

BERGRIVIER MUNICIPALITY**BY-LAW RELATING TO THE RULES OF ORDER FOR THE CONDUCT OF
MEETINGS OF THE COUNCIL OF BERGRIVIER MUNICIPALITY**

Under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996, the Bergrivier Municipality, enacts as follows:-

Table of Contents

1. Definitions

CHAPTER I: APPLICATION OF BY-LAW

2. Application
3. Supplementation

CHAPTER 2: MEETINGS

4. Chairing of meetings
5. Commencement of meeting
6. Order of business
7. Speaker may introduce urgent matter
8. Business to be transacted
9. Meetings and agendas
10. Attendance at Meetings
11. Leave of Absence
12. Sanction for non-attendance
13. Minutes
14. Quorum

CHAPTER 3: DECISIONS

15. Unopposed Matters
16. Manner of Voting
17. Decisions
18. Unopposed issues
19. Rescission of resolutions

CHAPTER 4: PUBLIC ACCESS

20. Admittance of Public
21. Non-disclosure of matters
22. Exclusion of the public and media from meetings
23. Re-admission of public and media to meetings
24. Invitation to non-member
25. Deputations

CHAPTER 5: ORDER AT MEETINGS

26. Conduct of non-members and members of the public
27. Conduct of members
28. Offences

CHAPTER 6: RULES OF DEBATE

29. Member to address speaker
30. Order of Priority
31. Precedence of speaker
32. Relevance
33. Right to speak and limitation
34. Length of speeches
35. Re-introduction of motion or question
36. Notices of motion
37. Notices of questions
38. Absence of mover or questioner
39. Motions and questions on matters dealt with by a committee
40. Recommendation by executive mayor or committee regarded as motion
41. Questions
42. Motion of exigency
43. Motions of course
44. Points of order
45. Points of explanation
46. Withdrawal of motion, amendment or question
47. Speaker's ruling on points of order and explanation
48. Order of debate
49. Amendment of motion
50. Postponement of consideration of the matter
51. Adjournment of council to another date
52. Adjournment of council for a specified time
53. Adjournment of debate
54. Voting on a Matter
55. Removal of matter from the agenda

CHAPTER 7: PROCESS FOR ADOPTION OF BY-LAW

56. Submission of draft by-law
57. First submission to council
58. Submission by executive mayor
59. Publication
60. Second submission to council
61. Debating procedure

CHAPTER 8: GENERAL PROVISIONS

62. Official languages
63. Privileges and immunities for councillors

64. Municipal employees
65. Offences and penalties
66. Revocation of by-laws
67. Short title and commencement

SCHEDULE: STANDARD PROCEDURES FOR NON-ATTENDANCE BY MEMBERS

1. Definitions

In this by-law, the Afrikaans text prevails in the event of any conflict with the English text, and unless inconsistent with the context –

“**Code**” means the Code of Conduct for councillors set out in Section 54 and Schedule 1 of the Systems Act;

“**committee**” means a committee established by council in terms of section 79 or 80 of the Structures Act, or any other committee established by council for a specific purpose;

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**council**” means the municipal council of Bergrivier;

“**councillor**” means a member of the municipal council of Bergrivier municipality and includes a member of any committee established by the council;

“**MEC**” means the Member of the Executive Council responsible for local government in the province of the Western Cape;

“**meeting**” means the meetings of the municipal council and any committee established by council;

“**member**” means a member of the municipal council and any committee established by council;

“**motion**” means a motion of which written notice is given by a member, but shall not include a motion as contemplated by sections 43 and 44 and order motions as set out in section 48;

“**municipal manager**” means the person appointed by council in terms section 54A of the Systems Act or a person delegated by the municipal manager;

“**municipality**” means the Bergrivier Municipality established in terms of Section 12 of the Municipal Structures Act, 117 of 1998, and includes any political structure, political office bearer, councillor, duly authorised agent or any employee acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, councillor, agent or employee;

“**notice**” means notice given of meetings which notice must be in writing including notice by electronic mail and cellular phone;

“**party**” means a party as defined in the Structures Act,

“**rules**” means the provisions of this by-law (alternatively these Rules of Order);

“**speaker**” means the member elected as chairperson of the council or any other member elected as chairperson of the council and the chairpersons of committees established by council and members acting in those capacities;

“**Systems Act**” means the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);

“**Structures Act**” means the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998); and

“**whip**” means a member of a party in the council appointed by that party as whip to assist (alternatively, together with the chief whip) with the functioning of the council in terms of this by-law.

CHAPTER 1: APPLICATION OF BY-LAW

2. Application

- (1) This by-law applies to-
 - (a) all meetings of council;
 - (b) all committees of council established in terms of sections 79 or 80 of the Structures Act and all meetings that are the result of any of the aforementioned; and
 - (c) any other committee established by council for a specific purpose unless such committee determines its own rules and procedures; and
 - (d) except where it is clearly inappropriate, a section applying to members in any proceedings, shall also apply to a non-member who takes part in those proceedings with the approval of the speaker.
- (2) Notwithstanding the provisions of sub section (1), the provisions of this section shall not apply to the Attendance Committee as contemplated in the Schedule to this by-law or any special committee established by council in terms of item 14(1)(b) of the Code.

3. Supplementation

- (1) The speaker may make a ruling with regard to the application of this by-law and in respect of any eventuality for which this by-law does not make provision and no further discussion shall be allowed on the ruling.
- (2) Notwithstanding the provisions of section 52, the speaker may order that the council adjourn for a specific time, not exceeding one hour, should circumstances require this.
- (3) The speaker's decision will be final and binding on all councillors and the public.
- (4) The ruling of the speaker must be entered in the minutes.

CHAPTER 2: MEETINGS

4. Chairing of meetings

- (1) The speaker is the chairperson at all meetings of the council.
- (2) Should the speaker not be present at a meeting, an acting speaker for that meeting will be elected from the members present by a majority of votes.
- (3) Where the office of the speaker becomes vacant, the municipal manager must call a special council meeting for the purpose of electing a speaker, at a date and time determined by him, provided that such special meeting must take place within 14 days after the office became vacant.
- (4) If the office of the speaker becomes vacant during a meeting, an acting speaker for that meeting must be elected from the members present at the meeting.
- (5) The municipal manager, or in the absence of a municipal manager, a person designated by the MEC, presides over the election of a speaker.

5. Commencement of Meeting

The speaker must take the chair precisely at the time for which the meeting is convened and must proceed immediately with the business of the meeting subject to section 14.

6. Order of Business

- (1) The business of meetings will appear in the following order on the agenda –
 - (a) election of acting speaker, if necessary;
 - (b) applications for leave of absence;
 - (c) declaration of interests;

- (d) confirmation of minutes;
 - (e) statements and communications by the speaker;
 - (f) statements and communications by the executive mayor;
 - (g) interviews with deputations;
 - (h) consideration of reports;
 - (i) urgent matters submitted by the municipal manager;
 - (j) consideration of notices of motion;
 - (k) consideration of notices of questions;
 - (l) consideration of motions of exigency;
 - (m) consideration of items and matters not finalised;
- (2) The speaker may change the order of the business appearing on the agenda.
- (3) A member who wishes to have the order of business on the agenda changed must approach the speaker with this request prior to the meeting, but any changes remain the prerogative of the speaker.
- (4) Agendas may be provided in electronic format.

7. Speaker may introduce urgent matters

The speaker, executive mayor and the municipal manager may at any time and without notice make any statement or introduce urgent matters and such matters may be discussed if the majority of the members agree thereto.

8. Business to be transacted

Except as otherwise provided in these rules, no matter not specified in the agenda of a meeting of the council shall be transacted at such meeting.

9. Meetings and agendas

- (1) The speaker or a person designated by the speaker must prepare the agenda for a meeting.
- (2) All meetings must be open to members of the public unless they are excluded in terms of section 21.
- (3) The council must meet at least quarterly and at least 72 hours notice must be given of every ordinary council meeting.
- (4) The speaker shall decide when and where the council meets, but if a majority of the members request the speaker in writing to convene a meeting, the speaker must convene a meeting at a time as set out in the request.
- (5) (a) If the speaker fails to convene a special council meeting referred to in sub section (4), the majority of members may request the municipal manager to convene such meeting and the municipal manager must convene such meeting at a time set out in the request.
- (b) A notice by the majority of members must clearly indicate the business that will be conducted at the special council meeting. No other business, except with the agreement of a majority of members, may be conducted at the special council meeting.
- (6) The municipal manager must, at the direction of the speaker, give notice in writing to each member of every meeting decided upon in terms of subsections (4) and (5).
- (7) The speaker or in his or her absence, the executive mayor, shall determine whether a meeting is urgent or not.
- (8) In the case of a urgent or special meeting at least 24 hours notice must be given of the meeting or such lesser period as the speaker may determine.

(9) The municipal manager must give notice to the public of the day, time and venue of every meeting by publishing a notice in a local newspaper determined by him or her; provided that he or she may depart from this requirement when the time constraints make this impossible in respect of urgent meetings.

(10) Each member of the municipal council must submit in writing an electronic mail address, a mobile telephone number for instant messaging as well as a physical address within the Bergrivier municipal area where he or she can receive notification of meetings and other official correspondence. Electronic notice of a meeting or any other official correspondence to any of the addresses or numbers provided will constitute proper notice of meeting.

(11) Hard copies of agendas and all official correspondence may be made available at the various municipal offices provided it is practical or economical to do so in the circumstances.

10. Attendance at Meetings

(1) Every member attending a meeting of the council or a committee of which he or she is a member must sign his or her name in the attendance register kept for such purpose.

(2) A member must attend each meeting of the council or a committee of which he or she is a member except when –

- (a) leave of absence is granted in terms of section 11 of this bylaw; or
- (b) the member is required to withdraw in terms of law.

11. Leave of Absence

(1) A member who wishes to absent himself or herself from a meeting of council or a committee must make an application to the speaker in writing at least 48 hours before the meeting. An e-mail directed to the speaker in this regard will be acceptable.

(2) Upon receipt of the application referred to in sub section (1), the speaker must consider the application, and may approve or reject the application. The speaker must notify the member of his or her decision, and reasons in case of refusal, at least 24 hours before the meeting.

(3) The speaker may grant leave of absence to a member who has been prevented by special circumstances from applying for leave of absence in accordance with sub section (1).

(4) The special circumstances referred to in sub section (3) may include –

- (a) illness of the member; or
- (b) illness or death of close relatives of the member; or
- (c) a member being on official business of council.

(5) Sub sections (1) to (4) apply, with the necessary changes, in respect of the speaker, and in such application, a reference in those sub sections to the speaker is regarded to be a reference to the council.

(6) A member, who without permission, refrains from remaining in attendance at a meeting shall be regarded as being absent without leave.

(7) The names of all members to whom leave of absence from any meeting has been granted and those of all members who absent themselves without leave from any meeting or who fail to remain in attendance at a meeting, must be recorded in the minutes or report(s) relating to such meeting.

12. Sanction for non-attendance

Subject to the provisions of the Code, the speaker must act in accordance with the standing procedures as reflected in the Schedule to this by-law against members who do not comply with sections 10 and 11 of this by-law.

13. Minutes

- (1) Minutes of the proceedings of meetings must be recorded electronically and compiled by the municipal manager within two weeks of the meeting in printed format and be confirmed by council or the relevant committee at the next ordinary meeting and signed by the speaker.
- (2) In exceptional cases where there is uncertainty regarding a specific item in minutes, the minutes may be approved without that item, which item must then be approved at the next meeting in its existing or amended form. The electronic version of the minutes must be kept in terms of council's electronic records management policy.
- (3) For the purpose of confirmation, the minutes shall be taken as read if a copy, including an electronic copy, was sent to each member within 48 hours before the next meeting.
- (4) No motion or discussion shall be allowed on the minutes, except in connection with the correctness thereof.
- (5) If a member is dissatisfied with the correctness of the minutes, he or she must-
 - (a) state the item with which he or she is dissatisfied; and
 - (b) propose a motion outlining the alternative wording to amend the minutes.

14. Quorum

- (1) A majority of the members shall constitute a quorum.
- (2) If there is no quorum at the time for which the meeting is scheduled, the speaker must take the chair as soon as a quorum is present.
- (3) Whenever there is no quorum, the start of the meeting must be delayed for no longer than 30 minutes and if at the end of that period, there is no quorum, the speaker must adjourn the meeting to another time, date and venue at his or her discretion and record the names of those members present.
- (4) Whenever the speaker is not present and there is no quorum, the start of the meeting must be delayed for no more than 30 minutes and if there is no quorum at the end of that period, no meeting shall take place and the municipal manager must record the names of the members present.
- (5) Whenever during a meeting, there is no quorum the speaker must suspend the proceedings until a quorum is again present, provided that if after 10 minutes there is still no quorum the speaker must adjourn the meeting.
- (6) Whenever a meeting is adjourned owing to the absence of a quorum, the time of such adjournment, as well as the names of the members present, must be recorded in the minutes.
- (7) The municipal manager must report the names of the absent members to the speaker in terms of Item 4 of the Schedule for the purposes of an investigation in terms of Item 5 of the Schedule.

CHAPTER 3: DECISIONS**15. Unopposed Matters**

Whenever council is called upon to consider a matter before it and there is no opposition from any member, an unanimous vote must be recorded in the minutes.

16. Manner of Voting

- (1) The speaker must put every opposed motion to the vote by calling upon the members to indicate by a show of hands, unless otherwise prescribed by law, whether they are for such motion or against it, whereupon the speaker must declare the result of such vote.

- (2) If the majority of the members present request the speaker that a vote should take place by secret ballot, this shall be done accordingly.
- (3) If there is an equality of votes in respect of a motion on which voting takes place in accordance with subsections (1) and (2), the speaker must exercise his casting vote, in addition to his deliberative vote, provided that the speaker may not exercise a casting vote in terms of any matter set out in section 160(2) of the Constitution of the Republic of South Africa, 1996.
- (4) Immediately after a matter has been put to the vote, or immediately after a decision reached by a showing of hands, and the result of which is announced by the speaker, any two members may demand a head count, and the speaker must request those members who support the demand to stand up in their places.
- (5) Whenever a head count is going to take place, the speaker must announce it and voting must commence immediately.
- (6) Whenever a head count is taking place the municipal manager must call the names of all the members in alphabetical order, note the vote of every attending member as "for" or "against" and note the names of the absent members.
- (7) The speaker must announce the decision of council based on the result of the head count as well as the number of members who voted for and against the decision.
- (8) All head count votes must be entered into the minutes.
- (9) Upon the speaker's declaration of the result of a vote, a member may demand for his or her vote to be recorded against the decision concerned and the municipal manager shall ensure that such vote is recorded in the minutes.
- (10) A member may abstain from voting on any matter and such abstention must accordingly be recorded in the minutes.

17. Decisions

- (1) In accordance with the Constitution of the Republic of South Africa, 1996, a supporting vote of a majority of the members is necessary to decide on –
 - (a) the passing of by-laws;
 - (b) the approval of the budget;
 - (c) the imposition of rates and other taxes, levies and duties;
 - (d) the raising of loans
- (2) In accordance with the Structures Act, 1998 a supporting vote of at least two-thirds of the members is necessary to adopt a decision to dissolve the council.
- (3) Subject to section 42(3) all other questions are decided by a majority of votes cast.

18. Unopposed issues

- (1) When a meeting has been in progress for at least one hour, the speaker may interrupt proceedings and instruct council to immediately deal with all unopposed issues.
- (2) When all unopposed issues have been brought to a close, proceedings must be resumed at the point where it was interrupted, unless all other remaining matters have been postponed to the next meeting.
- (3) An item on the agenda is deemed an opposed matter if, immediately after the speaker gave notice to the meeting that the matter is open for discussion, a member gives notice that he or she is intending to discuss such item, provided that no item is deemed opposed merely because questions are posed in connection therewith.

19. Rescission of resolutions

A member who wishes council to rescind or amend a resolution taken at a meeting, must deliver to the municipal manager a notice of motion in writing stating the following-

- (a) at which meeting the motion will be introduced;
 - (b) that the resolution be reviewed for the purpose of rescission or amendment as the case may be; and
 - (c) in the case of amendment, the exact amendment desired.
- (2) Where a committee has resolved to recommend to the council that a resolution of the council be rescinded or amended, notice of intention to move such rescission or amendment must be given by the inclusion of such recommendation in a report of the committee to the council upon which the municipal manager must provide each member with a copy thereof at least twelve hours before the meeting at which the recommendation will be considered.
- (3) Except upon the recommendation of a committee, a resolution may not be reviewed at any meeting of the council unless supported by the majority of the members present at such meeting.
- (4) There shall be no debate on such motion to review, save that the member or the chairman of the committee giving notice shall have the right to briefly state the reasons therefore.

CHAPTER 4: PUBLIC ACCESS

20. Admittance of Public

The speaker must take reasonable steps to regulate public access to public conduct at meetings as well as the safety of persons.

21. Non-disclosure of matters

- (1) Whenever the municipal manager at his or her discretion has provisionally placed any matter on a part of the agenda which will not be disclosed to the public before the meeting, the speaker, when such matters are to be considered, must –
- (a) direct that the members consider whether it would be reasonable for any or all of the items on such part of the agenda to be considered without the presence of the public, with due regard to section 160(7) of the Constitution of the Republic of South Africa, 1996, which requires that the public and media may only be excluded from being present at a meeting only when it is reasonable to do so, having regard to the nature of the business being transacted; and
 - (b) where the majority of members present support such exclusion, direct that all members of the public leave the venue of the meeting in respect of those items to be dealt with in the absence of the public;
- (2) The motivation for the exclusion of the public must be recorded in the minutes of the meeting.
- (3) Any items from which the public will not be excluded must be considered directly after the procedure as set out in subsection (1).

22. Exclusion of the public and media from meetings

- (1) The public, including the media, may be excluded from any meeting –
- (a) where so directed by the speaker in terms of section 21 of this by-law; or
 - (b) where so decided by council in terms of subsection (3).
- (2) If a motion to exclude the public is seconded, it must be put to the vote forthwith without discussion.
- (3) If, after due consideration of the reasons stated such motion is carried, the place of meeting shall be cleared of all members of the public, including the media.

(4) Members of the public do not have access to meetings of the mayoral committee, unless otherwise directed by the executive mayor.

23. Re-admission of public and media to meetings

(1) A member may during the course of the meeting from which the public and the media were excluded, move "that the meeting again be opened" and state the reasons for such motion.

(2) If such motion is seconded it must be put to the vote forthwith without discussion.

24. Invitation to non-member

The speaker may invite a person who is not a member of council to address council or to attend a meeting in order to express his or her opinion on a matter before council. A time limit of 15 minutes, or any such time as may be allowed by the meeting, will apply.

25. Deputations

(1) A deputation that wishes to make representations to council must give six working days written notice to the municipal manager of such intention and must provide detail of the presentations that will be made and the source of the deputation.

(2) The municipal manager must submit a report to the speaker, together with his or her comments and recommendations, and the speaker may decide whether to grant or refuse a request for such an audience, and if granted, upon which conditions.

CHAPTER 5: ORDER AT MEETINGS

26. Conduct of non-members and members of the public

If a non-member or member of the public misbehaves, behaves in an unseemly manner, or obstructs the business of any meeting, the speaker may order that he or she should leave the meeting or be removed from the meeting.

27. Conduct of members

(1) If a member –

(a) misbehaves, or

(b) behaves in an unseemly manner, or

(c) obstructs the business of a meeting, or

(d) challenges the ruling of the speaker on any point of order or ruling in terms of section 3(1), or

(e) declines to withdraw any expression when required to do so by the chairperson, or

(f) indulges in tedious repetition or unbecoming language, or

(g) commits any breach of this by-law, the speaker must direct such member to conduct himself or herself properly and, if speaking, to discontinue his or her speech.

(2) In the event of a persistent disregard of the directions of the speaker, he or she shall direct such member to retire from the place of meeting for the remainder of the meeting and may, if necessary, cause him or her to be removed from the meeting.

(3) Where a member is guilty of the conduct in subsections (1) or (2), the speaker may act against such member in terms of Item 13 of the Code of Conduct for Councillors.

28. Offences

Any non-member or member of the public who –

- (a) refuses or fails to comply with a direction of the speaker given in terms of sections 26 and 27; or
- (b) returns to the place of meeting prior to the conclusion of the meeting from which he was directed to retire; or
- (c) offers resistance whilst being removed from the place of meeting;

shall be guilty of an offence and liable on conviction to a fine or imprisonment or either such fine or imprisonment or to both such fine and such imprisonment.

CHAPTER 6: RULES OF DEBATE**29. Member to address speaker**

A member that speaks at a meeting must address the speaker whilst standing and can address such meeting in any of the three official languages of the Province of the Western Cape, as regulated by council's communication policy.

30. Order of Priority

(1) When a member wishes to address the council, he or she must first have the permission of the speaker and must raise his or her hand in order to obtain permission to speak.

31. Precedence of speaker

Whenever the speaker addresses the meeting, all members must be silent so that the speaker may be heard without any interruption.

32. Relevance

- (1) A member who speaks must direct his or her speech strictly to the subject or matter under discussion or to an explanation or to a point of order.
- (2) No discussion shall be permitted –
 - (a) which will anticipate any matter on the agenda; or
 - (b) on any matter in respect of which a decision by a judicial or quasi-judicial body or a commission of enquiry is pending.

33. Right to speak and limitation

- (1) A member may speak or proceed to speak at a meeting after being recognised by the speaker.
- (2) A councillor who is not a member of a committee has the right to speak at that committee meeting provided that such councillor has been invited in writing by the chairperson to attend such meeting for a specific item on the agenda.
- (3) Councillors who attend and speak at a committee meeting without being invited, will not be protected by the Western Cape Privileges and Immunities of Councillors Act, 2011 (Act No 7 of 2011).
- (4) A member may only speak once –
 - (a) to the matter before the council;
 - (b) to any motion before the council;
 - (c) to any amendments to the matter before the council;
 - (d) to a matter or an amendment proposed or to be proposed by himself or herself;
 - (e) to a point of order or a question of privilege;unless authorised by the speaker or as provided for in terms of this by-law.

(5) The mover of an original motion may speak to the motion and reply but in replying he or she shall strictly confine himself or herself to answering previous speakers and shall not introduce any new matter into the debate.

(6) The right of reply shall not extend to the mover of an amendment which, having been carried, has become the substantive motion.

34. Length of speeches

(1) Except with the consent of the speaker, no member may speak for more than five minutes on any matter.

(2) The mover of an original motion or of any amendment may, however, speak for five minutes on such motion or amendment.

35. Re-introduction of motion or question

No motion which has been rejected by the council and no question asked in terms of the by-law and dealt with at any meeting may again be moved or asked within a period of three months of such meeting except with the consent of the speaker.

36. Notices of motion

(1) The speaker may, subject to section 40, and excluding an urgent motion of order, not accept any motion unless notice thereof has been given in terms of subsection (2).

(2) Every notice of intention by a member to introduce a motion must be in writing, motivated, signed and dated and delivered to the municipal manager at least six working days before the date of the meeting on which it is intended to be introduced.

(3) The speaker must either put the motion in the agenda or refer such motion to the committee which is dealing with the matter.

37. Notices of questions

(1) Subject to section 41, the speaker may not accept any question unless notice thereof has been given in terms of subsection (2).

(2) Every notice of intention by a member to introduce a question must be in writing, motivated, signed and dated and delivered to the municipal manager at least six working days before the date of the meeting on which it is intended to be introduced.

(3) The member to whom such question is posed, may answer the question at the meeting referred to in subsection (2) or, if the member elects to answer the question in writing, he or she may do so within six work days after the meeting.

38. Absence of mover or questioner

In the event of the mover or questioner not being present in his or her place at the meeting of the council when called upon by the speaker to move a motion or ask a question standing in his or her name on the agenda, such motion or question shall lapse, unless the original mover or questioner has notified the speaker in writing of a substitute to move the motion or ask the question.

39. Motions and questions on matters dealt with by a committee

(1) A member may not give notice of a motion or question in regard to any matter assigned to a committee unless such motion has previously been submitted to such committee or unless such motion is in the form of a reference to such committee.

(2) The chairperson of a committee may, if he or she is of opinion that the matter is one of urgency, give notice of his or her intention to introduce a motion or ask a question on a

matter assigned to such committee, notwithstanding the fact that such motion or question has not received the prior consideration of the committee.

40. Recommendation by committee regarded as motion

(1) The adoption of a recommendation contained in a report submitted by a committee to the council shall be deemed to have been moved by the chairman of such committee or in his or her absence, or when he or she contests the motion, by a member of such committee deputed by him or her to act at the time when the speaker of the meeting intimates that such recommendation is open for discussion, and no such motion need be seconded, nor shall the chairman of such committee be thereby precluded from exercising his or her right to speak thereon.

(2) The chairperson referred to in subsection (1), may, however, speak on the matter and reply but in replying he or she shall strictly confine himself or herself to answering previous speakers and shall not introduce any new matter into the debate.

(3) The provisions of sub sections (1) and (2) also apply to recommendations by the executive mayor.

41. Questions

(1) After any motion or amendment has been moved and seconded or at the conclusion of any speech thereon a member may ask any question relevant to such motion or amendment.

(2) No supplementary questions may be asked except by the member asking the original question and then only in respect of matters arising out of the reply to such original question.

(3) The speaker may not disallow any such question, provided that the member to whom such question is directed may either reply thereto forthwith or require that notice thereof be given in terms of section 37.

42. Motion of exigency

(1) A member may direct the attention of the council to any matter which does not appear on the agenda and of which no previous notice has been given, by stating briefly the subject of the matter and without comment thereon moving "that the motion to which attention has been directed be considered forthwith as a matter of exigency."

(2) Such motion is herein referred to as a motion of exigency.

(3) If such motion is seconded and carried by a majority of the members present, the mover shall be permitted without notice to bring the matter under consideration by way of motion or question.

43. Motion of course

In addition to those provided for elsewhere in this by-law, the following shall be regarded as motions of course –

- (a) that preference is given to the consideration of any item on the agenda;
- (b) that any report referred to in the agenda be noted, adopted, acted upon or referred back; and
- (c) that any document before the council be acted upon in the manner specified in the motion.

44. Point of order

(1) A member may interject during a meeting to raise a point of order to a breach of the rules or a statutory provision.

(2) A point of order may be raised in relation to —

- (a) a procedural matter; or

- (b) the conduct of a member, a member of the public, or an employee of the municipality.
- (3) A member raising a point of order must immediately be heard, and he or she must —
 - (a) state the point of order; and
 - (b) the rule or statutory provision that is being breached.
- (4) A member who is speaking when a point of order is raised must immediately stop speaking until the point of order is ruled on by the speaker. All other matters before the meeting must be suspended until the point of order is ruled on.
- (5) If ruled to be in order, the member must be allowed to proceed with his or her speech.
- (6) If ruled to be out of order, the member must remain silent or must retract or change any remarks so as to comply with the ruling.
- (7) The speaker's ruling on a point of order is final and not open to debate, and it must be entered in the minutes.

45. Points of explanation

The speaker may allow a member to raise a point of explanation provided that such explanation shall be confined to some material part of the debate which may have been misunderstood.

46. Withdrawal of motion, amendment or question

- (1) A motion or amendment may without debate and with the permission of the seconder and council, be withdrawn by the mover.
- (2) A member may not speak on such motion or amendment after council has agreed to the withdrawal of such motion.
- (3) A question may be withdrawn by the member intending to put it.

47. Speaker's ruling on points of order and explanation

- (1) The ruling of the speaker on a point of order or an explanation shall be final and not open to discussion.
- (2) The ruling of the speaker on any point of order raised as to the interpretation of this by-law shall be entered in the minutes.

48. Order of debate

When a matter is under debate at any meeting of council, no further motion shall during such discussion be received except the following –

- (1) that the motion be amended;
- (2) that the consideration of the matter be postponed;
- (3) that the public and the media be excluded;
- (4) that the public and the media be readmitted;
- (5) that council do now adjourn;
- (6) that council adjourn for a specified time;
- (7) that the debate be adjourned;
- (8) that the matter be put to the vote;
- (9) that council proceed to the next business.

49. Amendment of motion

- (1) Every amendment must be relevant to the motion on which it is moved.
- (2) An amendment must, if required by the speaker, be in writing, signed by the mover and handed to the speaker.
- (3) An amendment must be read before being moved.

- (4) An amendment may not be discussed or put to the council until it has been seconded.
- (5) If there are more than one amendment to a motion the amendment last proposed must be put to the vote first and if carried the matter shall be resolved accordingly.
- (6) If the amendment last proposed is rejected the amendment proposed immediately prior to the last amendment shall be put to the vote.
- (7) No further amendment shall be moved to a motion or amendment after the speaker has commenced to take the vote upon such motion or amendment.

50. Postponement of consideration of the matter

- (1) A member may at the conclusion of a speech move that the consideration of the matter be postponed to a fixed or undetermined date.
- (2) Such motion must be seconded but the motion need not be in writing, provided that the seconder shall not be permitted to speak.
- (3) The mover shall be permitted to speak to the motion for a period not exceeding five minutes and the seconder shall not speak except for seconding the motion.
- (4) Upon such motion being made, the mover of the matter under debate may without prejudice to his or her ultimate right to reply if the motion that the matter be postponed is not carried, be heard in reply for five minutes, after which the motion shall be put to the vote without further debate.
- (4) If the motion is carried, the matter shall be placed first on the agenda of matters to be considered at the meeting to which it has been postponed, provided that sections 6(2) and 6(3) shall not apply to such matter.

51. Adjournment of council to another date

- (1) A member who has not already participated in the debate on a matter before the meeting may at any time except during the course of a speech by another member or while a vote is being taken move "that the council do now adjourn to another date".
- (2) Such motion must be seconded but need not be in writing.
- (3) The mover shall be permitted to speak to the motion for a period not exceeding five minutes but the seconder shall not speak except for seconding the motion.
- (4) If the motion is carried the council shall forthwith adjourn; provided that the speaker may direct that the meeting proceed first to dispose of business other than opposed business.
- (5) If the motion is not carried the speaker shall not accept another such motion until the period of half an hour has elapsed.
- (6) Save as is provided in subsection (3), no discussion on such motion shall be permitted, except that a member who has first indicated his or her opposition to such motion, may speak in opposition of the motion for not more than five minutes.
- (7) No amendment to such motion may be moved except in relation to the period of adjournment.
- (8) Where a motion to adjourn a meeting has been carried and the matter has not been concluded, the member who moved the adjournment shall be entitled to speak first at the subsequent meeting.
- (9) No business may be transacted at an adjourned meeting except such business set out in the agenda for the meeting which is adjourned.

52. Adjournment of council for a specified time

- (1) A member may at any time, except during the course of a speech by another member or while a vote is being taken, request "that the council now adjourn for a specified time, up to maximum one hour and such an adjournment may have the opportunity to caucus as purpose."

- (2) Such motion need not be in writing and no prior notice is needed.
- (3) If the motion is carried the council must forthwith adjourn for the specified time.
- (4) If the motion is not carried, the meeting proceeds as if no interruption has taken place and the speaker may not accept a similar motion until half an hour has passed.
- (5) The speaker may limit the number of such motions.

53. Adjournment of debate

- (1) A member who has not yet participated in the debate then before council, may at the conclusion of any speech move that the debate be adjourned.
- (2) Such motion must be seconded but need not be in writing.
- (3) The mover of such motion may speak to it for five minutes, but the seconder may not speak beyond formally seconding it.
- (4) Subject to subsection (3) no discussion may be permitted on such motion except in relation to the period of adjournment and that the member who first indicated his other opposition against such motion may speak in opposition thereto for five minutes.
- (5) If such motion is carried, the meeting proceeds to the next business on the agenda, and the discussion of the adjourned debate, unless otherwise resolved, is resumed at the next meeting.
- (6) On the resumption of the adjourned debate the member who moved the adjournment is entitled to speak first.
- (7) If the motion is not carried the speaker shall not accept another such motion until half an hour has elapsed.
- (8) A member may not move or second more than one motion for the adjournment of the debate during the course of that debate.

54. Voting on a matter

- (1) A member who has not yet participated in the debate on the matter then before council, may at the conclusion of any speech, move that the matter "be now put to the vote."
- (2) Subject to the provisions of subsection (3), no motion put in terms of subsection (1) shall be open to discussion.
- (3) The mover of a matter under discussion may, when a motion has been put in terms of subsection (1), speak on such motion for not more than five minutes, whereupon the said motion shall be put to the vote without any further discussion.

55. Removal of matter from the agenda

- (1) A member who has not yet participated in the debate on the matter then before council, may during such debate at the conclusion of any speech, move that the matter be removed from the agenda.
- (2) Subject to the provisions of subsection (3), no motion put in terms of subsection (1) shall be open to discussion.
- (3) The mover of a matter under discussion may, when a motion has been put in terms of subsection (1), speak on such motion for not more than five minutes, whereupon the said motion shall be put to the vote without any further discussion.
- (4) If such a motion is carried, the matter under discussion shall not be further pursued.

CHAPTER 7: PROCESS FOR ADOPTION OF BY-LAW

56. Submission of draft by-law

A by-law may only be introduced by a member or the executive mayor.

57. First submission to council

- (1) A draft by-law submitted by a member or the executive mayor, must be submitted to council in the following form –
- (a) an executive summary of the by-law;
 - (b) the need to regulate the conduct addressed by the draft by-law;
 - (c) the content of the draft by-law;
 - (d) any other by-law that must be repealed or amended if the draft is adopted;
 - (e) any relevant comments or proposals; and
 - (f) a recommendation.
- (2) After consideration of the report contemplated in subsection (1) council must resolve to reject the draft or to adopt it in principle.
- (4) When a proposed by-law is adopted in principle, it must be advertised for public comment.

58. Submission by executive mayor

- (1) The executive mayor may submit a draft by-law to council on his or her own volition or after consideration of a request submitted by the municipal manager.
- (2) If the executive mayor decides to submit a draft by-law on his or her own volition, he or she must obtain the comments of the municipal manager on the contents thereof and may request comment from any person.
- (3) The executive mayor must submit a report on the submission of a draft by-law to council as contemplated in section 57(1)

59. Publication

- (1) The municipal manager must, as soon as possible after a by-law has been adopted in principle, publish the draft by-law in such a way that the public will have the opportunity to make representations in connection therewith.
- (2) Publication must be in at least two of the official languages of the province.

60. Second submission to council

- (1) The municipal manager must, as soon as possible after the closing date for representations by the public, submit a report to the executive mayor together with –
- (a) a copy of the proposed by-law;
 - (b) copies of the advertisements in which the public was invited to submit representations;
 - (c) any comments received from the public; and
 - (d) any comments from the administration.
- (2) When a by-law is adopted after consideration thereof, it must be published in the *Provincial Gazette*.

61. Debating procedure

The provisions regarding debating are also applicable to the legislative process.

CHAPTER 8: MISCELLANEOUS PROVISIONS

- 62.** Anyone who speaks at a meeting may use any of the three official languages recognised by the Constitution of the Western Cape, 1997, namely Afrikaans, English and isiXhosa.

63 Privileges and immunities for councillors

The privileges and immunities of councillors of the municipality are subject to the provisions of the Western Cape Privileges and Immunities of Councillors Act, 2011 (Act 7 of 2011).

64. Municipal employees

(1) The employees of the municipality who attend a meeting must observe the rules and decorum applicable to members.

(2) A municipal employee must attend a meeting if requested to do so by the municipal manager or the speaker.

65. Offences and penalties

(1) No member or member of the public may—

- (a) improperly interfere with—
 - (i) or impede a council or committee when such council or committee is exercising its authority or performing its functions; or
 - (ii) the performance by a member of his or her functions as a member;
 - (b) threaten or obstruct a member proceeding to or going from a meeting of a council or committee;
 - (c) assault or threaten a member, or deprive a member of any benefit, on account of the conduct of the member in a council or committee;
 - (d) while a council or committee is meeting, create or take part in any disturbance within the precincts;
 - (e) fail or refuse to comply with an instruction by the person presiding at a meeting of a council or committee regarding the presence of any person at that meeting; or
 - (f) fail or refuse to comply with an instruction by a duly authorised official of the council regarding—
 - (i) the presence of persons at a particular meeting of the council or a committee; or
 - (ii) the possession of any article, including a firearm, in the precincts or any part thereof.
- (2) A person may not by fraud, intimidation, force, insult or threat of any kind, or by the offer or promise of any inducement or benefit of any kind, or by any other improper means—
- (a) influence a member in the performance of the functions of the member;
 - (b) induce a member to be absent from a council or committee; or
 - (c) attempt to compel a member to declare himself or herself in favour of or against anything pending before or proposed or expected to be submitted to a council or committee.
- (3) A person who contravenes sub sections (2) and (3) is guilty of an offence and on conviction is liable to a fine or to imprisonment or to both the fine and the imprisonment.

66. Revocation of by-laws

The provisions of any by-laws previously promulgated by the municipality or by any of the disestablished municipalities now incorporated in the municipality, are hereby repealed as far as they relate to matters provided for in this by-law.

67. Short title and commencement

This by-law shall be known as the Rules of Order Regulating the Conduct of Meetings of the Council of Bergrivier Municipality and shall come into operation on the date of publication thereof in the Provincial Gazette.

SCHEDULE
(Section 12)
STANDING PROCEDURE FOR NON-ATTENDANCE BY MEMBERS

Preamble

Whereas item 4(3) of the Code of Conduct for Councillors provides for proceedings to impose a fine or to remove a councillor from office for non-attendance of council- or committee meetings, the municipality hereby establishes the following standing procedures-

1. Definitions

In this Schedule, unless the context indicates otherwise-

“attendance committee” means a committee consisting of three councillors under chairmanship of the speaker and appointed by the council solely for the purpose of dealing with non-attendance at meetings; provided that in the absence or non-availability of the speaker, the executive mayor, or deputy executive mayor, where applicable, shall act as chairperson of the committee;

“Code of Conduct” means the code of conduct for councillors as contained in Schedule 1 to the Municipal Systems Act 2000 (Act 32 of 2000);

“fine” means a fine as contemplated in Item 9 of this schedule for non-attendance of council or committee meetings;

“non-attendance” means failure by a member to-

- (a) attend a meeting that the member is required to attend in terms of section 10 of this by-law;
- (b) be in attendance at the commencement of a meeting; or
- (c) remain in attendance until the end of a meeting;

2. Attendance of meetings compulsory

A member must attend each meeting of the council and of a committee as contemplated in section 10 of this by-law.

3. Leave of absence

Applications for leave of absence must be dealt with in terms of section 11 of this by-law.

4. Reporting of non-attendance

The municipal manager must report each case of non-attendance to the speaker not later than the next working day after the meeting concerned.

5. Duty of the speaker

(1) The speaker must, within two working days, after receipt of the report of non-attendance from the municipal manager, inform the member concerned in writing of the report and request the written comments of the member within seven working days of the date of notification.

(2) Upon receipt of the comments of the member, or, if the member fails to furnish the speaker with his or her comments within the seven working days, or after such extension of time that may be permitted by the speaker, the speaker must convene a meeting of the Attendance Committee and instruct the member concerned in writing to attend such meeting.

6. Procedures at the Attendance Committee meeting

(1) The speaker must determine the procedures for the hearing of the matter which must include the following-

- (a) that the member concerned has the right to be present when any evidence is heard and may ask questions based on the report of the municipal manager;
- (b) that the members of the Attendance Committee may ask questions to the member; and
- (c) that the member shall have the right to adduce evidence and to call witnesses.-

(2) If the member-

- (a) fails or refuses to attend the meeting; or
- (b) is requested to leave because of his or her conduct at the meeting;

the meeting may continue in his or her absence.

(3) The Attendance Committee may call witnesses to assist in making a decision.

(4) If the speaker is the person accused of non-attendance, then the executive mayor must chair the Attendance Committee.

7. Findings of the Attendance Committee

(1) After considering all the evidence contemplated in item 6, the Attendance Committee must make a finding as to whether the member contravened section 10(2) of this by-law, and record its reasons for the finding.

(2) If the finding is that the member did not contravene any of the provisions contemplated in sub section (1), the speaker must adjourn the meeting and inform him or her of the finding in writing.

(3) If the finding is that the member has contravened section 10(2) of this by-law, the Attendance Committee must impose the relevant sanction as contemplated in item 9 and the speaker must, in writing, advise the municipal manager and the member accordingly.

(4) The municipal manager must take the necessary steps to ensure payment of any fine imposed or to record any other sanction against the name of the member.

(5) If the finding is that the member was absent from three or more council meetings or committee meetings of which he or she is a member, the speaker must, within seven working days, submit a report to that effect to council to be dealt with in terms of item 4(2) of the Code of Conduct.

8. Consideration of the report from the Attendance Committee

(1) If the council agrees with the findings of the Attendance Committee contemplated in item 7(5), the MEC must, within seven working days after such resolution, be requested to remove the member from office.

(2) If the council disagrees with the report of the Attendance Committee, it must instigate its own investigation into the matter within seven working days after such resolution.

9. Sanctions for non-attendance

(1) The Attendance Committee may, upon finding of a contravention of section 10(2) of this by-law, impose the following sanctions-

- (a) for non-attendance, or failure to remain in attendance at a meeting, impose a fine equal to 5% of the member's monthly gross salary package, excluding allowances;
- (b) for non-attendance, or failure to remain in attendance at two consecutive meetings, impose a fine equal to 10% of the member's monthly gross salary package, excluding allowances;

(2) Absence from three or more executive council or committee meetings shall be dealt with in terms of Item 7(5) of this Schedule.

10. Exemptions

Members shall be exempted from the provisions of this Schedule in cases of absence as result of-

- (a) illness, provided that an acceptable medical certificate is submitted to the speaker;
- (b) death or trauma in the family, provided that a sworn statement be submitted;
- (c) official business of the council; or
- (d) approval of absence by the speaker in terms of section 11 of this by-law;

11. Appeal

A member against whom sanctions have been imposed in terms of item 9(1)(a) or (b) of this Schedule, may within 14 days of having been notified of the decision of the Attendance Committee, appeal to the council in writing against the finding as well the sanction imposed, setting out the reasons on which the appeal is based.