in that register in respect of each such person—

- (a) the total amount of expenses incurred; and
- (b) the instalments in which the amount is payable; and
- (c) the land or premises in respect of which the expenses have been incurred; and
- (d) the balance for the time being outstanding.

(3) The register kept in terms of subsection (2) shall be open to inspection during office hours by any person on whose behalf expenses referred to in subsection (1) have been incurred or to whom a loan referred to in subsection (1) has been made.

(4) The register kept in terms of subsection (2) or any extract therefrom purporting to be certified by the town clerk, treasurer or other person authorized by the council shall, in all proceedings for the recovery of such expenses or loan or interest thereon or any instalment thereof, be *prima facie* evidence of the matters contained therein.

(5) If an owner referred to in subsection (1) fails to provide the council with security to its satisfaction for the repayment of any expenses or loan referred to in subsection (1), the council may cause a notice in writing to be lodged with the Registrar of Deeds specifying the amount of the expenses or loan, as the case may be, and subsections (2) and (3) of section *one hundred and sixty-six* shall thereafter apply, *mutatis mutandis*.

(6) For the purposes of this section, expenses referred to in paragraph (a) of subsection (1) include indirect costs in connection with the work concerned to the extent that the indirect costs do not exceed ten *per centum* of the total costs of the work.

## **180 Protection of public sewers and public drains**

(1) No person shall, except with the consent of the council and subject to such conditions as it may impose—

- (a) construct any building or other structure over a public sewer or public drain or in such a position or in such a manner as to be likely to interfere with or endanger a public sewer or public drain; or
- (b) excavate, open or remove the ground above, next to, under or near a public sewer or public drain; or
- (c) discharge or put into or permit to enter a public sewer or public drain any solid, liquid or gaseous substance which the council, by notice in writing to the person concerned, has prohibited from being discharged into that sewer or drain on the grounds that it is likely to injure or damage that sewer or drain, interfere with the free flow or sewage or storm-water or cause a nuisance or involve danger to the health of persons entering that sewer or drain or employed at the sewage works or to endanger, destroy or be injurious to the structure of any public sewer, public drain, sewage works or land or to the processes used therein or thereon; or
- (d) discharge or put into or permit to enter a public sewer any storm-water; or
- (e) discharge or put into or permit to enter a public drain any sewage; or
- (f) make any opening into a public sewer or public drain; or
- (g) take any action which might injure, endanger or destroy a public sewer or public drain.

(2) The council may—

- (a) demolish, alter or otherwise deal with any building or other structure constructed in contravention of subsection (1);
- (b) fill in or make good any ground excavated or removed in contravention of subsection (1);
- (c) repair and make good any damage done in contravention of, or occasioned as a result of a contravention of subsection (1);
- (d) remove anything discharged or put into a public sewer or public drain in contravention of subsection (1) or which is injuring or endangering or likely to injure or endanger or destroy the public sewer or public drain;

and recover the expenses incurred by the council from the person guilty of such contravention.

(3) Where any person discharges or puts into or permits to enter a public sewer or public drain any solid, liquid or gaseous substance which is prohibited in by-laws, the council may take steps to stop the entry of the substance into the sewer or drain and may recover the reasonable expenses incurred by it in stopping such entry and in—

- (a) removing; and
- (b) repairing and making good any damage done by;

anything so discharged or put into or permitted to enter a public sewer or public drain.

### **181 Control of public streams**

(1) Notwithstanding anything contained in the Environmental Management Act [*Chapter 20:27*] or the Water Act [*Chapter 20:22*] but subject to the requirements of any water rights granted by the Administrative Court in terms of the latter Act, a council shall have power and authority within the council area or any other area under the administration and control of the council to canalize, control, define, deepen, broaden or narrow the course of any public stream which lies wholly or partly within the council area or such other area.

[Subsection amended by section 142 of Act 13 of 2002]

(2) For the purpose of exercising any power or authority conferred by subsection (1) or for the control of storm-water, the council may—

- (a) alter, close, divert or drain any public stream;
- (b) subject to section 357 of the Mines and Minerals Act [*Chapter 21:05*], build, construct and maintain any aqueduct, artificial water course, wall or other works which in its opinion is necessary.

### **182 Saving of rights under contract or servitude**

Nothing in this Part shall derogate from the rights of a municipality or town under any contract or servitude.

## **PART XIII**

### **WATER**

### **183 Powers of council in relation to water supply**

(1) A council may provide and maintain a supply of water within or outside the council area and for that purpose the council may—

- (a) in accordance with the Water Act [*Chapter 20:22*] take such measures and construct such works, whether inside or outside the council area, as it considers necessary for the purpose of providing and maintaining a supply of water;
- (b) enter into agreements for the purchase and sale of water and for any other thing necessary in connection with the maintenance and supply of water.

(2) It shall be lawful for a council to add fluoride to water intended to be supplied for consumption by the public.

(3) Where a council requires any servitude over land for the purposes of the supply of water and the owner of the land will not grant such a servitude, Part IX of the Water Act [*Chapter 20:22*] shall apply, *mutatis mutandis*, as if the council required the servitude in connection with a water right granted by the Administrative Court in terms of that Act.

### **184 Council may require connection to water supply system**

(1) A council may, by notice in writing, require the owner of any premises within the council area which are not connected with the council's water supply system to connect his premises to the limits of his property to that system for the purpose of taking a supply of water for drinking, domestic and sanitary purposes, and the owner of the premises shall comply therewith within such reasonable time, being not less than thirty days, as is specified in the notice for the compliance therewith.

(2) If an owner of premises fails to comply with the terms of a notice given under subsection (1) within the time specified therein or within such extension of time as the council may allow, the council may connect the premises to the water supply system on behalf of the owner and the owner shall be liable to pay the expenses incurred by the council in making such connection.

### **185 Removal of obstructions in public stream**

A council may remove any obstruction, other than works constructed under the authority of any law, which interferes with the flow of a public stream.

### **186 Protection of water mains**

(1) No person shall, except with the consent of the council and subject to such conditions as it may impose—

- (a) construct any building or other structure over a water main or in such a position or in such a manner as to be likely to interfere with or endanger a water main; or
- (b) excavate, open or remove the ground above, next to, under or near a water main; or
- (c) make any opening into a water main; or
- (d) take any action which might injure, endanger or destroy a water main.

(2) The council may—

- (a) demolish, alter or otherwise deal with any building or other structure constructed in contravention of subsection (1); or
- (b) fill in or make good any ground excavated or removed in contravention of subsection (1); or
- (c) repair and make good any damage done in contravention of, or occasioned as a result of a contravention of subsection (1); or
- (d) remove any thing which is injuring or endangering or likely to destroy, injure or endanger a water main; and recover the expenses incurred by the council from the person guilty of such contravention:

Provided that a council shall not exercise the powers conferred by this subsection unless it has, by notice in writing, called upon the person guilty of such contravention to remedy the contravention within such period, being not less than thirty days, as the council may specify and the contravention has not been remedied within such period.

### **187 Emergency water rationing or restriction schemes**

(1) A council may, in cases of emergency, establish by resolution a scheme for rationing or restricted use of water.

(2) A scheme referred to in subsection (1) may provide—

- (a) for the payment of a surcharge for use of water that is rationed or restricted;
- (b) for the apportionment of any surcharge amongst occupants of any building or group of buildings whose water supply is unmetered or jointly metered, whether or not such occupants have entered into an agreement with the council for the supply of water and irrespective of the quantity of water which such occupants may in fact have consumed;
- (c) for the installation of meters to measure the quantity of water consumed by individual occupants of any building or group of buildings;
- (d) for any matter referred to in paragraph 69 of the Third Schedule;
- (e) that any person who contravenes any provision of the scheme shall be guilty of an offence and liable to a fine not exceeding level six.

[Paragraph amended by section 4 of Act 22 of 2001.]

(3) Where a scheme referred to in subsection (1) has been established, the council shall give notice thereof in a newspaper and in any other way which the council considers convenient to bring it to the notice of persons affected thereby:

Provided that the council shall, as soon as possible after the establishment of the scheme, give notice thereof in the *Gazette*.

### **188 Savings of rights under contract or servitude**

Nothing in this Part shall derogate from the rights of a municipality or town under any contract or servitude.

## **PART XIV**

### **PARKING, OMNIBUSES AND OTHER TRANSPORT SERVICES**

#### **189 Parking places and parking meters**

(1) A council may, on land acquired, leased or set aside by the council for the purpose and on any road, provide and maintain places for the parking of motor vehicles.

(2) A municipal council may purchase parking meters and other devices for the control of the parking of motor vehicles and may install and maintain such meters or other devices in any place set aside by the council for the parking of motor vehicles and on any road.

#### **190 Parking garages**

(1) Subject to subsection (2), a municipal council may construct, acquire or lease buildings to provide accommodation for the parking of motor vehicles by members of the public on land set aside for the purpose.

(2) If a municipal council intends to construct buildings in terms of subsection (1) on land which has not been specifically reserved in terms of an approved town planning scheme for a parking garage, the council shall—

- (a) give notice of its proposal in two issues of a newspaper stating—
  - (i) the situation of the buildings to be constructed; and
  - (ii) the purposes for which provision in terms of subsection (3) is proposed to be made; and
  - (iii) any other information considered by the council to be relevant to the proposal; and
  - (iv) that objections thereto may be submitted within such period, being not less than twenty-one days after the date of the last publication of the notice in the newspaper, as may be stated in the notice;

and

- (b) after the expiry of the period referred to in subparagraph (iv) of paragraph (a), apply to the Minister for his consent to the proposal submitting with the application a copy of the notice given in terms of para-

graph (a) and of any objections received in terms of subparagraph (iv) of paragraph (a), together with any comments of the council on such objections;

and the council shall not construct the buildings unless the Minister has consented thereto and compliance is made with any conditions fixed by the Minister in granting his consent.

(3) A municipal council may include in any buildings referred to in subsection (1), in addition to accommodation for the parking of vehicles, provision for—

- (a) such accommodation as may be required for the purposes of the council or any service provided by the council;
- (b) depots in which parcels or goods may be left for safe-keeping;
- (c) any matter not referred to in paragraph (a) or (b) which has been approved by the Minister for the building concerned.

(4) A municipal council may, in respect of any building referred to in subsection (1), manage and control the parking of vehicles and deposit of parcels or goods for safe-keeping.

### **191 Parking account**

(1) A council which makes charges for the use of parking places referred to in section *one hundred and eighty-nine* or which has provided a parking garage such as is referred to in section *one hundred and ninety* shall establish a separate account to be called the parking account.

(2) There shall be credited to the parking account—

- (a) all moneys received by the council from charges for the use of any place referred to—
  - (i) in subsection (1) of section *one hundred and eighty-nine* which is provided for the parking of motor vehicles; or
  - (ii) in subsection (2) of section *one hundred and eighty-nine* at which parking meters or other devices referred to in subsection (2) of that section have been installed;

and

- (b) all moneys received by the council for any accommodation provided in a building referred to in section *one hundred and ninety* or for the safe-keeping of parcels or goods deposited at a depot referred to in paragraph (b) of subsection (3) of that section or, if the whole of that building is leased to any person, for the lease thereof; and
- (c) all penalties paid to the council in terms of the Municipal Traffic Laws Enforcement Act [*Chapter 29:10*]; and
- (d) any charges or penalties referred to in subparagraph (ii) of paragraph (a) or paragraph (c), which were received by the council to the extent that the moneys concerned have not been expended; and
- (e) interest received by the council from investments made of moneys accruing from sources referred to in paragraphs (a), (b) and (c); and
- (f) such amounts as the council may consider to be an economic rental for accommodation such as is referred to in paragraph (a) of subsection (3) of section *one hundred and ninety*.

(3) If a municipal council sells a parking garage referred to in section *one hundred and ninety* the council shall credit to the parking account the moneys received from the sale of the parking garage:

Provided that—

- (i) where the land on which the parking garage is situated was not purchased with moneys credited to the parking account or any similar account or fund, the amount to be credited to the parking account in connection with the sale of that parking garage shall be—
    - (a) the cost to the parking account of the construction or conversion of that parking garage or the expenses incurred by the council in the construction of that garage; and
    - (b) any amount in excess of the value of the land as determined as the date of the sale and the cost of the construction or conversion of that parking garage;
  - (ii) there may be deducted from the amount to be credited to the parking account the expenses incurred in the sale of the parking garage or, if only a portion of the moneys received from that sale have been credited to the parking account in terms of proviso (i), a portion of such expenses which bears the same ratio to the total of such expenses as the amount credited to the parking account in terms of proviso (i) bears to the total amount received from that sale;
  - (iii) if the council financed only a portion of the cost of the construction of the parking garage from the parking account or any similar account or fund, a proportion of the excess referred to in paragraph (b) of proviso (i), less an appropriate proportion of the expenses determined in terms of proviso (ii) shall be credited to the parking account to the extent that the council financed the cost of construction from any such fund or account.
- (4) Moneys credited to the parking account may be expended only on—
- (a) employing parking supervisors in terms of paragraph (b) of subsection (1) of section *one hundred and forty-two* and expenses incidental to such employment; and

- (b) meeting any expenses incurred in the implementation of the Municipal Traffic Laws Enforcement Act [*Chapter 29:10*]; and
- (c) meeting any expenses incurred in providing, improving and developing facilities for the parking of motor vehicles within the council area, including payments in respect of the redemption of loans raised in connection therewith and interest charges thereon; and
- (d) the purchase or lease of land used or to be used for the purposes referred to in section *one hundred and eighty-nine* or *one hundred and ninety*; and
- (e) the payment to any other account of the council of such amounts as the council may consider to be an economic rental for any parking place provided in terms of subsection (1) of section *one hundred and eighty-nine* otherwise than on a road; and
- (f) the payment to any other account of the council in accordance with the by-laws of the council of amounts in respect of land owned by the council which is used or to be used for the purposes referred to in section *one hundred and ninety*; and
- (g) constructing, acquiring or leasing buildings in terms of subsection (1) of section *one hundred and ninety*; and
- (h) meeting the expenses of maintaining and operating facilities provided in terms of section *one hundred and eighty-nine* or *one hundred and ninety*, including the employment of staff and reasonable charges for such maintenance and supervision, together with all incidental expenses necessary in connection with such matters; and
- (i) the payment of subsidies for any transport system; and
- (j) any other matter in respect of which the council is specifically authorized by or in terms of any other law to expend moneys from the parking account.

(5) Any moneys credited to the parking account which are not immediately required for the purposes of paragraphs (a) to (j) of subsection (4) may be invested in terms of section *three hundred and two*.

#### **192 Provision of omnibus services and stations**

- (1) Subject to sections *one hundred and ninety-four* to *one hundred and ninety-six*, a council may—
- (a) on land acquired, leased or set aside by the council for the purpose and on any road, provide and maintain places for the parking and standing of omnibuses;
  - (b) establish, acquire, construct, maintain and carry on within the council area or any other area under the administration and control of the council, an omnibus service;
  - (c) enter into an agreement with any person for the establishment or acquisition of any omnibus service or for the construction or laying down of any works for such service or for the equipment, maintenance, carrying on and working of such service, and for the guaranteeing of the capital cost and interest on the capital cost thereof;
  - (d) exercise the powers conferred by paragraphs (b) and (c)—
    - (i) either alone or in conjunction with any other person;
    - (ii) in any area outside the council area or any other area under the administration and control of the council, with the consent of the local authority, if any, of such area, or, if there is no local authority in such area, with the consent of the Minister;
  - (e) grant subsidies in respect of any service referred to in this subsection.

(2) A council may and, if required by the Minister, shall establish omnibus stations and ancillary services connected therewith.

#### **193 Commuter transport services**

(1) Notwithstanding anything to the contrary contained in the Road Motor Transportation Act [*Chapter 13:10*] or in this Act, the Minister may, whenever he considers it to be in the interests of the inhabitants of a council area, enter into agreements with, and grant permits to, persons to provide commuter transport services within a council area or between two or more council areas and, in so doing, he may make regulations to provide for—

- (a) the issuing of permits to such persons;
- (b) the control and regulation of fares;
- (c) the designation of appropriate routes;
- (d) the number of operators permitted on each route;
- (e) the period of validity of permits;
- (f) the insurance of vehicles;
- (g) environmental protection from fuel emissions and pollutants;
- (h) speed and safety standards;
- (i) any matter necessary or convenient for the regulation of such commuter transport services.

(2) Any person who contravenes any provision of regulations made in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 33 of Act 6 of 2005]

(3) On a second or subsequent conviction of an offence in terms of subsection (2), the court may, in addition to any penalty authorized by this Act, cancel the permit relating to the vehicle used in connection with the commission of the offence, and a copy of such cancellation order shall be forwarded by the clerk of the court to the Controller of Road Motor Transportation.

[Subsection inserted by section 33 of Act 6 of 2005]

#### **194 Prohibition of omnibus services**

(1) In this section—

“authorized operator” means a person who has entered into an agreement such as is referred to in paragraph (c) of subsection (1) of section *one hundred and ninety-two* with a municipal council.

(2) Notwithstanding anything to the contrary contained in the Road Motor Transportation Act [*Chapter 13:10*] or in any other enactment, but subject to section *one hundred and ninety-three*, whenever any omnibus service is or is proposed to be established, acquired, maintained or carried on by a municipal council or by an authorized operator, the municipal council may, subject to this section and section *one hundred and ninety-five*, by statutory instrument, prohibit the carrying on by any person, other than the municipal council or the authorized operator, as the case may be, of any such service—

(a) for such period approved by the Minister in terms of subsection (3) as may be specified in the notice; and

(b) within the area specified in the notice and approved by the Minister and the Minister responsible for transport, which area may include areas that are not under the administration and control of the council:

Provided that any route within the area specified in the notice which is not being served by the omnibus service operated by the municipal council or the authorized operator, as the case may be, may be served by some other public service vehicle in terms of subsection (2) of section *one hundred and ninety-five* if the municipal council and, where appropriate, the authorized operator have agreed thereto.

(3) The powers of a municipal council under subsection (2) shall not be exercised in respect of any omnibus service established, maintained or carried on by the authorized operator unless and until the terms of the agreement between the municipal council and the authorized operator and the period of the proposed prohibition have been approved by the Minister.

(4) Before any resolution to prohibit the carrying on by any person of a service referred to in subsection (2) is passed by a municipal council—

(a) there shall be published in the *Gazette*, and in at least three issues of a newspaper, notice of the proposed resolution, including the period and area to be specified therein, and stating that representations or objections to the proposed resolution may be lodged with the town clerk in writing before a specified date, being not less than thirty days after the date of the publication of the notice in the *Gazette*; and

(b) any representations or objections lodged in terms of paragraph (a) shall be laid before the council at the meeting appointed to consider the proposed resolution.

(5) Where the proposed prohibition is required in terms of subsection (3) to be approved by the Minister, the council shall forward to the Minister with the application for his approval a copy of all representations or objections lodged in terms of subsection (4), together with any comments of the council on such representations or objections.

(6) Where any prohibition referred to in subsection (2) is in force and the municipal council proposes to extend the period of the prohibition, subsections (3), (4) and (5) shall apply, *mutatis mutandis*, in relation to any resolution to extend the period of prohibition.

#### **195 Prohibition of certain public service vehicles**

(1) In this section—

“public service vehicle” has the meaning assigned to the expression in the Road Motor Transportation Act [*Chapter 13:10*];

“road service permit” means a road service permit issued under the Road Motor Transportation Act [*Chapter 13:10*];

“specified area” means an area referred to in paragraph (b) of subsection (2) of section *one hundred and ninety-four* in the prohibition notice.

(2) Notwithstanding anything to the contrary contained in the Road Motor Transport Act [*Chapter 13:10*], if a municipal council has published a prohibition notice then, save as is provided in this section, no road service permit in respect of any public service vehicle which is authorized to carry more than seven passengers shall, without the consent of the municipal council, entitle any person to carry passengers for hire or reward in or on such vehicle within the specified area during the period of the validity of the prohibition notice.

(3) The right of any person to carry for hire or reward—

- (a) passengers within the specified area for the unexpired period of any road service permit issued before the prohibition notice came into force shall not be affected by the prohibition notice; or
- (b) passengers departing to or arriving from any place outside the limits of the specified area shall not be affected by the prohibition notice.

(4) If the specified area includes any land which is situated within Communal Land, a road service permit in respect of a service within the specified area issued after the prohibition notice came into force to a person in respect of a public service vehicle which is authorized to carry more than seven passengers shall, notwithstanding subsection (2), entitle that person to operate that vehicle within the specified area to and from Communal Land for the carriage of passengers for hire or reward, subject to such conditions concerning—

- (a) the routes and terminal points of the service; and
- (b) the taking up and setting down of passengers; and
- (c) the places at which passengers may be taken up and set down;

as the municipal council, with the approval of the Minister, may from time to time impose on such operators.

### **196 Omnibus routes, terminal points and stops**

(1) In this section—

“specified area” means the area referred to in paragraph (b) of subsection (2) of section *one hundred and ninety-four*;

“unauthorized”, in relation to a place, terminal point or route referred to in subsection (4), means a place, terminal point or route that has not been fixed and determined by the council in terms of subsection (4) of section *one hundred and ninety-five* or in terms of subsection (2) or (3), as the case may be.

(2) A council may from time to time fix and determine in respect of any omnibus service the routes and terminal points and the places for the setting down and taking up of passengers within the council area or any other area under the administration and control of the council.

(3) A municipal council may from time to time fix and determine the routes and terminal points and the places for the setting down and taking up of passengers in respect of any service which a person is permitted by subsection (2) or (3) of section *one hundred and ninety-five* to carry on within the specified area:

Provided that—

- (i) in relation to any portion of the specified area which is within another local authority area, the agreement of that local authority shall be obtained before any determination is made in terms of this subsection;
- (ii) where there is no local authority in respect of any area within the specified area or the municipal council and a local authority referred to in proviso (i) cannot agree on any matter referred to therein, the approval of the Minister shall be obtained before any determination is made in terms of this subsection;
- (iii) places for the setting down and taking up of passengers on a road which is not vested in or maintained by the council shall be determined in consultation with the appropriate road authority as defined in the Roads Act [*Chapter 13:12*].

(4) Any person who, in the course of carrying on any service mentioned in subsection (4) of section *one hundred and ninety-five* or in terms of subsection (2) or (3)—

- (a) takes up or sets down any passenger at an unauthorized place or terminal point; or
- (b) carries any passenger for hire or reward along an unauthorized route;

within the council area, any other area under the administration and control of the council or the specified area, as the case may be, shall be guilty of an offence and liable to a fine not exceeding level five to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001 and by section 33 of Act 6 of 2005]

(5) On a second or subsequent conviction of an offence in terms of subsection (4), the court may, in addition to any penalty authorized by this Act, cancel the road service permit relating to the vehicle used in connection with the commission of the offence, and a copy of such cancellation order shall be forwarded by the clerk of the court to the Controller of Road Motor Transportation.

### **197 Transport service**

A council may enter into agreements for the provision and working of a transport service, other than an omnibus service, for the carriage of passengers and, subject to such agreements, may incur expenditure in relation to that transport service or any thing incidental thereto, including, without prejudice to the generality of the foregoing, the guaranteeing of the capital cost thereof and interest thereon and the granting of subsidies in respect thereof.

## PART XV

### OTHER POWERS OF COUNCIL

#### 198 General powers

(1) Subject to compliance with this Act and any other law, a council shall have power to undertake, carry out or carry on any or all of the acts and things set out in the Second Schedule.

(2) The Minister may authorize a council to do, carry out or carry on any act or thing which, in his opinion, is necessary or desirable that the council should be able to do, carry out or carry on, whether or not the act or thing is an extension of any power set out in the Second Schedule or elsewhere in this Act.

(3) Subject to this Act, a council shall have power to do any act or thing which, in the opinion of the council, is necessary for administering or giving effect to any by-laws of the council.

#### 199 Enforcement of conditions of title

(1) Subject to this section, a council shall have a duty to do all things necessary to ensure that the conditions of the establishment of any township within the council area and the conditions of title to any land in the council area are properly observed and, without derogation from the generality of the foregoing may, for such purposes, *inter alia*—

- (a) without compensation, cause any building wilfully erected in contravention of any such condition to be demolished and recover from any person responsible for the contravention the expenses incurred by the council in connection with such demolition;
- (b) prohibit the use of any building or land which contravenes any such condition;
- (c) execute any work which under any such condition it is the duty of any person to execute and recover from that person the expenses incurred by the council in executing such work.

(2) Before taking any action in terms of subsection (1), the council shall serve notice on the owner and on the occupier of the building or land in respect of which the action is proposed to be taken, specifying the nature of the action proposed and the grounds upon which it proposes to take that action.

(3) If—

- (a) the notice in terms of subsection (2) relates to a condition which imposes—
  - (i) restrictions on the purposes for which the property may be used; or
  - (ii) any requirements to be complied with or to be observed in connection with the erection of any building on the property; or
  - (iii) any restriction or requirement to be observed, not referred to in subparagraphs (i) and (ii), which is subject to control under an approved scheme, operative master plan or operative local plan as defined in the Regional, Town and Country Planning Act [*Chapter 29:12*] that relates to the area in which that property is situated;

and

- (b) the person upon whom the notice has been served is aggrieved by the action proposed to be taken in terms of subsection (1);

he may, within twenty-eight days after the date of service of the notice, appeal to the Administrative Court and no action shall thereafter be taken by the council until the appeal has been determined by that Court or the appeal has been withdrawn or abandoned.

(4) If on an appeal in terms of subsection (3) the Administrative Court—

- (a) is satisfied that the council is entitled to take the proposed action on the grounds specified in the notice, it shall dismiss the appeal;
- (b) is not satisfied that the council is entitled to take the proposed action on the grounds specified in the notice, it shall allow the appeal.

#### 200 Fire brigade

(1) A council may provide and maintain for use inside or outside the council area for the protection and saving of life and property in the case of fire or other emergency, a fire brigade and a fire protection service including all personnel, vehicles, machines, equipment, appliances and appurtenances necessary or incidental thereto.

(2) The personnel of the fire brigade shall consist of employees of the council, whether permanent or part-time employees, or of volunteers or of both.

(3) The officer in charge of the fire brigade may, if he considers it necessary in the case of any fire or other emergency, employ casual assistants on behalf of the council and avail himself of the assistance of persons who place their services at his disposal, and any such assistants or persons shall, whilst engaged at that fire or in connection with that emergency, be deemed to be members of the fire brigade.

#### 201 Powers and duties of fire brigade

(1) The officer in charge of a council's fire brigade shall, at any fire or for the purpose of dealing with any other emergency, take all measures which he may consider to be necessary or expedient for fighting, extinguish-

ing and preventing the spread of the fire or for meeting the emergency and for the protection or saving of life and property.

(2) Without derogation from the generality of the powers conferred by subsection (1), the officer in charge of a fire brigade, in the exercise of the powers so conferred, may himself or through any member of the fire brigade—

- (a) take possession and, until all the members of the fire brigade are withdrawn, shall have control of the property on fire or involved in the emergency and all other property in the vicinity considered by him to be in danger;
- (b) where he considers it to be necessary for fighting the fire or dealing with the emergency, close any road without compliance with the procedure specified in any other law;
- (c) enter upon, break into or through, pull down or destroy any property;
- (d) forcibly evacuate people from any property;
- (e) forcibly remove or cause to be removed any person interfering with or whom he considers likely to interfere with the operations of the fire brigade;
- (f) take, and have access to, water from any available supply:

Provided that the council shall be liable to replace or compensate the owner for any water so taken.

(3) For the purposes of any policy of insurance against fire or other emergency relating to property affected by the exercise of any powers in terms of this section—

- (a) any charges and expenses payable to a council in connection with the operation of its fire brigade; and
- (b) any damage done by a council's fire brigade or the police in the exercise of their functions in terms of this Part;

shall, notwithstanding anything to the contrary in such policy, be deemed to be loss or damage insured by that policy:

Provided that nothing in this subsection contained shall be construed as compelling an insurer to pay a sum in excess of the total amount for which the property concerned is insured.

## **202 Fire brigade operating in area of any local authority**

When, in terms of an agreement with another local authority, the fire brigade of a council operates within the area of that other local authority—

- (a) if that other local authority has its own fire brigade with an employee in full-time employment as the chief officer thereof, the fire brigade of the council shall be deemed to be an integral part of and, in the absence of anything to the contrary in such agreement, be under the command of the chief officer of the fire brigade of that other local authority;
- (b) in any case not referred to in paragraph (a), the fire brigade of the council and the chief officer thereof shall be deemed to be the fire brigade and the chief officer, respectively of that other local authority for the purposes of sections *two hundred and one* and *two hundred and three*.

## **203 Indemnification in respect of fire brigade**

(1) A municipality, town, council, fire brigade and the members of that fire brigade are hereby indemnified against and exempted from all legal proceedings, whether criminal or civil, on account of anything lawfully done by any member of the fire brigade in the exercise of the functions imposed or conferred by or under this Part.

(2) If any police officer assists a council's fire brigade at any fire, the State and such police officer are hereby indemnified against and exempted from all legal proceedings, whether criminal or civil, on account of anything lawfully done by the police officer in assisting the fire brigade.

(3) Nothing in subsection (1) or (2) shall be construed so as to prevent any person from recovering, by action in a competent court, compensation for any loss or damage sustained by him which was caused by negligence or breach of contract.

## **204 Railway sidings**

(1) A council shall have power and authority—

- (a) to enter into agreements for, and otherwise to incur expenditure in connection with, the construction, maintenance and working of railway service sidings and ancillary works on land within the council area which, under a town planning scheme, has been zoned for industrial purposes; and
- (b) to carry out such maintenance works as are agreed with the National Railways of Zimbabwe in connection with the railway service sidings and ancillary works referred to in paragraph (a); and
- (c) for the purpose of defraying wholly or partly any expenditure incurred under an agreement such as is referred to in paragraphs (a) and (b) or any other expenditure incurred in terms of paragraph (a)—
  - (i) to enter into agreements with the owners of land which is or is capable of being served by the railway service siding concerned; or
  - (ii) subject to this section, at the same time as the council fixes and levies its general rate in terms of subsection (1) of section *two hundred and seventy-two*, to fix and levy a special rate on the value

of that portion of the rateable property which consists of land only or that portion which consists of improvements only or upon the value of all rateable property.

(2) A special rate referred to in subparagraph (ii) of paragraph (c) of subsection (1) shall be fixed and levied only in respect of rateable property—

- (a) which is within an area which, under a town planning scheme, has been zoned for industrial purposes; and
- (b) in respect of which an agreement referred to in paragraph (a) of subsection (1) has been entered into or expenditure has been incurred in terms of that paragraph, as the case may be.

(3) In fixing and levying a special rate in terms of paragraph (c) of subsection (1) the council may—

- (a) fix and levy different special rates in respect of different portions of an area referred to in paragraph (a) of subsection (1); or
- (b) fix and levy a special rate in respect of a portion only of an area referred to in paragraph (a);

in which event it shall specify the different rates and areas or the appropriate portion of the area, as the case may be, in the notice referred to in subsection (4).

(4) Before fixing and levying a special rate in terms of paragraph (c) of subsection (1) the council shall give notice in three issues of a newspaper—

- (a) of the intention to levy such special rate on the properties described in that notice; and
- (b) that representations in connection with, or objections to, the proposals may be submitted in writing to the town clerk within such period, being not less than thirty days after the date of the first publication of the notice in the newspaper, as may be stated in the notice:

Provided that a council need not give notice in terms of this subsection where it fixes and levies a special rate which is no greater than, and is fixed and levied in respect of the same property and for the same purpose as, a special rate fixed and levied by the council in the previous financial year.

(5) If any objections or representations are received in terms of subsection (4), they shall be considered by the council and the special rate shall not be fixed and levied unless a majority of the total membership of the council has voted in favour thereof.

(6) For the avoidance of doubt, it is declared that sections *two hundred and seventy-two* and *two hundred and seventy-three* shall not apply to a special rate levied under this section.

(7) A municipal council shall have power and authority to defray, in terms of paragraph (c) of subsection (1), any expenditure such as is referred to in that paragraph, irrespective of the date when that expenditure was incurred.

## 205 Estate development

(1) Subject to this section, a council shall have power and authority inside or outside the council area or in a local government area, the administration, control and management or which has been vested in the council, on its own land or on State land—

- (a) to lay out and service any such land for residential, commercial or industrial purposes;
- (b) to construct buildings on such land for residential, commercial or industrial purposes;
- (c) in accordance with section *one hundred and fifty-two*, to sell, exchange, lease, donate or otherwise dispose of or permit the use of such land or buildings and improvements for residential, commercial or industrial purposes.

(2) Subject to this section, the council shall have power and authority to purchase or to hire land or building for the purposes of subsection (1).

(3) Before exercising any power or authority in terms of subsection (1) or (2), the council shall submit the proposal to exercise such power and authority to the Minister for his approval in terms of this section.

(4) Where a proposal referred to in subsection (3) relates to an area for which there is no approved town planning scheme, the council shall—

- (a) before it submits its proposal to the Minister, give notice in two issues of a newspaper—
  - (i) of the details of the proposal; and
  - (ii) of the place where such details of the proposal may be inspected; and
  - (iii) giving such further information considered by the council to be relevant to the proposal; and
  - (iv) stating that objections to the proposal may be submitted in writing to the town clerk within such period, being not less than twenty-one days after the date of the last publication of the notice in the newspaper, as may be stated in the notice; and
- (b) after the expiry of the period referred to in subparagraph (iv) of paragraph (a), submit with its proposal to the Minister a copy of the notice given and of any objection submitted in terms of the said subparagraph (iv) together with any comments of the council thereon.

(5) After consideration of a proposal referred to in subsection (3) and any objection thereto submitted in terms of subparagraph (iv) of paragraph (a) of subsection (4), the Minister may—

- (a) refuse to approve the proposal or approve the proposal in whole or in part subject to such directions or terms and conditions as he may think fit to give or impose, as the case may be, either at the time of approval or subsequently;
- (b) without derogation from the generality of paragraph (a), exercise all or any of the following powers either at the time of approval of the proposal or subsequently—
  - (i) authorize or direct the council concerned to make by-laws for the whole or any part of the area to which the proposal relates for all or any of the matters specified in subsection (2) of section *two hundred and thirty-five*, as though any reference therein to the State included a reference to the council and in that event subsections (3), (7) and (8) of that section and sections *two hundred and twenty-seven* and *two hundred and twenty-eight* shall apply, *mutatis mutandis*, in relation to the making of such by-laws;
  - (ii) require that any land in the area to which the proposal relates shall be reserved for the purposes of a police station or school and any land so reserved shall, upon the request of the Minister and at the cost of the council, be transferred to the President and the council shall not be entitled to any payment or compensation for any land so transferred but shall be entitled to recover the costs incurred by the council in surveying such land:  
 Provided that subsection (8) and, where applicable, the provisos to subsection (7), of section *one hundred and fifty-two* shall apply, *mutatis mutandis*, in relation to any land acquired in terms of this subsection by the State;
  - (iii) authorize the council to—
    - A. sell in accordance with section *one hundred and fifty-two* buildings upon security of a first mortgage over each property;
    - B. lend money for the construction of buildings and the acquisition of land therefor;
    - C. guarantee loans from building societies registered in terms of the Building Societies Act [*Chapter 24:02*] for the construction of buildings, not exceeding ninety *per centum* in each case of the estimated value of the land and the buildings to be built thereon;
 in accordance with the proposal;
  - (iv) direct the council to apply section *three hundred and one* to the area to which the proposal relates, in which case—
    - A. any reference in that section to a local government area shall be construed as including a reference to the area to which the proposal relates; and
    - B. the housing account required to be kept in terms of that section shall be called by such name as the Minister may direct;
  - (v) authorize the council to sell or lease any land or buildings to which the proposal relates in accordance with section *one hundred and fifty-two* or *one hundred and fifty-three*;
  - (vi) give the council directions as to the manner in which it may exercise its powers relating to the disposal of any land or building to which the proposal relates, including, without derogation from the generality of the foregoing, directions prohibiting the council from repossessing any such land or building;
- (c) call for further details or information before considering the proposal any further.

(6) Where a council has made by-laws imposing a supplementary charge in respect of any property situated within an area to which the proposal concerned relates, the council shall, notwithstanding any other provision of this Act—

- (a) not be required to value that property in terms of Part XVIII;
- (b) not impose any rate in respect of that property in terms of Part XIX.

(7) The Minister may at any time revoke or amend any directions or terms and conditions given or imposed, as the case may be in terms of subsection (5).

(8) Where the administration of any area, to which a proposal which has been approved in terms of this section relates, is vested in another council, the proposal shall be deemed to have been approved in relation to that other council with the same directions, terms and conditions to which it was previously subject.

## **206 Minister's powers to act on behalf of council regarding estate development**

(1) Where the Minister considers that serviced stands, land or buildings are required for the purposes of subsection (1) or (2) of section *two hundred and five*, he may direct the council concerned to exercise its powers in terms of those provisions.

(2) If a council fails to comply with any direction given in terms of subsection (1) or any direction given or terms or condition imposed in terms of section *two hundred and five* in relation to any proposal which has been approved in terms of that section, the Minister may, subject to subsection (3) and after notice in writing to the council—

- (a) take possession of any undeveloped council land, including surveyed land—

- (i) for which there is a town planning scheme and which is zoned for the appropriate purpose in terms thereof; or
- (ii) for which there is no town planning scheme but which is suitable for the appropriate purpose;
- (b) expropriate, in accordance with Part X, in the name of the council or of the State, any land—
  - (i) for which there is a town planning scheme and which is zoned for the appropriate purpose in terms thereof; or
  - (ii) for which there is no town planning scheme but which is suitable for the appropriate purpose;
- (c) provide serviced stands or erect buildings on any land such as is referred to in paragraph (a) or (b) or on State Land;
- (d) recover from the council concerned any expenses incurred in the exercise of the powers referred to in paragraph (a), (b) or (c) by all or any of the following methods—
  - (i) by action in competent court;
  - (ii) by declaring that any income of the council shall be applied to the payment of such expenses and by appointing a receiver who is hereby authorized to attach so much of that income as will meet such expenses;
  - (iii) by levying a special rate on all rateable property within the council area, which rate shall be levied in all respects as if it were a rate levied in terms of section *two hundred and seventy-two*;
- (e) transfer to the council at its expense any State land serviced in terms of paragraph (c) or any land expropriated in terms of paragraph (b) in the name of the State, together with any buildings thereon;
- (f) make regulations for any area in which any land referred to in paragraph (a), (b) or (c) is situated or to which the proposal concerned relates, as the case may be, for any of the purposes set out in subsection (2) of section *two hundred and thirty-five* as if any reference therein to the State included a reference to the council and in such event—
  - (i) where there is a conflict between by-laws made by the council and regulations made by the Minister, the latter shall prevail;
  - (ii) subsections (3), (5), (7) and (8) of section *two hundred and thirty-five* shall apply, *mutatis mutandis*.
- (3) Before taking action in terms of subsection (2) the Minister shall—
  - (a) publish in at least three issues of a newspaper notice of his intention to take such action and calling for representations to be made in regard thereto;
  - (b) consider any representation made in terms paragraph (a).

#### **207 Repayment of loans made in respect of estate development**

Any loan made in terms of section *two hundred and five* shall be repaid to the council on such conditions as the council may determine:

Provided that—

- (i) the rate of interest shall not be more than one *per centum* per annum above the rate of interest charged at the date of the loan by the State in respect of loans made to local authorities; and
- (ii) in no case shall the period for the repayment of the total amount loaned exceed thirty years.

#### **208 Security for loans made in respect of estate development**

Security for the repayment of any loan made in terms of section *two hundred and five* and interest thereon shall be a first mortgage on the property in respect of which that loan has been made:

Provided that loans may be made in terms of that section without such bond if the dwelling in respect of which the loan is made is situated upon land held by the council, but which has not been transferred and which will not be transferred until the loan and any money owing to the council has been paid.

#### **209 Contracts**

(1) A council may enter into contracts for any purpose authorized by law and may require and take security from any person for the due performance of his obligations under any such contract.

(2) Without derogation from the generality of subsection (1), a council may enter into contracts referred to in section 35 of the Electricity Act [*Chapter 13:05*] for the operation of an electricity undertaking or for the carrying on of any activity incidental thereto.

#### **210 Municipal procurement board**

(1) Subject to section 211, every municipal council shall appoint a municipal procurement board consisting of not less than five and not more than seven members, which shall be responsible for arranging tenders in terms of section *two hundred and eleven* and for making recommendations to the council in regard to the acceptance of tenders and the procurement of goods, materials and services.

[Subsection amended by Act 5 of 2017]

(2) A municipal council shall designate one of the members of the procurement board as chairman of the board.

(3) The quorum of the procurement board shall be four members.

(4) A municipal council shall not procure any goods, materials or services unless its municipal procurement board has made recommendations to the council thereon and the council has considered such recommendations.

(5) The Minister may make regulations enabling municipal procurement boards to set up technical committees or specialized procurement committees or to co-opt appropriate professional and technically qualified persons to assist the procurement boards in the proper discharge of their functions.

## 211 Tenders

(1) In this section—

“municipal procurement board” means a municipal procurement board appointed by a municipal council in terms of section *two hundred and ten*.

(2) Subject to subsections (8) and (9), before entering into a contract for the execution of any work for the council or the supply of any goods or materials to the council which involves payment by the council of an amount exceeding such sum or sums as may be prescribed, the council or, in the case of a municipal council, the municipal procurement board shall call for tenders, by notice posted at the office of the council and advertised in two issues of a newspaper, specifying—

(a) the nature of the proposed contract, giving such particulars thereof as the council or the municipal procurement board, as the case may be, considers to be desirable; and

(b) the closing time and date for the receipt of tenders therefor, which shall be not less than twenty-eight days after the date of the first publication of the notice in the newspaper:

Provided that, if in any case the council or the municipal procurement board, as the case may be, considers the execution of the work or the supply of the goods or materials to be urgent, the period of such notice may be reduced to not less than fourteen days.

(3) In prescribing amounts for the purposes of subsection (2), the Minister may prescribe different amounts for different classes of council.

(4) Tenders received in terms of subsection (2) shall be opened in public on the closing date fixed therefor forthwith after the closing time.

(5) In the case of a municipal council, the municipal procurement board shall without delay consider all tenders opened in terms of subsection (4) and submit them, together with the board’s recommendations, to the council for its consideration.

(6) The council shall accept wholly or partly the tender which in all the circumstances appears to it to be the most advantageous:

Provided that—

(i) nothing contained in this subsection shall prevent the council from rejecting all tenders;

(ii) the tender of any person who canvasses or solicits or causes to be canvassed or solicited the support of the mayor, any councillor or employee of the council or any number of municipal procurement board in support of his tender shall not be considered;

(iii) any tender which is received after the time when the tenders are opened in public in terms of subsection (4) shall not be considered.

(7) If any tender, other than the lowest tender, is accepted the council shall cause the reasons for its decisions to be recorded in the minutes of its proceedings.

(8) The council or, in the case of a municipal council, the municipal procurement board shall advise every tenderer in writing whether or not his tender has been accepted.

(9) Notwithstanding this section, the council may, in accordance with a scheme approved by the Minister and subject to any regulations, compile a register of building and engineering contractors graded into categories according to the type and value of work for which they may be permitted to tender and may thereafter, in accordance with such scheme and any regulations, call for tenders for work from the contractors registered in any appropriate category, whether the contractors are registered for work of the value of that tendered for or work of a higher value.

(10) Subsection (2) shall not apply to—

(a) any case or class of case in which the council by resolution sets forth the circumstances and declares that it would be against the best interests of the municipality or town to invite tenders:

Provided that the council may by resolution delegate to one or more of its committees the powers contained in this paragraph in respect of contracts involving payment by the council of any amount not exceeding such sum as may be prescribed; or

(b) any contract relating to the publication of notices and advertisements of the council; or

(c) purchases on behalf of the council at public auction sales; or

(d) purchases on behalf of the council where the seller has called for tenders; or

(e) any contract entered into by the council with the State, any other local authority or any statutory corporation established by or in terms of a law in force in Zimbabwe; or

(f) any contract entered into by the council for the provision of professional services.

(11) Every municipal procurement board shall be the “procuring entity” for the purposes of the Public Procurement and Disposal of Public Assets Act [*Chapter 22:23*] (“the procurement law”).

[Subsection inserted by Act 5 of 2017]

(12) In the event of inconsistency between this section and section 210 and any provision of the procurement law, then—

- (a) the procurement law shall prevail over this section and section 210 to the extent of the inconsistency; and
- (b) this section and section 210 shall be construed with such modifications, qualifications, adaptations and exceptions as may be necessary to bring them into conformity with the procurement law.

[Subsection inserted by Act 5 of 2017]

(13) For the purpose of subsection (11)(b) and for the purpose generally of assisting councils to adapt their procurement procedures to the procurement law, every council shall comply with any directions issued by the Procurement Regulatory Authority of Zimbabwe in terms of section 7(a) of the procurement law.

[Subsection inserted by Act 5 of 2017]

## **212 Numbering of houses and naming of roads**

(1) The council may from time to time assign names to roads within the council area and cause the name of any road to be affixed to or painted on any house, building or other structure fronting upon any part of such road.

(2) The council may, by notice in writing to the owner or occupier of any house or other building, direct the owner or occupier at his own expense—

- (a) to mark or affix in accordance with any by-law at the main entrance or in some other conspicuous position on such premises the number specified in that notice; or
- (b) to renew the number referred to in paragraph (a) as often as it has become defaced or obliterated;

and that owner or occupier shall, within thirty days after receipt of that notice from the council, mark, affix or renew any such number as so directed.

[Subsection amended by section 4 of Act 22 of 2001.]

(2a) If an owner or occupier contravenes subsection (2)—

- (a) he shall be guilty of an offence and liable to a fine not exceeding level two; and
- (b) whether or not he is prosecuted for an offence under paragraph (a), the council may cause the number of the owner's house or building to be marked, affixed or renewed, as the case may be, and recover the expenses of doing so from the owner or occupier.

[Subsection inserted by section 4 of Act 22 of 2001.]

(3) No person shall, without the permission of the council -

- (a) destroy, remove or deface any name affixed or painted by the council in terms of subsection (1); or
- (b) destroy, remove or deface any number marked or affixed by a person in terms of a direction given under subsection (2) or by the council in terms of that subsection; or
- (c) fail to keep marked or affixed the number specified in the notice given under subsection (2).

(4) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level three.

[Subsection inserted by section 4 of Act 22 of 2001.]

## **213 Projections over or under roads or property of council**

(1) In this section—

“projection” means any veranda, balcony, awning, sign, signboard or other similar structure, device or contrivance or any bridge or tunnel, other than a railway bridge or tunnel, which projects or extends into, over or under any road or property owned by the municipality or town or under the control of the council.

(2) A council may, by by-law or resolution, subject to such conditions as it may think fit to impose, permit the erection or construction of projections and charge recognition fees in respect thereof.

(2a) If any person contravenes or fails to comply with a condition imposed in terms of subsection (2)—

- (a) he shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment; or
- (b) whether or not he is prosecuted for an offence under paragraph (a), the council may cause the projection in question to be demolished and removed at the cost of the owner thereof.

[Subsection inserted by section 4 of Act 22 of 2001.]

(3) If any person fails to comply with any condition imposed under subsection (2), he shall be guilty of an offence and the council may cause the projection in question to be demolished and removed at the cost of the owner thereof.

## **214 Closure or deviation of entrances to roads**

(1) A council may, by notice in writing given to the owner of any property abutting on any road—

- (a) require that owner to close or deviate any entrance, driveway or other means of access by vehicles from such property to any road in such manner and to such extent and for such period as may be specified in that notice;
- (b) prohibit or restrict any means of access by vehicles to any such road or any property, save at a point or points authorized by it on any such road and specified in that notice.

(2) If the owner of property is aggrieved by any notice in terms of subsection (1) he may appeal in writing to the Minister whose decision shall be final.

(3) An owner of property to whom notice has been given in terms of subsection (1) shall comply with the requirements of that notice within such period, being not less than two months, as the council may specify in that notice or any extension of that time granted by the council:

Provided that if, within that period of two months, the owner has appealed in terms of subsection (2) and the order is not withdrawn as a result of such appeal, the owner shall comply with the requirements of the order within a period of two months from the date that he is notified of the decision of the Minister.

### **215 Prohibition or regulation of use of ramps or similar devices**

(1) The council may make by-laws providing for the prohibition or regulation of the use of any ramp or similar device for the purpose of permitting any vehicle to cross a side-walk where—

- (a) access to the property concerned is available or can be made available by means of an access lane; or
- (b) the presence or use of such device could—
  - (i) obstruct the stormwater channel or constitute a nuisance or an obstruction or a danger to traffic or to persons using the sidewalk; or
  - (ii) cause damage to the sidewalk by the passage of vehicles.

(2) By-laws in terms of subsection (1) may provide for—

- (a) the removal and disposal of any ramp or similar device which is placed or used in contravention of the by-laws; and
- (b) the recovery and, where appropriate, the apportionment of the costs of—
  - (i) the removal and disposal of any ramp or similar device which is placed or used in contravention of the by-laws; and
  - (ii) the repair and maintenance of a sidewalk necessitated by the passage of vehicles over a ramp or similar device, whether or not the use of the device is prohibited or regulated.

### **216 Electricity undertaking**

A municipal council may, subject to the Electricity Act [*Chapter 13:05*] own and operate a public electricity supply undertaking and carry on any activity incidental thereto.

### **217 Street lighting**

Subject to the Electricity Act [*Chapter 13:05*] a council may place, erect, install, provide, maintain and operate street lighting inside or outside the council area, either—

- (a) on its own behalf; or
- (b) on behalf of any other local authority or other person on such terms and conditions as may be mutually agreed upon;

and supply electricity thereto and do all such things as are incidental to the foregoing.

### **218 Owners of land may be charged for services made available**

Where—

- (a) any stand, lot, premises or other area, whether with or without improvements, within the council area is or could reasonably be connected to any sewer, water main or electricity main of the council; or
- (b) a service for the removal of refuse, whether trade, domestic or otherwise, has been made available by the council to any stand, lot, premises or other area, whether with or without improvements, within the council area;

the owner of that stand, lot, premises or other area—

- (i) shall be deemed to be the user of the service in question, whether or not he makes use thereof; and
- (ii) may be charged by the council such amount as the council may fix in respect of the service:

Provided that the amount so fixed by the council shall not exceed the minimum rate payable to the council by actual users of the service concerned for the time being.

### **219 Charges by resolution**

(1) A council may, by resolution passed by a majority of the total membership of the council—

- (a) fix tariffs or charges for—
  - (i) the supply of electricity or water or of refuse removal services; or
  - (ii) the conveyance of sewage or trade effluent in public sewers and its treatment at a sewage treatment works; or
  - (iii) any other services which a council may provide in terms of this Act;

- (b) fix charges to be payable in respect of certificates, licences or permits issued, inspections carried out, services rendered or any act, matter or thing done by the council in terms of this Act;
- (c) fix deposits to be paid in connection with any services provided by the council in terms of this Act:

Provided that in any local government area administered by a council or in such part of a council area as may be prescribed or as may be notified to the council by the Minister—

- (a) notwithstanding anything to the contrary contained in this Act, no rents, charges, fees or deposits or any kind, other than charges, fees or deposits in connection with the supply of electricity, shall be raised or levied by a council in respect of any residential accommodation or services provided specifically to or in connection with any residential accommodation otherwise than by by-laws made or in force in terms of this Act;
- (b) a council may, subject to the approval of the Minister, fix in any lease or agreement entered into by it the rents, charges, fees or deposits which shall be payable by the lessee in respect of the occupation of any premises.

(2) Before any tariffs, charges or deposits fixed in terms of subsection (1) come into operation a statement setting out the proposed tariffs, charges or deposits and any existing tariffs, charges or deposits for the same matters shall—

- (a) be advertised in two issues of a newspaper; and
- (b) be posted at the office of the council for a period of not less than thirty days from the date of the first advertisement in the newspaper.

(3) If a statement has been advertised in terms of paragraph (a) of subsection (2) and within the period of thirty days referred to in that paragraph objections to the proposed tariffs, charges or deposits are lodged—

- (a) by thirty or more persons who are voters or who are users of the service to which the tariff, charge or deposit relates; or
- (b) where there are less than thirty such users of the service concerned, by not less than fifty *per centum* of the number of such users;

such tariffs, charges or deposits shall be reconsidered by the council, together with the objections so lodged, and they shall not come into operation unless the resolution is again passed by a majority of the total membership of the council:

Provided that the council may in these circumstances, by such resolution, fix lower tariffs, charges or deposits than those objected to without further advertising.

(4) The notice to councillors of any meeting at which the proposed tariffs, charges or deposits are to be reconsidered for the purposes of subsection (3) shall contain a copy of all objections lodged in terms of subsection (3) unless all councillors have been previously circulated with a copy of the objections.

(5) A resolution in terms of this section relating to any tariffs, charges or deposits which are provided for in any by-law shall not have the effect of introducing new tariffs, charges or deposits until the by-law concerned has been repealed or amended, as the case may be:

Provided that this subsection shall not apply in relation to the introduction of a special water tariff which is introduced to have effect during a period of a water shortage.

(6) Where a council is empowered in terms of this Act to make by-laws providing for, or to fix by resolution, any tariff, charge or deposit, the council may, from time to time, by resolution fix a rate of interest payable on any such tariff, charge or deposit remaining unpaid after such date as may be determined from time to time by the council and set out in the notice of demand for the payment of such tariff, charge or deposit.

(7) The rate of interest referred to in subsection (6) shall not be more than one *per centum* per annum above the rate of interest charged by the State in respect of loans made to local authorities at the time the rate was fixed in terms of subsection (6).

(8) Subsections (2), (3), (4) and (5) shall apply, *mutatis mutandis*, to the rate of interest fixed by a council in terms of subsection (6).

## **220 Council's right of entry to and use of land**

(1) Subject to this section, a council—

- (a) may place any water main, public drain, electricity transmission line or public sewer, together with any works necessary to and used in connection with such water main, public drain, electricity transmission line or public sewer, whether above or below ground, into, out of, along or across any land, including any road, other than land covered by buildings, whether such land is inside or outside the council area; and
- (b) through its employees or contractors, together with any assistants and advisers that may be necessary, shall have access to or over any property by the shortest and most practicable route reasonable in the circumstances for the purposes of—

- (i) doing anything authorized or required to be done by the council in terms of this Act or any other law, including the placing of any water main, public drain, electricity transmission line or public sewer in terms of paragraph (a);
- (ii) inspecting, examining, testing, repairing, renewing, maintaining and cleaning any property of the council, including any water main, public drain, electricity transmission line or public sewer;
- (iii) inquiring into and investigating the suitability of immovable property for any work, scheme or undertaking of the council, and in making any necessary survey or valuation in connection therewith;
- (iv) ascertaining whether—
  - A. there exists any nuisance; or
  - B. there is or has been a contravention of this Act or any other law, responsibility for the administration of which is vested in the council;
- (v) ensuring compliance with this Act or any other law, responsibility for the administration of which is vested in the council.

(2) The exercise by the council of any of the powers referred to in subsection (1) shall be subject to this Act and any other law regulating or controlling the rights of the council in that regard.

(3) Where it is proposed that the powers referred to in subsection (1) should be exercised over or under any road which is not vested in or maintained by the council, the council, before commencing any such work, shall consult the appropriate road authority as defined in the Roads Act [*Chapter 13:12*] and shall comply with any reasonable requirements of that road authority.

(4) Before exercising any powers referred to in subsection (1) the council shall give reasonable notice—

- (a) to the owner or occupier of the property concerned of the intention to enter into or upon any building or land by notifying the occupier personally or by post or by giving notice to the owner at his last usual or last known place of abode or business personally or by post:

Provided that for the purposes of subparagraphs (iv) and (v) of paragraph (b) of subsection (1) and in the case of work which is required to be executed urgently, any matter affecting public health which is urgent or the reading of meters, it shall not be necessary for the council to give the notice required by this subsection;

- (b) in the case of land within the area of another local authority, to that other local authority.

(5) No person shall in terms of this section be subjected to entry on his premises without his consent, except at reasonable times and to the extent that such entry is necessary—

- (a) in the interests of public safety, public health or town and country planning; or
- (b) for the enforcement of the law in circumstances where there are reasonable grounds for believing that the entry is necessary for the prevention, investigation or detection of an offence in terms of this Act or any other law, responsibility for the administration of which is vested in the council; or
- (c) for the purpose of the valuation of the premises in connection with any rate; or
- (d) to enable the council to carry out work connected with any of its property which is lawfully on those premises.

(6) A person who is authorized in terms of this section to enter any land may take with him such persons, animals, vehicles, appliances and other things as he may consider necessary for the performance of his duties.

(7) Upon the completion of any works performed in the exercise of the powers conferred by this section on the property of any person, the council shall promptly restore the surface of the land, road or other place upon which the work was carried out as nearly as reasonably possible to the same condition as it was before the commencement of the work, and in carrying out the work the council shall do as little damage as reasonably possible to such land or other place.

(8) The council shall pay compensation to any person who suffers loss or deprivation of rights by the exercise of the powers conferred by this section and Parts V and VIII of the Land Acquisition Act [*Chapter 29:10*] shall apply, *mutatis mutandis*, to the payment of such compensation:

Provided that any reference in Part V of that Act to the date of the publication of a preliminary notice in the *Gazette* shall be construed as a reference to the date of the exercise of the powers conferred by this section.

## **221 Income-generating projects**

(1) With the written approval of the Minister and subject to such terms and conditions as he may impose, a council may engage in any commercial, industrial, agricultural or other activity for the purpose of raising revenue for the council.

(2) The Minister, after consultation with the council concerned, may revoke any approval given in terms of subsection (1) or amend any term or condition of such approval, and, where he has done so, may give the council such directions as he considers necessary in regard to the disposal of any assets or undertakings acquired or used by the council in carrying on the activity concerned.

(3) A council shall comply with any directions given by the Minister in terms of subsection (2).

## 222 Establishment of co-operatives

(1) Subject to any other enactment, with the written approval of the Minister and subject to such terms and conditions as he may impose, a council may—

- (a) establish and foster co-operative companies and co-operative societies to carry on any commercial, industrial, agricultural or other activity; and
- (b) advance moneys and give other assistance to any co-operative company or co-operative society established in terms of paragraph (a).

(2) The Minister, after consultation with the council concerned, may give the council such directions as he considers necessary in regard to the carrying on of any activity by a co-operative company or co-operative society established in terms of subsection (1) or as to the winding up of any such co-operative company or co-operative society.

(3) A council shall comply with any directions given by the Minister in terms of subsection (2).

## PART XVI

### POWERS TO CO-OPERATE WITH THE STATE, LOCAL AUTHORITIES AND OTHER PERSONS

## 223 Co-operation through agreement with State, local authorities and persons

(1) Subject to this section, a council may by agreement co-operate with the State or with any other local authority or other person for the better or more economic carrying out, either by any of the contracting parties or by the use of joint facilities, of any matter which the council may by law perform and in which the contracting parties are mutually interested.

(2) The conditions of any agreement referred to in subsection (1) shall be embodied in a deed of agreement to be entered into and subscribed to by the contracting parties and shall, *inter alia*, as far as may be necessary or expedient, provide for—

- (a) the date upon which the agreement shall come into force, the period for which it shall endure and the terms and conditions on which—
  - (i) any of the parties thereto may withdraw therefrom; and
  - (ii) another local authority or other person may become a party thereto; and
  - (iii) the agreement may, during its currency, be terminated; and
- (b) the money, material, land, buildings or other property or things to be provided by each of the contracting parties, and the payment, if any, to be made therefor; and
- (c) the charges, if any, to be borne by, and the income or profit, if any, to be payable to each of the contracting parties; and
- (d) the apportionment between the contracting parties of the income, profits, assets, losses and liabilities arising out of the operation of the agreement; and
- (e) the raising of loans, subject to the approval of the Minister, either jointly or separately by the contracting parties and the determination of their liability under and generally the terms and conditions of any such loan; and
- (f) the management, control, execution and audit of any matter forming the subject of the agreement; and
- (g) the rights, powers, privileges and duties of each contracting party; and
- (h) the amount of and the manner of fixing and collecting the charges, if any, to be paid in regard to any matter forming the subject of the agreement; and
- (i) the making of regulations or by-laws, subject to this Act or any other law conferring the power thereof, in regard to any matter forming the subject of the agreement; and
- (j) the delegation by the contracting parties of any or all of their powers and duties relating to any matter forming the subject of the agreement to one of their number or to a joint committee appointed by them.

(3) Where the Minister considers that the co-operation of any council with any other local authority or other person for any purpose which they may by law perform would be of public advantage, he may make an order for the drawing up of a deed of agreement for the purposes specified therein, and such agreement shall, subject to subsection (4), be framed in accordance with the requirements of subsection (2).

(4) Where any council or local authority objects to the exercise by the Minister of any powers conferred by subsection (3), the Minister shall appoint investigators in terms of section *three hundred and eleven* to hold an investigation into the objections and to report to him thereon and that section shall apply accordingly.

(5) On receiving the report submitted in terms of subsection (4), the Minister may make such order as he thinks fit.

(6) If the Minister has ordered a council to draw up a deed of agreement in terms of subsection (3) and the council fails or refuses to do so within such period as the Minister may direct, the Minister may, on behalf of the council, enter into such a deed of agreement, and that deed of agreement shall be binding on the council and the other party or parties thereto as though it had been entered into by the council.

(7) If the agreement concerned so provides, a joint committee referred to in paragraph (j) of subsection (2) shall be a body corporate capable of suing and being sued in its own name and having such powers as may be conferred upon it by the agreement concerned.

## **224 Joint committees by agreement and joint boards**

(1) In this section—

“councillor” includes a member of a local authority, however designated.

(2) Subject to this section, any council and any other local authority may, on such terms and conditions as may be agreed between them, combine for any purpose which they may by law perform and in which they are jointly interested, including, without prejudice to the generality of the foregoing, the purpose of conducting and managing their affairs and the employment of their employees.

(3) Any agreement referred to in subsection (2) may, *inter alia*, provide for any or all of the following—

- (a) the appointment of a joint committee of the parties thereto consisting of such number of councillors as is specified in the agreement and the delegation to such committee of any function relating to any purpose for which the parties have combined;
- (b) the joint exercise in any other manner by the parties thereto of any of their functions;
- (c) the supply by any one or more of the parties thereto or on behalf of the other parties of any service for which they have combined in terms of this section on terms and conditions specified in the agreement which may, in addition, provide that, notwithstanding anything in this Act or any other law, councillors of other local authorities may be appointed members of any committee or subcommittee of the party or parties providing the service for the purpose of dealing with matters arising from the provision of the service.

(4) The expenses of any joint committee appointed under an agreement or combination of local authorities referred to in this section shall be defrayed by the local authorities concerned in the proportions specified in the agreement, and the proportion of the expenses falling to be defrayed by any local authority shall be defrayed by the local authority in the same manner as they would have been defrayed had the service been provided by that local authority.

(5) The Minister, on the application of all the local authorities concerned, may, by statutory instrument, declare a joint committee appointed in terms of this section to be a body corporate with such name as may be determined by him, and that joint committee shall thereupon be a body corporate, to be known as a joint board, capable of suing and being sued in its own name and shall have such powers as may be conferred upon it by the agreement referred to in subsection (2).

## **225 Joint committees by Minister’s authority and joint boards**

(1) Subject to this section, if it appears to the Minister that it would be of advantage to combine a council with any other local authority or local authorities with which it may combine in terms of section *two hundred and twenty-four* for any purpose which those local authorities may by law perform, the Minister may make an order combining the local authorities for such purpose:

Provided that no such order shall be made unless—

- (a) an investigation has been held in terms of section *three hundred and eleven*; or
- (b) all the local authorities concerned consent to the order.

(2) Subsection (3) of section *two hundred and twenty-four*, shall apply, *mutatis mutandis*, to an order under subsection (1) as though it were an agreement referred to in the said subsection.

(3) An order under subsection (1)—

- (a) shall define the powers, rights, duties, liabilities and obligations of the local authorities concerned and the method of defraying the expenses of the combination; and
- (b) may provide for any other matter or thing which the Minister considers to be necessary or proper to regulate for the better carrying into effect of the order.

(4) The Minister, after consultation with all the local authorities concerned, may, by statutory instrument, declare a joint committee appointed in terms of this section to be a body corporate with such name as may be determined by him, and that joint committee shall thereupon be a body corporate, to be known as a joint board, capable of suing and being sued in its own name, and shall have such powers as may be conferred upon it by the order under subsection (1).

## **226 Provisions as to members and proceedings of joint committees and joint boards**

(1) The members of a joint committee or joint board established in terms of this Part shall be appointed at such times and in such manner and shall hold office for such period as may be provided in the agreement or order, as the case may be, regulating the combination, and failing any such provision a member shall hold office for such period as may be fixed by the local authority which he represents.

(2) Every member of a joint committee or joint board referred to in subsection (1) shall, if he ceases to be a councillor or member of the local authority by whom he was appointed, cease on the expiry of two months thereafter or on the appointment of his successor, whichever first occurs, to be a member of the joint committee or joint board.

- (3) Unless otherwise provided in the agreement or order regulating the combination referred to in subsection (1)—
- (a) the joint committee or joint board shall elect a chairman who shall hold office for such period as shall be fixed at the time of his election;
  - (b) the proceedings and place of meeting of the joint committee or joint board shall be such as the joint committee or joint board may determine;
  - (c) the joint committee or joint board may appoint subcommittees and delegate to any subcommittee any of its functions, and every such subcommittee shall, as soon as is reasonably practicable, report its proceedings to the joint committee or joint board;
  - (d) the chairman or other person presiding at a meeting of the joint committee or joint board or a subcommittee thereof shall have a casting vote as well as a deliberative vote;
  - (e) the quorum at any meeting of the joint committee or joint board shall be not less than one-half of the total membership.
- (4) If at any meeting of a joint committee or joint board referred to in subsection (1) the chairman is absent, the members of the committee or board shall elect one of their number to preside at that meeting.

## PART XVII

### BY-LAWS AND REGULATIONS

#### 227 Matters for which council may make by-laws

(1) A council may make by-laws in terms of this Part in relation to any matter specified in the Third Schedule or anything which is incidental to or connected with a matter so specified or for any matter for which in terms of this Act provision may be made in by-laws:

Provided that a by-law shall not apply to a mining location as defined in the Mines and Minerals Act [*Chapter 21:05*] or the mining lease referred to in paragraph (b) of subsection (2) of section 4 of that Act unless the by-law specifically purports to apply to the mining location or mining lease, whether in whole or in part, and subject to such modifications as may be specified therein.

(2) In relation to a local government area administered by the council or any other area that is prescribed or in respect of which the Minister has, by written notice to the council, directed that this subsection should apply, a council may, in addition, make by-laws in terms of this Part in respect of any matter which it considers to be necessary or desirable for the control, management and good government of that area, including, without derogation from the generality of the foregoing, the matters specified in subsection (2) of section *two hundred and thirty-five* as though any reference therein to the State were a reference to the council, and in that case subsections (3), (6) and (7) of that section shall apply, *mutatis mutandis*.

(3) The power to make by-laws for matters referred to in this section may be exercised—

- (a) in relation to all cases to which the power extends or in relation to all those cases subject to specified exceptions or in relation to any specified cases or classes or cases;
- (b) so as to make, as respects the cases in relation to which it is exercised—
  - (i) the full provision to which the power extends or any less provision, whether by way of exception or otherwise; and
  - (ii) the same provision for all cases in relation to which the power is exercised or a different provision for different cases or classes of cases or a different provision as respects the same case or class of cases for different purposes; and
  - (iii) any such provision, either unconditionally or subject to any specified conditions;
- (c) in so far as it provides for the licensing of any person, establishment, premises or thing, for the circumstances in which a licence may be refused or cancelled.

#### 228 Making of by-laws

(1) Subject to this section and section *two hundred and twenty-nine* and of any other law, a council may make by-laws for all or any of the matters referred to in section *two hundred and twenty-seven* and may at any time thereafter amend or repeal any by-laws so made.

(2) By-laws may be made in terms of subsection (1) for—

- (a) the council area; or
- (b) any property or area outside the council area which is administered and controlled by the council, including a local government area; or
- (c) any area outside the council area in so far as the by-laws relate to the control of a service provided in that area by the council; or
- (d) the area of any omnibus service operated in agreement with the council in terms of section *one hundred and ninety-two*:

Provided that subject to this section, by-laws made for the council area may be applied by reference to any area referred to in paragraph (b) and unless so applied no such by-laws shall apply to such area.

(3) A by-law applied by reference in terms of the proviso to subsection (2) shall not be of any force until such application has been approved by the Minister and published in the *Gazette*.

(4) Where a local board has been appointed for a local government area which is administered and controlled by a council, the council may not make by-laws in terms of this section in relation to any matter for which that local board in terms of its warrant issued under section *seven* may make by-laws.

(5) Where a council has resolved to make any by-law it shall—

(a) ensure that a copy of the proposed by-laws is open to inspection at the office of the council during office hours for a period of thirty days from the date of the last publication of the notice in terms of paragraph (b); and

(b) cause a notice in terms of subsection (6) to be published in two issues of a newspaper.

(6) A notice in terms of subsection (5) shall—

(a) describe the general purport of the proposed by-law and the area to which it is to be applied or extended, as the case may be; and

(b) state that—

(i) a copy of the proposed by-law will be open to inspection at the office of the council during office hours for a period of thirty days from the date of the last publication of that notice in the newspaper; and

(ii) objections to the proposed by-law may be lodged with the town clerk in writing before a specified date, being not less than thirty days after the date of the last publication of the notice in the newspaper.

(7) If at end of the period referred to in subparagraph (ii) of paragraph (b) of subsection (6)—

(a) no objections have been lodged, the council shall submit the proposed by-law to the Minister for his approval in terms of section *two hundred and twenty-nine*;

(b) any objection has been lodged, the council shall reconsider the proposed by-law, together with the objections thereto, and if it thereafter resolves—

(i) to alter the by-law from its advertised form, it shall readvertise the by-law in accordance with the requirements of subsections (5) and (6);

(ii) to pass the proposed by-law in its advertised form, it shall submit that by-law to the Minister for his approval in terms of section *two hundred and twenty-nine*:

Provided that the council may at the same time request the Minister to exercise his powers in terms of proviso (i) to subsection (2) of section *two hundred and twenty-nine* to take account of any objection.

(8) The notice to councillors of a meeting held to reconsider a proposed by-law in terms of paragraph (b) of subsection (7) shall contain a copy of all the objections to that proposed by-law which have been duly lodged unless all councillors have been previously circulated with a copy of such objections.

## **229 Approval of by-laws by the Minister**

(1) After any proposed by-law has been passed by the council, it shall be submitted to the Minister, together with a copy of any objections thereto that have been lodged and the comments or recommendations of the council on the objections, for his approval.

(2) On receipt of any by-laws submitted in terms of subsection (1) the Minister may approve the proposed by-laws or withhold his approval thereof as he thinks fit, and if the proposed by-laws are in their nature divisible he may approve part of the proposed by-laws and withhold his approval to any part thereof:

Provided that—

(i) if, in the opinion of the Minister, the proposed by-laws are substantially the same as any model by-laws made in terms of section *two hundred and thirty* he may refuse to approve the proposed by-laws and, after the council has been consulted, direct that the council shall adopt, in terms of section *two hundred and thirty*, such model by-laws, either wholly or in part and with or without modifications;

(ii) before approving the proposed by-laws the Minister may, after the council has been consulted, modify or amend them if such modification or amendment appears to him to be advisable and not opposed to the true spirit and intent of the by-laws as advertised.

(3) Where the Minister approves only part of the by-laws submitted to him or modifies or amends those by-laws in terms subsection (2), it shall not be necessary for section *two hundred and twenty-eight* relating to the advertisement, deposit or lying open to inspection to be again complied with.

(4) Once the Minister has approved any by-laws submitted to him in terms of subsection (1), either wholly or in part and with or without modification or amendment in terms of this section, the by-laws as so approved shall be published in a statutory instrument and shall have the force of law in the area to which the by-laws apply with effect from the date of such publication or any later date specified in the by-laws.

### 230 Model by-laws

(1) Subject to section *two hundred and thirty-two*, the Minister may publish in a statutory instrument model by-laws providing for any of the purposes for which a council may in terms of this Part make by-laws and may at any time thereafter, by statutory instrument, withdraw or amend any model by-laws so made.

(2) Subject to section *two hundred and thirty-two*, a council may, in accordance with sections *two hundred and twenty-eight* and *two hundred and twenty-nine*, make by-laws adopting by reference wholly or in part and with or without modifications any model by-laws made in terms of subsection (1), and the model by-laws as adopted shall have effect as if they were by-laws made by the council.

### 231 Withdrawal or amendment of model by-laws

(1) Any model by-laws made in terms of section *two hundred and thirty* or part of such model by-laws adopted by or on behalf of a council shall, notwithstanding the withdrawal or substitution *in toto* of such model by-laws or such part thereof by the Minister, remain of full force within such council area until the council makes by-laws repealing such adoption.

(2) Any amendment by the Minister, not amounting to a withdrawal or substitution *in toto* as contemplated by subsection (1), of model by-laws made in terms of section *two hundred and thirty* shall not be of force within any council area where such model by-laws have been adopted by or on behalf of the council unless and until such amendment has been adopted by or on behalf of that council in accordance with that section.

### 232 Model building by-laws

(1) The Minister may publish in a statutory instrument model by-laws providing for any of the matters specified in Part IV of the Third Schedule, for any other matter specified elsewhere in the Third Schedule which relates to the construction, maintenance or use of any building as defined in paragraph 33 of the Third Schedule, the provision of water, electricity or other services for such building and the disposal of sewage from such building and for anything which is incidental to or connected with any such matter, and such by-laws (hereinafter referred to as model building by-laws)—

- (a) shall be drafted in chapters with each Chapter dealing with a specified subject-matter; and
- (b) shall be entitled Model Building By-laws.

(2) A council may, in accordance with sections *two hundred and twenty-eight* and *two hundred and twenty-nine*, make by-laws adopting by reference either the complete model building by-laws without any modification or any complete Chapter or chapters of the model building by-laws without any modification:

Provided that in so adopting the model building by-laws or any complete Chapter or chapters thereof, the council may—

- (a) provide that the provisions adopted shall apply only to a specified part or to specified parts of the council area or to a specified class or to specified classes of buildings therein; and
- (b) make provision for the gradual or phased introduction of the provisions adopted within the council area or any part or parts thereof, including the saving, for any period and subject to any conditions, of any other by-laws of the council in force within that area or part or parts thereof.

(3) Where a council has not adopted the whole of the model building by-laws and applied them to the whole of the council area, if he considers it necessary or desirable, the Minister may, after the council has been consulted, on behalf of the council adopt, in accordance with subsections (2) and (3) of section *two hundred and thirty-three*, the model building by-laws in whole or in part in respect of the whole council area or any specified part or parts thereof or any specified class or classes of buildings therein, as the case may be, and may make provision for the gradual or phased introduction of the model building by-laws or part thereof within such area, and where he has done so—

- (a) he may likewise amend, repeal or replace any existing by-laws referred to in subsection (2) made by the council; and
- (b) subsection (8) shall not apply.

(4) Different sets of model building by-laws may be made for different areas.

(5) Where the Minister wishes to amend any model building by-laws he shall—

- (a) ensure that copies of the proposed amending model building by-laws are open to inspection at the State offices specified in the notice referred to in paragraph (b) and at the offices of the councils referred to in paragraph (b) of subsection (6); and
- (b) cause a notice in terms of subsection (6) to be published in two issues of a newspaper.

(6) A notice in terms of subsection (5) shall—

- (a) specify the chapters of the model building by-laws that are to be amended by the proposed by-laws; and
- (b) specify offices of the State from which the following information may be obtained—
  - (i) the councils which have adopted each particular Chapter of the model building by-laws that is to be amended; and
  - (ii) the area within which or class of buildings to which the Chapter concerned applies within a particular council area; and

(c) indicate that the proposed amendment to a Chapter of the model building by-laws will apply automatically within the areas of those councils which have adopted the Chapter concerned or, where a council has provided that the provisions of the Chapter concerned shall apply only to a part of its area or to a class of buildings, within that part of its area or to that class of buildings, as the case may be; and

(d) state that—

(i) copies of the model building by-laws and the proposed amending by-laws, together with a written explanation of each amendment, will be open to inspection at—

A. the offices of the State specified in the notice; and

B. the offices of the councils within the areas of which the proposed amending by-laws will apply;

for a period of thirty days from the date of the last publication of that notice in the newspaper; and

(ii) objections to the proposed amending by-laws may be lodged in writing with the Secretary of the Ministry for which the Minister is responsible before a specified date, being not less than thirty days after the date of the last publication of the notice in the newspaper.

(7) Subject to subsection (8), any amendment to a particular Chapter of the model building by-laws made by the Minister in terms of this section shall be of force—

(a) within any council area where that Chapter has been adopted; or

(b) where a council has provided that the Chapter concerned shall apply only to a part of its area or to a class of buildings, within that part of its area or to that class of buildings, as the case may be;

without the council adopting such amending by-laws.

(8) If a council to which any proposed amendment of the model building by-laws would apply—

(a) does not wish that amendment to apply within its area, it may, with the approval of the Minister, amend its by-laws so as to provide that the particular Chapter of the model building by-laws that is to be or has been amended is no longer applicable within its area and may make alternative provisions; or

(b) wishes that amendment to be introduced gradually or in stages within its area or any part thereof, it may amend its by-laws adopting the model building by-laws so as to provide for the gradual or phased introduction of that amendment within that area or part thereof and for the saving, for any period and subject to any conditions, of any other by-laws of the council in force within that area or part thereof.

(9) The Minister may, in respect of such buildings or such areas and on such terms and conditions as he may determine, after the council concerned has been consulted, by notice in the *Gazette* require the council to suspend the operation of any by-laws in force within the council area which provide for the matters referred to in subsection (1).

(10) Subject to any by-laws made in terms of paragraph (b) of the proviso to subsection (2) or paragraph (b) of subsection (8), where model building by-laws are in force in any council area and there is any conflict or inconsistency between any provision of the model building by-laws as applied and any other by-laws of the council in force in that area, the provision of the model building by-laws as applied shall prevail.

### **233 Minister's power to make or adopt by-laws on behalf of councils**

(1) Where—

(a) a council has not made by-laws for any matter in respect of which it may make by-laws; and

(b) the Minister considers that the matter should be controlled or regulated by by-laws;

he may direct the council to make by-laws or to adopt model by-laws in relation to that matter within such period as he may specify, and if the council fails to do so the Minister may, subject to this section—

(i) make by-laws on behalf of the council in respect of that matter; or

(ii) make by-laws adopting the appropriate model by-laws on behalf of the council.

(2) If the Minister proposes to make by-laws on behalf of a council in terms of paragraph (i) or (ii) of subsection (1), he shall—

(a) cause a notice to be published in two issues of a newspaper—

(i) describing the general effect of the proposed by-laws and, where appropriate, the model by-laws concerned and the area within which such by-laws or model by-laws will apply; and

(ii) stating that—

A. copies of the proposed by-laws and, where appropriate, of the model by-laws concerned will be open to inspection at the State offices specified in the notice and at office of the council for a period of thirty days from the date of the last publication of the notice in the newspaper; and

B. objections to the proposed by-laws or, where appropriate, to the adoption of the model by-laws may be lodged with the Secretary of the Ministry for which the Minister is responsible, before a specified date, which date shall not be earlier than thirty days after the date of the last publication of the notice in the newspaper; and

(b) ensure that copies of the proposed by-laws and, where appropriate, the model by-laws concerned, are open to inspection at the State offices specified in the notice referred to in paragraph (a) and at the office of the council.

(3) If, during the period referred to in subparagraph B of subparagraph (ii) of paragraph (a) of subsection (2), any objections have been lodged in terms of that subparagraph, the Minister shall consider the objections and, before publishing the proposed by-laws in the *Gazette*, the Minister may modify or amend the proposed by-laws as if they had been submitted to him by the council and he were acting in terms of section *two hundred and twenty-nine*.

(4) Any by-laws made by the Minister in terms of this section shall have effect in all respects as if they had been made by the council concerned.

### **234 Power of the Minister to make general regulations**

(1) The Minister may make regulations providing for—

- (a) the conduct of elections, including the precautions to be taken for the purposes of securing secrecy of voting at elections of mayors, councillors or members of local boards;
- (b) in respect of a local board, the qualifications of, and the qualifications of voters for candidates for elections, the allowances payable to members, the procedure to be followed at meetings and the application of all or any of the provisions of this Act relating to councillors, with such modifications as the Minister considers to be desirable;
- (c) the formation of ward development committees and neighbourhood development committees for the purpose of exercising such consultative and advisory functions as may be prescribed in the regulations;
- (d) the form of accounts, statements and reports to be prepared and the manner in which information should be set out in such accounts, statements and reports;
- (e) requiring a council to inform the public of its annual expenditure and specifying the manner in which such information shall be provided and any specific matters which are to be included in such information;
- (f) the form in which estimates of income and expenditure are to be prepared, the information which shall be contained in such estimates and the manner in which any particular information shall be set out in such estimates;
- (g) the procedure to be followed in applying for borrowing powers and the date on which the application therefor shall be submitted;
- (h) any matter which in terms of this Act is required or permitted to be prescribed;

and generally in respect of all matters for which he considers it necessary or expedient to provide for the better carrying out of the purposes and objects of this Act.

(2) Without derogation from section 21 of the Interpretation Act [*Chapter 1:01*], regulations made in terms of subsection (1) may apply to a particular council or local board or may apply to council or local boards generally or specified classes thereof.

### **235 Minister may make regulations for local government areas**

(1) In this section—

“service charge” means a charge such as is referred to in paragraph (r) of subsection (3);

“supplementary charge” means a charge such as is referred to in paragraph (q) of subsection (3);

“vehicle” means any bicycle or other vehicle which is intended or adapted for use on roads, but does not include—

- (a) any motor vehicle; or
- (b) any trailer; or
- (c) any vehicle which is kept by a dealer for the purpose of sale only; or
- (d) any vehicle which is not used on any road.

(2) The Minister may make such regulations as he considers necessary or desirable for the control, management and good government of a local government area:

Provided that, save as is provided in subsection (8), where—

- (a) the administration and control of a local government area has been vested in a council, the Minister may not make regulations for that local government area;
- (b) a local board has been appointed for a local government area, the Minister may not make regulations for that area in relation to any matter for which that board in terms of its warrant issued under section *six* may make by-laws.

(3) Regulations in terms of subsection (2) may provide for—

- (a) the duties and powers of the persons employed in the administration of a local government area;
- (b) regulating the construction of buildings and other structures in a local government area and the ventilation, lighting, materials and manner of construction of such buildings and structures according to their type and function;

- (c) the terms and conditions under which persons may be permitted to reside in premises owned by the State in a local government area, the collection of rents therefor payable to the State and the procedure for the summary eviction from such premises of tenants who fail to pay such rent;
- (d) defining and preventing the overcrowding of dwellings and buildings in a local government area;
- (e) specifying the portions of buildings and dwellings in which cooking may be carried out and—
  - (i) prohibiting cooking in any other portion of any such building or dwelling; and
  - (ii) requiring the provision of cooking facilities and fixing the standards of such facilities;
- (f) regulating trading and the carrying on of any occupation or calling in a local government area;
- (g) defining, preventing and removing nuisances in a local government area;
- (h) preserving public decency;
- (i) providing for the maintenance of health and cleanliness and good order of all houses and buildings within a local government area and for the maintenance in good order of proper sanitary accommodation and for maintaining cleanliness and sanitation generally;
- (j) prohibiting or regulating the cultivation of land in a local government area;
- (k) prohibiting or regulating the keeping of animals, including poultry, within a local government area;
- (l) regulating and licensing the keeping of dogs and fixing the fee payable for any such licence, providing for the seizure, sale or destruction of diseased, unclaimed or ownerless dogs or other animals and for dealing with vicious or dangerous dogs or other animals;
- (m) providing for and maintaining generally the safety and convenience and good order of the residents in a local government area;
- (n) regulating the registration of lodgers residing in a local government area and prescribing the fees or charges to be paid by lodgers or by the owners or occupiers of premises provided accommodation for such lodgers to the State in respect of services provided by it in the area;
- (o) the licensing of any vehicles which are ordinarily kept within a local government area, regulating and restricting the use of any such vehicles and fixing the tariff of fees payable in respect of licences issued;
- (p) fixing the rents to be charged for accommodation provided by the State in a local government area, related to the type and standard of the accommodation;
- (q) fixing the charges to be made for any services, amenities or facilities provided by the State in a local government area, either for certain premises, residential or other, or for the whole of such area:
  - Provided that such charges may, in respect of water charges, include a provision that a minimum charge shall be payable in respect of premises connected with the water supply, whether the water is used or not;
- (r) fixing and imposing in respect of immovable property in a local government area, except such property as may be exempted in the regulations, a supplementary charge to cover the expenses incurred by the State in the maintenance and administration of the area;
- (s) the proper administration of any water supply, sewerage services, rubbish removal services or other like services within the local government area and, without derogation from the generality of the foregoing, for—
  - (i) the protection of meters, appliances, fittings, plant and equipment and the like;
  - (ii) the imposition and collection of fees and charges for such services;
  - (iii) the cutting off of any supply or service where the payment of any fee or charge is outstanding or overdue;
- (t) the creation of offences for hindering or obstructing persons employed in the administration of a local government area or otherwise contravening any provision of regulations made in terms of this section;
- (u) penalties for offences referred to in paragraph (t):
  - Provided that no such penalty shall exceed a fine of level five or imprisonment for a period of six months or both such fine and such imprisonment.

[Paragraph inserted by section 4 of Act 22 of 2001.]

- (4) Regulations in terms of subsection (2) which provide for matters referred to in paragraphs (p), (q) and (r) of subsection (3)—
- (a) shall specify the persons who are liable to pay the rents, service charges or supplementary charges provided for; and
  - (b) may provide that service charges or supplementary charges shall be included in rents or charged separately; and
  - (c) may divide the persons who are liable to pay rents, service charges or supplementary charges into classes according to their means and correspondingly charge different amounts for different classes; and
  - (d) may vary service charges according to the use to which the premises concerned are put; and
  - (e) shall base any supplementary charge upon a unit of land and, additionally or alternatively, a unit of residential or business accommodation, as the case may be, determined by the Minister and may vary such charge according to any or all of the following—

- (i) the type of tenure under which the property is held;
- (ii) the value of the property, whether based upon the value of the land or the improvements, or both;
- (iii) the area of the property, being either that of the land or of the improvements;
- (iv) the use to which the property is put.

(5) Where the administration, control and management of a local government area has been vested in any person other than a local authority, the Minister may make regulations in terms of this section for that local government area and for such purposes any reference in this section to the State shall be construed as including a reference to that person.

(6) Subsection (3) of section *two hundred and twenty-seven* shall apply, *mutatis mutandis*, in relation to the power to make regulations in terms of subsection (2).

(7) Where a local board is appointed for a local government area, any regulations made under this section which were in force in that area immediately before the appointment of the local board shall continue in force, and if the local board is empowered in its warrant issued in terms of section *six* to make by-laws in respect of any matter provided for in such regulations, the local board may amend or repeal such regulations in so far as they relate to such matters.

(8) Notwithstanding the proviso to subsection (2), the Minister may make regulations exempting immovable property, which is situated in a local government area the administration, control and management of which has been vested in a council or for which a local board has been appointed, as the case may be, from the imposition of any supplementary charge referred to in paragraph (*r*) of subsection (3) and, in the event of any conflict between regulations made by the Minister and any by-laws made by a council in terms of that paragraph, the regulations made by the Minister shall prevail.

## PART XVIII

### VALUATION AND ASSESSMENT OF PROPERTY FOR RATING

#### 236 Interpretation in Part XVIII

(1) In this Part—

“assessment” means an assessment of residential property in terms of section *two hundred and fifty-two*;

“non-residential property” means any property that is not residential property;

“occupier”, in relation to property, means—

- (a) in the case of property which has been sub-let, the person receiving the rent payable by the sub-lessee, whether on his own account or as agent for any person thereto;
- (b) in all other cases, the person in actual occupation of the property, without regard to his title of possession;

“property” means land and includes improvements thereon;

“rating unit” means an area determined or fixed as a rating unit in terms of subsection (2) of section *two hundred and fifty-two*;

“rating zone” means a zone into which a council area is divided in terms of subsection (5) of section *two hundred and fifty-two*;

“residential property” means property which—

- (a) is used exclusively as a residence by one occupier and his household; or
- (b) is reserved or zoned under a town planning scheme for use exclusively as a place of residence by one occupier and his household;

and includes any such property held as an undivided share coupled with an exclusive right of occupation to which section 25A of the Deeds Registries Act [*Chapter 139*] applies, but does not include a flat or apartment that forms part of a single block of flats or apartments;

“valuation board” means the valuation board established under this Part for any council area;

“valuation officer” means a person appointed in terms of section *two hundred and thirty-seven* as a valuation officer or assistant valuation officer.

(2) For the purposes of this Part, any reference to improvements includes—

- (a) all buildings, movable or immovable;
- (b) incomplete buildings which are occupied in whole or in part;
- (c) all work actually done or material used upon any land by the expenditure of capital or labour by or on behalf of any owner or occupier of, or any holder of an interest in, such land but in so far only as the effect of such work or material used is to increase the value of the land and the benefit thereof is unexhausted at the time of valuation.

(3) For the purposes of this Part, any reference to improvements does not include—

- (a) the clearing of land of trees, undergrowth or rock or the levelling or draining of the land or works of a similar nature;
- (b) work done or material used on or for the benefit of any interest in land by the State or by any council, unless such work or material has not become the property of the State or such council;
- (c) any overhead power poles or pole lines or any tubular poles or pole lines or underground air pipes or lines or underground water pipes or underground cables in, or under, any land, together with any transformers and switchgear necessary and used in connection with such cables or overhead lines, held by any electricity undertaking;
- (d) any telecommunication line as defined in the Postal and Telecommunication Services Act [*Chapter 12:02*] or any radio apparatus as defined in the Radiocommunication Services Act [*Chapter 12:04*];
- (e) plant or machinery which is situated on or in any property that is occupied and used wholly or mainly in connection with one or more of the following activities—
  - (i) the making or assembly of any article, product or goods or part of any article, product or goods;
  - (ii) the altering, repairing, renovating, ornamenting, painting, spraying, polishing, finishing, cleaning, dyeing, washing or breaking up of any article or material;
  - (iii) the generation of electricity for sale;
  - (iv) the adaption for sale or use of any article or material;
  - (v) the sorting, assembling or packing, including washing or filling bottles or other containers, of any article or material;
  - (vi) printing by letterpress, lithography, photogravure or similar process, including any activity associated with the printing industry;
  - (vii) the production and storage of gas in a holder with a storage capacity of not less than seventy cubic metres;
  - (viii) the freezing, chilling or storage in cold storage of any article or material;
  - (ix) the painting, spraying, construction, reconstruction, assembling, repairing or breaking up of vehicles or parts thereof;
  - (x) the slaughtering of livestock;

where such plant and machinery is used wholly or mainly for one or more of the activities mentioned in subparagraphs (i) to (x) or wholly or mainly for the conveying of any article or material from one place to another on or in the said property in connection with one or more of the said activities:

Provided that this paragraph shall not extend to plant or machinery situated on a property which is occupied and used wholly or mainly for—

- (a) the sale of goods by wholesale or retail; or
- (b) repair work; or
- (c) storage, not being storage such as is mentioned in subparagraph (vii) or (viii).

### **237 Appointment of valuation officers and assistants**

- (1) Every council—
  - (a) shall appoint a valuation officer to make valuations and assessments and prepare valuation rolls provided for in this Part and to amend and correct such valuations, assessments and valuation rolls; and
  - (b) may appoint assistant valuation officers to assist the valuation officer in carrying out his duties under this Part.
- (2) A person appointed in terms of subsection (1) may be a member of the Public Service.
- (3) Notwithstanding the appointment of any assistant valuation officers it shall be the responsibility of the valuation officer appointed in terms of paragraph (a) of subsection (1) to ensure that the duties imposed upon a valuation officer in terms of this Part are carried out.

### **238 Valuation officer to disclose his interest in property**

- (1) No valuation officer shall make a valuation or assessment of any property in which—
  - (a) he personally has an interest, direct or indirect; or
  - (b) his spouse or a partner or relative of his, within the first degree of consanguinity or affinity, has an interest, direct or indirect; or
  - (c) any company of which he is an officer has an interest, direct or indirect;

without first submitting to the town clerk a list of the properties in which he or his spouse, partner or relative, as the case may be, has such an interest.

- (2) The town clerk shall send the valuation board any list submitted to him in terms of subsection (1).

### **239 Valuation officer's powers of entry**

(1) A valuation officer provided with written authority signed by the town clerk shall have power to enter, at all reasonable hours in the daytime, into and upon any property within the council area for the purpose of valuing or assessing the property in terms of this Part:

Provided that a valuation officer shall not enter upon any property in terms of this subsection, unless—

- (a) he has given to the owner or occupier of the property at least twenty-four hours' notice in writing of his intention to do so; or
- (b) he has given, in two issues of a newspaper, notice of his intention to enter upon the property and, if the owner or occupier of the property concerned has so requested in writing, the valuation officer has given such owner or occupier at least twenty-four hours' notice in writing of his intention to enter upon the property.

(2) Any person who obstructs or hinders a valuation officer in the exercise of his duties shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]

#### **240 Valuation officer may obtain information**

(1) A valuation officer may require the owner or occupier or person in charge of any property in the council area to furnish him with information upon such matters as may be necessary to enable him correctly to value or assess such property, including the names of the owner and occupier thereof and any other necessary particulars.

(2) If any person refuses or wilfully omits to give any information required in terms of subsection (1) to the best of his knowledge and belief or wilfully makes any false statement in connection therewith he shall be guilty of an offence.

#### **241 Establishment and constitution of valuation board**

(1) There shall be established for every council area a valuation board which shall have the jurisdiction, powers and authority conferred upon it by this Act.

(2) A valuation board shall consist of a president and two other members appointed by the Minister.

(3) The president of the valuation board shall be a person who holds the office of Judge of the Administrative Court.

[Subsection amended by Act 3 of 2017]

(4) The two members of the valuation board, other than the president, shall be persons who are not councillors or employees of the council and—

- (a) of those members, one shall be selected by the Minister and the other shall be nominated by the council;
- (b) any person may be appointed as a member of more than one valuation board.

(5) The Minister may appoint as an alternate member to any member of the valuation board, other than the president, a person who—

- (a) shall be selected in the same manner as the member to whom he is alternate; and
- (b) shall be entitled to attend and to vote at any meeting of the valuation board if the member to whom he is alternate is unable to attend.

(6) If a council fails to nominate a person for appointment to the valuation board, the Minister may appoint to the valuation board any person selected by him.

#### **242 Terms of office of members of valuation board**

(1) The members of a valuation board shall hold office—

- (a) in the case of the member selected by the Minister in terms of paragraph (a) of subsection (4) of section *two hundred and forty-one* or appointed by the Minister in terms of subsection (6) of that section, during the pleasure of the Minister;
- (b) in the case of the member nominated by the council, during the pleasure of the council.

(2) A member of the valuation board, other than the president, shall vacate his office and his office shall become vacant if—

- (a) his appointment is terminated by the Minister or the council, as the case may be; or
- (b) his estate is sequestrated or assigned; or
- (c) he is absent from three consecutive sittings of the board without the permission of the board; or
- (d) he is incapacitated by physical or mental illness or is otherwise unable or unfit to discharge the functions of a member; or
- (e) he resigns; or
- (f) he is convicted and sentenced to imprisonment without the option of a fine for any offence, whether the sentence is suspended or not.

(3) When the office of a member of the valuation board is vacated, the Minister shall appoint a person selected as such member was selected to fill the vacancy.

(4) If—

- (a) the president of the valuation board is unable to exercise his functions, the Minister shall appoint a person qualified in terms of subsection (3) of section *two hundred and forty-one* who is nominated by the Minister responsible for the administration of the Administrative Court Act [*Chapter 7:01*] to act as president during the period that the president is unable to exercise his functions on the valuation board,

and the person so appointed shall, during the term of his appointment, exercise all the functions of the president;

- (b) a member of the valuation board, other than the president, and the alternate to that member are unable to exercise their functions on the valuation board, the Minister shall appoint a person selected as that member was selected to act for that member during the period he and his alternate are unable to exercise their functions.

(5) The members of the valuation board, other than the president, and their alternates shall, be paid out of the funds of the council concerned such remuneration and allowances as the Minister may from time to time determine.

#### **243 Meetings, decisions and procedure of valuation board**

(1) The president shall preside at every meeting of the valuation board which, subject to subsection (4) of section *two hundred and forty-two*, shall not sit unless the president and the two other members or their alternates are present.

(2) At any meeting of the valuation board all members shall vote on any matter to be decided by the valuation board and all decisions shall be arrived at by the vote of the majority of the members:

Provided that—

- (a) any matter of law arising for decision at any sitting of the valuation board; and
- (b) any question arising at any such sitting as to whether a matter for decision is a matter of fact or a matter of law;

shall be decided by the president, and no other member of the valuation board shall have a voice in the decision on any such matter.

(3) Where the valuation board has commenced to consider any objection and before it reaches a decision thereon one of the members of the valuation board—

- (a) vacates his seat, the valuation board shall commence the hearing afresh after a new member has been appointed in his place;
- (b) is unable to attend, the valuation board shall not decide the matter until that member is able to attend:

Provided that the valuation board may, if it considers it desirable, commence to consider the matter afresh with the alternate or acting member.

(4) The Minister may, by statutory instrument, make rules to regulate the procedure of all valuation boards which shall be as simple and informal as possible and if no such rules are made or in any case not covered by such rules, the valuation board shall act in such manner and on such principles, as it deems best fitted to do substantial justice and to give effect to this Part.

#### **244 Personal interest of member of valuation board**

No person shall sit as a member of a valuation board at the hearing of any matter in which—

- (a) he has a personal interest, direct or indirect; or
- (b) his spouse or a partner or relative of his, within the first degree of consanguinity or affinity, has an interest, direct or indirect; or
- (c) any company of which he is an officer has an interest, direct or indirect.

#### **245 Clerk of valuation board**

(1) The council shall appoint a clerk to its valuation board.

(2) If for any reason the clerk of the valuation board is unable to perform his duties, the council may appoint some other person to act in his stead.

(3) The council shall determine the remuneration, if any, to be paid to the clerk of the valuation board from its funds.

#### **246 Date and place of sittings of valuation board**

The valuation board shall sit at such times and places as the president of the board may decide upon so as to complete its work in the shortest possible time compatible with effective adjudication.

#### **247 Valuation of property for rating purposes**

(1) As soon as possible after a council has been established and thereafter from time to time, the council shall cause to be made—

- (a) a general valuation of all non-residential property within its area, and for that purpose the council shall fix a date falling within the period during which the valuation is being carried out; and
- (b) a general assessment of all residential property within its area; and
- (c) a general valuation roll of all property within its area;

in such a manner as to arrive at a fair and equitable valuation or assessment, as the case may be, of the property, having regard to the provisions of this Part.

(2) A general valuation and assessment and a general valuation roll shall be made so that the interval between the date the new roll becomes effective and the date the current roll became effective is not less than three and not more than ten years:

Provided that the Minister may, by statutory instrument, extend such interval to not more than fifteen years in any particular case.

#### **248 Supplementary valuations**

(1) Subject to section *two hundred and forty-nine*, a council shall cause a supplementary valuation or assessment, as the case may be, to be made of—

- (a) any property which does not appear on the current valuation roll; and
- (b) any non-residential property the value of which has been materially affected by—
  - (i) alterations, additions or demolitions; or
  - (ii) a town planning scheme or the construction of any public work or undertaking; or
  - (iii) flood or other disaster; or
  - (iv) any cause peculiar to that property;
 and
- (c) any properties which have been consolidated or any property which has been subdivided into lots as shown on an approved diagram or general plan within the meaning of the Land Survey Act [*Chapter 20:12*]; and
- (d) any property in respect of which there are errors in the general valuation roll affecting the value or assessment of the property.

(2) The valuation or assessment of any property appearing on a supplementary valuation roll shall be deemed for all purposes to form part of the general valuation roll on the basis of which the valuation or assessment is calculated:

Provided that, where improvements to non-residential property appear on the supplementary valuation roll as completed improvements and upon the general valuation roll as uncompleted, the valuation of the improvements as shown on the supplementary valuation roll shall be taken as the valuation of those improvements.

(3) In the making of any supplementary valuation or assessment in terms of subsection (1) the same procedure shall be observed as is specified in this Part with regard to general valuations, save that—

- (a) at the option of the council the requisite notice may be served in writing upon the owner of any property affected instead of being published as provided in section *two hundred and fifty-four*;
- (b) any objection against the valuation of property such as is referred to in subparagraph (i) of paragraph (b) of subsection (1) shall be limited to the change of valuation as a result of the alteration, addition or demolition referred to in that subparagraph.

#### **249 Amendment of general valuation rolls**

(1) Where—

- (a) any property does not appear on the current valuation roll; or
- (b) the value of any non-residential property has been materially affected by—
  - (i) alterations, additions or demolitions; or
  - (ii) a town planning scheme or the construction of any public work or undertaking; or
  - (iii) flood or other disaster; or
  - (iv) any cause peculiar to that property;
 or

(c) any properties have been consolidated or any property has been subdivided into lots as shown on an approved diagram or general plan within the meaning of the Land Survey Act [*Chapter 20:12*]; or

(d) there are errors in the general valuation roll affecting the value or assessment of any property;

the council may, subject to this Part, cause the valuation roll to be amended instead of causing a supplementary valuation roll to be prepared in terms of section *two hundred and forty-eight*.

(2) Before causing a valuation roll to be amended in terms of subsection (1), a council shall—

- (a) cause a list of the proposed amendments to be open for inspection at the office of the council by any owner or occupier of property affected by such amendment or by a duly authorized representative of such owner or occupier who may, during office hours, inspect such list and make copies thereof; and
- (b) serve upon every owner or occupier of property affected by such amendment a notice in writing—
  - (i) specifying the property affected, the existing and proposed valuations or assessments of the property, the date with effect from which it is intended to amend the valuation or assessment and the reasons for the amendment; and
  - (ii) calling upon the owner or occupier of the property to lodge with the clerk of the valuation board, in writing in the form prescribed, any objections he may have to the proposed amendment within a specified time which shall be not less than twenty-one days from the date on which such notice is served upon him.

(3) Any objection to a proposed amendment of a valuation roll for a reason specified in subparagraph (i) of paragraph (b) of subsection (1) shall be limited to the change of valuation as a result of any alteration, addition or demolition of the property concerned.

(4) Where the clerk of the valuation board has advised the council that—

- (a) no objections to a proposed amendment of a valuation roll have been duly lodged in terms of this Part; or
- (b) any objections to a proposed amendment of a valuation roll that have been duly lodged in terms of this Part have been withdrawn; or
- (c) the valuation board has confirmed, either wholly or subject to modifications, any proposed amendment to a valuation roll;

the council may cause the valuation roll to be amended accordingly.

### **250 Basis of valuation of non-residential property**

(1) Where a valuation of any non-residential property is made for the purposes of section *two hundred and forty-seven*, *two hundred and forty-eight* or *two hundred and forty-nine*, the basis of valuation of the property shall be the estimated price which a buyer would be willing to give and a seller would be willing to accept if the property to be valued were brought to voluntary sale in the open market—

- (a) in the case of a general valuation, at the date fixed in terms of paragraph (a) of subsection (1) of section *two hundred and forty-seven*;
- (b) in the case of a supplementary valuation or valuation for the purposes of section *two hundred and forty-nine* at the date fixed in terms of paragraph (a) of subsection (1) of section *two hundred and forty-seven* and any general rise or fall in property values since that date in respect of the last general valuation shall be ignored:

Provided that, where the date referred to in section *two hundred and seventy-six* is prior to the date referred to in paragraph (b) of subsection (1) of section *two hundred and sixty-three*, the supplementary valuation for the period prior to that date shall be calculated on the same basis as the previous general valuation roll.

(2) For the purpose of any valuation roll, the valuation determined in terms of subsection (1) may, if the council concerned so wishes, be apportioned between the land and the improvements in the following manner—

- (a) the valuation of the land shall be its value as though it were unimproved;
- (b) the valuation apportioned to the improvements shall be the valuation of the property less the valuation of the land as determined under this section.

(3) Where—

- (a) non-residential properties have been consolidated, the valuation of the consolidated property shall be the combined valuations of the properties that have been consolidated;
- (b) a single non-residential property valued as a whole has been subdivided among two or more owners, the valuation of such single property shall be divided among the subdivided portions in such proportions as may be agreed upon by the owners or, failing such agreement, as may be determined by the valuation officer at the expense of the owners;

until a supplementary valuation is made in terms of section *two hundred and forty-eight* or the valuation roll is amended in terms of section *two hundred and forty-nine* or the next general valuation is made in terms of section *two hundred and forty-seven*, whichever occurs the earlier.

(4) In determining the valuation in terms of this section the valuation officer shall ignore any exceptional circumstances of a temporary nature.

### **251 Valuation of land only: non-residential property**

Notwithstanding sections *two hundred and forty-seven* and *two hundred and forty-eight*, where a general or supplementary valuation of non-residential property is made or a valuation of non-residential property is amended, the council may cause the valuation to be made of land only and in so doing shall cause such valuation to be assessed as though the land were unimproved:

Provided that the basis of valuation shall be that laid down in subsection (1) of section *two hundred and fifty* and, in determining the valuation in terms of this section, due regard shall be had to other property in the vicinity.

### **252 Assessment of residential property**

(1) The assessment of residential property for rating purposes shall consist of—

- (a) calculating the number of rating units to be assigned to the property; and
- (b) determining the rating zone within which the property is situated.

(2) The rating unit for any residential property shall be—

- (a) an area equal to the minimum size of stands or plots permitted under any town planning scheme applicable within the locality in which the residential property is situated; or
- (b) such area as the council may fix for all residential properties situated in localities where there is no town planning scheme regulating the minimum size of stands or plots.

- (3) Where a council has fixed the area of a rating unit in terms of paragraph (b) of subsection (2)—
- (a) the town clerk shall cause notice thereof to be published once in the *Gazette* and in two issues of a newspaper;
  - (b) the council shall not alter that area except for the purpose of a general assessment made in terms of section *two hundred and forty-seven*.
- (4) The number of rating units to be assigned to any residential property shall be calculated by dividing the area of the property by the rating unit applicable to the property, and in the result yielded by that calculation—
- (a) any quantity which is less than a quarter of a rating unit shall be disregarded;
  - (b) any quantity which is a quarter of a rating unit or more but less than three-quarters of a rating unit shall be counted as half a rating unit;
  - (c) any quantity which is more than three-quarters of a rating unit shall be counted as a full rating unit:  
Provided that in no case shall any residential property be assigned less than half a rating unit.
- (5) Every council shall divide the council area into one or more rating zones, having regard to the following considerations—
- (a) where practicable, each rating zone should contain residential properties of approximately the same size and value; and
  - (b) where practicable, each rating zone should contain residential properties that are adjacent to each other; and
  - (c) no rating zone shall consist of a single residential property.
- (6) Where a council has divided the council area into rating zones in terms of subsection (5), the town clerk shall—
- (a) give notice thereof in two issues of a newspaper; and
  - (b) ensure that a map showing the zones is available at all reasonable times at the offices of the council for inspection by members of the public.

### **253 Particulars to be inserted in the valuation roll**

The valuation officer shall frame the valuation roll in such manner as to show—

- (a) the name of the owner of the property; and
- (b) the description of the property; and
- (c) the area of the land; and
- (d) in the case of non-residential property the valuation—
  - (i) of the property; or
  - (ii) of the land and that apportioned to the improvements:  
Provided that where land only has been valued in terms of section *two hundred and fifty-one*, it shall only be necessary to show in the valuation roll the valuation of the land;
- (e) in the case of residential property—
  - (i) the number of rating units assigned to the property; and
  - (ii) the rating zone in which the property is situated;
- (f) such other particulars as may be required by the council concerned.

### **254 Objections to valuation roll**

As soon as a valuation roll has been completed the valuation officer shall sign it and submit it to the council which shall—

- (a) cause a copy thereof to be open to inspection at the office of the council by any owner or occupier of property included in such roll or his duly authorized representative who may during office hours inspect such roll and make copies thereof; and
- (b) by notice published in the *Gazette* and in two issues of a newspaper, call upon owners and occupiers of property to lodge with the clerk of the valuation board in writing in the form prescribed any objections they may have—
  - (i) against the valuation of any non-residential property owned or occupied by them or against any apportionment of such valuation; or
  - (ii) against the assessment of any residential property owned or occupied by them and, in particular, against—
    - A. the number of rating units assigned to the property; and
    - B. the rating zone within which the property has been placed;
- (iii) in respect of any error, omission or incorrect description in relation to any property, whether owned or occupied by them or not;

within a specified time which shall not be less than twenty-one days from the publication of that notice in the *Gazette*.

## 255 Notice of sitting of valuation board

The clerk of the valuation board shall—

- (a) publish notice in the *Gazette* and a newspaper intimating the place, hour and date at and on which the valuation board will sit to consider objections lodged in terms of this Part and not previously withdrawn;
- (b) at least twenty-eight days before the day upon which the valuation board will sit—
  - (i) post a copy of the notice referred to in paragraph (a) to every objector to the address stated in his form of objection; and
  - (ii) forward a copy of the notice referred to in paragraph (a) to the valuation officer, together with copies of all objections which are to be considered by the valuation board.

## 256 Appearance before valuation board

(1) Any owner or occupier who has submitted an objection in terms of this Part may, unless he has previously withdrawn his objection, appear before the valuation board personally or represented by a legal practitioner or any other person duly authorized thereto in writing.

(2) The council may appear before the valuation board at any of its sittings for the purpose of making any representations or objections on behalf of the council and shall be represented before the valuation board by such person, not being the valuation officer, as the council may appoint.

(3) The valuation officer shall appear before the valuation board.

(4) The representative of the council, the valuation officer and any objector or his representative may call evidence and cross-examine any witness giving evidence before the valuation board.

(5) If the council objects to any valuation or assessment appearing in the valuation roll or to any proposed amendment thereof, it shall give notice in writing in the form prescribed to the owner or occupier of the property concerned and to the clerk of the valuation board at least twenty-eight days before the day upon which the valuation board will sit to consider the valuation roll.

(6) If any objection has been duly lodged in terms of this Part and has not been withdrawn and the objector fails to appear, either personally or through a representative, on the day appointed for the hearing of objections, that objection shall nevertheless be considered and determined by the valuation board.

## 257 Powers and procedure of valuation board

(1) The valuation board, at the day, place and hour appointed—

- (a) shall proceed to consider any objections duly lodged in terms of this Part and not previously withdrawn;
- (b) may consider any objection made which was not duly lodged, whether by reason that it was not in the prescribed form or was out of time or otherwise:

Provided that if no objections to the valuation roll or any amendment thereof have been duly lodged in terms of this Part, it shall not be necessary for the valuation board to sit.

(2) After considering any objections in terms of subsection (1) and the valuation roll, the valuation board may, subject to this section—

- (a) confirm any valuation or assessment or amendment thereof, as the case may be;
- (b) make such alterations or amendments in the valuation roll as it considers expedient, whether or not an objection has been lodged in respect of the properties concerned;
- (c) without derogation from paragraph (b), transfer any residential property to another rating zone, where the board considers it would be more appropriately placed in that other zone.

(3) In the case of property in respect of which no objection has been lodged, no alteration or amendment shall be made to the valuation or assessment thereof unless the owner or occupier of the property concerned and the council have—

- (a) received twenty-eight days' notice in writing from the clerk of the valuation board of—
  - (i) the day, place and hour of the sitting of the valuation board at which such alteration or amendment will be considered; and
  - (ii) the nature and extent of the proposed alteration or amendment;
 and
- (b) been afforded an opportunity to make such representations to the valuation board as they may think fit.

(4) The valuation board shall not reduce or increase the valuation of properties in the whole or any portion of the council area by a percentage.

(5) The valuation board may, for the proper adjudication of all matters before it—

- (a) hear and receive evidence and examine witnesses on oath, which shall be administered by the president; and
- (b) by notice under the hand of the president, call upon any person—
  - (i) who, in its opinion, is able to give material information concerning the valuation or assessment under consideration; or

(ii) whom it suspects or believes has in his possession or custody or under his control any book, document or thing which has any bearing on the valuation or assessment under consideration; to appear before it at the day, place and hour specified in the notice to be interrogated on oath or to produce such book, document or thing.

(6) Any person who, after being called upon to appear before the valuation board to be interrogated or to produce any book, document or thing—

- (a) fails without sufficient cause to attend at the day, place and hour specified in the notice; or
- (b) fails to remain in attendance until excused by the valuation board; or
- (c) refuses to be sworn or affirmed as a witness; or
- (d) fails to answer fully and satisfactorily to the best of his knowledge and belief any questions lawfully put to him or knowingly makes a false answer to any question put to him; or
- (e) fails without sufficient cause to produce any book, document or thing in his possession or custody or under his control when lawfully required to do so;

shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]

### **258 Record of proceedings of valuation board**

(1) The clerk of the valuation board shall keep a record of all proceedings of the valuation board and all evidence submitted to it, together with details of all decisions and the reasons leading thereto.

(2) Any person shall have the right to examine, without charge, the record kept in terms of subsection (1).

### **259 Order as to costs**

(1) The valuation board may make an order as to costs if, in its opinion, any objection, whether withdrawn or not, is, or the grounds thereof are, unreasonable or frivolous.

(2) Any costs awarded in terms of subsection (1) shall be taxed by the clerk of the valuation board acting in accordance with the directions of the president of the valuation board and may be recovered by action in a competent court.

(3) Any decision of the clerk of the valuation board in terms of subsection (2) shall be reviewed by the president of the valuation board if so requested by the person to whom or against whom the costs have been awarded.

### **260 Decisions of valuation board to be final**

Any decision of the valuation board, shall, subject to section *two hundred and sixty-one*, be final.

### **261 Application to Supreme Court on point of law**

(1) Any question of law arising in the case of proceedings before the valuation board may, at the request of any party to the proceedings, be referred by the valuation board to the Supreme Court for decision, whether before or after the valuation board has given its decision in the proceedings:

Provided that a question shall not be referred to the Supreme Court in terms of this subsection in pursuance of a request made after the date on which the valuation board gave its decision unless the request is made within thirty days thereof.

(2) If the valuation board, after giving its decision in any proceedings, refuses any request to refer a question of law to the Supreme Court, the party by whom the request was made may, within thirty days of the giving of that decision, apply to the Supreme Court for an order directing the valuation board to refer the question to that court.

(3) On any reference to the Supreme Court under this section with respect to any proceedings before the valuation board and on any application under subsection (2), every party to the proceedings before the valuation board shall be entitled to appear and to be heard.

(4) Where, after the valuation board has given its decision in any proceedings, the valuation board refers to the Supreme Court under this section a question of law which arose in the course of the proceedings and the Supreme Court decides that the question was erroneously determined by the valuation board—

- (a) the valuation board shall, if it considers it necessary to do so for the purpose of giving effect to the decision of the Supreme Court, give to the parties to the proceedings a further opportunity of presenting their cases; and
- (b) the valuation board shall reconsider the matter in dispute in conformity with the decision of the Supreme Court; and
- (c) if on such reconsideration it appears to the valuation board to be appropriate to do so, the valuation board shall make such order revoking or modifying any order previously made by it in the proceedings or make such other order as the valuation board determines to be appropriate.

(5) Any reference of a question by the valuation board to the Supreme Court under this section shall be by way of a stated case for the opinion of the Supreme Court.

## **262 Procedure upon completion of proceedings in relation to objections to valuations**

(1) Where no objections to a valuation roll or an amendment thereof have been duly lodged in terms of this Part or any such objections that have been lodged have been withdrawn and the valuation board has not sat, the clerk of the valuation board shall advise council accordingly, and—

- (a) the valuation roll shall be signed and certified by the mayor or chairman of the council; or
- (b) the council may in terms of section *two hundred and forty-nine* cause the valuation roll to be amended;

as the case may be.

(2) Whenever the valuation board has sat and completed its consideration of any objections duly lodged in terms of this Part and has made such alterations and amendments to the valuation roll as it considers necessary—

- (a) where it has been considering objections to a valuation roll, the president of the valuation board shall sign and certify the valuation roll as so altered and amended, and the clerk of the valuation board shall thereupon transmit to the council a certified copy of the valuation roll showing the original valuation or assessment and the alterations, if any, made by the valuation board;
- (b) where it has been considering objections to a proposed amendment of a valuation roll, the clerk of the valuation board shall notify the council in writing of the decision of the valuation board on the proposed amendment.

## **263 Advertisement of valuation roll**

(1) The council shall cause a notice to be inserted in the *Gazette* and in two issues of a newspaper informing all persons that the valuation roll—

- (a) has been certified in terms of section *two hundred and sixty-two*; and
- (b) shall, subject to sections *two hundred and sixty-one* and *two hundred and sixty-six*, become finally fixed and binding upon all persons concerned and the date on which it will come into effect.

(2) A general valuation roll shall come into effect for rating purposes on the 1st January or 1st July next following the date on which it was certified in terms of section *two hundred and sixty-two*, whichever is the sooner.

## **264 Correction of valuation roll**

(1) Subject to subsections (2) and (3), the council may at any time cause any error on the valuation roll to be corrected any may authorize any such amendments to the valuation roll as are consequential on the change of ownership of any property or on the exclusion of any property from the council area.

(2) Before causing any error in respect of the matters mentioned in paragraphs (b), (c) and (d) of section *two hundred and fifty-three* to be corrected, the council shall notify the owner and the occupier of the property concerned, in writing, of the proposed correction.

(3) If the owner or occupier referred to in subsection (2)—

- (a) within twenty-one days of receiving notification in terms of that subsection, lodges with the town clerk an objection in the prescribed form to the proposed correction, that objection shall be referred to the valuation board for determination unless the owner or occupier withdraws his objection or the council withdraws the proposed correction, and sections *two hundred and fifty-five* to *two hundred and sixty-two* shall apply, *mutatis mutandis*, in respect of the determination of the objection;
- (b) does not object in terms of paragraph (a) or withdraws any such objection, the proposed correction may be made.

## **265 Amendment of rating zones**

(1) Where the valuation board has transferred a residential property to another rating zone in terms of section *two hundred and fifty-seven*, the council—

- (a) shall forthwith alter the boundaries of the rating zones concerned so as to reflect the valuation board's decision; and
- (b) subject to subsections (2) and (3), may transfer other residential properties to that other rating zone, where the council considers it necessary or appropriate to do so in order to give effect to the valuation board's decision.

(2) Where the council has transferred residential properties to a rating zone in terms of paragraph (b) of subsection (1), the council shall forthwith cause the owners and occupiers of those properties to be notified in writing of the transfer.

(3) If within twenty-one days of receiving notification in terms of subsection (2) an owner or occupier of residential property lodges with the town clerk an objection in the prescribed form to the transfer of his property, the objection shall be referred to the valuation board for determination unless the owner or occupier withdraws his objection or the council withdraws the transfer, and sections *two hundred and fifty-five* to *two hundred and sixty-two* shall apply, *mutatis mutandis*, in respect of the determination of the objection.

## **266 Pending application not to interfere with decision of valuation board and pending objection not to interfere with supplementary valuation**

(1) Subject to section *two hundred and seventy-six*, the fact that an application to the Supreme Court in terms of section *two hundred and sixty-one* is pending shall not in the meantime interfere with or affect the decision of

the valuation board which forms the subject-matter of the application and rates may be fixed, levied and recovered on the valuation or assessment fixed by such decision in the same manner as if no such application were pending.

(2) Subject to section *two hundred and seventy-six*, the fact that the owner or occupier of property has objected to any supplementary valuation roll or amended valuation shall not in the meantime interfere with or affect the valuation or assessment which forms the subject-matter of the objection, and rates may be fixed, levied and recovered from the valuation or assessment so made in the same manner as if no objection had been made.

### **267 Valuation roll may not be challenged or set aside**

(1) No valuation or assessment contained in any valuation roll framed and certified under this Part and no rate based thereon shall be rendered void or be affected by reason of any mistake or variance in the description of any rateable property or in the name of any owner thereof.

(2) No valuation roll made, framed and certified in terms of this Part shall be capable of being challenged or set aside by reason of any informality in the making, framing or certification thereof.

## **PART XIX**

### **RATING OF PROPERTY**

### **268 Interpretation for purposes of Part XIX**

(1) In this Part—

“assessment” means an assessment of residential property in terms of section *two hundred and fifty-two*;

“non-residential property” means any property that is not residential property; “property” means land and includes improvements thereon and any portion of such land or such improvements;

“rates exemption list” means the records kept in terms of paragraph (b) of subsection (2) of section *two hundred and seventy-one*;

“rating unit” means an area determined or fixed as a rating unit in terms of subsection (2) of section *two hundred and fifty-two*;

“rating zone” means a zone into which a council area is divided in terms of subsection (5) of section *two hundred and fifty-two*;

“residential property” means property which—

(a) is used exclusively as a residence by one occupier and his household; or

(b) is reserved or zoned under a town planning scheme for use exclusively as a place of residence by one occupier and his household;

and includes any such property held as an undivided share coupled with an exclusive right of occupation to which section 27 of the Deeds Registries Act [*Chapter 20:05*] applies, but does not include a flat or apartment that forms part of a single block of flats or apartments.

(2) For the purposes of this Part, any reference to improvements shall be construed in accordance with subsections (2) and (3) of section *two hundred and thirty-six*.

### **269 Rateable property**

All property within a council area shall be rateable by the council, except property which is—

(a) owned by the State and is not property held by a person referred to in paragraph (b) or (c) of the definition of “owner” in subsection (1) of section *two*; or

(b) owned by the council and is not property held by a person referred to in paragraph (b) or (c) of the definition of “owner” in subsection (1) of section *two*; or

(c) exempted under section *two hundred and seventy*:

Provided that in the case of property which has, in terms of subsection (2) of section *two hundred and seventy* been exempted in part only, that part which has not been so exempted shall be regarded as rateable property.

### **270 Property exempt from rates**

(1) Subject to section *two hundred and seventy-one*, the following property shall be exempted from any rate—

(a) property which is used exclusively for—

(i) public religious worship; or

(ii) public religious worship and religious educational purposes;

(b) property which is used exclusively for a public library, a public art gallery or a public museum of natural history or of fine arts;

(c) property which is used exclusively for—

(i) a university or university college; or

(ii) a school established for primary or secondary education that is registered under any enactment; or

(iii) a nursery school that is registered under any enactment where—

- A. the building is erected or adapted for the purpose of a nursery school and is sited separately from any dwelling-house; and
  - B. the nursery school is owned and operated by a board or committee; or
- (iv) as a boarding-house or hostel in connection with an institution referred to in subparagraph (i), (ii) or (iii) and is owned or controlled by the same person or authority that owns or controls that institution;
- (d) property which is used exclusively as—
  - (i) a public institution for aged persons or mentally or physically handicapped persons or for any other charitable purpose, a public hospital or a public orphanage; or
  - (ii) a nurses' home or hostel which is maintained by and in connection with an institution referred to in subparagraph (i) and is owned or controlled by the same person or authority that owns or controls that institution;
- (e) property which is used exclusively as a public cemetery or a public crematorium;
- (f) property which is used exclusively for—
  - (i) amateur theatricals; or
  - (ii) boy scout or girl guide organizations or other similar organizations for youth; and activities normally associated therewith;
- (g) property which is owned by any other local authority and which is less than five hectares in extent and on which works of a public nature have been erected:

Provided that the exemption granted by this subsection shall not apply to or in respect of any property referred to in paragraph (c) or (d) if the use of that property is for the purpose of or results in profit or gain for any person, whether as a shareholder of a company or otherwise.

(2) If any property referred to in subsection (1) is used for any of the purposes specified in that subsection which, if such use were exclusive, would result in that property being exempted from rates, and for some other purpose at the same time or at different times during any year, and the use for that purpose specified in subsection (1) is substantial—

- (a) that property may be regarded as rateable in part and non-rateable in another part or as rateable in respect of that portion of the year during which it was used for such other purpose, as the case may be; and
  - (b) the council may accordingly apportion the valuation or rates or both valuation and rates in respect of the land and the improvements thereon in accordance with such principles as the council may by resolution from time to time determine.
- (3) Property which is—
- (a) referred to in paragraph (a) or (b) of section *two hundred and sixty-nine* shall become rateable and rates shall be deemed to have been fixed and levied thereon from the date that it ceases to be property such as is referred to in the said paragraph; or
  - (b) exempt in terms of subsection (1) from rates shall become rateable and rates shall be deemed to have been fixed and levied thereon from the date that it ceases to satisfy the requirements set out in subsection (1) which qualify it for exemption; or
  - (c) rateable in part only or in respect of a portion of the year only, shall become rateable wholly and rates shall be deemed to have been fixed and levied thereon accordingly from the date that it ceases to satisfy the requirements set out in subsection (2) which qualify it for partial exemption.

## **271 Determination of exemption from rates**

(1) No property shall be exempt from rates because of the use to which it is put unless the council has, on a claim submitted by the owner thereof, determined that the property is exempt from rates in terms of section *two hundred and seventy* on the grounds that the property satisfies the appropriate requirements of subsection (1) of that section which entitled it to be so exempted.

(2) The council shall—

- (a) notify the owner in writing of any determination made pursuant to his claim in terms of subsection (1); and
- (b) cause adequate records to be kept of all property determined by it to be exempt from rates, showing whether the property is wholly exempt or the extent to which it is partly exempt.

(3) If any change occurs in the use or ownership of property included in the rates exemption list or in the conditions qualifying that property for exemption from rates, the owner shall forthwith notify the council thereof and thereupon the council shall—

- (a) determine whether the property is rateable or rateable in part and not rateable in another part or rateable in respect of a portion of the year only, in which case paragraph (b) of subsection (2) of section *two hundred and seventy* shall apply; and
- (b) amend the rates exemption list accordingly.

(4) If the owner of any property at any time fails to furnish the council with such particulars as it may require for the purpose of determining whether that property should be included or should be retained on the rates exemption list, the council shall not include or retain that property on that list.

(5) In the case of property included on the rates exemption list, no rate shall be assessed or payable in respect of—

- (a) the property included on that list; or
- (b) that portion of the property included on that list which is shown as being exempt from any rate; or
- (c) the period for which the property is shown on that list as being exempt from any rate;

until the property is removed from that list or there is a change in the use or ownership thereof or the conditions qualifying it for exemption from rates, whichever is the earlier:

Provided that, if the property is included or retained on the rates exemption list as a result of the owner of the property having failed to notify the council of any such change or of his having furnished the council with incorrect particulars, the property shall be rateable with retrospective effect from the date of such failure or of the furnishing of the incorrect particulars, as the case may be, and if that date cannot be accurately determined, the council shall fix such date as it considers to be appropriate.

(6) Any owner of property who wilfully furnishes false particulars to the council under this section shall, in addition to any rates due in terms of the proviso to subsection (5), be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]

(7) Nothing in this section shall affect—

- (a) the right of the council's auditor to question the correctness in law of the action of the council in including any property on the rates exemption list; or
- (b) the right of an owner of property to test in a competent court of law the refusal of the council to include that property on the rates exemption list; or
- (c) the right of a voter or ratepayer to test in a competent court of law the action of the council in including any property on the rates exemption list.

## 272 General rate

(1) Subject to this Part, as often as it considers necessary in respect of each financial year or part thereof, a council may fix and levy a general rate upon all rateable property in the council area:

Provided that, where the council has determined in terms of *two hundred and seventy* that the property shall be rateable in respect of a portion of a year, the rate shall be levied in respect of that portion only.

(2) A rate levied in terms of subsection (1) upon non-residential property shall be assessed on the valuation—

- (a) of the land only; or
- (b) apportioned to the improvements only; or
- (c) of the property as a whole; or
- (d) of the land and that apportioned to the improvements;

as shown on the valuation roll completed and certified in terms of Part XVIII, and the council may determine that one rate shall be levied on the valuation of land and a different rate shall be levied on the valuation apportioned to improvements.

(3) For the purpose of levying any rate upon residential property the council shall fix the monetary amount payable per rating unit, and the general rate levied upon such property in terms of subsection (1) shall be that monetary amount multiplied by the number of rating units assigned to the property concerned on the valuation roll which has been completed and certified in terms of Part XVIII.

(4) Without derogation from subsections (3) and (4), the council may fix a different monetary amount for rating units in terms of subsection (3) in respect of different rating zones.

(5) If during any financial year—

- (a) any residential property becomes rateable non-residential property; or
- (b) any rateable non-residential property becomes residential property;

the rate levied upon that property in terms of subsection (1)—

- (i) in respect of that portion of the financial year during which the property was non-residential, shall be assessed on the basis referred to in subsection (2);
- (ii) in respect of that portion of the financial year during which the property was residential, shall be assessed on the basis referred to in subsection (3):

Provided that, if the property changed its nature from residential to non-residential or *vice versa* during the last two months of the financial year concerned, the council may continue to assess rates upon it in the same manner as during the earlier part of the year.

(6) Where a council levies rates in terms of subsection (1) which are declared by the council to include the cost of defraying in whole or in part the expenses incurred in connection with any sewerage, sanitary or rubbish

removal services, the owner of any property exempted from the payment of rates in terms of section *two hundred and seventy* shall pay to the council for those services either such proportion of the rates levied as the council may determine or such tariff of charges as the council may determine.

(7) In levying a general rate in terms of subsection (1) the council may, with the approval of the Minister, determine that a lower rate or rates than that generally applicable shall be levied for a particular class or classes of properties and in classifying the rateable property for such purpose the council shall have regard to—

- (a) the situation of the property; and
- (b) the area of the property; and
- (c) the use to which the property is put; and
- (d) the services of the council made available to such property; and
- (e) any other factor which, in the opinion of the council, warrants a lower rate being levied.

(8) Notwithstanding anything contained in this Act, a council may, with the approval of the Minister—

- (a) determine that a different general rate shall be levied in respect of commercial and industrial properties or in respect of different classes of commercial and industrial properties;
- (b) levy a minimum rate in respect of any class or classes or property.

(9) Where a minimum rate is levied in terms of paragraph (b) of subsection (8)—

- (a) and where subsection (6) applies, the council may determine that an amount, tariff or charge which is less than the minimum rate shall be payable by the owners of the properties referred to therein;
- (b) and where subsection (7) applies, no rate lower than the minimum rate shall be levied;
- (c) subsection (3) of section *two hundred and seventy* shall apply, *mutatis mutandis*, to a minimum rate;
- (d) and where as a result of a supplementary valuation or assessment in terms of section *two hundred and forty-eight* or an amendment of a valuation roll in terms of section *two hundred and forty-nine*, or correction thereof in terms of section *two hundred and sixty-four*, the rate payable in respect of any property is varied—
  - (i) if such rate is thereby increased above the minimum rate, the council shall recover the amount by which the rate as increased exceeds the minimum rate;
  - (ii) if such rate is thereby decreased below the minimum rate, the council shall refund the difference between the rate assessed on the former valuation and the minimum rate.

### **273 Special rate**

(1) Subject to subsection (2), a council may, for the purpose of recovering in whole or in part the expenses incurred by it in executing, maintaining or operating any works, fix and levy a special rate upon all rateable property in that portion of its area which derives benefit from such works.

(2) A special rate in terms of subsection (1) shall be assessed in accordance with section *two hundred and seventy-two*.

(3) Before any special rate is levied in terms of subsection (1) notice of the intention to levy the rate shall be served in writing on the owners of the property concerned and shall be given in three issues of a newspaper.

(4) If, within thirty days of the last publication of the notice in terms of subsection (3)—

- (a) no objection has been received, the council may levy the rate;
- (b) any objection has been received and the council wishes to proceed, the council shall forward any such objection to the Minister, together with its observations thereon, and if the Minister consents to the special rate being levied, the council may levy the rate.

### **274 Notice of rate and interest**

(1) The council shall, within thirty days after it has fixed a rate, give notice in a newspaper and by notice posted at the office of the council of—

- (a) the amount of the rate fixed by it; and
- (b) the period in respect of which that rate is levied; and
- (c) subject to section *two hundred and seventy-six*, the date upon which that rate or the dates upon which parts of that rate shall become due and payable.

(2) The council shall, by notice in writing not less than thirty days before any rate becomes due and payable, notify the person liable to pay that rate of the amount payable by him and, where any rate remains unpaid after thirty days from the date on which it became due and payable (hereinafter called the due date), the council may charge and recover interest thereon reckoned from the due date at such rate as may be fixed by the council which is not more than one *per centum* per annum above the rate of interest charged by the State in respect of loans made to local authorities at the time the rate was fixed in terms of subsection (1).

(3) The failure of any person to receive notice in terms of subsection (2) shall not invalidate the fixing and levying of the rate against the property concerned or affect the liability of such person to pay the rate.

### **275 Abatement of rates and payment by instalments**

(1) Subject to subsections (2) and (3) a council may, when it fixes a date upon which a rate shall become due and payable, by resolution duly passed, allow all persons liable to pay that rate such abatement of the amount

thereof as it thinks fit if the rate, less any such abatement, is paid at the office of the council on or before the date so fixed.

(2) An abatement allowed in terms of subsection (1) shall apply equally to all persons who are liable to pay the rate.

(3) A council may refuse to allow an abatement in terms of a resolution under subsection (1) of the rates payable in respect of any property if arrear rates are due in respect of that property.

(4) A council may accept payment of any rate by instalments in such equal or varying amounts as may be determined by the council:

Provided that the acceptance of such instalments shall not affect the right of the council to charge interest on unpaid rates in terms of subsection (2) of section *two hundred and seventy-four*.

### **276 Payment or refund of rate on supplementary valuation roll**

(1) Whenever any supplementary valuation or assessment is made in terms of section *two hundred and forty-eight* or a valuation roll is amended in terms of section *two hundred and forty-nine* or corrected in terms of section *two hundred and sixty-four*, any rate fixed and levied by the council shall be assessed in terms of this Act from the date—

- (a) that the circumstances occurred that warranted the supplementary, amended or corrected valuation or assessment; or
- (b) that the property should have been on the valuation roll;
- (c) in the case of non-residential property—
  - (i) that any improvements, save as are referred to in subparagraph (ii), were completed; or
  - (ii) that the erection of buildings was completed or the buildings were occupied, in whole or in part, whichever is the earlier date;

and the council shall collect the rate according to this Part or refund to the person liable to pay the rate levied on the property any amount which is due to him as a result of such valuation.

(2) If any supplementary valuation or assessment in terms of section *two hundred and forty-eight* or amended valuation or assessment in terms of section *two hundred and forty-nine* or corrected valuation or assessment in terms of section *two hundred and sixty-four* is subsequently altered by the valuation board in accordance with Part XVIII, a due adjustment shall be made to the rate payable in terms of subsection (1) and any amount—

- (a) paid in excess shall be refunded by the council to the ratepayer concerned; or
- (b) unpaid shall be collected by the council from the ratepayer by notice given in accordance with subsection (2) of section *two hundred and seventy-four*.

(3) The council shall fix the date on which any rate assessed in terms of this section shall become due and payable.

### **277 Payment or refund of rate on alteration or correction of valuation roll**

Where—

- (a) the alteration of a valuation roll in terms of section *two hundred and forty-nine* or the correction of a valuation roll in terms of section *two hundred and sixty-four* results in the alteration of the valuation or assessment of any property in respect of which the rate has been paid; or
- (b) the valuation board alters the valuation roll in accordance with section *two hundred and fifty-seven*;

a due adjustment shall be made to the rate payable by the ratepayer and any amount—

- (i) paid in excess shall be refunded by the council to the ratepayer concerned; or
- (ii) unpaid shall be collected by the council from the ratepayer by notice given in accordance with subsection (2) of section *two hundred and seventy-four*.

### **278 Rate to be assessed on valuation in valuation roll**

All rates made and levied by the council shall be assessed on the valuations or assessments as shown on the valuation rolls which are in effect in terms of this Act.

### **279 Liability to pay rate**

(1) The person who is the owner of any property on the date on which any rate fixed and levied by the council becomes due and payable shall be primarily liable for that rate.

(2) If, on the date on which a rate becomes due and payable, the owner primarily liable has failed to pay that rate, a demand in writing may be served on him requiring him to pay the amount stated therein within fourteen days of the service of the demand.

(3) If the owner primarily liable for a rate fails to comply with the demand referred to in subsection (2), then any person who at any time during the period in respect of which such rate was fixed and levied—

- (a) is the occupier of the property concerned shall, if a demand in writing is served on him by the council, be liable for such rate together with any other unpaid rates in respect of such property, not exceeding the amount of any rent in respect of such property due by him but not yet paid at the time of the demand and

shall thereafter continue to pay such rents to the council until the amount of the unpaid rates has been paid off;

- (b) as agent or otherwise, receives any rent in respect of such property, shall, if a demand in writing is served on him by the council, be liable for such rate, together with any other unpaid rates in respect of that property, not exceeding the amount of any such rent paid to him subsequent to that demand, subject to the deduction by the agent of commission due to him for the collection of that rent.

(4) The persons referred to in paragraphs (a) and (b) of subsection (3) shall be liable for the rates to the amount specified therein jointly and severally with each other and with the owner primarily liable.

(5) Any person referred to in subsection (3) who has paid any rate in terms of that subsection may deduct from any rent payable by him to the owner so much as was so paid by him to the council, and the production of the receipts for the rates so paid shall be a discharge for the amount so paid as payment of rent to the owner:

All property within a council area shall be rateable by the council, except property which is—Provided that an occupier of property who has entered into an agreement whereby he has accepted liability for payment of the rates due in respect of that property shall not be entitled to make any deduction in terms of this subsection.

## 280 When two or more owners liable to pay rate proportionately

Notwithstanding anything to the contrary in this Part but subject to any agreement to the contrary—

- (a) save as otherwise provided in paragraph (b), when the owner of rateable property ceases to be the owner thereof before the end of the period in respect of which the rate in respect of that property was made, he shall be liable to pay a portion only of the rate payable for the whole of such period proportionate to the time during which he continued to be the owner, and any person who is the owner of that property during the remainder of the period shall be liable to pay a portion of such rate in proportion to the time during which he is the owner thereof and the same shall be recovered from him in the same manner as if he had been originally rated for such property;
- (b) where any property, in respect of which a supplementary valuation or assessment in terms of section *two hundred and forty-eight* has been made or the valuation roll has been amended in terms of section *two hundred and forty-nine*, has been transferred to a new owner prior to that valuation or amendment having been made, the new owner shall not be liable for any rates levied in respect of the period before the date upon which that property was transferred to him but any person who was the owner of that property during the period in respect of which that rate is payable shall be liable to pay a portion of such rate in proportion to the time during that period whilst he was the owner thereof and the same shall be recoverable from him in the same manner as if he had been originally rated for such property.

## 281 Legal proceedings for recovery of rates

No legal proceedings for the recovery of rates shall be instituted against any person referred to—

- (a) in subsection (2) of section *two hundred and seventy-nine* unless the council has complied with that subsection and the owner has failed within fourteen days to comply with the demand served on him in terms of that subsection requiring him to pay the amount stated therein; or
- (b) in subsection (3) of section *two hundred and seventy-nine* unless he has failed within thirty days to comply with the demand served on him in terms of that subsection requiring him to pay the amount stated therein, subject to the maximum amount provided for in that subsection.

## 282 Certificate required for transfer of property

(1) In this section—

“appropriate issuing authority” means—

- (a) in the case of property situated in a council area or in a local government area the administration, control and management of which has been vested in a council in terms of section *six*, the council;
- (b) in the case of property situated in a local government area not referred to in paragraph (a), the appropriate Minister:

Provided that, if the Minister has, by statutory instrument, declared that in the case of any such local government area a local board shall issue certificates referred to in subsection (1), that local board shall be the appropriate issuing authority in the case of property situated in that area;

“charges” means any charges which are referred to—

- (a) in section *two hundred and eighteen*; or
- (b) in the proviso to paragraph (q) or in paragraph (r) of subsection (2) of section *two hundred and thirty-five* and have been imposed upon the owner of the property in terms of that section or in terms of section *two hundred and five*, *two hundred and six* or *two hundred and twenty-seven*;

“land” does not include an undivided share in land coupled with an exclusive right of occupation to which section 27 of the Deeds Registries Act [*Chapter 20:05*] applies.

(2) No transfer of land shall be registered in, and no certificate of consolidated or registered title to any land shall be issued by, a Deeds Registry if the land concerned is in a council area or in a local government area administered and controlled by a council or local board, unless there is produced to a Registrar of Deeds a valid certificate issued in terms of this section by the appropriate issuing authority stating—

- (a) that all rates and charges made and levied in respect of the land during the period of five years immediately preceding the date on which the certificate, in terms of subsection (3), ceases to be valid have been paid; or
- (b) where all or any of the rates and charges levied in respect of the land during the period of five years immediately preceding the date of issue of the certificate have not been paid, that such rates and charges have not been paid and that they are, in the opinion of the issuing authority, irrecoverable;

as the case may be.

(3) A certificate which purports to be issued in terms of subsection (2) by the appropriate issuing authority in respect of any property shall be *prima facie* evidence that the certificate has been duly issued in accordance with this section.

(4) A certificate referred to in subsection (2) shall specify the date up to which all rates and charges made and levied in respect of the land concerned have been paid or written off, as the case may be, and shall be valid until the date so specified.

(5) Nothing in this section shall be construed as a derogation from the rights of the council to recover unpaid rates or charges which have not been included in a certificate issued in terms of subsection (2) or which become payable in terms of this Act as a result of a supplementary valuation or assessment in terms of section *two hundred and forty-eight*.

(6) Notwithstanding anything to the contrary in this Act, no fee shall be charged for the issue of a certificate in terms of subsection (2).

### **283 Writing-off of rates**

Rates which have been in arrear for a period of not less than five years may be written off by the council if—

- (a) the council considers that such amounts are irrecoverable; or
- (b) in the opinion of the council the difficulties, disadvantages or costs of collection thereof outweigh the value thereof:

Provided that rates owed to the council by a company or an insolvent estate may be written off by the council at any time after—

- (a) the company has been wound up; or
- (b) the account of the trustee of the insolvent estate has been confirmed by the Master of the High Court in terms of section 128 of the Insolvency Act [*Chapter 6:04*];

as the case may be.

## **PART XX**

### FINANCIAL PROVISIONS, AUDIT, LOANS AND ACCOUNTS

### **284 Interpretation in Part XX**

In this Part—

“auditor” means a person appointed as auditor or joint auditor in terms of section three hundred and four;

“borrowing power” means the authority to borrow money which—

- (a) has been granted by the Minister in terms of subsection (4) of section *two hundred and ninety*; or
- (b) had been granted or approved in terms of the repealed Act and had not been exercised before the date of commencement of this Act and which has not been cancelled in terms of subsection (8) of section *two hundred and ninety*;

“project” means any matter for which a council may borrow money in terms of subsection (1) of section *two hundred and ninety*.

### **285 Financial year**

The financial year of a council shall be the period of twelve months ending on the 30th June in each year:

Provided that on the establishment of a council its first financial year shall be the period ending on the 30th June in the calendar year next after the date of its establishment.

### **286 Books and accounts**

(1) A council shall cause to be kept such books of account as may be necessary to maintain a true and proper record of all matters relating to the financial transactions of the council, including, without prejudice to the generality of the foregoing, all moneys received and paid, income earned or accrued but not received, and expenditure incurred but not paid, clearly showing the assets and liabilities of the council.

(2) The books referred to in subsection (1) shall be kept on the basis of double entry accounting principles in such a manner as to facilitate the preparation of—

- (a) such balance sheets as may be required by or under this Act or any other law, which shall clearly distinguish between assets and liabilities; and
  - (b) income and expenditure accounts; and
  - (c) such other accounts as the council is required to keep in terms of this section.
- (3) The books referred to in subsection (1) shall be kept by the treasurer in the office of the council and shall not be removed except by leave of the council or by order of a competent court.
- (4) The council shall—
- (a) prepare a balance sheet which reflects a true and fair view of the state of affairs of the council;
  - (b) ensure that the balance sheets and income and expenditure accounts referred to in subsection (2) show a summary of the transactions, under separate headings, of funds and reserves unless such a summary is shown separately as an annexure thereto.
- (5) The council shall prepare—
- (a) such separate balance sheets and income and expenditure accounts as may be necessary to reflect a true and fair view of the financial position and transactions of—
    - (i) the parking account referred to in section *one hundred and ninety-one*; and
    - (ii) the housing account referred to in section *three hundred and one*; and
    - (iii) the consolidated loans fund referred to in section *two hundred and ninety-seven*; and
    - (iv) the estates account referred to in section *three hundred*;
 and
  - (b) such separate income and expenditure accounts as may be necessary and, if it considers it desirable or if the Minister so directs, balance sheets which reflect a true and fair view of the transactions of—
    - (i) the rates account; and
    - (ii) the electricity account; and
    - (iii) the water account; and
    - (iv) such other accounts as the Minister may direct.
- (6) When used in any books referred to in subsection (1), the following terms shall have the meanings assigned thereto as follows—
- “fund” means any amount set aside, either for a specific purpose or for general purposes, and invested solely—
- (a) in interest-bearing advances to one or more funds or accounts of the council concerned; or
  - (b) in accordance with section *three hundred and two*; or
  - (c) partly as mentioned in paragraph (a) and partly as mentioned in paragraph (b);
- “provision” means any amount set aside for the purpose of meeting, either in whole or in part, a known liability the amount of which cannot be calculated with substantial accuracy;
- “reserve” does not include any amount retained by way of providing for any known liability.

### **287 Books and records to be prima facie evidence**

In any proceedings for the recovery of any rates, taxes or other moneys due and payable to a council, the books and records of the council or any extract therefrom which purports to have been certified by the treasurer or other officer authorized thereto by the council, shall be *prima facie* evidence of the amounts so due.

### **288 Estimates**

(1) Before the expiry of any financial year the finance committee shall draw up and present for the approval of the council estimates in such detail as the council may require of the income and expenditure on revenue and capital accounts of the council for the next succeeding financial year.

(2) When the estimates presented in terms of subsection (1) have been approved by the council and signed by the mayor or chairman of the council, as the case may be, the council shall ensure that—

- (a) copies of the estimates are forthwith made available for inspection by the public; and
- (b) three copies of the estimates are forwarded within two months to the Minister for his information.

(3) If the council so requires, the estimates shall show in respect of employees of the council—

- (a) the total number of employees and the aggregate of the salaries and wages payable to them; and
- (b) the total number of employees in each department and the aggregate of the salaries and wages payable to them; and
- (c) the information referred to in paragraphs (a) and (b) in respect of the year prior to that to which the estimates relate; and
- (d) the posts held by employees in each department;

and, unless the salary scales are otherwise made known to the councillors, there shall be attached to a copy of the estimates made available to councillors an annexure showing the salary scales applicable to each class of employees.

(4) Copies of the estimates approved in terms of subsection (1) shall be available for purchase by any person at such charge as may be fixed by the council:

Provided that the charge fixed by the council shall not exceed such amount, if any, as may be prescribed.

(5) In any financial year supplementary estimates may be drawn up and presented in the manner specified in this section in respect of further income and expenditure for that financial year not provided or inadequately provided for in the estimates and subsections (1) and (4) shall apply in relation to such supplementary estimates.

(6) A council which is established after the date of commencement of this Act shall, as soon as possible after its establishment, draw up and present at a meeting of the council estimates of income and expenditure on revenue and capital accounts of the council for the first financial year, and subsections (1) and (4) shall apply, *mutatis mutandis*.

(7) Subject to subsection (8), a council shall not expend any moneys unless such expenditure has been covered by estimates or supplementary estimates approved in terms of this section.

(8) The mayor or chairman of the council may authorize expenditure which—

(a) has not been foreseen or provided for in terms of this section; and

(b) in his opinion cannot, without detriment to the interests of the municipality or town, be postponed:

Provided that such expenditure shall be reported at the next meeting of the finance committee and this section shall apply, *mutatis mutandis*, as though the moneys had not yet been expended.

## 289 Banking account

A council shall open in its name with a commercial bank registered in terms of the Banking Act [*Chapter 24:01*] such banking account or accounts as it may consider necessary.

## 290 Borrowing powers

(1) Subject to this Act, a council may borrow money in terms of subsection (5) for any of the following projects—

(a) the acquisition or construction of permanent works or undertakings;

(b) the acquisition of immovable property or any interest therein;

(c) the making of advances authorized by this or any other Act;

(d) the payment of compensation;

(e) the liquidation of the principal moneys owing on account of any previous loan;

(f) the relief of general distress occasioned by some calamity in the council area;

(g) the acquisition of plant, equipment, vehicles and the like.

(2) A council shall not borrow money in terms of subsection (5) unless—

(a) a resolution to borrow the money has been passed by a majority of the total membership of the council and the mayor or chairman, as the case may be, has not exercised a casting vote; and

(b) the council has complied with subsection (3); and

(c) the Minister has granted the council authority in terms of subsection (4) to borrow the money; and

(d) the borrowing power has not been cancelled in terms of subsection (8);

(e) the council complies with any conditions fixed by the Minister in terms of subsection (4):

Provided that paragraphs (a), (b), (c) and (e) shall not apply where the council has such authority as is mentioned in paragraph (b) of the definition of “borrowing power” in section *two hundred and eighty-four*.

(3) Whenever a council has resolved in terms of paragraph (a) of subsection (2) to borrow money it shall—

(a) give notice in two issues of a newspaper, stating—

(i) the general purposes for which moneys are to be borrowed and the amount of the money required to be borrowed therefor; and

(ii) that any objections which ratepayers or voters wish to make must be lodged with the town clerk within such period, being not less than twenty-one days from the date of the last publication of the notice, as may be specified therein; and

(iii) that details of the proposals may be inspected at the office of the council;

and

(b) make available to ratepayers and voters such information on the proposals as it considers necessary; and

(c) make application to the Minister, not earlier than the date referred to in subparagraph (ii) of paragraph (a) before which objections must be lodged, for authority in terms of subsection (4) to borrow the money; and

(d) submit to the Minister with any application made in terms of paragraph (c) any objections which have been received before the date referred to in that paragraph, together with the comments of the council thereon.

(4) On receipt of an application in terms of paragraph (c) of subsection (3) the Minister may approve the project in whole or in part and grant the council authority to borrow the moneys applied for, either in whole or in part, subject to such conditions as he may impose, including, without derogation from the generality of the foregoing, a condition limiting the period of validity of such authority.

(5) Where a council has the necessary borrowing power, it may resolve to raise the money—

- (a) from the State, the Local Authorities Pension Fund, a municipal provident fund, a municipal medical aid society or sick fund or a local authority; or
- (b) with the consent of the Minister and the Minister responsible for finance, by the issue of stock, bonds, debentures or bills or from any other source not mentioned in paragraph (a):

Provided that a municipal council which is operating a consolidated loans fund in terms of section *two hundred and ninety-seven* may resolve to obtain the necessary moneys from that fund and any advances from that fund for the purposes of this section shall be deemed to be borrowings.

(6) Except in the case of a municipal council which is operating a consolidated loans fund in terms of section *two hundred and ninety-seven*—

- (a) all moneys borrowed by a council shall be applied to the project for which they were borrowed and, if not immediately required for that project, may be invested in the manner provided in section *three hundred and two*;
- (b) if the loan moneys are not expended in full on the project for which they were borrowed, then the unexpended portion shall be applied to—
  - (i) the reduction of the original loan or advance; or
  - (ii) any other purpose for which the council has borrowing power; or
  - (iii) any other purpose approved by the Minister.

(7) The council shall, within three months of the end of each financial year, prepare and submit to the Minister a statement showing the borrowing powers which have not been fully utilized.

(8) Where a council has obtained a borrowing power which it has not exercised, the Minister may, after giving the council concerned not less than twelve months' notice of his intention to do so, cancel that borrowing power, either wholly or, if the borrowing power is by nature divisible, in respect of any portion thereof.

### **291 Short-term borrowing**

The council may borrow money by means of bank overdraft or short-term loans or both from any person for the purpose of temporary financial accommodation:

Provided that—

- (i) the aggregate of the money borrowed in terms of this section shall not at any time exceed the aggregate of the income of the council in the preceding financial year from rates unless the approval of the Minister for the borrowing of the amount in excess of that figure has been obtained;
- (ii) no money shall be borrowed in terms of this section for the purpose of financing capital expenditure unless a borrowing power for such capital expenditure has been obtained.

### **292 Salaries of permanent employees to be met from revenue**

No capital or loan account of a council shall be used for the purpose of meeting the emoluments or any portion thereof of a permanent employee of the council unless the Minister has authorized the council to meet from such account the emoluments or such portion as the Minister may specify of the emoluments of that particular employee or class of employees of which he is a member, as the case may be.

### **293 Security for loans**

(1) All loans made to a council, whether before or after the date of commencement of this Act, shall be secured and charged upon the assets and the income of the council and all securities granted by the council in respect of such loans shall rank equally without priority.

(2) Whenever any council has failed to pay any sum due by it on account of interest on any loan or the repayment of any loan by instalments or otherwise, the Minister may direct such council to remedy its default within a period of one month, and if the council fails to comply with such direction within one month the Minister may—

- (a) direct the council to make and levy a rate on property within its area sufficient to produce the sum due; and
- (b) if the council fails to levy such rate within one month of such direction, the Minister may himself levy the rate as if he were the council.

(3) Any rate referred to in subsection (2) shall be levied in all respects as if it were a rate levied in terms of section *two hundred and seventy-two* or *two hundred and seventy-four* and the moneys collected shall be applied in payment or repayment, as the case may be, of the sum due.

### **294 Illegal borrowing**

If a council borrows any money in contravention of this Act—

- (a) all councillors who were present at the meeting at which the resolution to borrow the money was passed and who did not record their dissent; and
- (b) all councillors who otherwise purported to authorize the borrowing of money;

shall be jointly and severally liable to repay the money so borrowed and all interest payable thereon, and the amount may be recovered from such councillors by action in any competent court:

Provided that a councillor shall not be liable under this section if it is proved that—

- (a) he did not know of the contravention; and
- (b) his lack of knowledge was not the result of a failure on his part to exercise reasonable care in the matter.

### **295 Repayment of loan**

A council shall, except where it is operating a consolidated loans fund in terms of section *two hundred and ninety-seven*, provide annually for the repayment of loans by—

- (a) sinking funds as provided in section *two hundred and ninety-four*; or
- (b) equal fixed instalments of principal and interest; or
- (c) equal fixed instalments of principal; or
- (d) such other method as the Minister may approve.

### **296 Sinking fund**

(1) Whenever any moneys are borrowed by a council and are repayable at the end of a fixed period, the council shall, unless otherwise directed by the Minister or except where it is operating a consolidated loans fund in terms of section *two hundred and ninety-seven*—

- (a) establish a sinking fund for the repayment of each loan; and
- (b) subject to this section, pay every year into such sinking fund from its general revenues such equal annual instalments as will, with accumulations in the way of compound interest, be sufficient to pay off the loan concerned within the period for which it was borrowed.

(2) The annual instalments payable in terms of subsection (1) into the sinking fund shall—

- (a) unless otherwise directed by the Minister, commence within twelve months from the date on which—
  - (i) the moneys were borrowed; or
  - (ii) the work or purpose for which the moneys were borrowed was completed;as the council may determine;

- (b) be computed on the basis of accumulating interest at an assured rate equal to the interest rate payable on the moneys borrowed less one and one-half *per centum* per annum.

(3) If the average rate of interest earned by the sinking fund established in terms of subsection (1) is—

- (a) less than the assured rate, the council shall make such increased payments each year to the sinking fund as will cause the sinking fund to be sufficient for the purpose;
- (b) more than the assured rate, the excess of earnings over the assured rate shall be refunded to the general revenues of the council.

(4) The council shall invest the moneys in the sinking fund—

- (a) in the manner provided in section *three hundred and two*; or
- (b) with the approval of the Minister, in advance for capital projects for which the council has borrowing powers.

### **297 Consolidated loans fund**

(1) A municipal council may, in accordance with a scheme prepared by it and approved by the Minister, establish and operate a consolidated loans fund which shall be used to account for all moneys borrowed, the redemption or repayment thereof and the payment of interest thereon.

(2) A scheme referred to in subsection (1) shall make provision—

- (a) for the purpose for which payments are to be authorized or required to be made out of the fund; and
- (b) for the assets and liabilities which are to be authorized or required to be transferred to the fund; and
- (c) without prejudice to the generality of paragraphs (a) and (b), for securing that payment shall be made to the fund of such amounts and at such times as are necessary for fulfilling any requirements as to—

- (i) the period within which loans are to be repaid; and
  - (ii) the obligations of the council to repay loans and interest on loans;
- and for defraying the management expenses of the fund; and

- (d) for the keeping of separate accounts of—

- (i) receipts and outgoings of the fund determined by the scheme to be of a capital and of a revenue nature respectively; and
- (ii) expenditure in connection with the management of the fund;

and

- (e) as to the investment, or the application in the repayment or redemption of loans, of assets of the fund which are for the time being not required for other purposes.

(3) A scheme referred to in subsection (1) may be varied or revoked by a subsequent scheme prepared by the council and approved by the Minister.

(4) Advances may only be made from the consolidated loans fund for any purpose mentioned in subsection (1) of section *two hundred and ninety* for which the council has the necessary borrowing power.

### **298 Capital development fund**

(1) Subject to subsection (4), a council shall establish one or more capital development funds from which moneys shall be issued as advances repayable to such fund—

- (a) for the purpose of financing capital expenditure; or
- (b) for the creation or replacing of assets appropriate to the function or functions for which the capital development fund was established:

Provided that any moneys in the capital development fund which are not immediately required for advances in terms of this section shall be invested in a manner specified in section *three hundred and two*;

(2) There shall be paid into the capital development fund or, where more than one capital development fund is being operated, into the appropriate capital development fund—

- (a) such sums of money as the council may from time to time determine; and
- (b) the capital sum due in respect of repayments of advances made from that fund; and
- (c) the interest payable on advances made from that fund which shall not be less than such rate as may be fixed by the Minister from time to time; and
- (d) subject to sections *one hundred and ninety-one* and *three hundred*, the proceeds received by the council from the sale of any asset of a capital nature after the deduction from such proceeds of—
  - (i) the repayment of any loan outstanding in respect of that asset; or
  - (ii) the payment into a sinking fund of a sum which will, with accumulations in the way of compound interest, be sufficient to redeem by due date the loan outstanding in respect of that asset:

Provided that the net proceeds of the sale of immovable residential property may, with the consent of the Minister, be withheld and applied to any purpose related to housing;

and

- (e) amounts provided in the revenue estimates for the purchase of any plant, equipment or vehicle, the cost of which will exceed ten thousand dollars.

(3) Where an advance has been made in terms of subsection (1)—

- (a) the advance shall be deemed to be due and owing to the capital development fund from which it was made and shall be repaid thereto over a period fixed by reference to the estimated life of the asset concerned; and
- (b) the amount of the advance, the period of repayment thereof which shall not exceed thirty years, the interest rate and the conditions of repayment shall be such as the council, subject to subsection (2), may determine.

(4) Where a council is operating one or more capital development funds and has made by-laws regulating the operations thereof—

- (a) those by-laws shall apply; and
- (b) subsections (1), (2) and (3) shall not apply.

### **299 Revenue reserves**

(1) A council may establish one or more revenue reserves for general or specific purposes.

(2) There shall be appropriated to the revenue reserves of a council such amounts as the council may determine to transfer from accumulated revenue surpluses or from current revenue.

(3) A revenue reserve shall not, except upon a resolution passed by not less than two thirds of the total membership of the council voting in favour, be used or applied in any manner other than—

- (a) for the purpose for which such reserve was established; or
- (b) by way of transfer to the capital development fund.

### **300 Estates account**

(1) Subsection to subsections (6) and (7), a council shall establish an estates account which shall have a capital account and a revenue account.

(2) The capital account of the estates account established in terms of subsection (1) shall not be used for any purpose other than—

- (a) the purchase of land; or
- (b) investment in terms of section *three hundred and two*;
- or
- (c) payment of—
  - (i) the initial cost of the provision of the local roads, sewers, drains and matters incidental thereto in respect of the development of stands for sale; or
  - (ii) the initial cost of surfacing parking areas serving commercial stands for sale; or
  - (iii) legal, advertising and survey costs involved in the development of stands for sale; or
  - (iv) fees, commissions and any other expenses incurred in the sale of stands;
- or

- (d) advances for the purpose of financing any capital expenditure or for the creation or replacement of an asset.

(3) Advances from the capital account of the estates account referred to in paragraph (d) of subsection (2), shall be repaid to that account with interest at a rate fixed by the council which shall be not less than such rate as may be fixed by the Minister, from time to time.

(4) There shall be paid into the capital account of the estates account—

- (a) the gross proceeds from the sale of any land granted or donated to the council or previously acquired with moneys from the estates account or any other account of a like nature which had previously been established by the council; and
- (b) such other contributions as the council may determine.

(5) The annual surplus in the revenue account of the estates account may be appropriated to any purpose for which the council may expend moneys or to the consolidated revenue account.

(6) This section shall not apply to any land which has been transferred to the municipality or town as trustee in terms of a deed of trust which controls the use of any moneys arising out of that land:

Provided that land known as municipal township land which has been granted to a municipality in trust for the inhabitants thereof shall not be regarded as land referred to in this subsection.

(7) Where a council is operating an estates account and has made by-laws regulating the operations thereof—

- (a) those by-laws shall apply; and
- (b) subsections (1), (2), (3), (4) and (5) shall not apply.

### 301 Housing account

(1) In respect of—

- (a) each local government area administered by a council; and
- (b) any other area within a council area that the Minister may specify;

the council shall establish a separate account, to be called the housing account, preceded by the name of the area concerned:

Provided that the council may establish one housing account in terms of this subsection in respect of any two or more such areas, in which case the housing account shall be called by a title which bears the name of the municipality or town, as the case may be.

(2) There shall be credited to the housing account kept in respect of any area referred to in subsection (1)—

- (a) unless otherwise specially provided for by any other law, all licence and other fees accruing under any law to the council in respect of dogs, cycles or other things kept in that area or any business or trade carried on in that area; and
- (b) all fees paid in terms of the Vehicle Registration and Licensing Act [*Chapter 13:14*] in respect of vehicles ordinarily kept at night in that area; and
- (c) all rents, fees, charges and other income of any kind derived in respect of the occupation or residence of persons in that area, other than income derived from the sale of electricity which has, with the consent of and subject to any conditions imposed by the Minister, been supplied to consumers in terms of separate supply contracts entered into in terms of the Electricity Act [*Chapter 13:05*]; and
- (d) all payments by the council for accommodation in that area for its own employees, which shall not be less than the appropriate charges fixed in the relevant by-laws for the same standard of accommodation; and
- (e) with the approval of the Minister, appropriations from the general funds of the council; and
- (f) any moneys borrowed in terms of section *two hundred and ninety* for any purpose for which the account may be used in terms of this section; and
- (g) any grants, gifts, contributions, donations, advances, subscriptions or bequests made to or in respect of that area; and
- (h) a proportion of any surplus accruing to the council from charges levied for water and electricity supplied in the council area and the local government areas administered by the council, calculated to take into account the revenues accruing from supplies to such local government areas and the revenues accruing from all sales of water and electricity by the council:

Provided that a proportion of the surplus referred to in this paragraph shall not be credited to the housing account where supplies to the local government area or areas are provided in bulk and at a cost as mentioned in subparagraph (ii) of paragraph (f) of subsection (4); and

- (i) any moneys received by the council in respect of the realization of any asset purchased from moneys held in the account or in respect of any other transaction relating to the moneys in the account; and
  - (j) interest received by the council from the investment of moneys held in the account; and
  - (k) any other moneys that may be payable to the account.
- (3) For the purposes of paragraph (h) of subsection (2)—

“surplus” means an amount which, but for that paragraph, would be appropriated from the annual revenue surplus of the water or electricity account, as the case may be, to the consolidated revenue account for the benefit of the rates account.

- (4) Moneys in the housing account may be expended only on—
- (a) direct costs incurred by the council in connection with the supervision and administration of the area concerned;
  - (b) the expenses incurred by the council in providing, developing and maintaining any buildings, works, services or other matters which are within the area of, and solely for the benefit of the inhabitants of the area concerned, but excluding roads and employment bureaux;
  - (c) the expenses incurred by the council in providing, developing and maintaining any roads which—
    - (i) are within the area of and solely for the benefit of the inhabitants of the area concerned; or
    - (ii) provide access to the area concerned;
 and which are declared by the Minister by notice in writing to the council, to be roads to which this paragraph shall apply;
  - (d) the acquisition by purchase or lease of land within the boundaries of the area concerned for the purposes of that area or the development of that area;
  - (e) charges made by the council for water, electricity, sanitation and other services rendered to the area concerned, not exceeding—
    - (i) in the case of any such service for which a tariff is fixed for recovery of charges from individual inhabitants, the appropriate charge for such service in respect of a similar type of property within the council area;
    - (ii) in the case where electricity or water is supplied in bulk for distribution at the expense of the housing account, the actual cost of such bulk supply as certified by auditors of the council;
    - (iii) in the case of any such service not referred to in subparagraph (i) or (ii), such amount as the Minister may approve;
  - (f) if any deficit in the electricity or water account, as the case may be, is debited to the rates account, a proportion of that deficit calculated in the same manner as the proportion of any surplus in that account is calculated in terms of paragraph (h) of subsection (2):

Provided that the proportion of any deficit referred to in this paragraph shall not be paid from the housing account where the supplies to the area or areas concerned are provided in bulk and at cost as mentioned in subparagraph (ii) paragraph (e);

- (g) such overhead charges of the council as may be approved by the Minister;
- (h) any costs incurred by the council in connection with the acquisition, construction or maintenance of buildings used in connection with the supervision and administration of the area concerned;
- (i) any expenditure incurred by the council in connection with the acquisition or construction and the maintenance of any hostel in the area concerned;
- (j) any costs incurred by the council in connection with a service which by this Act or any other law is authorized to be expended from the housing account;
- (k) any expenditure, loss or liability incurred by the council connection with the account;
- (l) the cost of the audit of the account.

(5) The Minister may direct a council to eliminate or reduce any deficit in its housing account within such period as he may specify, and if the council fails to the satisfaction of the Minister to comply with any such direction the Minister may, on behalf of the council, assess and levy any charge or impose any rent in respect of the area concerned for the purpose of eliminating or reducing the deficit.

### **302 Investment of moneys**

(1) If a council has in any fund or account moneys which are not immediately required for the payment of expenditure payable from that fund or account, then, unless otherwise provided in this Act or any other law, the council shall hold such moneys as balances on current account with a commercial bank or shall invest them in one or more of the following ways—

- (a) balances or deposits with, or bills issued by, any person registered in terms of the Banking Act [*Chapter 24:01*];
- (b) Treasury bills;
- (c) locally registered securities which are issued by—
  - (i) the State or a municipal council; or
  - (ii) a statutory corporation established by or in terms of a law in force in Zimbabwe; or which are guaranteed by the State;
- (d) deposits with the Post Office Savings Bank;
- (e) shares in or deposits with a building society registered in terms of the Building Societies Act [*Chapter 24:02*];
- (f) savings certificates issued in terms of the Savings Certificates Act [*Chapter 22:12*];

- (g) temporary advances to a capital account for a purpose for which the council has borrowing power, pending the raising of the necessary loan;
- (h) temporary advances to a consolidated loans fund operated by a municipal council in terms of section *two hundred and ninety-seven*;
- (i) loans to other local authorities;
- (j) such other manner as the Minister and the Minister responsible for finance may approve.

(2) Where any investment has been made in terms of subsection (1)—

- (a) any interest earned and any benefit received on the realization of the investment shall be credited to the fund or account from which the investment was made; and
- (b) any loss incurred on the realization of the investment shall be debited to the fund or account from which the investment was made.

(3) If a council has accepted any moneys in trust by virtue of a document of trust which directs how such moneys shall be invested or dealt with, the council shall invest or deal with such moneys as directed by that document.

(4) For the purposes of subsection (3)—

“document of trust” means a document in terms of which—

- (a) the municipality, town or council is constituted the trustee or holder of any moneys; or
- (b) a donation or bequest of any moneys is made in favour of the municipality, town or council;

and directions are included controlling the use by the council of such moneys.

### **303 Writing-off of bad debts**

A council may write off amounts, excluding rates, owing to the council by any person if—

- (a) the council considers that such amounts are irrecoverable; or
- (b) in the opinion of the council the difficulties, disadvantages or costs of collection thereof outweigh the value thereof.

### **304 Appointment of auditors**

(1) On or before the commencement of each financial year the council shall appoint as auditor for that financial year a person or persons approved by the Minister who are registered as public auditors in terms of the Public Accountants and Auditors Act [*Chapter 27:12*] or who, in the opinion of the Minister, are otherwise competent to carry out the functions of auditors in terms of this Part, and any person so appointed shall act as auditor of the council:

Provided that no mayor or councillor or partner, employer, employee or spouse of a mayor or councillor may be appointed or continue as auditor of the council concerned.

(2) A council shall not cancel the appointment of an auditor unless—

- (a) such cancellation has been resolved at a special meeting of the council held for the purpose, of which meeting the auditor was given notice and at which he was afforded an opportunity to address the council; and
- (b) the Minister has approved the cancellation of the appointment.

(3) If a vacancy in the office of auditor of a council occurs owing to death, cancellation of appointment, resignation or other cause, the council, with the approval of the Minister, shall appoint some other person or persons who are registered as public auditors in terms of the Public Accountants and Auditors Act [*Chapter 27:12*] or who, in the opinion of the Minister, are otherwise competent to carry out the functions of auditors in terms of this Part, and any person so appointed shall act as auditor of the council for the remainder of the period for which the original appointment was made.

(4) Whenever the Minister considers it appropriate he may, after consultation with the council, appoint a person designated by the Urban Development Corporation established by the Urban Development Corporation Act [*Chapter 29:16*]—

- (a) to act jointly with the auditor appointed in terms of subsection (1) or (3) in the audit of the council's accounts; or
- (b) to audit the council's accounts, in which case subsections (1) and (3) shall not apply to the council.

### **305 Council's duties and production of accounts to auditor**

For the purpose of an audit, the council shall—

- (a) cause to be produced to the auditor all relevant books, papers, writings and minute books in its possession; and
- (b) not later than one hundred and twenty days after the end of each financial year or such later date as the Minister may approve, cause the accounts of the council to be balanced to the end of such financial year and to lay before the auditor the balance sheets and accounts referred to in section *two hundred and eighty-six*.

### 306 Auditor's duties and auditor's report

(1) The auditor shall have power at any time and without notice to make an examination of any records and assets of the council.

(2) In the exercise of his powers and duties under this Act the auditor may—

- (a) call upon any councillor or employee of the council for any explanations and information he may require in order to enable him to discharge his duties and such persons shall, to the best of their knowledge, provide the explanations and information called for;
- (b) make an interim or special report, in which case a copy thereof shall be submitted by the council to the Minister.

(3) The auditor shall, not later than sixty days after the receipt of the accounts referred to in paragraph (b) of section *three hundred and five* or such later date as the Minister may approve, make a report in writing—

- (a) which shall contain statements as to whether, in his opinion, the balance sheets and accounts reflect a true and fair view of the financial position of the council and its transactions and of the results of its trading; and
- (b) in which attention is drawn to—
  - (i) any material loss or deficiency, whether resulting from the misconduct of or misappropriation by any person or otherwise; or
  - (ii) any other matter arising out of the audit which he considers to be of importance or special interest.

(4) If, in the opinion of the auditor in so far as it appears from his examination of the accounts and records—

- (a) proper books and records have not been kept; or
- (b) any significant expenditure brought to charge in the accounts is not supported by sufficient vouchers, authority or, if paid, proof of payment; or
- (c) any expenditure incurred by the council has not been provided for in duly approved estimates or supplementary estimates; or
- (d) reasonable precautions have not been taken to safeguard the assets of the council and to ensure the collection of all moneys due to it; or
- (e) separate funds or accounts required by or in terms of this Act or any other law have not been kept; or
- (f) payments due in respect of moneys borrowed, including moneys borrowed on bank overdraft, have not been made on due date; or
- (g) adequate provision has not been made for the repayment of loans as provided for in section *two hundred and ninety-five* or the provisions of this Part relating to loans have not been complied with; or
- (h) any provision of this Act or any other law relating to the transactions of the council as disclosed in its accounts and records have not been complied with; or
- (i) in the case of the consolidated loans fund—
  - (i) the loan debt of that fund is, or advances from the fund are, not covered by borrowing powers of the council or authorized under the repealed Act; or
  - (ii) any conditions attaching to any borrowing power or to any authority granted under the repealed Act in regard to repayment and provision for repayment have not been duly observed by the council; or
  - (iii) the provisions of the scheme prepared and approved in terms of subsection (1), as read with any variation in terms of subsection (3), of section *two hundred and ninety-seven* in relation to that fund have not been complied with; or
- (j) any moneys derived from a grant have not been spent according to the conditions under which the grant was made; or
- (k) internal control procedures have been unsatisfactory in any material respect; or
- (l) the requirements of the auditor have not been complied with;

the auditor shall include in his report made in terms of subsection (3) a statement or statements to that effect.

(5) The auditor shall transmit the audited balance sheets and accounts, together with his report in terms of subsection (3), to the town clerk who shall submit it to the council at its next meeting.

### 307 Council's duty re accounts and auditor's report

(1) Upon receipt of the audit report from the town clerk in terms of subsection (5) of section *three hundred and six* the council shall take note of the report and forthwith refer the report to the audit committee established in terms of section *ninety-seven*.

(2) Upon receipt of the audit report in terms of subsection (1) the audit committee shall require the town clerk to respond to the audit report forthwith.

(3) The audit committee shall, within fourteen days of receiving the town clerk's response or at its next meeting, whichever is the later, consider the documents referred to in subsection (5) of section *three hundred and*

six and subsection (2), and as soon as it has completed its consideration of such documents, whether at that meeting or at an adjournment thereof, it shall submit the documents together with its own report thereon to the council.

(4) At a meeting held within one month after the audit committee has, in terms of subsection (3), submitted its recommendations, the council shall itself consider such documents and the report of the finance committee thereon and at that meeting or at an adjournment thereof the council shall—

- (a) if it finds the balance sheets and accounts reflect a true and fair view of the financial position of the council and its transactions and of the results of its trading, certify them accordingly under the hand of the person presiding at that meeting;
  - (b) if the auditor has reported on any irregularities, decide what action should be taken in regard to the matters reported upon by the auditor and inform the auditor accordingly.
- (5) When any meeting referred to in—
- (a) subsection (3) is adjourned by the audit committee;
  - (b) subsection (4) is adjourned by the council;

that meeting shall be resumed as soon as is possible in the circumstances.

(6) The council shall not go into committee when considering the documents and report of the audit committee at the meeting referred to in subsection (2).

(7) A copy of the final accounts, together with the auditor's report, shall be kept by the town clerk at the office of the council and shall be open to inspection by any person during office hours, and any person may take extracts from any of those documents and may obtain copies thereof at such charge as may be fixed by the council, which shall not exceed such amount, if any, as may be prescribed.

(8) The council shall, within fourteen days after the final accounts have been certified in terms of paragraph (a) of subsection (4), submit them, together with the auditor's report, to the Minister and shall also submit a statement of any decision the council has taken in terms of paragraph (b) of subsection (4) as to any action to be taken as a result of the auditor's report.

## PART XXI

### GENERAL

#### **308 Copy of Act, regulations and by-laws to be available for inspection**

A council shall ensure that a copy of this Act, together with any regulations and by-laws made or deemed to have been made in terms of this Act which are applicable to the council area or any local government area administered and controlled by the council, are available for inspection by any person at the office of the council during office hours.

#### **309 Minister to be furnished with reports, etc**

The Minister may from time to time require a council to submit to him certified copies of records of its proceedings, statistics and other documents, and such other information as he may consider necessary for the effective discharge of his duties and responsibilities in terms of this Act or for any other purpose, and the council shall comply with any such requirement.

#### **310 Furnishing of particulars of owners, lessees and occupiers**

(1) A council may call for such particulars as it may require from—

- (a) an owner of property in respect of any former or present lessee or occupier of that property; or
- (b) an occupier of property in respect of the owner of that property or the person receiving or authorized to receive the rents payable in respect of such occupation;

and the owner or occupier shall supply such information as is available to him.

(2) Any person who refuses or fails to supply any information required in terms of subsection (1) or wilfully supplies false information shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]

#### **311 Inquiries by the Minister and appointment of investigators**

(1) In this section—

“authority” means a council or other local authority into whose affairs or concerns the Minister has appointed an investigator to inquire in terms of this section.

(2) The Minister may, if he considers it necessary or desirable in the public interest, appoint one or more persons as investigators, together with such assistants and advisers as he may consider necessary, to inquire into any matter which—

- (a) relates to the good government of a council area or local government area or arises out of the government of a council area or local government area; or
- (b) relates to the failure of a council to undertake any function or provide any facilities for which it has the necessary power in terms of this Act, which power it has failed to exercise; or
- (c) relates to arises out of the affairs of—

- (i) a council; or
- (ii) a local authority concerning any matter referred to in Part XVI;

and to report to him thereon.

(3) An authority and every member or employee of an authority shall, when requested to do so, submit to an investigator all information in its or his possession and shall produce to him and give him access to all books, documents, records, accounts and other sources of information of the authority.

(4) For the purpose of an inquiry in terms of subsection (2), it shall be lawful for the investigator, if the Minister so directs—

- (a) to hear and receive evidence upon oath, which oath he is hereby empowered to administer; and
- (b) by summons under his hand, to require such persons as he may think fit to appear personally before him at a time and place to be stated in such summons and to produce all such books and papers as may be necessary for the inquiry.

(5) If it is intended that an investigator shall take evidence from members of the public, notice of the time and place at which evidence will be heard shall be given at the office of the authority and in two issues of a newspaper.

(6) A statement given by any person to an investigator under this section shall not be admissible in evidence in any court of law, except with the consent of all persons affected thereby or for the purposes of a prosecution under subsection (11), (12) or (13).

(7) The costs of an inquiry in terms of subsection (2) shall be recovered by the Minister from the authority or, if there are two or more authorities, from the authorities concerned in such proportions as the Minister may determine.

(8) The investigator and his assistants and advisers shall be paid such fees as the Minister may fix and those fees shall be included in the costs of the inquiry referred to in subsection (7).

(9) If a person appointed by the Minister in terms of subsection (2) requires any facilities which the authority fails or refuses to provide, the Minister may direct the authority to provide such facilities and, if the authority fails or refuses to comply with such direction within such time as the Minister may require—

- (a) the Minister may, on behalf of the authority, provide the facilities; and
- (b) any expenditure incurred by the Minister in providing the facilities may be recovered by the Minister by action in a competent court against the authority, and the certificate of the Minister shall be *prima facie* evidence of the amount due by the authority.

(10) An investigator, together with such assistants and advisers as may be necessary, shall for the purposes of the inquiry have the same powers of access to and entry upon property as are conferred upon employees of a council by section *two hundred and twenty*.

(11) Any member or employee of an authority who—

- (a) refuses or fails to answer to the best of his ability any lawful question put to him by, or wilfully makes any false statement to, an investigator in the exercise of his functions under this section; or
- (b) refuses or fails to comply to the best of his ability with any lawful requirement made by an investigator in the exercise of his functions under this section;

shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]

(12) Any person who—

- (a) threatens, resists, hinders or obstructs or uses foul, abusive or insulting language towards, or at, an investigator or any person referred to in subsection (2) while that investigator or other person is exercising his functions under this section; or
- (b) falsely holds himself out to be an investigator; or
- (c) without lawful excuse, having been summoned under subsection (4)—
  - (i) refuses or fails to attend in obedience to such summons; or
  - (ii) having so attended, refuses to be examined upon oath or to take the oath; or
  - (iii) having taken the oath, refuses to answer such questions as are lawfully put to him; or
  - (iv) refuses or fails to produce any books or papers he has been required to produce;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]

(13) Any person who, having taken an oath under subsection (4), makes any false statement knowing it to be false or not reasonably believing it to be true, shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]

(14) A conviction for an offence in terms of this section shall not exempt the person convicted from liability to do or perform the act, matter or thing required to be done or performed by him.

(15) The Minister may, on receipt of a report arising from an inquiry instituted by him in terms of subsection (2), take such steps as in his opinion are necessary or desirable to rectify any defect or omission revealed by the report.

### **312 Hearing of objections and appointment of board**

(1) In this section—

“board” means a board referred to in subsection (2).

(2) When, in terms of this Act, the Minister is required to appoint a board for the determination of objections, such board shall consist of three persons, one of whom shall be a person who has been a legal practitioner or magistrate for a period of not less than five years, who shall also be the chairman of the board.

(3) A quorum of a board shall be all three members.

(4) At any meeting of a board all members shall vote on any matter to be decided by the board and all decisions shall be arrived at by the vote of the majority of the members:

Provided that—

(a) any matter of law arising for decision at a meeting of the board; and

(b) any question arising at a meeting of the board as to whether a matter for decision is a matter of fact or a matter of law;

shall be decided by the chairman of the board and no other member of the board shall have a voice in the decision on any such matter.

(5) No person shall be appointed a member of the board if—

(a) he is directly affected by any objection to be determined by the board; or

(b) he is a mayor, councillor or employee of the council concerned.

(6) At any meeting of a board—

(a) an objector or other person interested may make his representations personally or through a legal practitioner or any other person appointed in writing by him;

(b) a council may be represented by a mayor, a councillor or an employee of the council or by a legal practitioner.

(7) There shall be no appeal from any decision or order of a board.

(8) The procedure to be followed by a board in the determination of objections shall be determined by the board.

(9) Section *three hundred and eleven*, other than subsections (2), (7) and (9) thereof, shall apply, *mutatis mutandis*, to a board and to the determination by a board of any objections in the same manner as such provisions apply to an investigator and an inquiry in terms of that section.

(10) The costs of any proceedings before a board in the hearing of objections shall be in the discretion of the board, and the board may direct that the whole or any part of such costs shall be paid by such objector or objectors in such proportions as may appear just to the board:

Provided that the council shall meet the costs of the board in the first instance and, where the board has directed that any costs shall be paid by an objector, such costs shall be treated as a debt owing to the council.

### **313 Minister may give directions on matters of policy**

(1) Subject to subsection (2), the Minister may give a council such directions of a general character as to the policy it is to observe in the exercise of its functions, as appear to the Minister to be requisite in the national interest.

(2) Where the Minister considers that it might be desirable to give any direction in terms of subsection (1), he shall inform the council concerned, in writing, of his proposal and the council shall, within thirty days or such further period as the Minister may allow, submit to the Minister, in writing, its views on the proposal and the possible implications on the finances and other resources of the council.

(3) The council shall, with all due expedition, comply with any direction given to it in terms of subsection (1).

### **314 Minister may reverse, suspend, rescind resolutions, decisions, etc. of councils**

(1) Where the Minister is of the view that any resolution, decision or action of a council is not in the interests of the inhabitants of the council area concerned or is not in the national or public interest, the Minister may direct the council to reverse, suspend or rescind such resolution or decision or to reverse or suspend such action.

(2) Any direction of the Minister in terms of subsection (1) to a council shall be in writing.

(3) The council shall, with all due expedition, comply with any direction given to it in terms of subsection (1).

### **315 Minister's power to direct certain actions and elimination of deficit**

(1) Where—

(a) a council has failed to give effect to any of the duties imposed upon it by or under this Act or any other law; or

- (b) the final accounts of a council for any financial year reveal an accumulated deficit on the consolidated revenue account and the council has not provided to the satisfaction of the Minister for the elimination or reduction of such deficit;

the Minister may, after having given the council an opportunity to submit any representations it may wish to make in connection therewith, direct the council to take such action as he considers necessary within a time specified by him.

(2) Where the council fails to take action in accordance with a directive in terms of subsection (1) within the time specified, the Minister may take appropriate action on behalf of the council and recover the expenses incurred in connection therewith from the council.

(3) For the purposes of subsection (2), the Minister may do all or any of the following—

- (a) take action in a competent court for the recovery of any expenses incurred in terms of that subsection; or
- (b) declare that any income of the council shall be applied to the payment of such expenses and appoint a receiver who is hereby authorized to attach so much of such income as will meet such expenses; or
- (c) levy a special rate on all rateable property within the council area for the purpose of recovering such expenses or eliminating or reducing any deficit referred to in paragraph (b) of subsection (1), and such rate shall be levied in all respects as if it were a general rate levied in terms of subsection (1) of section *two hundred and seventy-two*.

### **316 Correction of errors or omissions**

If an act or thing required to be done or in terms of this Act is omitted to be done or is not done in the manner or within the time so required, the Minister may order all such steps to be taken as in his opinion are necessary or desirable to rectify such act or thing, and the said act or thing when done in terms of the said order shall be of the same force and validity as if originally done in accordance with the appropriate provisions of this Act:

Provided that no person shall be deprived in terms of this section of any right which he may have acquired before the Minister makes an order in terms of this section.

### **317 Authentication or execution of orders, etc**

Every order, notice or other document requiring authentication or execution by a council shall be sufficiently authenticated or executed if it is—

- (a) signed by the mayor or chairman of the council or the town clerk or some other employee duly authorized by the council, in the presence of such witnesses as may be required by law; or
- (b) authenticated or executed in the presence of the witnesses referred to in paragraph (a) in the manner determined in the standing orders of the council.

### **318 Ballot or meeting of voters**

(1) A council shall—

- (a) in the case of any matter which is a matter for decision by the council exclusively, upon a resolution passed by a majority of two-thirds of the total membership of the council; or
- (b) in the case of any matter in respect of which a reference to the President or the Minister is required, if directed by the Minister;

hold a ballot or a postal ballot among, or call a meeting or, voters to ascertain their views on such matter.

(2) Notice of a ballot or meeting referred to in subsection (1) shall—

- (a) specify the date of the ballot or meeting, which shall be not less than fourteen and not more than twenty-one days after the posting or first publication, as the case may be, of the notice and, in the case of a meeting, the time when it will commence and place where it will be held;
- (b) be given—
  - (i) by post to all voters; or
  - (ii) in two issues of a newspaper and posted at the office of the council.

(3) The mayor or chairman of the council shall preside at any meeting referred to in subsection (1) and shall cause to be made all arrangements necessary for the proper conduct, and the taking of minutes, of the proceedings thereof and to ensure that only voters attend such meetings:

Provided that if the mayor or chairman is not present at the meeting the deputy mayor or deputy chairman, as the case may be, shall preside and if he is also not present at the meeting, the voters at the meeting shall elect a councillor or, if no councillor is present, one of the voters present, as chairman to preside at that meeting.

(4) The views of the voters at a meeting referred to in subsection (1) shall be ascertained and any proposal made at such meeting on the subject for which the meeting was called shall be voted on by a show of hands of voters present and the minutes of the meeting shall record the number of voters voting in favour of, and the number of voters voting against, any such proposal.

(5) Part XVIII of the Electoral Act [*Chapter 2:13*] (No. 25 of 2004) shall apply, with such changes as may be necessary, to the holding of a ballot in terms of this section.

(6) As soon as possible after the close of the ballot the returning officer shall, with the assistance of such officers as may be appointed by him, ascertain the result of the ballot and advise the mayor or chairman of the council, as the case may be, of such result.

(7) The council shall, at a meeting held before the end of the calendar month next following the month in which the ballot or voters' meeting was held, consider the results of such meeting or ballot of voters and make such resolution in the light of the results as it thinks fit.

(8) The town clerk shall give notice in a newspaper or by post to all voters within fourteen days of the council meeting held in terms of subsection (7) of the result of any ballot or meeting held in terms of this section, together with any resolution of the council in terms of subsection (7).

(9) All expenses incurred in connection with a meeting or ballot held in terms of this section shall be paid out of the funds of the council.

### 319 Obstructing council

Any person who—

- (a) at a meeting of a council, creates a disturbance or uses insulting, abusive or obscene language; or
- (b) threatens, resists, hinders or obstructs a council or any councillor or person or contractor employed by the council in the performance of any thing which it or he, as the case may be, is empowered or required by or in terms of this Act to do; or
- (c) uses foul, abusive or insulting language towards any person referred to in paragraph (b); or
- (d) falsely holds himself out to be a mayor, chairman of a council or councillor or an employee or contractor of a council;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Section amended by section 4 of Act 22 of 2001.]

### 320 .....

[Section repealed by section 4 of Act 22 of 2001.]

### 321 Savings and transitional provisions

(1) Notwithstanding the repeal of the repealed Act—

- (a) any municipality or municipal council, whether or not it had been raised to the status of a city and city council, respectively, town council, local board or township board which was established or deemed to have been established or any local government area which had been declared or deemed to have been declared under the repealed Act and which was in existence immediately before the date of commencement of this Act, shall continue in existence and shall be deemed for the purposes of this Act to have been established or declared under the appropriate provisions of this Act;
- (b) the persons who, immediately before the date of commencement of this Act, were members of a council or board referred to in paragraph (a) shall continue in office as though they had been elected in accordance with this Act for the remainder of their terms of office unless sooner terminated in terms of this Act;
- (c) any voters' roll prepared by a council or board referred to in paragraph (a) which was in force immediately before the date of commencement of this Act shall continue in force, and this Act shall apply in relation thereto as though it had been prepared under this Act;
- (d) any by-laws which were made or continued in force under the repealed Act and which were in force immediately before the date of commencement of this Act shall continue in force as though they were, and shall be deemed to be, by-laws, made under the appropriate provisions of this Act and may be amended or repealed as though they had been so made;
- (e) any declaration, direction, regulation or notice which was made or other thing which was done by the President, the Minister or any other such authority in terms of any provision of the repealed Act and which was in force immediately before the date of commencement of this Act, shall, continue in force, *mutatis mutandis*, as though it had been made or done under the appropriate provisions of this Act;
- (f) any rate levied, standing order made, resolution passed, delegation made, agreement entered into, estimates approved or other thing done by a council or board referred to in paragraph (a) shall continue to have effect on and after the date of commencement of this Act as though it had been levied, made, passed, entered into, approved or done under the appropriate provisions of this Act;
- (g) any right to impound or acquire water granted to a council in terms of any enactment repealed by the repealed Act and in force immediately before the date of commencement of this Act, shall remain in force and this Act shall, *mutatis mutandis*, continue to apply in relation to the exercise of that right until such time as that right is replaced by a water right issued in terms of the Water Act, 1976 (No. 41 of 1976).

(2) Anything done in terms of the Presidential Powers (Temporary Measures) (Urban Councils) Regulations, 1995, published in Statutory Instrument 148A of 1995, for the purpose of an election of councillors or for the office of mayor shall be valid as if it had been done in terms of this Act, and any person elected as councillor or

mayor in terms of those regulations shall be deemed to have been elected councillor or mayor, as the case may be, in terms of this Act and shall assume office as such on the date of commencement of this Act.

(3) Subsection (1) of section *three hundred and sixteen* shall apply, *mutatis mutandis*, in relation to any act or thing which was required to be done before the date of commencement of this Act by or in terms of the repealed Act and which was omitted to be done or was not done in the manner or within the time so required.

(4) If any person contravenes any by-laws or regulations which have been preserved in force by paragraph (d) or (e) of subsection (1) he shall be guilty of an offence and, if no penalty is expressly provided for such a contravention, shall be liable to a fine not exceeding level five.

[Subsection amended by section 4 of Act 22 of 2001.]

(5) The Minister shall without delay appoint members of the Local Government Board and generally do all things necessary to secure the establishment and functioning of the Board as soon as practicable after the date of commencement of this Act.

(6) Until the Local Government Board is capable of exercising its functions under this Act, the Minister shall exercise its functions, and any reference in this Act to the Board shall be construed accordingly.

#### FIRST SCHEDULE (Section 14)

##### MATTERS TO BE CONSIDERED FOR CITY STATUS

1. The size and density of the population, taking into account the proportion of the population living in flats, private homes, etc.
2. The extent to which the municipality provides employment opportunities for inhabitants of the municipal area and surrounding areas and the range and variety of employment opportunities provided.
3. The total valuation of property as shown in the valuation roll and the ratios of the values of industrial, commercial and residential property.
4. The extent to which the municipality caters for the requirements of the community by the provision of such local services as fire-fighting services, ambulance services, public parking, etc.
5. The extent of the influence of the municipality as a national centre for—
  - (a) commercial purposes;
  - (b) industrial purposes;
  - (c) mining purposes;
  - (d) agricultural purposes;
  - (e) administrative purposes;
  - (f) financial purposes.
6. The extent to which the municipality is a centre for—
  - (a) State services, such as law courts, police stations, prisons, etc.;
  - (b) road, rail and air communications;
  - (c) postal and telecommunication services;
  - (d) the dissemination of information by means of radio, television, newspapers and magazines;
  - (e) tourism and tourist facilities, including hotels, motels and caravan parks.
7. The standard of marketing and shopping facilities and the range of specialist, professional, banking and other financial services provided.
8. The extent, quality and variety of—
  - (a) cultural amenities;
  - (b) educational facilities;
  - (c) recreational facilities;
 provided.
9. The historical associations, length of existence and geographical importance of the centre.
10. The armed forces stationed in or around the municipal area.
11. The religious significance of the centre.
12. The growth rate of the municipality with reference to population, valuation of buildings, commercial and industrial facilities and other provisions.

#### SECOND SCHEDULE (Section 198)

##### POWERS OF COUNCIL

##### ARRANGEMENT OF POWERS

##### Paragraph

1. Land, buildings and works.
2. Open spaces.
3. Recreational facilities.
4. Showgrounds.
5. Trees.
6. Conservation of natural resources.
7. Cultivation and farming.
8. Grazing.
9. Clearing of land.
10. Stock pens and dip tanks.
11. Slaughter-houses.
12. Markets and agricultural produce.
13. Sale of products.
14. Conduct of liquor undertakings.
15. Manufacture and sale of mahewu.
16. Application of controlled liquor moneys.
17. Charges.
18. Plant and machinery.
19. Roads, bridges, dams, etc.
20. Decorations and illuminations.

21. Advertising hoardings.
22. Public conveniences.
23. Effluent or refuse removal and treatment.
24. Control of pests.
25. Hospitals and clinics.
26. Ambulances.
27. Creches.
28. Maternity and child welfare services.
29. Family planning services.
30. Charitable institutions.
31. Maintenance allowances.
32. Funerals.
33. Grants to charities, sports, etc.
34. Grants to local authorities.
35. Educational institutions.
36. Youth centres.
37. Employment bureaux.
38. Libraries, museums, theatres, public halls, botanical and zoological gardens.
39. Orchestras and bands.
40. Aerodromes and helicopter stations.
41. Boats.
42. Publicity.
43. Public entertainment.
44. Congresses.
45. Courses for councillors and employees.
46. Subscriptions to associations.
47. Travelling expenses.
48. Loans to employees for transport.
49. Insurance.
50. Mementoes.
51. Coats of arms and seal.
52. Freedom of the municipality.
53. Monuments, statues and relics.
54. General.

*Land, buildings and works*

1. (1) Subject to subsection (3) of section *one hundred and fifty*—
  - (a) to lease, erect or acquire any buildings or other improvements on land inside or outside the council area for the purpose of exercising or carrying out any function conferred or imposed on the council by or under this Act or any other law;
  - (b) to lease or acquire by purchase, exchange or donation or to erect dwelling-houses for the occupation by employees of the municipality or town and to lease such dwelling-houses to such employees without compliance with section *one hundred and fifty-two*.(2) To acquire immovable property at a sale in execution, in pursuance of any judgment obtained by the council.  
(3) To construct any works for a purpose which the council is authorized by or under this Act or any other law to carry out.  
(4) To renovate, keep in repair, improve, develop, alter and maintain any roads or property under the control of the council, whether situated inside or outside the council area.

*Open spaces*

2. To provide, lay out, adorn and maintain any open space under the control of the council.

*Recreational facilities*

3. (1) To provide on land under the control of the council and operate parks and other facilities for recreation, swimming or other sports, bathing, camping and caravanning and to do all things necessary or desirable in connection with the provision or operation of such facilities, including the provision of premises for the sale of food and drink.  
(2) To let, subject to section *one hundred and fifty-two*, such facilities as are referred to in subparagraph (1) or any portion thereof or rights therein to any person, club or other body of persons.

*Showgrounds*

4. To provide, inside or outside the council area, showgrounds and facilities connected therewith and to do all things necessary or desirable with regard to the provision of such showgrounds and facilities.

*Trees*

5. To plant, cultivate, trim or remove trees or shrubs on land under the control of the council and to trim or remove roots or branches which interfere with or are likely to interfere with any water main, electricity line, public or private drain or other works of the council.

*Conservation of natural resources*

6. To take measures for the conservation or improvement of natural resources.

*Cultivation and farming*

7. To cultivate and farm land owned by the municipality or town which is not required for other purposes.

*Grazing*

8. To permit the grazing of stock on land under the control of the council.

*Clearing of land*

9. To enter with the consent of the Secretary of the Ministry responsible for the administration thereof, upon any State land or, with the consent of the owner or person who has the charge or control thereof, upon any other land, and to clear or render such State or other land free from any growing or standing crop, vegetable, rubbish or other offensive or unwholesome matter or thing which—
  - (a) is being or has been cultivated, grown or accumulated on the land without the consent of the State or owner or person who has the charge or control, as the case may be; or
  - (b) constitutes or is likely to constitute a fire hazard or a danger to public health or to the natural resources of the council area or is unsightly.

*Stock pens and dip tanks*

10. To provide stock pens and dip tanks inside or outside the council area and to operate them.

*Slaughter-houses*

11. To provide, inside or outside the council area, and operate public slaughter-houses, cold storage chambers and depots for the inspection of game and other carcasses.

*Markets and agricultural produce*

12. (1) For the purposes of this paragraph—  
“agricultural produce” means—
- (a) fresh fruit, fresh vegetables, eggs, cheese, butter or any other dairy produce;
  - (b) honey, home-made preserves or home-made chutney;
  - (c) flowers, seeds, seedlings, bulbs, plants, cuttings or trees;
  - (d) the flesh or offal of any animals or poultry or any fish intended for human consumption;
  - (e) any other produce declared by the Minister, by notice in the *Gazette*, to be agricultural produce for the purposes of this paragraph;
- but excludes any tinned product.
- (2) To provide, inside or outside the council area, and operate facilities for the inspection, grading, storage and treatment of agricultural produce and to undertake any service for improving the marketing of such produce.
- (3) To provide markets for the sale of agricultural produce, and carry on the business of dealing with agricultural produce at such markets or from mobile vans or other vehicles.
- (4) To let, on such terms and conditions as the council may determine, portions of such markets or stalls in such markets for—
- (a) the carrying on therein of the business of a cafe or restaurant; or
  - (b) the sale by retail of agricultural produce; or
  - (c) office accommodation for market agents; or
  - (d) any other purpose approved by the Minister.

*Sale of products*

13. To sell any products or by-products resulting from the carrying on or operating of any of the works or undertakings which the council is authorized to carry on or operates.

*Conduct of liquor undertakings*

14. Subject to the Liquor Act [*Chapter 14:14*] and the Traditional Beer Act [*Chapter 14:26*], with the approval of the Minister, to hold any licences or permits in terms of those Acts and to engage in any activity authorized by such licences or permits.

*Manufacture and sale of mahewu*

15. To manufacture the drink commonly known as *mahewu* or *maheu* and to sell it in any premises in respect of which the council holds a licence or permit in terms of the Liquor Act [*Chapter 14:14*] or the Traditional Beer Act [*Chapter 14:26*].

*Application of controlled liquor moneys*

16. Subject to the Traditional Beer Act [*Chapter 14:26*] to engage in any activity or do any thing in order to give effect to any purposes for which controlled liquor moneys as defined in section 2 of that Act may be applied in terms of that Act.

*Charges*

17. (1) Subject to subsection (5) of section *two hundred and eighty-two*, to make charges in respect of certificates, licences or permits issued, inspections carried out, services provided or any act, matter or thing done by the council in terms of this Act, including the requiring of a deposit in connection with any services provided by the council.
- (2) In making charges in the exercise of the powers conferred by subparagraph (1) different charges may be made in respect of different certificates, licences or permits, inspections, services or other acts or different classes thereof.
- (3) Subject to such conditions as the Minister, after consultation with the Minister responsible for the administration of the Electricity Act [*Chapter 13:05*] may approve, to levy surcharges on charges to consumers in respect of electricity supplied to premises within the council area.

*Plant and machinery*

18. To hire or acquire vehicles, plant, machinery and equipment for the purpose of carrying out any function conferred or imposed on the council by or under this Act or any other law.

*Roads, bridges, dams, etc.*

19. (1) Subject to any other law, to provide and maintain roads, bridges, canals, reservoirs, dams, water courses, furrows and culverts.
- (2) Roads, including bridges and culverts, may be provided and maintained in terms of subparagraph (1) outside the council area—
- (a) for access to or in connection with any facility or amenity provided or operated by the council; and
  - (b) either solely by the council or jointly with any other local authority or with the State or any statutory board.

*Decorations and illuminations*

20. To provide and operate decorations and illuminations of roads and buildings.

*Advertising hoardings*

21. To provide advertising hoardings on property under the control of the council and to hire out space on such hoardings.

*Public conveniences*

22. To provide public sanitary conveniences on land under the control of the council.

*Effluent or refuse removal and treatment*

23. (1) To provide and operate a service for removing and treating trade or other effluent, refuse and human waste for the council area or any portion thereof and to make the use of the service compulsory.
- (2) To provide and operate a cleansing service for sewerage installations on private premises.

*Control of pests*

24. To make measures to control or exterminate insects, pests and vermin.

*Hospitals and clinics*

25. Subject to any other law, to provide and operate hospitals, clinics and dispensaries and to take any measures or provide any facilities which the council considers necessary for the maintenance of health, including dental health.

*Ambulances*

26. To provide and operate an ambulance service inside or outside the council area

*Crèches*

27. To provide and operate crèches.

*Maternity and child welfare services*

28. To provide, operate or carry on services for the care and welfare of newly-born infants and for the giving of advice, guidance and instructions to expectant mothers and mothers of newly-born infants.

*Family planning services*

29. To provide and operate or carry on services for family planning.

*Charitable institutions*

30. To provide and operate public institutions or services for aged persons or mentally or physically handicapped persons or for any other charitable purpose or public orphanages.

*Maintenance allowances*

31. To provide maintenance allowances for aged persons, mentally or physically handicapped persons, orphans and indigent persons.

*Funerals*

32. To provide funerals for indigent persons.

*Grants to charities, sports, etc.*

33. (1) Subject to subparagraph (2), to make grants of money or loans for the establishment, maintenance or support of—
- (a) any organization or institution which is performing a function which the council itself is, by this Act or any other law, permitted to perform; or
  - (b) institutions such as—
    - (i) associations for the education of the public in road safety measures; or
    - (ii) operatic, orchestral and dramatic societies, scientific, literary and musical institutions, including institutions providing lectures on scientific, literary and other subjects; or
    - (iii) registered welfare organisations; or
  - (c) agricultural societies; or
  - (d) sporting or recreational bodies; or
  - (e) organizations for the protection of adults, children or animals against accident or cruelty; or
  - (f) organizations providing instruction in first aid, home or district nursing or any other matter relating to public health; or
  - (g) organizations for the education, welfare or recreation of members of the Defence Forces, students and school-children, including such movements as the Boy Scouts and the Girl Guides Associations; or
  - (h) prizes for schools or school-children; or
  - (i) prizes for training in defence of Zimbabwe; or
  - (j) measures for the relief of persons suffering from any disaster or widespread calamity; or
  - (k) the National Arts Council of Zimbabwe; or
  - (l) the National Trust of Zimbabwe; or
  - (m) the Trustees of the National Museums and Monuments in respect of the acquisition, restoration or maintenance of historical properties within the council area; or
  - (n) any university or college or any institute of adult education, whether inside or outside Zimbabwe, which is approved by the Minister responsible for education; or
  - (o) bursaries for students at institutions, whether inside or outside Zimbabwe, approved by the Minister responsible for education.
- (2) A council shall not make any grant or any loan in the exercise of the powers conferred by subparagraph (1) to an institution or organization which is conducted for profit or gain for any person, whether as a shareholder of a company or otherwise.

*Grants to local authorities*

34. To provide grants to other local authorities.

*Educational institutions*

35. To provide, operate and maintain schools and other educational institutions and facilities and amenities connected therewith, and for such purposes to levy and collect fees and other charges.

*Youth Centres*

36. To provide and operate youth centres and facilities or amenities connected therewith.

*Employment bureaux*

37. To provide and operate employment bureaux.

*Libraries, museums, theatres, public halls, botanical and zoological gardens*

38. To provide and operate—
- (a) public libraries, museums, including fine arts museums, and art galleries; and
  - (b) theatres, public halls and public lecture rooms; and
  - (c) aquaria and botanical and zoological gardens;
- and facilities or amenities connected therewith and to hire out the facilities referred to in subparagraph (b).

*Orchestras and bands*

39. To provide and maintain orchestras or bands and to hire them out.

*Aerodromes and helicopter stations*

40. To provide, maintain and operate aerodromes and helicopter stations and facilities connected therewith.

*Boats*

41. To provide, inside or outside the council area, and operate boats and boating establishments.

*Publicity*

42. To advertise and give publicity to the amenities, attractions and advantages of the council area and the district in which it is situated.

*Public entertainment*

43. To incur expenditure necessary for the provision and acceptance of civic hospitality, civic presentations and civic courtesies and towards religious services, receptions, commemorations, celebrations, conferences, congresses, entertainments and functions of a civic, public or national character and to defray the expenses of the representation of the council on any such occasion.

*Congresses*

44. To incur expenditure in connection with—
- (a) the representation of the council at any congress or conference; or
  - (b) any deputation appointed by the council or on which the council is represented.

*Courses for councillors and employees*

45. To provide, operate, support, promote or participate in courses of instruction, seminars and lectures for the purpose of improving the ability of councillors and employees to carry out their functions.

*Subscriptions to associations*

46. To pay subscription fees to associations established to protect the interests of councils or render advice and service to councils.

*Travelling expenses*

47. (1) Subject to subparagraph (3), to pay to councillors, employees of the council, members of the committees of the council and persons representing the council such sums as may reasonably be necessary to cover travelling and subsistence expenses while on the business of, or representing, the council.
- (2) Subject to subparagraph (3), to pay to persons interviewed for appointment to employment of the council or travelling to take up employment with the council such sums as may reasonably be necessary to cover the travelling and subsistence expenses incurred by those persons in connection therewith.
- (3) Sums paid in terms of subparagraph (1) or (2) shall not exceed such amounts as the Minister may prescribe.

*Loans to employees for transport*

48. To provide loans for employees of the council to enable them to purchase motor vehicles necessary for the performance of their duties.

*Insurance*

49. To insure, either through the funds of the municipality or town or through underwriters—
  - (a) against losses, damages, risks or liabilities the municipality, town or council may incur; and
  - (b) councillors, members of committees, employees of the council and persons representing the council against any risk, while engaged upon the business of the council or otherwise.

*Mementoes*

50. To present mementoes, including civic regalia, to past mayors, past mayoresses and aldermen of the council.

*Coats of arms and seal*

51. To adopt a coat of arms or a seal or both, which may be altered from time to time, and determine the use thereof.

*Freedom of the municipality*

52. To confer the freedom of the municipality upon such persons or bodies as the council may consider worthy thereof.

*Monuments, statues and relics*

53. (1) To provide public monuments and statues on land acquired, leased or set aside for the purpose.
- (2) To undertake and carry on any scheme or work for improving facilities or amenities for the public in connection with any land or thing under the control of the council which is a monument or national monument or relic in terms of the National Museums and Monuments Act [Chapter 25:11]:

Provided that no work shall be undertaken in terms of this subparagraph without the consent in writing of the Director appointed in terms of section 14 of that Act and in accordance with such requirements as he may stipulate.

*General*

54. Generally to do all such things, whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights, as are calculated to facilitate or are incidental or conducive to the performance of the functions of the council or the exercise of the powers specified in this Schedule or which are calculated directly or indirectly to enhance the value of or to develop the operations or property of the council, municipality or town, as the case may be.

### **THIRD SCHEDULE (Sections 102, 145(1), 227 and 232)**

#### **MATTERS IN RESPECT OF WHICH COUNCIL MAY MAKE BY-LAWS**

##### **ARRANGEMENT OF MATTERS**

###### **PART I**

###### **GENERAL**

*Paragraph*

1. Control of any service, institution or thing.
2. Control of collections.
3. Inspections.
4. Fees.
5. Offences and penalties.

###### **PART II**

###### **PROCEEDINGS OF THE COUNCIL AND FINANCIAL MATTERS**

6. Proceedings at meetings.
7. Disclosure of documents and publication of proceedings.
8. Financial.
9. Contracts.
10. Tenders.
11. Capital development fund.
12. Estates account.
13. Allowances for municipal councillors.

###### **PART III**

###### **CONTROLS OVER PROPERTY**

14. Protection of council property.
15. Vegetation.
16. Conservation of natural resources.
17. Congregation, entry and parking on council property.
18. Permits for certain activities on council land.
19. Removal of unauthorized buildings on council land.
20. Advertisements.
21. Depreciation of property.
22. Overcrowding.
23. Regulation and control of occupation and use of land or buildings.
24. Excavations.
25. Masts and poles.
26. Hedges and trees.
27. Fire places and chimneys.
28. Cooking and washing facilities.
29. Occupation or use of buildings.

30. Dangerous or neglected buildings.
31. Public buildings.
32. Fire-fighting equipment and fire-escapes.

#### PART IV

##### PLANNING, CONSTRUCTION AND USE OF BUILDINGS AND STRUCTURES

33. Interpretation
34. Location and situation.
35. Plans, specifications and structural calculations.
36. Nature, design and appearance of buildings.
37. Drainage and sewerage provisions.
38. Water supplies.
39. Materials and construction.
40. Conduct of building operations.
41. Inspections, samples and tests.
42. Temporary structures.
43. Use of buildings.
44. Completion of buildings.
45. Use of scaffolding, hoarding or protective devices.
46. Numbering of buildings.
47. Administration of by-laws relating to certain matters.
48. General.

#### PART V

##### ROADS, PUBLIC PLACES AND TRAFFIC

49. Work in the vicinity of roads.
50. Scaffolding and decorations on roads.
51. Gatherings and noises in roads.
52. Prevention of use of sidewalk for unauthorized purposes.
53. Trees, shrubs, etc., in relation to roads and traffic.
54. Regulation of use of roads.
55. Obstruction of roads and other public places.
56. Processions and public meetings.
57. Driving of stock.
58. Parking of vehicles.
59. Loading and unloading of vehicles.
60. Use of warning devices.
61. Regulating and licensing of cycles and certain other vehicles.
62. Taxi-cabs and omnibuses.
63. Drivers of taxi-cabs.
64. Omnibuses.

#### PART VI

##### AMENITIES AND FACILITIES

65. Sanitary conveniences.
66. Parks, recreation grounds, caravan parks, camping grounds, etc.
67. Boating establishments.
68. Crèches.

#### PART VII

##### WATER

69. General.
70. Pollution of water.
71. Wells and boreholes.

#### PART VIII

##### ELECTRICITY

72. Supply of electricity to consumers.
73. Cutting off electricity and recovery of charges.
74. Inspections and testing.
75. Meters.
76. Prevention of interference.

#### PART IX

##### SEWERAGE, EFFLUENT AND THE REMOVAL OF REFUSE AND VEGETATION

77. Sewerage.
78. Sanitary fittings.
79. Effluent and refuse removal.
80. Cleansing of private sewers, streets and yards.
81. Crops, vegetation, rubbish and waste material.

#### PART X

##### ANIMALS

82. Keeping of animals, reptiles and birds.
83. Disease-carrying animals, insects and vermin.
84. Noxious insects.
85. Public riding stables and kennels.
86. Dog tax.
87. Slaughter of animals and slaughter-houses.
88. Dipping tanks.

89. Stock pens.

#### PART XI

##### FOOD, FOOD PREMISES OR VEHICLES AND MARKETS

90. Sale and supply of food.
91. Premises, vehicles and employees.
92. Food introduced from outside council area.
93. Market gardens.
94. Markets.

#### PART XII

##### TRADES, OCCUPATIONS AND OTHER ACTIVITIES

95. Dangerous trades.
96. Employment bureaux and compulsory medical examination and treatment of workers.
97. Disinfection and fumigation.
98. Infectious diseases.
99. Hawkers and street vendors.
100. Electricians.
101. Plumbers and drain-layers.
102. Hairdressers.
103. Launderers, cleaners and dyers.
104. Funeral parlours and mortuaries.
105. Boarding-houses.
106. Public auctions.

#### PART XIII

##### NUISANCES

107. General.
108. Horns, bells, etc.
109. Use of loudspeakers.
110. Objectionable advertisements, etc.

#### PART XIV

##### FUNCTIONS, PERFORMANCES, EVENTS AND AMUSEMENTS

111. Performances dangerous to the public.
112. Amusements.
113. Open-air events.

#### PART XV

##### FIRES, COMBUSTIBLE MATERIALS AND EXPLOSIVES

114. Fires.
115. Bonfires and burning of rubbish.
116. Combustible or inflammable material and explosives.

#### PART I

##### GENERAL

###### *Control of any service, institution or thing*

1. The regulation of any service, institution or thing which the council is empowered to operate, carry out or do.

###### *Control of collections*

2. The prohibition, regulation or licensing of collections for the purpose of obtaining money or goods, and the prohibition of persons from so collecting without the consent of the council.

###### *Inspections*

3. The regulation of any inspections or tests that may be carried out by or on behalf of the council.

###### *Fees*

4. (1) Providing a tariff of fees that may be charged by the council for any inspection carried out or service provided or any act, matter or thing done by the council in terms of this Act, including the requiring of a deposit in connection with the services provided by the council.  
(2) Fixing a scale of fees that may be imposed by the council in connection with the costs reasonably incurred in carrying out the removal, safe custody or disposal of, or in arranging for such removal, safe custody or disposal of, vehicles left or abandoned in the circumstances mentioned in paragraph 26 of the Third Schedule to the Road Traffic Act [*Chapter 13:11*].  
(3) Fixing a scale of surcharges which may be imposed by the council for the use of water at a time when water is rationed or regulated under paragraph 69.

###### *Offences and penalties*

5. Providing for offences in respect of contraventions of by-laws:  
Provided that no such penalty shall exceed a fine of level five.

#### PART II

##### PROCEEDINGS OF THE COUNCIL AND FINANCIAL MATTERS

###### *Proceedings at meetings*

6. The regulation of the proceedings and the preserving of order at meetings of the council and the committees thereof, including provision for the suspension and exclusion of a councillor or a member of any such committee who disregards the authority of the chair or wilfully obstructs the business of the council or any committee thereof.

###### *Disclosure of documents and publication of proceedings*

7. (1) The prohibition or regulation of the disclosure of documents and records of the council.  
(2) The prohibition or regulation of the publication of the proceedings of any committee of the council or of the council whilst in committee.

(3) The punishment by suspension of a councillor or any member of a committee who is guilty of a breach of any by-laws in relation to a matter specified in subparagraph (1) or (2).

*Financial*

8. The regulation of the manner in which the finances of the council shall be controlled, including, without derogation from the generality of the foregoing, provision for—
- (a) ensuring the proper collection of income and the control of banking accounts and regulating the procedure for authorizing payments of accounts, including the signing of cheques; or
  - (b) ensuring the proper custody and preservation of moneys, securities and other property; or
  - (c) a procedure for the reporting of the loss or destruction of money or other assets or damage to assets; or
  - (d) adequate control of stores and requiring and regulating the checking of stock.

*Contracts*

9. The regulation of the manner in which contracts shall be executed by or on behalf of the council.

*Tenders*

10. The regulation of the calling for, the submission of and the dealing with tenders and the placing of contracts for the execution of work for the council and supply of goods or materials to the council.

*Capital development fund*

11. The regulation of the operation of any capital development fund established in terms of section *three hundred and three*.

*Estates account*

12. The regulation of the operation of an estates account established in terms of section *three hundred and five*.

*Allowances for municipal councillors*

13. Providing for the payment of any allowances permitted by section *one hundred and twelve* and the circumstances in which such an allowance shall not be payable.

PART III

CONTROLS OVER PROPERTY

*Protection of council property*

14. The protection of property under the control of the council and the prohibition of any interference therewith or the defacing thereof.

*Vegetation*

15. The preservation of trees, shrubs and other vegetation on property under the control of the council and the prevention of injury to such vegetation.

*Conservation of natural resources*

16. The preservation and conservation of natural resources.

*Congregation, entry and parking on council property*

17. (1) The prohibition or regulation of the congregation of persons on or in any land, buildings or premises under the control of the council.  
(2) The prohibition of—
- (a) the entry of persons on to any land, building or premises under the control of the council; or
  - (b) the parking of motor and other vehicles on any land referred to in subparagraph (a);
- without the authority of the council.

*Permits for certain activities on council land*

18. The granting of permits in respect of property under the control of the council for—
- (a) the catching of fish; or
  - (b) the hunting of game; or
  - (c) the picking of wild flowers; or
  - (d) the taking of bees or honey; or
  - (e) the making of bricks; or
  - (f) the digging or removal of sand, clay or gravel; or
  - (g) the quarrying of stone; or
  - (h) the cutting of firewood, brushwood or grass.

*Removal of unauthorized buildings on council land*

19. The removal of unauthorized buildings on land under the control of the council.

*Advertisements*

20. (1) The regulation of the erection, display and use of any advertisement or sign, and any apparatus, device or surface upon which an advertisement or sign is displayed or which is erected or intended for the display of advertisements.  
(2) The prohibition of the erection of hoardings which constitute a disfigurement of, or a source of annoyance to, the neighbourhood.  
(3) The prohibition or regulation, and the inspection, supervising and licensing, of the use and passage of advertising vans, sandwich-boards, lanterns, flags, screens or other movable advertising devices.  
(4) The prohibition and removal of advertising signs and the like which, in the opinion of the council, are a danger to traffic.

*Depreciation of property*

21. The prohibition of—
- (a) the carrying out on land or in buildings or any work; or
  - (b) the utilization of any land or buildings in a manner;
- which would be likely to depreciate or disfigure property, or to interfere with the convenience or comfort of the neighbours or with the amenities of the locality or to become a source of danger.

*Overcrowding*

22. The prevention of the overcrowding of any building and defining what shall constitute such overcrowding.

*Regulation and control of occupation and use of land or buildings*

23. (1) Notwithstanding any other enactment, for regulating and controlling the occupation or use of accommodation which is occupied or used by, or which is designed or is intended for occupation or use by, employees, the number of persons who may occupy or use any land or buildings in the council area, for the summary eviction of any person occupying or using any land or building in contravention of the by-laws and the removal of any property, including any building or structure unlawfully erected, in connection with such eviction and for empowering the council to take measures to ensure compliance with the by-laws on the failure of any person to comply with his duty in that regard and to recover from such person any expenses incurred by the council in ensuring such compliance.

(2) By-laws referred to in subparagraph (1) may provide that no compensation shall be payable in respect of property which is removed as referred to in that subparagraph and—

- (a) is destroyed and damaged in the course of such removal; or
- (b) is not claimed within a specified period of such removal and is destroyed.

*Excavations*

24. Requiring all holes, wells, pits, excavations and ponds on any private land not effectively fenced or enclosed to be filled or to be adequately protected, and, on the failure of any person to do any act to comply with his duty in that regard, empowering the council to do the act at his expense.

*Masts and poles*

25. The regulation of the erection of masts or poles, the material to be used and the painting thereof and the stays and other contrivances to be used in connection therewith.

*Hedges and trees*

26. (1) The regulation of the planting of hedges, the position of hedges and the plants which may be used for hedges.  
(2) Requiring owners of property to remove trees, shrubs or hedges which obstruct natural lighting in neighbouring properties, and, on the failure of any person to do any act to comply with his duty in that regard, empowering the council to do the act at his expense.

*Fire places and chimneys*

27. The maintenance of fire places and chimneys.

*Cooking and washing facilities*

28. Ensuring that suitable and adequate accommodation and facilities for cooking and washing are provided and for ensuring and regulating the use of such accommodation and facilities.

*Occupation or use of buildings*

29. (1) The prohibition or regulation of the use of underground rooms for human habitation or occupation.  
(2) The closing of buildings or parts of buildings which are unfit for human habitation or the prohibition of their use for human habitation or occupation.  
(3) The prohibition, except with the consent of the council, of the use of any building in a manner other than that indicated on the plans submitted to and approved by the council in connection with the construction thereof.  
(4) The closing of buildings, the use and occupation of which has been prohibited.  
(5) The prohibition or regulation of the accommodation of employees in outbuildings other than those designed to accommodate persons.

*Dangerous or neglected buildings*

30. (1) Requiring the protection, securing, repair, alteration, renovation, maintenance, closure or demolition of buildings or works of any nature which—  
(a) are or show signs of becoming dangerous or unhealthy; or  
(b) have fallen into a ruinous or dilapidated condition; or  
(c) are likely to detract from the value or desirability of other properties in the neighbourhood;  
and, on the failure of any person to do any act to comply with his duty in that regard, empowering the council to do the act at his expense.  
(2) Prohibiting the occupation or use of buildings or works referred to in subparagraph (1) until any work required to be done in respect of such buildings or works has been completed to the satisfaction of the council.

*Public buildings*

31. (1) The regulation and the inspection, supervising and licensing of—  
(a) churches, chapels and other public places of worship, not being dwelling-houses so used; and  
(b) hospitals; and  
(c) colleges, schools and universities; and  
(d) cinemas, theatres, public halls, public billiard rooms, public hotel rooms and public restaurants; and  
(e) buildings or premises, including any house, garden, or other place, which are kept or used for dancing or other public entertainment of any kind or used for dance studios or schools of dancing; and  
(f) any other public places of assembly having accommodation for more than fifty persons.  
(2) The securing and keeping of places referred to in subparagraph (1) free from nuisance so as not to endanger the health or safety of persons resorting thereto or of members of the public generally.  
(3) The provision in cinemas, theatres and public halls of—  
(a) mechanical means of ventilation; and  
(b) seating accommodation;  
and the regulation thereof.  
(4) The prohibition of the use of buildings, premises referred to in subparagraph (1) which do not conform with the requirements of the by-laws.  
(5) The regulation of public libraries, museums and art galleries and other services and facilities provided in connection therewith.

*Fire-fighting equipment and fire-escapes*

32. Requiring the provision in any building of suitable and adequate fire-fighting equipment and, in the case of buildings with one or more storeys above the ground floor, the provision of suitable and adequate fire-escapes.

PART IV

PLANNING, CONSTRUCTION AND USE OF BUILDINGS AND STRUCTURES

*Interpretation*

33. For the purposes of this Part—  
“building” includes sewers, drainage works, swimming pools, walls, fences, masts, temporary platforms, grandstands and other structures, whether movable or immovable.

*Location and situation*

34. (1) Requiring the pointing out of boundaries or beacons and otherwise ascertaining the limits and identity of sites upon which buildings are constructed or to be constructed.  
(2) The prohibition of the construction of buildings upon sites which are unstable, not readily susceptible to drainage, unhealthy or otherwise unsuitable for buildings.  
(3) Regulating the position in which buildings may be constructed upon sites.  
(4) Regulating the number of buildings which may be constructed upon sites.  
(5) Regulating the level or elevation at which buildings may be constructed in relation to land adjoining sites or likely to be affected by the construction of buildings.

*Plans, specifications and structural calculations*

35. (1) The prohibition of the construction of any buildings without submitting plans, specifications and structural calculations to the council and having those plans, specifications and structural calculations approved by the council.  
 (2) The submission, form, consideration and custody of plans, specifications and structural calculations.  
 (3) The prohibition of the construction of buildings otherwise than in accordance with plans, specifications and structural calculations approved by the council.  
 (4) Controlling amendments to and departures from approved plans, specifications and structural calculations.

*Nature, design and appearance of buildings*

36. (1) Regulating the nature, design, appearance, height, ventilation, area, lighting and cubic content of buildings and the several parts thereof generally and according to where they are located or situated.  
 (2) The prohibition of the construction of buildings which may—  
 (a) be insanitary, dangerous or unhealthy; or  
 (b) be objectionable, displeasing or unsuitable by virtue of the buildings themselves, the use to which they are to be put or the situation or surroundings; or  
 (c) depreciate the value or desirability of other properties in the neighbourhood or the neighbourhood itself; or  
 (d) cause annoyance to the inhabitants in the neighbourhood.  
 (3) The prohibition or regulation of the fitting to buildings of clocks, awnings, flag poles, emblems, decorations and other fixtures or projections.  
 (4) The prohibition or regulation of encroachments upon, over and under roads or public places.

*Drainage and sewerage provisions*

37. (1) Ensuring the provision of suitable and adequate toilet facilities, sewerage and drainage and sanitation and for enforcing and regulating the use thereof.  
 (2) The provision and construction of drainage and sewerage for any premises.  
 (3) The prohibition or regulation of the construction of septic or conserving tanks, including provision for the conditions and specifications to which such tanks shall conform.  
 (4) The regulation of the construction and maintenance of private sewers and combined private sewers.  
 (5) The regulation of the nature and construction of sanitary fittings.

*Water supplies*

38. (1) Ensuring the provision of suitable and adequate supplies of water.  
 (2) The regulation of the nature and construction of water fittings, including, without derogation from the generality of the foregoing—  
 (a) specifying the size, nature, materials and strength and the mode of arrangement, connection, disconnection, alteration and repair of water fittings to be used;  
 (b) the stamping of water fittings to be used;  
 (c) prohibiting the use of water fittings which are not duly stamped or which are of such a nature or so arranged or connected as to cause or permit, or to be likely to cause or permit, waste, undue consumption, misuse, erroneous measurement or contamination of water or reverberation of pipes;  
 (d) the testing and inspecting of water fittings.  
 (3) The manner in which, the persons by whom, and the places where, water connections may be made and the testing and inspecting of water connections.

*Materials and construction*

39. (1) The regulation of the excavation of land prior to the construction of buildings and the erection of supports and earthworks for the stability of buildings and the convenient disposal of rain-water from a site.  
 (2) The determination and regulation of the nature of the materials used in the construction of foundations, floors, walls, stairs, windows, doors, roofs, guttering, down-pipes, chimneys, drains and every other part of buildings.  
 (3) The determination and regulation of the design and structure of buildings so as to ensure that proper regard is paid to loads, stresses, forces, structural calculations and other considerations relevant to the stability and durability of buildings.

*Conduct of building operations*

40. (1) Regulating encroachments on, over or under, and interference with, roads, sidewalks or public places during building operations.  
 (2) Requiring and regulating the erection and use of builders' sheds and temporary toilets for persons engaged on the construction of buildings.  
 (3) Regulating, minimizing and limiting disturbances caused by noisy, dirty or offensive operations.  
 (4) Requiring the clearing up or removal of rubble, materials and refuse so that building sites are left in a clean and tidy condition and, on the failure of any person to do any act to comply with his duty in that regard, empowering the council to do the act at his expense.

*Inspections, samples and tests*

41. (1) The inspection and testing of materials used for the construction of buildings and of work performed or being performed in the construction of buildings.  
 (2) Ensuring that the approved plans, specifications and structural calculations are adhered to.  
 (3) The taking and removal of samples of materials.  
 (4) The allocation of costs of inspections and tests.

*Temporary structures*

42. (1) Determining buildings and classes of buildings which shall be subject to prohibition and control as temporary structures and regulating the construction and retention of temporary structures.  
 (2) Requiring the demolition and removal of temporary structures that—  
 (a) are constructed without permission; or  
 (b) become dangerous, unhealthy, dilapidated or unsightly;  
 and, on the failure of any person to do any act to comply with his duty in that regard, empowering the council to do the act at his expense.

*Use of buildings*

43. (1) Prohibiting the use or occupation of buildings or any part of buildings prior to completion to the satisfaction of the council.  
 (2) Regulating the use of buildings, including prohibiting the use and occupation of buildings which—  
 (a) are constructed in contravention of plans, specifications and structural calculations approved by the council; or  
 (b) do not conform with the requirements of the by-laws.  
 (3) Requiring the alteration or demolition of buildings which—  
 (a) are constructed in contravention of plans, specifications and structural calculations approved by the council; or  
 (b) do not conform with the provisions of by-laws;  
 and the removal of any rubble, materials and refuse and, on the failure of any person to do any act to comply with his duty in that regard, empowering the council to do the act at his expense.

*Completion of buildings*

44. (1) Ensuring that buildings, the construction of which has commenced, are completed.  
(2) Requiring uncompleted buildings to be demolished or otherwise rendered safe, tidy and as little offensive as possible and, on the failure of any person to do any act to comply with his duty in that regard, empowering the council to do the act at his expense.

*Use of scaffolding, hoarding or protective devices*

45. Requiring and regulating the erection, lighting and use of scaffolding, hoardings or protective devices during the construction, repair or demolition of any building.

*Numbering of buildings*

46. The numbering and renumbering of premises or buildings and the imposition of duties and obligations in connection therewith upon the owners of the premises or buildings.

*Administration of by-laws relating to certain matters*

47. (1) Establishing boards or tribunals and determining procedures whereby disputes between the council, builders, land-owners and other persons concerning the implementation of by-laws relating to matters referred to in subsection (1) of section *two hundred and thirty-two* may be resolved.  
(2) The relaxation or waiver of the provisions of by-laws relating to matters referred to in subsection (1) of section *two hundred and thirty-two*.

*General*

48. Regulating the situation, location, construction, maintenance and protection of all buildings and monuments, whether of a permanent or temporary nature, in order to protect and ensure the safety, health, comfort and aesthetic pleasure of persons visiting, living, working or otherwise present in the council area.

PART V

ROADS, PUBLIC PLACES AND TRAFFIC

*Work in the vicinity of roads*

49. Requiring the owner of any land on which any work is or is about to be done which may damage any road—  
(a) to deposit with the council a sum of money determined by the council against the cost of repairing such damage; and  
(b) to take such measures as the council may specify for securing the safety and convenience of persons using any roads or property in the vicinity of such work.

*Scaffolding and decorations on roads*

50. The regulation of—  
(a) decorations or illuminations; and  
(b) scaffolding, hoardings and protective devices such as are referred to in paragraph 45;  
on or over roads.

*Gatherings and noises in roads*

51. (1) The regulation of performances, singing, dancing and gatherings in roads.  
(2) The regulation and prohibition of the use in roads of loudspeakers or other devices for the reproduction or amplification of sound.

*Prevention of use of sidewalk for unauthorized purposes*

52. (1) The prohibition of the use of vehicles, other than perambulators and invalid chairs, on any sidewalk, except for the purpose of crossing the sidewalk to or from any premises.  
(2) The prohibition of the use of any sidewalk—  
(a) for the display, storage or sale of goods; or  
(b) for any other purpose which is likely to encumber or obstruct the free passage along that sidewalk.

*Trees, shrubs, etc., in relation to roads and traffic*

53. (1) The prevention of trees and shrubs on private property from overhanging or encroaching upon, or the roots thereof from protruding into or under, any road so as to damage any road or obstruct or endanger any user of such road and the measures to be taken for the removal thereof by the owner or by the council at the owner's cost.  
(2) The prohibition of the erection of any wall or fence or the planting of any tree, shrub or hedge which, owing to its position in regard to any road or intersection of roads or for any other reason, constitutes a danger to traffic.  
(3) Requiring the removal, lowering or trimming of any wall, fence, tree, shrub or hedge which, owing to its position in regard to any road or intersection of roads or for any other reason, constitutes a danger to traffic and, on the failure of any person to do any act to comply with his duty in that regard, empowering the council to do the act at his expense.

*Regulation of use of roads*

54. (1) The prohibition, restriction and regulation of the use of any road by—  
(a) vehicles generally or any particular class of vehicles for the purpose of controlling traffic; or  
(b) notwithstanding anything contained in section 9 of the Road Traffic Act [*Chapter 13:11*], holders of learners licences.  
(2) The fixing of the maximum axle-load of any vehicle which may be permitted on any road.  
(2a) In the event of conflict between by-laws providing for the matter referred to in subparagraph (2) and regulations made for the same matter in terms of the Road Traffic Act [*Chapter 13:11*], the regulations shall prevail.  
[Subparagraph inserted by section 39 of Act 3 of 2000.]  
(3) The prohibition or regulation of the use of any road by animal-drawn vehicles.  
(4) The prohibition, restriction or regulation of the use of any road with a surface constructed of gravel, bitumen or other like material by vehicles which are not equipped with pneumatic tyres or by any other particular class of vehicles.

*Obstruction of roads and other public places*

55. The prevention of the obstruction of any road or other public place.

*Processions and public meetings*

56. The regulation of processions and public meetings in public places.

*Driving of stock*

57. (1) The regulation of the driving or leading of stock on roads or on land under the control of the council.  
(2) The prohibition of the driving or leading of stock except along such routes and during such hours as may be specified in the by-laws.

*Parking of vehicles*

58. (1) The regulation and supervision of parking garages and parking places and of the use thereof and of parking meters or other devices for the control of parking vehicles.  
(2) The prohibition or regulation of the parking of vehicles in any road.

*Loading and unloading of vehicles*

59. The conditions subject to which and the times at which articles may be loaded on to or unloaded from vehicles in any road.

*Use of warning devices*

60. The regulation of the use of hooters, horns or other such warning devices on any vehicle and the prohibition of their use during such hours and in such areas as may be specified in the by-laws.

*Regulating and licensing of cycles and certain other vehicles*

61. (1) For the purposes of this paragraph—  
“vehicle” means any cycle or other vehicle which is intended or adapted for use on roads, but does not include—  
(a) any motor vehicle; or  
(b) any auto-cycle; or  
(c) any trailer; or  
(d) any vehicle which is kept by a dealer for the purpose of sale only; or  
(e) any vehicle which is not used on any road; or  
(f) any vehicle which is used solely on a farm or mining claim for farming or mining purposes.  
(2) The regulation of the use of any vehicle.  
(3) The licensing of any vehicle which is ordinarily kept within the council area.

*Taxi-cabs and omnibuses*

62. (1) The regulation of the use of taxi-cabs and omnibuses carrying passengers or parcels for hire or reward.  
(2) The fixing of the fares to be charged and the regulation of disputes as to fares in respect of taxi-cabs and omnibuses.  
(3) Ensuring generally the good and efficient working of any taxi-cab or omnibus service.

*Drivers of taxi-cabs*

63. The regulation and licensing of the drivers of taxi-cabs.

*Omnibuses*

64. (1) The regulation of any omnibus service.  
(2) The prohibition of the driver of any omnibus from—  
(a) accepting any passenger while the vehicle is in motion or is stopped within or at any place other than a place set aside for the purpose; or  
(b) permitting any person to use the omnibus or a portion of the omnibus in contravention of any law.

PART VI

AMENITIES AND FACILITIES

*Sanitary conveniences*

65. The regulation of the use of public sanitary conveniences provided in terms of paragraph 22 of the Second Schedule.

*Parks, recreation grounds, caravan parks, camping grounds, etc.*

66. The regulation of—  
(a) parks, recreation, athletic and sports grounds, swimming baths and like places of public entertainment, pavilions, refreshment rooms and restaurants; and  
(b) caravan parks, camping grounds, health or pleasure resorts,  
botanical or zoological gardens and any other accommodation, services, amenities and conveniences on land under the control of the council.

*Boating establishments*

67. The regulation and licensing of boating establishments and boats, whether kept for hire or otherwise, on waters under the control of the council.

*Crèches*

68. The regulation and licensing of crèches.

PART VII

WATER

*General*

69. (1) The regulation and rationing of the supply and distribution of water.  
(2) Without derogation from the generality of subparagraph (1), by-laws relating to matters referred to in that subparagraph may contain provision for all or any of the following—  
(a) the maximum quantity of water that may be consumed on any specified premises during any specified period;  
(b) the purposes for which, the manner in which or the periods during which water may not be used or applied;  
(c) empowering a court to terminate a lease on the grounds that the lessee has failed to comply with any written directions given to him by the lessor as to the use of water on the leased premises in a manner which contravenes any by-laws and the ejection of any such lessee;  
(d) generally for the protection from injury or injurious use of any water works, water mains, connections and fittings of the council;  
(e) cutting off the supply of water, after not less than twenty-four hours' notice, on account of -  
(i) failure to pay any charges which are due; or  
(ii) the contravention of any by-laws relating to waste, misuse or contamination of water;  
(f) subject to subsection (5) of section *two hundred and twenty*, the inspection of consumers' premises at all reasonable times;  
(g) the testing and inspecting of water mains;  
(h) fixing the duties of consumers in respect of meters and the settlement of disputes as to the amount of water supplied or the tariff applicable.

*Pollution of water*

70. The protection of any water from pollution.

*Wells and boreholes*

71. Subject to the Water Act [*Chapter 20:22*] the prohibition or regulation of—

- (a) the sinking, construction and extension of wells and boreholes; and
- (b) the use of water obtained from wells or boreholes; and
- (c) the interconnection of any well or borehole with the water mains or water supply of the council.

## PART VIII

## ELECTRICITY

*Supply of electricity to consumers*

72. (1) Subject to the Electricity Act [Chapter 13:05], fixing conditions under which consumers shall be entitled to a supply of electricity.
- (2) Subject to the Electricity Act [Chapter 13:05], the regulation and rationing of the supply and distribution of electricity.
- (3) Subject to the Electricity Act [Chapter 13:05], making provision for—
- (a) the wiring of installations; and
  - (b) the prevention of leakage of electricity; and
  - (c) the pressure of supply of electricity; and
  - (d) safety precautions in connection with electrical installations or wiring; and
  - (e) notice to the council by owners or occupiers receiving a supply of electricity upon change of ownership or occupation.
- (4) Subject to the Electricity Act [Chapter 13:05], ensuring a proper and sufficient supply of electricity.

*Cutting off electricity and recovery of charges*

73. Subject to the Electricity Act [Chapter 13:05], the cutting off of the supply of electricity, after not less than twenty-four hours' notice, on account of—
- (a) a failure to pay any charges which are due; or
  - (b) the contravention of any by-law or regulation relating to misuse of electricity or the wiring of installations.

*Inspections and testing*

74. (1) Subject to the Electricity Act [Chapter 13:05], and subsection (5) of section *two hundred and twenty*, the inspection of consumers' premises at all reasonable times.
- (2) Subject to the Electricity Act [Chapter 13:05], the testing and inspection of electricity mains and connections and fittings.
- (3) Subject to the Electricity Act [Chapter 13:05], the conducting of inspections of testing stations and premises.

*Meters*

75. (1) Subject to the Electricity Act [Chapter 13:05], ascertaining the supply of electricity by meters and the fitting of such meters.
- (2) Subject to the Electricity Act [Chapter 13:05], the duties of consumers in respect of meters and the settlement of disputes as to the amount of electricity supplied or the tariff applicable.

*Prevention of interference*

76. Subject to the Electricity Act [Chapter 13:05], the prevention of interference with any electrical service or equipment connected therewith or anything incidental to such service or equipment.

## PART IX

## SEWERAGE, EFFLUENT AND THE REMOVAL OF REFUSE AND VEGETATION

*Sewerage*

77. (1) The closing of cess-pits and the removal or sealing of disused private sewers.
- (2) The regulation of the use and protection from damage or injurious use of any system of sewerage and drainage and sewage works.
- (3) The regulation of the use of septic or conserving tanks and the inspection and supervision of such tanks.
- (4) The prohibition or regulation of the discharge, directly or indirectly, of sewage or other effluent or any solid, liquid or gas into any public stream, public sewer or public drain.

*Sanitary fittings*

78. (1) The prohibition of the use or occupation of premises where the required sanitary fittings are not provided.
- (2) The prohibition of the use of sanitary fittings which are defective or insanitary.

*Effluent and refuse removal*

79. (1) The removal or disposal of—
- (a) human waste;
  - (b) effluent, water or refuse, whether trade, domestic or otherwise;
  - (c) decaying and other offensive or unhealthy matter;
- and requiring the use by persons of any system or undertaking provided by the council for the collection, removal or disposal thereof.
- (2) The specification of the type of container to be used by the owner or occupier of any premises for the storage of refuse pending removal and the supply of such type of container in circumstances where such containers are not provided in sufficient number or adequate size or construction.
- (3) The regulation of the positions where containers referred to in subparagraph (2) shall be placed.
- (4) The prohibition or regulation of the arrangement, construction and siting of any building or appliance appertaining to the disposal of human waste or domestic or trade effluent.

*Cleansing of private sewers, streets and yards*

80. The regulation of the cleansing and condition of private sewers or combined private sewers, private roads and yards common to two or more owners and the imposition of duties in respect thereof upon owners, occupiers and tenants.

*Crops, vegetation, rubbish and waste material*

81. (1) The prohibition or regulation of—
- (a) the cultivating, accumulating or existence on any land of any crop, vegetation, rubbish or unwholesome or offensive matter or thing which—
    - (i) constitutes or is likely to constitute a fire hazard or a danger to public health or the natural resources of the council area; or
    - (ii) is such that it may give rise to circumstances in which a danger to public safety or security may arise; or
    - (iii) is unsightly in the area or locality;
  - (b) the accumulating, dumping, depositing, abandoning or dropping on or in any road, street, sidewalk, drain, land, premises or place of rubbish or waste material of any description including, without derogation from the generality of the foregoing, machinery or vehicles or parts thereof.
- (2) Requiring the removal or clearing of crops, vegetation, rubbish, waste material or any unwholesome matter or thing referred to in subparagraph (1) and, on the failure of any person to do any act to comply with his duties in that regard, empowering the council to do the act at his expense.

## PART X

## ANIMALS

*Keeping of animals, reptiles and birds*

82. (1) The prohibition, regulation or licensing of the keeping of any animals, bees, reptiles or birds.  
 (2) The prohibition of the construction or use for the keeping of any animals, bees, reptiles or birds of any building, kennel, cage, hive or other structure which is unfit or undesirable therefor or objectionable by reason of its locality, construction, condition or manner of use.  
 (3) Defining the areas or premises within which or in the neighbourhood of which bees or specified kinds of animals may not be kept.  
 (4) The prohibition of the keeping, with power to provide for the seizure and destruction, of animals, bees, reptiles or birds which are vicious or otherwise constitute a danger to the safety of human beings or other animals.  
 (5) The seizure of animals which are found trespassing or straying and—  
 (a) the sale, destruction or other disposal of such animals if they are not claimed within a reasonable period; and  
 (b) the destruction of such animals if they are so diseased that they are prejudicial to the health or safety of human beings or other animals.  
 (6) The prevention of the straying or wandering of animals or reptiles.

*Disease-carrying animals, insects and vermin*

83. (1) The destruction or extermination of disease-carrying animals, insects and vermin.  
 (2) The prevention of the keeping or breeding of rats and other vermin known to harbour or convey or infect with or cause any disease.

*Noxious insects*

84. (1) The destruction or extermination of locusts, mosquitoes, flies and other noxious insects.  
 (2) The prevention or abatement of conditions permitting or favouring the breeding of insects referred to in subparagraph (1).  
 (3) The supply by the council of poison and appliances for any purposes referred to in subparagraphs (1) and (2).

*Public riding stables and kennels*

85. (1) The regulation and licensing of public riding stables and kennels.  
 (2) The standards and minimum requirements for the construction, maintenance, conduct, good order, cleanliness, lighting and ventilation of premises used in connection with public riding stables or kennels, and the provision and maintenance of fittings or apparatus used in connection therewith.

*Dog tax*

86. The imposition of a tax on dogs of the age of six months or more.

*Slaughter of animals and slaughter-houses*

87. (1) The prohibition or regulation of the slaughtering of animals, the establishment, locality, supervision, administration, operation and maintenance of slaughter-houses and the disposal of the waste products from slaughter-houses.  
 (2) Requiring and regulating the use of public slaughter-houses and stock-fairs established in connection therewith.  
 (3) Requiring and regulating the use of weighbridges at slaughter-houses.

*Dipping tanks*

88. The regulation of the use of dipping tanks.

*Stock pens*

89. The regulation of the use of stock pens and the prohibition, regulation or licensing of the use of private stock pens.

## PART XI

## FOOD, FOOD PREMISES OR VEHICLES AND MARKETS

*Sale and supply of food*

90. (1) The regulation of the sale, preparation, manufacture, keeping, storing, depositing, conveying, handling and exposure for sale of food, including pet food.  
 (2) The prevention of the sale, preparation, manufacture, keeping, storing, depositing, conveying or exposure for sale of food that is, in the opinion of the medical officer of health or a health inspector, adulterated, unwholesome or diseased.  
 (3) The prohibition of the sale or supply of fresh meat obtained from cattle or other domestic livestock unless such cattle or other livestock have been slaughtered at a slaughter-house established or approved by the council.  
 (4) The prohibition of the supply to persons within the council area of—  
 (a) meat of any description, including fish, pet food, game meat and poultry meat, which has not been inspected; or  
 (b) any carcass of or meat or viscera from horses, mules or donkeys slaughtered outside the council area.

*Premises, vehicles and employees*

91. (1) The regulation, inspection and licensing of any premises in which food is sold, prepared, manufactured, stored, deposited or exposed for sale and the prevention of the use for such purposes of any premises that are unfit therefor.  
 (2) The standards and minimum requirements for the construction, maintenance, conduct, good order, cleanliness, lighting, ventilation, water supply, sanitary fittings and drainage of the premises referred to in subparagraph (1), and the provision of the requisite utensils, storage space, refrigeration, equipment, furniture, linen, crockery and furnishings, and the care and maintenance thereof.  
 (3) The specification of goods or merchandise that may not be handled, stored, received or sold on premises referred to in subparagraph (1).  
 (4) The regulation, inspection and licensing of vehicles used for or in connection with the vending of food.  
 (5) The medical examination of any person employed in, or in connection with, the business of handling food.

*Food introduced from outside council area*

92. The prohibition or regulation of the introduction, distribution or sale within the council area of—  
 (a) food which has been produced or prepared outside the council area; or  
 (b) meat or viscera from or carcasses of animals which have been slaughtered outside the council area;  
 unless compliance has been made with such conditions as may be specified in the by-laws.

*Market gardens*

93. (1) The regulation of the carrying on of any business, whether inside or outside the council area, of a market garden or the growing of vegetables or fruit, the produce of which is intended for sale to members of the public within the council area, and the storage and handling of such produce.  
 (2) The inspection of any land on which any business referred to in subparagraph (1) is carried on and of any premises in which produce referred to in that subparagraph is stored and of any vehicles or receptacles in which such produce is conveyed.  
 (3) The licensing of any person carrying on any business referred to in subparagraph (1).

*Markets*

94. (1) The regulation of markets and, without derogation from the generality of the foregoing, of—  
 (a) public sales thereon; and  
 (b) the dues or charges payable in respect of goods submitted for sale at the market; and  
 (c) the licensing of persons authorized by the council to trade as market agents.  
 (2) The regulation of the cleansing, cleanliness, sanitation and good order of markets and places used for public sale and barter and of the cleanliness, purity and wholesomeness of any goods exposed for sale thereon.

## PART XII

## TRADES, OCCUPATIONS AND OTHER ACTIVITIES

*Dangerous trades*

95. The regulation of the carrying on of offensive, unhealthy or dangerous trades or occupations for the purpose of safeguarding the health or safety of members of the public.

*Employment bureaux and compulsory medical examination and treatment of workers*

96. Subject to the Labour Relations Act [*Chapter 28:01*] the regulation of employment bureaux and the provision of compulsory medical examination, and treatment where necessary, of employees and work-seekers.

*Disinfection and fumigation*

97. (1) The regulation, inspection and licensing of businesses carrying on disinfection, disinfestation or fumigation by cyanide or other means.  
 (2) The penalizing of persons who, after notice thereof, refuse, without reasonable grounds, to vacate any room occupied by them in any building where fumigation by cyanide or other means is to be carried out.

*Infectious diseases*

98. The prevention of the possible spread of infectious, contagious or noxious diseases by the carrying on of any business, trade or occupation.

*Hawkers and street vendors*

99. (1) For the purposes of this paragraph—  
 “goods” means wares, merchandise, produce and, generally, corporeal movable things of any description;  
 “hawker” means any person who carries on the business of selling any goods while travelling about for that purpose from place to place with the goods, either on foot or with a vehicle, animal or carrier, but does not include—  
 (a) a baker or his employee in respect of the sale of bread;  
 (b) a dairy marketing authority or a dairyman or its or his employee, as the case may be, in respect of the sale of milk;  
 (c) any person in respect of the sale of publications sponsored by the State or newspapers;  
 “public place” means any bridge, enclosure, foot-path, garden, open space, pavement, road, sanitary lane, side-walk, square, sub-way or street of the nature of a thoroughfare which is vested in or controlled by the council and to which the public or any section of the public has access;  
 “sell” means to sell by retail or by wholesale and, in addition to its ordinary meaning, includes to barter or exchange or offer or expose or prepare for sale;  
 “street vendor” means any person who sells goods from one or more fixed places in or on any public place, but does not include any person in respect of the sale of publications sponsored by the State or newspapers.  
 (2) The regulation and licensing of hawkers and street vendors and persons who employ or engage hawkers or street vendors as servants or agents.  
 (3) The prohibition, regulation or inspection of the goods which may be sold by hawkers or street vendors.  
 (4) The prohibition of the carrying on of business by hawkers or street vendors except in specified areas.  
 (5) The specification of the times when or periods during which hawkers or street vendors may carry on business or allow goods to be exposed for sale at any one place.

*Electricians*

100. The examination and licensing of electricians and the prohibition of unlicensed persons from acting as electricians.

*Plumbers and drain-layers*

101. The examination and licensing of plumbers and drain-layers and the prohibition of unlicensed persons from carrying out plumbing or drain-laying work for the installation, alteration or repair of any system of water supply, sewerage or drainage.

*Hairdressers*

102. (1) The regulation, inspection and licensing of any premises used for or in connection with the business of hairdressers, barbers or beauty salons and the prevention of the use of such premises as are unfit therefor.  
 (2) The standards and minimum requirements for the construction, maintenance, conduct, good order, cleanliness, lighting, ventilation, water supply, sanitary fittings and drainage of the premises referred to in subparagraph (1), and the provision of the requisite utensils, equipment, furniture, linen and furnishings, and the care and maintenance thereof.  
 (3) The medical examination of any person employed in or in connection with the business of hairdressers, barbers or beauty salons.

*Launderers, cleaners and dyers*

103. (1) The regulation, inspection and licensing of any premises used for or in connection with the business of launderers, cleaners or dyers and the prevention of the use for such purposes of any such premises as are unfit therefor.  
 (2) The standards and minimum requirements for the construction, maintenance, conduct, good order, cleanliness, lighting, ventilation, water supply, sanitary fittings and drainage of the premises referred to in subparagraph (1) and the provision of the requisite utensils and equipment, and the care and maintenance thereof.  
 (3) The medical examination of any person employed in or in connection with the business of launderers, cleaners or dyers.

*Funeral parlours and mortuaries*

104. The prohibition of the establishment of funeral parlours or mortuaries otherwise than in specified parts of the council area.

*Boarding-houses*

105. The regulation, inspection and licensing of hotels and of premises providing accommodation for boarders or lodgers not being members of the family.

*Public auctions*

106. The regulation and licensing of public auctions conducted otherwise than on premises for which a licence or permit in terms of the Tobacco Marketing and Levy Act [*Chapter 18:21*] or the Shop Licences Act [*Chapter 14:19*] has been issued and the regulation and licensing of the trade or business carried on in connection with such auctions.

PART XIII

NUISANCES

*General*

107. The prevention or suppression of any nuisance which is likely to interfere with the ordinary comfort, convenience, peace or quiet, or affect the rights, of the public or any section of the public.

*Horns, bells, etc.*

108. The prohibition or regulation of the use of horns, bells, loudspeakers and the like for the purpose of attracting customers or indicating the presence of vendors in the neighbourhood.

*Use of loudspeakers*

109. The regulation or prohibition of the use of loudspeakers or other devices for the reproduction or amplification of sound in or upon properties where such reproduction or amplification is audible beyond the boundaries of such properties.

*Objectionable advertisements, etc.*

110. The prohibition of the exhibition in any place to which the public has access, or exposure to public view, of any advertisement, placard, poster, engraving, picture, drawing, print or photograph of an indecent, obscene or objectionable character.

PART XIV

FUNCTIONS, PERFORMANCES, EVENTS AND AMUSEMENTS

*Performances dangerous to the public*

111. The prohibition or regulation of performances considered by the council to be dangerous to the spectators in any place to which the public has access.

*Amusements*

112. (1) The regulation and licensing of amusement caterers and the prohibition of such persons from carrying on their business in such areas and during such hours as are specified.  
(2) The inspection of swings, roundabouts, switchbacks and installations of a similar nature and all tents, structures and appliances provided for the amusement or recreation of the public, whether on public or private property, and the prohibition of the use of such as are, in the opinion of the council, unsafe or dangerous or which may tend to injure the health or destroy the comfort, reasonable peace and quiet, or affect the rights, of the inhabitants of the council area or any section thereof.

*Open-air events*

113. (1) The regulation of open-air events and functions and the prohibition of the same in such areas and during such hours as are specified.  
(2) The licensing of organizers of open-air events and functions and of the owners or occupiers of property on which such events or functions are held.  
(3) The prohibition or regulation of the construction, erection, use and removal of temporary platforms, grandstands, seats and other structures for the accommodation of spectators at open-air events and functions.  
(4) The requiring of the provision of adequate sanitary conveniences at open-air events and functions and regulating the nature, construction and mode of use of such sanitary conveniences.

PART XV

FIRES, COMBUSTIBLE MATERIALS AND EXPLOSIVES

*Fires*

114. (1) Requiring the provision on land and in buildings of precautions against the outbreak and spread of fires and warning devices in connection therewith and regulating the maintenance, use and inspection thereof and the prevention of interference therewith.  
(2) The prohibition of the obstruction of fire escapes, stairs, doors or other means available of exit from any building in the event of a fire.  
(3) The conditions under which, in the absence of any agreement under Part XVI of the Act, the council may permit the use of the fire brigade outside the council area.  
(4) The reporting of fires and the prohibition of—  
(a) interference with a fire brigade or appliances provided for or in connection with the extinguishing of fires; and  
(b) the giving of false alarms concerning fires.  
(5) The prohibition of the use or occupation of buildings which constitute a fire hazard.

*Bonfires and burning of rubbish*

115. The prohibition or regulation of the burning of rubbish, trees, bushes, weeds or grass and of the making of bonfires.

*Combustible or inflammable material and explosives*

116. (1) In this paragraph—  
“petroleum” means petrol or any other liquid which has a flash- point in any apparatus specified in the by-laws for the purposes of this paragraph of sixty-five degrees Celsius or under.  
(2) The regulation of the keeping of fodder and other combustible stores or materials.  
(3) The restriction of the sites which may be used for or in connection with, and the regulation of the size of, stacks or timber, coal or other inflammable materials and the manner of stacking or storing such materials.  
(4) The regulation of the generation or storage of any inflammable or explosive gas, and the construction, maintenance and use of apparatus connected therewith.  
(5) The regulation and licensing of the storage of petroleum and the restriction of the sites thereof.  
(6) The regulation of—  
(a) the construction and maintenance of places of storage of petroleum; and  
(b) the construction, maintenance and use of buildings and premises connected with the storage of petroleum.  
(7) The limitation of the quantities of petroleum that may be stored on any premises and the issue of permits regulating the quantities of petroleum that may be stored on any premises.

- (8) The regulation, for the purposes of the prevention of fire or explosion, of the manner of use or conveyance and the nature of the conveyance of petroleum.
- (9) The regulation of pumps, whether portable or otherwise, for petroleum and the sites therefor and the use thereof, whether within the limits of any road or on private property.
- (10) The prohibition or regulation of the use of fireworks and combustibles.

#### **FOURTH SCHEDULE (Section 114a(13)(a))**

##### **RULES OF INDEPENDENT TRIBUNALS**

###### *1. Procedure before and immediately following allegation of misconduct*

(1) If on completion of the investigation (if any) referred to in section 114(4) (or section 157(4) in the case of the Rural District Councils Act) it is found that an allegation of misconduct should be preferred against the mayor, chairperson or councillor, (hereinafter called “the respondent”), the independent tribunal shall within thirty days after the completion of the investigation (or if no investigation is found to be necessary, within thirty days after the Minister refers the matter to the tribunal)—

- (a) inform the respondent, in writing, of the nature of the allegation against him or her, and call upon him or her to submit a written reply to the allegation within fourteen days; and
- (b) where possible, furnish to the respondent copies of any material documentary evidence relating to the allegation of misconduct, or afford the respondent an opportunity of having sight of any such evidence.

(2) The independent tribunal shall, within seven days of receiving the respondent’s reply or, if no such reply has been received in terms of (1)(a), determine whether the respondent has a case to answer, and if so, it shall, within seven days notify the respondent in writing accordingly.

###### *2. Sittings and powers of independent tribunal*

(1) For the purpose of this Schedule the chairperson of the independent tribunal shall convene a sitting of the tribunal, whenever he or she considers it to be necessary, at such time and place as he or she determines.

(2) The quorum at any sitting of the tribunal shall be all three members:

Provided that the tribunal may, in addition to sitting with all members physically present, hold or continue a sitting by the use of any means of communication by which all the members at the meeting can hear and be heard at the same time (hereinafter referred to as an “electronic sitting”).

(3) A member who participates in an electronic sitting is taken for all purposes to have been present at the sitting.

(4) The chairperson of the tribunal may establish procedures for electronic sittings (including recording the minutes of such sittings).

(5) The chairperson may conduct open or closed sittings of the tribunal, and shall be entitled, at any open sitting, to exclude any particular person or persons for the preservation of order, for the due conduct of the inquiry or for any other good reason.

(6) The tribunal shall, through the chairperson, have the powers contained in the Commissions of inquiry Act [*Chapter 10:07*], to subpoena witnesses and administer oaths, and to compel witnesses thus summoned to take an oath or affirmation and to remain in attendance at the hearing until excused by the tribunal.

###### *3. Hearings before independent tribunal*

(1) Where the independent tribunal determines that a respondent has a case to answer and so notifies the respondent in accordance with paragraph 1(2), it shall in the same notification give not less than seven days notice to the respondent of the time, date and place of the hearing of the allegation of misconduct against him or her.

(2) The hearing shall be conducted without the need to observe the rules of procedure and evidence ordinarily applicable in criminal or civil proceedings, provided, however, that the respondent concerned is afforded the opportunity to respond to every allegation of misconduct and that substantial justice is done.

(3) Findings of fact by the tribunal shall be made by a majority of the members of the tribunal on the basis of a balance of probabilities.

(4) Findings of law or of mixed law and facts shall be reserved for the chairperson alone.

(5) At the hearing the respondent, the Ministry and the independent tribunal may, if any of them so wishes, be advised and, in the case of the Ministry or respondent, represented by a legal practitioner.

(6) The independent tribunal may proceed to consider the allegation of misconduct in the absence of the respondent concerned if the respondent fails to attend the hearing without reasonable cause after having been duly notified.

(7) The chairperson of the independent tribunal shall keep or cause to be kept an accurate record of the substance of the evidence led at the hearing.

###### *4. Determination of allegation of misconduct*

(1) At the conclusion of a hearing the independent tribunal shall proceed to determine whether or not the respondent is guilty of misconduct as alleged.

(2) Where the independent tribunal determines that the respondent is not guilty of misconduct, the independent tribunal shall without delay notify the respondent, the Minister and the council concerned in writing accordingly.

(3) Where the independent tribunal determines that a respondent is guilty of misconduct—

- (a) the respondent is deemed to be removed from office on the date of that determination and his or her seat becomes vacant on that date; and
- (b) the independent tribunal shall without delay notify the respondent, the Minister and the council concerned in writing accordingly.

(4) It shall be competent for the independent tribunal to find a respondent guilty of an act of misconduct other than the act which the respondent was originally alleged to have committed if the facts disclose, such other act.

(5) Where the independent tribunal has not made a finding that the respondent is guilty of such other act as is referred to in subparagraph (4) but believes that there is a reasonable suspicion that the respondent may be guilty of such act—

- (a) the independent tribunal shall refer the matter back for further investigation by the Minister in terms of section 114(4) (or section 157(4) in the case of the Rural District Councils Act); and
- (b) the independent tribunal shall adjourn until the completion of the investigation in terms of section 114(4) (or section 157(4) in the case of the Rural District Councils Act).

(6) If the investigation is completed and a new charge is preferred against the respondent in accordance with paragraph 1(1)—

- (a) within thirty days from the date that the independent tribunal referred the matter back for further investigation by the Minister in terms of section 114(4) (or section 157(4) in the case of the Rural District Councils Act), the allegation of misconduct shall be dealt with by the independent tribunal that heard the original allegation;
- (b) after thirty days from the date that the independent tribunal referred the matter back for further investigation by the Minister in terms of section 114(4) (or section 157(4) in the case of the Rural District Councils Act), the allegation of misconduct shall be dealt with by a reconstituted independent tribunal.

#### *5. Respondent convicted of a criminal offence*

Where a respondent is convicted of a criminal offence which may constitute an act of misconduct, the Ministry shall endeavour to obtain a copy of the court record relating to the conviction of the respondent from the registrar or clerk of the court concerned and avail it to the tribunal.

#### *6. Costs*

At the conclusion of a bearing the independent tribunal may make such order as to the costs of the proceedings as it thinks fit.

#### *7. Imposition of civil penalties by independent tribunal*

(1) Where an independent tribunal determines that a respondent is guilty of misconduct the tribunal may, together with its determination that the respondent is guilty of the misconduct, impose upon the respondent either of the following civil penalties in either of the following circumstances—

- (a) if the respondent was responsible for any deficiency in or improper payment from or loss or destruction of the moneys of any local authority order the respondent to make such payment in respect of such deficiency, improper payment, loss or destruction, as the case may be, as may be fixed by the independent tribunal; or
- (b) if the respondent was responsible for any deficiency in or destruction of or damage to the property of any local authority, order the respondent to pay an amount equal to the cost of replacement of or repairs to the property concerned, as the case may be, or such portion of that cost as the independent tribunal considers to be equitable in the circumstances.

(2) A civil penalty order that becomes payable by the respondent shall constitute a debt due by the respondent to the local authority concerned, which may, at any time after it becomes due, sue for and recover the debt in a court of competent jurisdiction.

(3) The amount of a civil penalty shall be paid into and form part of the funds of the local authority concerned.

#### *8. Determination of incapacity for office*

This Schedule (other than paragraphs 4(4), (5) and (6), 5, 6 and 7) applies to the determination of an allegation of inability on the part a respondent to perform the functions of his or her office due to mental or physical incapacity, as if references in this Schedule to an allegation of misconduct are references to an allegation of incapacity.

*9. Alternate member*

(1) If an alternate is substituted for any member of the tribunal, the secretary of the tribunal shall furnish him or her with a written brief approved by the other members of all the evidence led or produced at the tribunal up to the date that the alternate assumes office:

Provided that the alternate has as the right to require the rehearing or reconsideration of any evidence led or produced at the tribunal before the date that he or she assumed office.

(2) The proceedings of the tribunal shall not be challenged on the sole ground that its composition changed by virtue of section 157A(9) or (11) of the Rural District Councils Act [*Chapter 29:13*] or section 114A(9) or (11) of this Act.