REPORT OF STANDING COMMITTEES REPORTING DIRECTLY TO THE COUNCIL
allowed in terms of Section 8(1)(f)(b)(i) of the Rules and Orders for consideration by the Council

Agenda of the Council Meeting of the

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

which will be held in the Council Chamber, Sammy Marks Conference Centre, cnr Madiba (Van der Walt) and Lilian Ngoyi (Vermeulen) Streets, Pretoria, on THURSDAY, 24 NOVEMBER 2016, at 10:00 to consider the matters as set out hereafter:

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B. FROM THE SECTION 79 STANDING COMMITTEE:
RULES AND ETHICS: 21 OCTOBER 2016 ................................................................. 4 – 33

RK MATHEBE
SPEAKER

16 November 2016
F. REPORTS TO COUNCIL

The Speaker, in terms of Section 8(1)(f)(b)(i) of the Rules and Orders, proposes to Council that the reports contained in this agenda, from the Meeting of the Section 79 Standing Committee: Rules and Ethics held on 21 October 2016, be submitted for consideration, and subsequently requests the Chair of Chairs, Councillor GC Pretorius, to present the reports to Council.
B. FROM THE SECTION 79 STANDING COMMITTEE:
RULES AND ETHICS: 21 OCTOBER 2016

1. Office of the Speaker
Report of the Section 79 Standing Committee: Rules and Ethics for the 2011 – 2016 Term
(From the Section 79 Standing Committee: Rules and Ethics: 21 October 2016) ................................................................. 4 – 21(8)

2. Office of the Speaker
Referral by the Speaker on the remarks made by Councillor NM Mhlongo towards ANC on allegations of none service delivery
(From the Section 79 Standing Committee: Rules and Ethics: 21 October 2016) ................................................................. 22 – 29(29)

3. Office of the Speaker
Referral of remarks made by the Speaker of Council regarding African National Congress attitude towards the issue of racism at the Pretoria High School for Girls and other schools
(From the Section 79 Standing Committee: Rules and Ethics: 21 October 2016) ................................................................. 30 – 33(33)
1. OFFICE OF THE SPEAKER
REPORT OF THE SECTION 79 STANDING COMMITTEE: RULES AND ETHICS FOR THE 2011-2016 TERM
(From the Section 79 Standing Committee: Rules and Ethics: 21 October 2016)

1. PURPOSE

The purpose of the report is to provide an overall performance of the Section 79 Standing Committee: Rules and Ethics for the 2011/16 term.

2. STRATEGIC OBJECTIVES

This report addresses the following Strategic Objectives:

Strategic Objective 4: “Promote Good Governance and Active Citizenry”.
Strategic Objective 5: “Improve Financial Sustainability”.

3. BACKGROUND

The City of Tshwane Rules and Ethics Committee was established by Council in order to carry out investigations, submit findings and make appropriate recommendations to Council pertaining to the alleged contraventions of the Code of Conduct for Councillors as contained in Schedule 1 of the Local Government Municipal Systems Act 32 of 2000.

The Committee is also mandated to observe and ensure compliance with Council Rules and Orders. In this regard, the Committee attends referral on alleged contraventions which are referred to it by Council, other Committees of Council, Chief Whip of Council or any person who has relevant evidence in terms of the alleged contravention of the Rules and Orders By-law or Code of Conduct.
4. DISCUSSION

The Rules and Ethics Committee holds its meetings, in accordance with the approved annual calendar of Council. In the 2011/16 term, the Committee considered the following matters wherein investigations and hearings were conducted depending on the merits of the alleged contravention, after which the Committee reported its recommendations to Council for final counsel and or ratification.

4.1 SYNOPSIS OF MATTERS CONSIDERED BY THE COMMITTEE DURING 2011/16 TERM

- Referral of a ruling by the Speaker on the determination of the behavior of the opposition Whip, Cllr. M Aucamp, towards the Chief Whip of Council.
- Referral on the determination of contravention of Rules 41(3) of the Rules and Orders by Councillor M Aucamp during the Section 79 meeting.
- Referral by the Speaker of remarks made by Councillors Motau, Mathebula, Makaung, and Rammushi during the debate on the name Mao Zedong (Mao tse Tung).
- Legality of the Council meeting held on 10 December 2014.
- The questioning about the credibility and integrity of the Auditor General.
- Referral of allegations of sexism remarks by the former Executive Mayor against Councillor Engelbrecht.
- Annual Performance Reports of the Section 79 Standing Committee: Rules and Ethics.
- Referral of allegation of ethnic discrimination remarks made by MMC JJ Ngonyama towards Cllr. Babane.
- Referral by the Acting Speaker of allegations made by Councillor BA Engelbrecht on the exercise of nepotism by the Executive Mayor.
• Consideration of a report on contravention of Section 2(A) and (B) of the Code of Conduct for Councillors as set out in schedule 1 of the Systems Act, 2000 (Act 32 of 2000).

• Referral by the Speaker on allegations of nepotism made by Councillor MS Shackleton.

• Consideration of a referral by Councillor RK Mathebe, on allegations of the alteration of annual financial statements, following the submission by the Auditor General.

4.2 CHALLENGES

The main challenge experienced by the Committee was postponement of meetings. In some instances, meetings were postponed due to unavailability/non-attendance by legal representatives. There were other meetings which were postponed due to technical problems wherein recording devices in the meeting venue were not working.

5. COMMENTS FROM STAKEHOLDER DEPARTMENTS

Not applicable.

6. IMPLICATIONS

6.1 FINANCIAL

The postponement of meetings have negative financial implications on the City.

6.2 HUMAN RESOURCES

The key role players must be informed timeously of the date of the next meeting, to avoid postponements.

The Office of the Speaker must confirm the state of readiness of meeting venues, prior to the actual date of the meeting.

6.3 CONSTITUTIONAL AND LEGAL FACTORS


6.4 COMMUNICATIONS

This report will be circulated to all members of the Committee, to provide them with an understanding of the contraventions which were considered by the same
Committee in the previous municipal term, as per Annexure A and B (terms of reference of the Rules and Ethics Committee and Code of Conduct of Councillors.

6.5 PREVIOUS COUNCIL AND MAYORAL COMMITTEE RESOLUTIONS

The Rules and Orders By-law, which forms the basis of this report, is a Council resolution of 29 November 2012.

7. CONCLUSION

This report highlights the performance of the Section 79 Standing Committee: Rules and Ethics, for the 2011/16 term. The report demonstrates that the Committee was able to deliver on its mandate, even though there were minor delays related to postponement of meetings and finalization of hearings.

The nature of contraventions dealt with and previous court rulings will assist the Committee in identifying possible recommendations to the Speaker and Chief Whip of Council, to ensure success of Committee and Council meetings.

IT WAS RECOMMENDED (TO THE SECTION 79 STANDING COMMITTEE: RULES AND ETHICS: 21 OCTOBER 2016):

That it be recommended to the Council:

1. That cognizance be taken of the contents of this report.

2. That the availability of key role players and state of readiness be confirmed by the Office of the Speaker, before issuing of the notice and agenda of all meetings/hearings of the Rules and Ethics Standing Committee.

During discussion of this matter at the Section 79 Standing Committee: Rules and Ethics meeting of 21 October 2016, Councillor J Jansen requested that paragraph “G QUORUM AT MEETINGS” of the Terms of Reference (Annexure B) be amended to read as follows, which request was acceded to by the Committee:

“Eleven (11) members (Chairperson included)”

(Remark: For purposes of these minutes Annexure B has already been amended accordingly.)

Furthermore, Councillor MD Matsena proposed that process to revisit the present Rules and Orders By-laws commence, which proposal was accepted by the Committee.
After discussion by the Committee, the Section 79 Standing Committee: Rules and Ethics resolved to recommend as set out below.

ANNEXURES:

A. Code of Conduct.
B. Terms of Reference.

RECOMMENDED:

1. That cognizance be taken of the contents of this report.

2. That the availability of key role players and state of readiness be confirmed by the Office of the Speaker, before issuing of the notice and agenda of all meetings/hearings of the Rules and Ethics Standing Committee.

3. That the Office of the Speaker commence with the process to revisit the present Rules and Orders By-laws.
LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT
(Act 32 of 2000)

Schedule 1

CODE OF CONDUCT FOR COUNCILLORS

[Schedule 1 amended by ss. 45 and 46 of Act 51 of 2002 and by ss. 20 and 21 of Act 19 of 2008.]
LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT  
(Act 32 of 2000)

Schedule 1

CODE OF CONDUCT FOR COUNCILLORS

Preamble

Councillors are elected to represent local communities on municipal councils, to ensure that municipalities have structured mechanisms of accountability to local communities, and to meet the priority needs of communities by providing services equitably, effectively and sustainably within the means of the municipality. In fulfilling this role councillors must be accountable to local communities and report back at least quarterly to constituencies on council matters, including the performance of the municipality in terms of established indicators. In order to ensure that councillors fulfill their obligations to their communities, and support the achievement by the municipality of its objectives set out in section 19 of the Municipal Structures Act, the following Code of Conduct is established.

1. Definitions

In this Schedule 'partner' means a person who permanently lives with another person in a manner as if married.

2. General conduct of councillors

A councillor must-

(a) perform the functions of office in good faith, honestly and a transparent manner; and  
(b) at all times act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised.

3. Attendance at meetings

A councillor must attend each meeting of the municipal council and of a committee of which that councillor is a member, except when-

(a) leave of absence is granted in terms of an applicable law or as determined by the rules and orders of the council; or
(b) that councillor is required in terms of this Code to withdraw from the meeting.

4. Sanctions for non-attendance of meetings

(1) A municipal council may impose a fine as determined by the standing rules and orders of the municipal council on a councillor for:

(a) not attending a meeting which that councillor is required to attend in terms of item 3; or
(b) failing to remain in attendance at such a meeting.

(2) A councillor who is absent from three or more consecutive meetings of a municipal council, or from three or more consecutive meetings of a committee, which that councillor is required to attend in terms of item 3, must be removed from office as a councillor.

(3) Proceedings for the imposition of a fine or the removal of a councillor must be conducted in accordance with a uniform standing procedure which each municipal council must adopt for the purposes of this item. The uniform standing procedure must comply with the rules of natural justice.

5. Disclosure of interests

(1) A councillor must-

(a) disclose to the municipal council, or to any committee of which that councillor is a member, any direct or indirect personal or private business interest that that councillor, or any spouse, partner or business associate of that councillor may have in any matter before the council or the committee; and

(b) withdraw from the proceedings of the council or committee when that matter is considered by the council or committee, unless the council or committee decides that the councillor’s direct or indirect interest in the matter is trivial or irrelevant.

(2) A councillor who, or whose spouse, partner, business associate or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the municipality, must disclose full particulars of the benefit of which the councillor is aware at the first meeting of the municipal council at which it is possible for the councillor to make the disclosure.
(3) This section does not apply to an interest or benefit which a councillor, or a spouse, partner, business associate or close family member, has or acquires in common with other residents of the municipality.

6. **Personal gain**

(1) A councillor may not use the position or privileges of a councillor, or confidential information obtained as a councillor, for private gain or to improperly benefit another person.

(2) and (3) ......

[Subitems (2) and (3) deleted by s. 20 (a) of Act 19 of 2008.]

(4) No councillor may be a party to or beneficiary under a contract for the provision of goods or services to any municipality or any municipal entity established by a municipality.

[Subitem (4) added by s. 20 (b) of Act 19 of 2008.]

7. **Declaration of interests**

(1) When elected or appointed, a councillor must within 60 days declare in writing to the municipal manager the following financial interests held by that councillor:

(a) shares and securities in any company;
(b) membership of any close corporation;
(c) interest in any trust;
(d) directorships;
(e) partnerships;
(f) other financial interests in any business undertaking;
(g) employment and remuneration;
(h) interest in property;
(i) pension; and
(j) subsidies, grants and sponsorships by any organisation.

(2) Any change in the nature or detail of the financial interests of a councillor must be declared in writing to the municipal manager annually.

(3) Gifts received by a councillor above a prescribed amount must also be declared in accordance with subitem (1).

(4) The municipal council must determine which of the financial interests referred in subitem (1) must be made public having regard to the need for confidentiality and the public interest for disclosure.
8. **Full-time councillors**

A councillor who is a full-time councillor may not undertake any other paid work except with the consent of a municipal council which consent shall not unreasonably be withheld.

9. **Rewards, gifts and favours**

A councillor may not request, solicit or accept any reward, gift or favour for-

(a) voting or not voting in a particular manner on any matter before the municipal council or before a committee of which that councillor is a member;

(b) persuading the council or any committee in regard to the exercise of any power, function or duty;

(c) making a representation to the council or any committee of the council; or

(d) disclosing privileged or confidential information.

10. **Unauthorised disclosure of information**

(1) A councillor may not without the permission of the municipal council or a committee disclose any privileged or confidential information of the council or committee to any unauthorised person.

(2) For the purpose of this item 'privileged or confidential information' includes any information-

(a) determined by the municipal council or committee to be privileged or confidential;

(b) discussed in closed session by the council or committee;

(c) disclosure of which would violate a person's right to privacy; or

(d) declared to be privileged, confidential or secret in terms of law.

(3) This item does not derogate from the right of any person to access to information in terms of national legislation.
11. **Intervention in administration**

A councillor may not, except as provided by law-

(a) interfere in the management or administration of any department of the municipal council unless mandated by council;

(b) give or purport to give any instruction to any employee of the council except when authorised to do so;

(c) obstruct or attempt to obstruct the implementation of any decision of the council or a committee by an employee of the council; or

(d) encourage or participate in any conduct which would cause or contribute to maladministration in the council.

12. **Council property**

A councillor may not use, take, acquire or benefit from any property or asset owned, controlled or managed by the municipality to which that councillor has no right.

12A. **Councillor in arrears**

A councillor may not be in arrears to the municipality for rates and service charges for a period longer than 3 months.

[Item 12A inserted by s. 45 of Act 51 of 2002.]

13. **Duty of chairpersons of municipal councils**

(1) If the chairperson of a municipal council, on reasonable suspicion, is of the opinion that a provision of this Code has been breached, the chairperson must-

(a) authorise an investigation of the facts and circumstances of the alleged breach;

(b) give the councillor a reasonable opportunity to reply in writing regarding the alleged breach; and

(c) report the matter to a meeting of the municipal council after paragraphs (a) and (d) have been complied with.

(2) A report in terms of subitem (1) (c) is open to the public.
(3) The chairperson must report the outcome of the investigation to the MEC for local government in the province concerned.

(4) The chairperson must ensure that each councillor when taking office is given a copy of this Code and that a copy of the Code is available in every room or place where the council meets.


(1) A municipal council may-

(a) investigate and make a finding on any alleged breach of a provision of this Code; or (b) establish a special committee-

(i) to investigate and make a finding on any alleged breach of this Code; and

(ii) to make appropriate recommendations to the council.

(2) If the council or a special committee finds that a councillor has breached a provision of this Code, the council may-

(a) issue a formal warning to the councillor;
(b) reprimand the councillor;
(c) request the MEC for local government in the province to suspend the councillor for a period;
(d) fine the councillor; and

(e) request the MEC to remove the councillor from office.

(3) (a) Any councillor who has been warned, reprimanded or fined in terms of paragraph (a), (b) or (d) of subitem (2) may within 14 days of having been notified of the decision of council appeal to the MEC for local government in writing setting out the reasons on which the appeal is based.

(b) A copy of the appeal must be provided to the council.

(c) The council may within 14 days of receipt of the appeal referred to in paragraph (b) make any representation pertaining to the appeal to the MEC for local government in writing.

(d) The MEC for local government may, after having considered the appeal, confirm, set aside or vary the decision of the council and inform the councillor and the council of the outcome of the appeal.
(4) The MEC for local government may appoint a person or a committee to investigate any alleged breach of a provision of this Code and to make a recommendation as to the appropriate sanction in terms of sub-item (2) if a municipal council does not conduct an investigation contemplated in sub-item (1) and the MEC for local government considers it necessary.

[Subitem (4) substituted by s. 21 of Act 19 of 2008.]

(5) The Commissions Act, 1947 (Act 8 of 1947), or, where appropriate, applicable provincial legislation, may be applied to an investigation in terms of sub-item (4).

[Subitem (5) substituted by s. 46 of Act 51 of 2002.]

(6) If the MEC is of the opinion that the councillor has breached a provision of this Code, and that such contravention warrants a suspension or removal from office, the MEC may-

(a) suspend the councillor for a period and on conditions determined by the MEC; or

(b) remove the councillor from office.

(7) Any investigation in terms of this item must be in accordance with the rules of natural justice.

15 Application of Code to traditional leaders

(1) Items 1, 2, 5, 6, 9 (b) to (d), 10, 11, 12, 13 and 14 (1) apply to a traditional leader who participates or has participated in the proceedings of a municipal council in terms of section 81 of the Municipal Structures Act.

(2) These items must be applied to the traditional leader in the same way they apply to councillors.

(3) If a municipal council or a special committee in terms of item 14 (1) finds that a traditional leader has breached a provision of this Code, the council may-

(a) issue a formal warning to the traditional leader; or

(b) request the MEC for local government in the province to suspend or cancel the traditional leader's right to participate in the proceedings of the council.
(4) The MEC for local government may appoint a person or a committee to investigate any alleged breach of a provision of this Code and to make a recommendation on whether the right of the traditional leader to participate in the proceedings of the municipal council should be suspended or cancelled.

(5) The Commissions Act, 1947, may be applied to an investigation in terms of subitem (4).

(6) If the MEC is of the opinion that the traditional leader has breached a provision of this Code, and that such breach warrants a suspension or cancellation of the traditional leader’s right to participate in the council’s proceedings, the MEC may:

(a) suspend that right for a period and on conditions determined by the MEC; or

(b) cancel that right.

(7) Any investigation in terms of this item must be in accordance with the rules of natural justice.

(8) The suspension or cancellation of a traditional leader’s right to participate in the proceedings of a council does not affect that traditional leader’s right to address the council in terms of section 81 (3) of the Municipal Structures Act.
ANNEXURE B

TERMS OF REFERENCE: SECTION 79 STANDING COMMITTEE: RULES AND ETHICS

A. SPECIFIC FUNCTIONS

The Section 79 Standing Committee: Rules and Ethics has the following functions:

1. Drafting the Rules and Orders By-laws of the CoT (i.e. inclusive of necessitated future amendments thereto);

2. Overseeing compliance to the Rules and Orders (i.e. inclusive of overseeing and enforcing adherence to the Code of Conduct for Councillors as contained in Schedule 1 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000)).

3. The initiating and drafting of reports regarding the establishment, composition, procedures, powers and functions / Terms of Reference of Committees of the Council.

4. To carry out investigations, submit findings and make appropriate recommendations to the Council pertaining to the alleged contravention of the Code of Conduct for Councillors as contained in Schedule 1 of the Local Government Municipal Systems Act, 2000 (Act 32 of 2000).

5. To investigate and make recommendations to the Council on any alleged contraventions by a Councillor of any policy document of the Council, statutory provision or any other obligatory provisions applicable to members of the Council.

6. In the process of executing the functions mentioned in 4. and 5. above, the procedure as contained in the Establishment Report (Ethics Committee), Council 27 September 2007, must be adhered to.

GENERAL FUNCTIONS

The Section 79 Standing Committee: Rules and Ethics will be used to, in relation to its core function, strengthen Council’s oversight role and will put Council in a position to:

- Determine priority areas for the said Committee (in conjunction with the Chairperson of Committees). Decisions on priority areas will be informed by research and analysis;
- Provide the said Committee with guidelines on how to deal with and implement its role;
- Ensure reports are written within the required format and according to approved guidelines;
- Ensure that departments, through the executive, receive resolutions on reports and provide feedback within the stipulated timeframes provided;
- Evaluate related processes at regular and appropriate intervals;
- Evaluate critical success factors.
- Ensure that proactive and reactive investigations are conducted as and when required.
PARTICIPATORY AND REPRESENTATIVE ROLE

The consideration of the Terms of Reference of this committee.

MONITORING ROLE

The monitoring role of this Committee may be extended to:

- Convening in conjunction with the Office of the Speaker public hearings on proposed by-laws and/or policy,
- Calling for evidence, including summoning Councillors and officials to appear before the Committee and to produce any documents required.

EXECUTIVE POWER

The consideration of any report submitted to it or referred to it by the Executive Mayor or Council.

ROLE OF THE CHAIRPERSON OF COMMITTEES

1. The role of the Chairperson of Committees is aimed at ensuring greater integration between Council Committees as well as efficient coordination of all Council matters.

2. The Chairperson of Committees will work closely with the Leader of Executive Business in coordinating the business of Council.

3. The Chairperson of Committees performs all her/his functions on behalf of and as directed by the Speaker.

The following are the roles and responsibilities of the Chairperson of Committees:

- Overseeing and co-ordinating the work of all Council Committees as directed by the Speaker;
- Liaise with the Executive, through the Leader of Executive Business, with regard to the coordination of Council work; and
- Assist the Speaker with the coordination of Council matters.

B. DELEGATED POWERS

The Committee has no decision-making powers. Therefore it holds a responsibility to submit reports to Council in line with the City's legislative and policy directives, as well as the Council approved Procedure for purposes of alleged breaches of the Code of Conduct by Councillors.

C. REPORTING LINE

1. Reports are referred to the Committee by Council or called for during meetings by its members/Chairperson, and as initiated by the Speaker/Office of the Speaker.

2. The Section 79 Standing Committee reports directly to Council on the outcomes in cases where Council had referred such reports to the Section 79 Standing Committee
D. CUSTODIANSHIP

The Chairperson of Committees will oversee and coordinate the work of this Committee on behalf of the Speaker.

E1. CHAIRPERSON

In terms of Section 79(2)(c) of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), the Council “must appoint” the Chairperson.

The Chairperson shall be a full-time Councillor, and may not be a Member of the Mayoral Committee (MMC).

2. ABSENCE OF THE CHAIRPERSON

In the event of the absence of the Chairperson at any meeting of the Committee, the Chair of Chairs may chair the meeting or the Chair of Chairs or Speaker may request another available Chairperson to chair the meeting.

F1. MEMBERS

In terms of Section 79(1)(b) the Council “may appoint” the members from among the Council’s members (ordinary Councillors).

In accordance with the Hare Quota in conjunction with the Largest Remaining Formulae, Section 79 Committees comprise of 20 members (Chairperson included), proportionally composed as follows:

- DA (9)
- ANC (8)
- EFF (2)
- FF+ (1)

Ex officio members:

- The Speaker
- The Executive Mayor
- The Chief Whip of Council (if not already a member)

2. VACANCIES AND AD HOC AMENDMENTS OF MEMBERS

The filling of membership vacancies, or ad hoc amendments of members, shall be submitted to the Chief Whip of Council for immediate implementation and a report in such regard shall be submitted to Council for cognisance only.

G. QUORUM AT MEETINGS

Eleven (11) members (Chairperson included).

H. DECISION-MAKING

Decision-making shall be conducted on the basis of a supporting vote of at least a majority of the members present at the meeting.
If on any matter there is an equality of votes, the Chairperson shall exercise a casting vote.

I. PROCEDURE AT MEETINGS

Meetings are conducted in accordance with the provisions of the Council’s Rules and Orders By-laws read with any specific Council approved Policy and Procedure regarding the functioning of the Committee.

J. FREQUENCY OF MEETINGS

The Committee shall have its meetings in accordance with the Council’s Annual Programme of meetings or as otherwise determined by the Chairperson after consultation with the Speaker.

* * * * * * *
2. OFFICE OF THE SPEAKER
REFERRAL BY THE SPEAKER ON THE REMARKS MADE BY
COUNCILLOR NM MHLONGO TOWARDS ANC ON ALLEGATIONS OF
NONE SERVICE DELIVERY
(From the Section 79 Standing Committee: Rules and Ethics:
21 October 2016)

1. PURPOSE

The purpose of this report is twofold:

- The Rules and Ethics Committee is to determine whether the remarks
  made by the EFF Councillor are true facts; and
- That if the facts are proven to be true, did the EFF Councillor
  contravene the Code of Conduct for Councillors.

2. STRATEGIC OBJECTIVES

This report seeks to address Strategic Objective 5, i.e. “To ensure good
governance, financial viability and optimal institutional transformation with
capacity to execute its mandate”.

3. BACKGROUND

At the Council meeting of the 31st August 2016, the Executive Mayor submitted
reports from the Mayoral Committee to Council for consideration, as contained
in Parts I, II and III. He further explained the reasons for the late submission of
the reports contained in the agenda.

The Executive Mayor further in terms of Section 13(5) of the Rules and Orders
withdrew items 4, 5, 9, 10, 11, 12, 13 and 14 from the agenda by indicating that
these reports would be resubmitted to Council in January 2017 as part of the
Annual Report of Council as per Section 127 of the MFMA.

The Executive Mayor during his address, among others, informed Council about
5 forensic reports in his possession that were, in his opinion, suppressed by the
previous administration. He further indicated that such reports would be made
available soon and necessary action against those implicated in the mentioned
reports would be taken.

Following an input by the following Councillors:

- Cllr KB Disoloane,
• Cllr RT Mashego, and
• Cllr A Maluleka

Councillor NM Mhlongo went on and said:

"… so Speaker I am beginning to think that this brigade who are busy singing in the Council that ‘Abana Valo’ in fact maybe ‘Abananqondo’ because asina service delivery, asina jobs, asina economy …"

The Speaker thereafter asked that Councillor NM Mahlangu withdraws the statement “Abananqondo” following which the Councillor went on to say the following:

"…I said maybe. If you are going to burn the City because you are fighting to become Mayors, then awuna ncgondo. You are busy burning Public Infrastructure, maybe awuna ncgondo. How can you burn public infrastructure just to fight to become the Mayor of the City when you have not even won elections. Awuna ncgondo. When you burn public infrastructure that is supposed to help our people, maybe awuna ncgondo. We will not burn down Municipal buildings which are supposed to help deliver services to our people Cllr Mapiti and their leader Thoko Didiza …"

The speaker subsequent to the above statements by Cllr NM Mhlongo referred the matter to Rules and Ethics Committee.

4. RELEVANT LEGISLATIVE PROVISIONS

4.1 This matter was submitted and will be dealt with in terms of Section 36 of the Rules and Orders By-Law read with Schedule 1 of the Municipal Systems Act, 2000 (Act 32 of 2000), Section 2 (b) General Conduct of Councillors which states that:

"36 Irrelevance, tedious repetition, unbecoming language and breach of order

1) The Speaker or Chairperson of a committee may call the attention of a member to irrelevance, tedious repetition, unbecoming language or any breach of order on the part of that member and may direct the member, if the member speaking, to discontinue his or her speech or, in the event of persistent disregard of the authority of the speaker or relevant chairperson, to retire from the meeting.

2) The Speaker or Chairperson of a committee may direct a
member to apologise or withdraw an allegation if the allegation injures or impairs the dignity or honour of a member or an official of the City of Tshwane, or any other person."

Schedule 1 of the Municipal Systems Act, 2000 (Act 32 of 2000), Section 2 (b)
General Conduct of Councillors

"A councillor must-

(b) At all times act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised."

5. DISCUSSION

In order to assist the committee in making appropriate recommendations to the Council, the following should be considered:

5.1 Whether the remarks made by an EFF Cllr constitutes contravention of Section 36(2) of the Rules and Orders.

In order to determine whether the remarks made by an EFF Councillor constitutes contravention of Section 36(2) of the Rules and Orders, the meaning of “abana nngondo” is vital.

In a direct translation the words “abana nngondo” means they don’t have brains or the capabilities of thinking rationally.

5.2 Whether the remarks made by an EFF Councillor contravenes Section 2(b) of the Code of Conduct for Councillors.

According to the explanation above, the EFF Councillor did contravene section 2(b) of the Code of Conduct for Councillors.

6. COMMENTS FROM STAKEHOLDER DEPARTMENTS

6.1 COMMENTS OF THE LEGAL ADVISOR

Not applicable as relevant and applicable legislation is quoted in the body of the report.

7. IMPLICATIONS

There are none
7.1 COMMUNICATIONS

This report is for consideration by the Committee and will be circulated with the notice, in terms of the Rules and Orders By-law.

7.3 FINANCES

There is none

7.4 PREVIOUS COUNCIL AND MAYORAL COMMITTEE RESOLUTIONS

There is none

7.5 CONSTITUTIONAL AND LEGAL FACTORS

This report seeks to implement Section 2 – General Conduct of Councillors as set out in the Rules and Orders By-law as read with Schedule 1 of the Municipal Systems Act, 2000 (Act 32 of 2000).

8. CONCLUSION

Councillor NM Mhlongo contravened Section 2(b) of the Code of Conduct for Councillors, by making remarks that impaired the dignity of other members of Council.

IT WAS RECOMMENDED (TO THE SECTION 79 STANDING COMMITTEE: RULES AND ETHICS: 21 OCTOBER 2016):

That it be recommended to the Council:

1. That cognisance be taken of the contents of this report.

2. That Cllr NM Mhlongo be ordered to withdraw the statement “abananqondo” in Council.

After the Chairperson put this matter for discussion at the Section 79 Standing Committee: Rules and Ethics Meeting of 21 October 2016, he suggested that the words “be ordered” in recommendation 1 be deleted as, in his opinion, these words are too harsh.

Hereafter the following Councillors took part in the debate:

- **Councillor JM Sindane**

  Councillor Sindane responded that the Speaker already requested Councillor Mhlongo in Council to withdraw her statement. However, she refused deliberately to do so. That is why the matter has been referred to the Section 79 Standing Committee: Rules and Ethics.
Councillor MD Matsena indicated to the Chairperson that he is in agreement with Councillor Sindane.

He then referred the Committee to the following paragraph under paragraph 3 BACKGROUND:

“The Speaker thereafter asked that Councillor NM Mhlongo withdraws the statement ‘Abananqondo’ following which the Councillor went on to say the following:”

Councillor Matsena pointed at that, in view of the above, that was the reason why the words “be ordered” had to remain in recommendation 2.

Furthermore, Councillor Matsena explained as follows:

The Speaker, in Council will give an instruction to a particular Councillor. If the Councillor then refuse to obey the Speaker, then that is a referral to the Section 79 Standing Committee: Rules and Ethics.

That is why the matter with regard to Councillor Mhlongo was referred to this Committee.

With regard to the word “be ordered”:

If the Council would order Councillor Mhlongo to withdraw her statement and if Councillor Mhlongo would fail to do so, then the Councillor must be charged in terms of the Code of Conduct for Councillors whereafter the Councillor will appear before this Committee.

Councillor MO Mabogwana

Councillor Mabogwana was of the opinion that the statement is not exactly what Councillor Mhlongo has said. Councillor Mhlongo, in her statement, has used the words “maybe” which means possibly. She did not say Councillors of the ANC “abananqondo”. She said “maybe abananqondo.”

Councillor JM Sindane

Councillor Sindane reiterated that Councillor Mhlongo was given time to withdraw her statement. She however, refused. Instead, she repeated what she has said.

Councillor KB Disoloane

Councillor Disoloane was of the opinion that Councillor Mhlongo refused to withdraw her statement because she used the word “maybe.”
He then requested a verbatim and based on the verbatim the Committee could clarify the issue.

- Councillor MD Matsena

Councillor Matsena responded as follows:

If a person say “abananqondo” or “maybe abananqondo” it is the same.

- On a point of order Councillor M Mtimkulu responded as follows:

Councillor Matsena is busy with semantics in respect of the word “maybe”.

When the word “maybe” is being used in front of any word, it nullifies the assertion with the word that follows the word “maybe”.

For Councillor Matsena to say that the members don’t understand what the word “abananqondo” means is insulting. An extract from the verbatim is contained in the document and it is very clear what Councillor Mhlongo has said. It is not for the Committee to argue in respect of semantics as to what the Councillor meant or intend to say that Councillors don’t have brains or maybe Councillors don’t have brains. It is in the documents that she started with the word “maybe”.

Therefore, in his opinion, to say that Councillor Mhlongo stated “abananqondo” is not true.

- Councillor MD Matsena hereafter proceeded as follows:

Firstly, it is not said that Councillor Mhlongo has contravened the Code of Conduct for Councillors. This is a standard process of Council where a Councillor is requested to withdraw her statement.

He is in agreement with Councillor Mtimkulu that the Committee does not argue in respect of the semantics.

Further, this matter was not referred to the Rules and Ethics Committee by any Councillor. It was referred by the Speaker after the Speaker instructed Councillor Mhlongo to withdraw her statement and she subsequently refused to withdraw.

It was on the basis that Councillor Mhlongo disobeyed the instruction of the Speaker that she referred the matter to the Rules and Ethics Committee.

Therefore Councillor Mhlongo must be ordered to withdraw her statement.

Hereafter the following Councillors took part in the debate:
- Councillor MO Mabogwana:

If the Speaker has referred the matter to the Rules and Ethics Committee based thereon that Councillor Mhlongo stated that ANC Councillors are “abananqondo”, then the Speaker is not correct because that is not exactly what Councillor Mhlongo has said. Councillor Mhlongo stated “maybe abananqondo.”

The Committee has to agree that Councillor Mhlongo stated “maybe abananqondo”.

- Councillor M Mtimkulu

Councillor Mtimkulu proposed that recommendation 2 be amended to read as follows:

(Unaltered)

“That Councillor NM Mhlongo be ordered to withdraw the statement ‘maybe abananqondo’ in Council.”

- Councillor JM Sindane

Councillor Sindane proposed that Councillor Mhlongo be requested to withdraw her statement as this is an insulting statement.

- Councillor KB Disoloane

Councillor Disoloane emphasised that the matter is “maybe abananqondo”. Therefore, to his understanding there is nothing wrong about what Councillor Mhlongo said as she used the word “maybe”.

On a point of order Councillor MD Matsena referred the Committee to the following paragraph under paragraph 3 BACKGROUND:

(Unaltered)

“If you are going to burn the City because you are fighting to become Mayors, then, ‘awuna ncgondo’”.

Councillor Matsena then indicated that he agrees with the proposal of Councillor M Mtimkulu that recommendation 2 be amended to include the word “maybe abananqondo.”

- Councillor MO Mabogwana

Councillor Mabogwana responded that the word “maybe” could be added in recommendation 2, but it must be explained what is wrong with the statement “maybe abananqondo” as Council is a place for freedom of expression.
• Councillor M Mtimkulu

Councillor Mtimkulu responded that if a Councillor says anything derogatory to another Councillor and add the word “maybe” in front, Councillors would be able to circumvent the rules.

After further discussion by the Committee, the Section 79 Standing Committee: Rules and Ethics resolved to recommend as set out below.

RECOMMENDED:

1. That cognisance be taken of the content of the report.
2. That Councillor NM Mhlongo be ordered to withdraw the statement “maybe abananqondo” in Council.

(Remark:

Councillor MO Mabogwana requested that his dissenting vote be recorded against the resolution of the Section 79 Standing Committee: Rules and Ethics of 21 October 2016.)
3. OFFICE OF THE SPEAKER
REFERRAL OF REMARKS MADE BY THE SPEAKER OF COUNCIL REGARDING AFRICAN NATIONAL CONGRESS ATTITUDE TOWARDS THE ISSUE OF RACISM AT THE PRETORIA HIGH SCHOOL FOR GIRLS AND OTHER SCHOOLS
(From the Section 79 Standing Committee: Rules and Ethics: 21 October 2016)

1. PURPOSE
The purpose of this report is for the Rules and Ethics Committee to determine whether the remarks made by the Speaker of Council regarding the African National Congress on the issue of Pretoria Girls High School amounts to the contravention of the Code of Conduct or the Rules and Orders By-Laws.

2. STRATEGIC OBJECTIVES
This report seeks to address Strategic Objective 4, i.e. “promote good governance and active citizenry”.

3. BACKGROUND
At the Council meeting of the 31st August 2016, during the consideration of Part D of the Business of Council on Unopposed Proposals by the Speaker of which the fourth item was a report about the racial issue at Pretoria Girls High school.

During the consideration of this Item by Council, the Speaker stated that:

(Unaltered)

“…It has come to my attention in the past few days about among others the probable element of racism at the Pretoria High School, and I must say that it is not only in Tshwane that we experience this, it is a national phenomenon and even in Bloemfontein is an experience and I wonder after 21 years of democracy and the Ruling Party under their watch, this is still continuing …”

After participation of Cllr Ramabodu, Council then erupted into chaos. The Speaker adjourned the meeting and proceeded ten minutes later. Upon proceeding Cllr MD Matsena went on to say:

(Unaltered)

“…Don’t raise political issues because we will respond particularly from the Chair. Now I want us to do the following, to say your statement around the Girls High particularly in relation to your political statement that this also
happened other municipalities, in other areas where the ruling party is in charge, I will request that, that particularly statement be referred to the Rules and Ethics Committee whether you did not act outside the scope of your responsibility. Now you have passed that particularly on the issue, you have passed it under Speaker’s Unopposed Proposals.”

The matter was referred.

4. RELEVANT LEGISLATIVE PROVISIONS

The following legislation finds application in the matter:

4.1 Section 37 of the Municipal Structures Act (Act 117 of 1998) - Functions of Speakers

“The Speaker of a municipal council -

(a) presides at meetings of the council;
(b) performs the duties and exercises the powers delegated to the Speaker in terms of section 59 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);
(c) must ensure that the council meets at least quarterly;
(d) must maintain order during meetings;
(e) must ensure compliance in the council and council committees with the Code of Conduct set out in Schedule 1 to the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000); and
(f) must ensure that council meetings are conducted in accordance with the rules and orders of the council.”

4.2 Section 2 of Schedule 1 of the Municipal Systems Act, 2000 (Act 32 of 2000) - General Conduct of Councillors

“A councillor must –

(a) perform the function of office in good faith, honestly and a transparent manner, and
(b) at all times act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised.”

5. DISCUSSION

In order to assist the committee in making appropriate recommendations to the Council, the following should be considered:
The remarks were made under Speaker's Unopposed Proposals and Other Proposals allowed by the Speaker. The Speaker does not expect any respond or debate when items are brought under this section of the Order of Business of Council meeting. As a result, African National Congress could not respond to the remarks but to have the matter referred to Rules and Ethics Committee.

The Speaker was making political remarks, however, the Speaker of Council as the chairperson is expected at all times to chair in good faith and not to unduly favour his or her party during the Council meeting.

The Speaker is expected to treat parties equally and respectfully. He or she is to refrain from entering into the debates or make political statements or remarks which may be seen to be unduly favouring one party over the other or demeaning a party during Council meetings. He or she is only there to chair.

The context under which the remarks were made by the Speaker clearly indicated that the Speaker did not expect the African National Congress to defend or respond because she made them under Speaker's Unopposed Proposals and Other Proposals allowed by the Speaker.

The Speaker acted outside the scope of Section 37 of the Municipal Systems Act as set out above by making remarks which have an element of biasness.

6. COMMENTS FROM STAKEHOLDER DEPARTMENTS

6.1 COMMENTS OF THE LEGAL ADVISOR

The report was drafted based on legal advice of the Director: Legal Services in the Office of the Speaker.

7. IMPLICATIONS

7.1 HUMAN RESOURCES

There are none.

7.2 FINANCES

There are none.

7.3 COMMUNICATION

This report is for consideration by the Committee and will be circulated with the notice, in terms of the Rules and Orders By-law.

7.4 PREVIOUS COUNCIL AND MAYORAL COMMITTEE RESOLUTIONS

There are none.
7.5 CONSTITUTIONAL AND LEGAL FACTORS

This report seeks to implement Section 37 of the Structures Act read with Section 2 – General Conduct of Councillors as set out in the Rules and Orders By-law as read with Schedule 1 of the Municipal Systems Act, 2000 (Act 32 of 2000).

8. CONCLUSION

The Municipal Structures Act read with the Code of Conduct for Councillors is very clear on how the Speaker of Council must conduct himself or herself during Council meetings and during his or her office. Based on the discussion above, the remarks made by the Speaker have the element of biasness and may result in undue prejudice to the African National Congress mainly because the remarks were made during Unopposed Proposals by the Speaker and other Proposal allowed by the Speaker. The African National Congress could not defend itself or argue about the remarks because of the topic under which they were made. The Speaker exceeded her powers as set out in Section 37 of the Municipal Structures Act, as the chairperson. She is expected to lead by example at all times and act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality(Council)is not compromised as set out in Section 2(a) and (b) of the Code of Conduct for Councillors.

After the Chairperson put this matter for discussion at the Section 79 Standing Committee: Rules and Ethics meeting on 21 October 2016, Councillor H Weber indicated to the Committee that the Speaker should at all times be impartial and refrain from making any statements. Therefore, they (members of the DA) are in agreement with the recommendation of the report.

Hereafter Councillor MD Matsena expressed his appreciation and thanked the members of the Committee, in particular the members of the DA for their view point on this matter.

It was thereafter resolved to recommend as set out below.

RECOMMENDED:

1. That cognisance be taken of the contents of this report.

2. That the Speaker should withdraw her remarks in Council.