

Features and successes of a properly structured municipality

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Legislation and compliance

- Legislation enacted for local government provides a very refined system of steps and processes to ensure that the objectives and competencies of local government are fulfilled
- Legal compliance with local government laws will go a long way in structuring well functioning municipalities
- Non-compliance, on the other hand, coupled with the absence of properly functioning systems of oversight and accountability will have devastating effects on local government as a very important and local arm of service delivery of the State

In terms of section 152 of the Constitution, the objectives of local government (which consists of municipalities) are:

- to provide democratic and accountable government for local communities;
- to ensure the provision of services to communities in a sustainable manner;
- to promote social and economic development;
- to promote a safe and healthy environment; and
- to encourage the involvement of communities and community organisations in the matters of local government

Governance beyond legislation

- The King IV code for corporate governance goes beyond mere compliance with legislation
- Instead of rules and explicit requirements, principles in the form of desired outcomes have been developed to enhance corporate governance
- Unlike what is expected, these principles have been adapted by the King Commission for local governments and provide a handy tool for structuring municipalities beyond mere compliance with legislation

Section 153 of the Constitution furthermore refers to the developmental duties of municipalities. Thus, municipalities provide a foundation for our democracy; the efficiency with which they deliver services is the basis for economic and social cohesion in the context of a developmental state

“Good governance is essential to ensure the success of the municipality itself, and to protect and advance the interests of those whom it serves. Good corporate governance assists by enhancing the functioning of leadership structures, and by providing the arrangements which enable the council to govern the municipality in such a way that it is able to meet its objectives”

(Part 6.2 Supplement for Municipalities King IV)

Principle 1: The council should lead ethically and effectively

- Ethical and effective leadership is exemplified by integrity, competence, accountability, fairness and transparency
- Members of the council should individually and collectively cultivate these characteristics and exhibit them in their conduct
- Conflict of interests and politics usually pose a challenge
- Ethics and effectiveness are directly aligned to the duty to represent the interests of the local community. This was explicitly spelled out by the Constitutional Court in the matter of **United Democratic Movement v Speaker of the National Assembly and Others 2017 (5) SA 300 (CC)**

“Central to the freedom “to follow the dictates of personal conscience” is the oath of office. Members are required to swear or affirm faithfulness to the Republic and obedience to the Constitution and laws. Nowhere does the supreme law provide for them to swear allegiance to their political parties, important players though they are in our constitutional scheme. Meaning, in the event of conflict between upholding constitutional values and party loyalty, their irrevocable undertaking to in effect serve the people and do only what is in their best interests must prevail. This is so not only because they were elected through their parties to represent the people, but also to enable the people to govern through them, in terms of the Constitution. The requirement that their names be submitted to the Electoral Commission before the elections is crucial. The people vote for a particular party knowing in advance which candidates are on that party’s list and whether they can trust them.”

Principle 2: The council should govern the ethics of the municipality in a way that supports the establishment of an ethical culture

- In addition to assuming responsibility for their own character and conduct, in accordance with Principle 2, municipal councils should govern the ethics of the municipality
- Schedule 2 of the *Municipal Systems Act* contains a Code of Conduct for Municipal Staff Members
- The recommended practices under Principle 2 provide useful guidance on how to ensure and oversee adherence to this code and the ethics of the municipality, generally

Principle 3: The council should ensure that the municipality is and is seen to be a responsible corporate citizen

- Corporate citizenship is an alternative expression of the objectives of the municipality as set out in section 152(1) of the Constitution (see above)
- In essence, municipalities are required to be in touch with the needs of it's community and govern with a "heart and soul" that makes the municipality an effective corporate citizen

Principle 4: The council should appreciate that the municipality's core purpose, its risks and opportunities, strategy, business model, performance and sustainable development are all inseparable elements of the value creation process

- The practices recommended under Principle 4 address the development and approval of the organisation's strategy, implementation thereof and organisational performance
- For municipalities, strategy-development and performance-management processes are largely legislated
- Political will should exist to ensure that this integral part of progressively advancing the interest of communities takes place

Principle 5: The council should ensure that reports issued by the municipality enable stakeholders to make informed assessments of the municipality's performance and its short, medium and long-term prospects

- Budgeting and Integrated Development Processes should actively involve communities
- They should give effect to input derived from public participation and also be instruments of accounting or accountability insofar as the management of progress is concerned

Principle 6: The council should serve as the focal point and custodian of corporate governance in the municipality

Under Principle 6, the primary leadership role of any governing body is expressed as encompassing the following:

- a. steering the organisation and setting its strategic direction;
- b. approving policy and planning that give effect to the direction provided;
- c. overseeing and monitoring the implementation and execution by management; and
- d. ensuring accountability for organisational performance by means of, among others, reporting and disclosure

Principle 7: The council should comprise the appropriate balance of knowledge, skills, experience, diversity and independence for it to discharge its governance role and responsibilities objectively and effectively

- This principle is primarily the function of political parties recruiting, selecting and deploying appropriately qualified public representatives

Principle 8: The council should ensure that its arrangements for delegation within its own structures promote independent judgment, and assist with balance of power and the effective discharge of its duties

- Section 59 of the *Municipal Systems Act*
- Section 79 of the *Municipal Structures Act*

Principle 9: The council should ensure that the evaluation of its own performance and that of its committees, its speaker and its individual councillors, support continued improvement in its performance and effectiveness

- This is an important aspect that is currently receiving very little attention

Principle 10: The council should ensure that the appointment of, and delegation to, management contribute to role clarity and the effective exercise of authority and responsibilities

- Appointment of senior management
- Accountability and performance

Principle 11: The council should govern risk in a way that supports the municipality in setting and achieving its strategic objectives

- Proactive risk identification and management should be an integral part of governance

Principle 12: The council should govern technology and information in a way that supports the municipality setting and achieving its strategic objectives

- IT and information systems should be properly managed and advantages in cost containment should be pursued
- Both internal and external capacity should exist and total dependence on external service providers should be avoided

Principle 13: The council should govern compliance with applicable laws and adopted, non-binding rules, codes and standards in a way that supports the municipality being ethical and a good corporate citizen

- Guidance and access to reliable, objective advice pertaining to compliance is extremely important in a volatile political environment and can offer great assistance in progress with decision making
- Legislation, policies, rules and codes should be common ground where competing views are expressed

Principle 14: The council should ensure that the municipality remunerates fairly, responsibly and transparently so as to promote the achievement of strategic objectives and positive outcomes in the short, medium and long term

- Performance should be acknowledged and promoted
- Poor performance should be managed and incapacity should be addressed to ensure optimum performance

Principle 15: The council should ensure that assurance services and functions enable an effective control environment, and that these support the integrity of information for internal decision-making and of the municipality's external reports

- Common standards of performance and measurability are key elements of ensuring progress
- Certainty enhances control and makes expectations insofar as service delivery, manageable

Principle 16: In the execution of its governance role and responsibilities, the council should adopt a stakeholder-inclusive approach that balances the needs, interests and expectations of material stakeholders in the best interests of the municipality over time

- The identification of stakeholders of interested and/or affected parties
- The involvement of stakeholders of interested and/or affected parties
- Giving effect to input derived in final decision making
- Feedback

(IDP and budgeting)