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PROVINCE OF WESTERN CAPE

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**WESTERN CAPE PRIVILEGES  
AND IMMUNITIES OF  
COUNCILLORS ACT, 2011**

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PROVINSIE WES-KAAP

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**WES-KAAPSE WET OP  
VOORREGTE EN IMMUNITEITE  
VAN RAADSLEDE, 2011**

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IPHONDO LENTSHONA KOLONI

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**UMTHETHO WAMALUNGELO  
NOKHUSELEKO LOOCEBA  
WENTSHONA KOLONI, 2011**

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**No 7, 2011**

# ACT

To give effect to section 161 of the Constitution of the Republic of South Africa, 1996, and section 28 of the Local Government: Municipal Structures Act, 1998, by defining the privileges and immunities of municipal councillors; and to provide for matters incidental thereto.

**B**E IT ENACTED by the Provincial Parliament of the Western Cape, as follows:—

## Definitions

1. In this Act, unless the context indicates otherwise—
  - “**Code of Conduct**” means the Code of Conduct for Councillors contained in Schedule 1 to the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);
  - “**committee**”, in relation to a council, means a committee established by the council in terms of any law and consisting of councillors only, including—
    - (a) an executive committee established in terms of section 42 of the Municipal Structures Act;
    - (b) an appeal committee established in terms of section 62(4)(c)(ii) of the Local Government: Municipal Systems Act, 2000; and
    - (c) a special committee established in terms of item 14 of the Code of Conduct;
  - “**council**” means the municipal council of a municipality established in terms of section 12(1) of the Municipal Structures Act;
  - “**councillor**” means a member of a council;
  - “**mayoral committee**” means a committee appointed by an executive mayor in terms of section 60 of the Municipal Structures Act;
  - “**Municipal Structures Act**” means the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);
  - “**precincts**”, in relation to a council, means any venue or room where the council or any of its committees or subcouncils or its mayoral committee holds a meeting;
  - “**rules and orders**” means the rules and orders of a council as envisaged in section 160(6) of the Constitution of the Republic of South Africa, 1996; and
  - “**subcouncil**” means a metropolitan subcouncil established in terms of section 62 of the Municipal Structures Act and includes a committee appointed in terms of section 71 of that Act.

## Freedom of speech of councillors

2. (1) A councillor has freedom of speech in any meeting of the council of which he or she is a member, and in any committee or subcouncil or mayoral committee of that council.
- (2) A councillor’s right to freedom of speech in terms of subsection (1)—
  - (a) includes participation in the deliberations and voting on any resolution, decision, report, paper or minutes adopted or approved by the council or any of its committees or subcouncils or its mayoral committee; and
  - (b) is subject to the council’s rules and orders and the Code of Conduct.

### **Immunity of councillors**

- 3.** (1) A councillor is not liable to civil or criminal proceedings, arrest, imprisonment or damages for—
- (a) anything that the councillor has said in, produced before or submitted to the council of which he or she is a member, or any committee or subcouncil or mayoral committee of that council; or 5
  - (b) anything revealed as a result of anything that the councillor has said in, produced before or submitted to that council or any of its committees or subcouncils or its mayoral committee.
- (2) A councillor who is not otherwise protected in terms of this Act in respect of any decision of a council, committee or subcouncil or mayoral committee, is not liable to civil or criminal proceedings in respect of that decision if the councillor—
- (a) voted against the decision; or 10
  - (b) where the matter concerned was not put to the vote, before the decision was taken, requested his or her opposition to the decision to be recorded. 15

### **Arrest of councillors and serving of court documents in council precincts**

- 4.** (1) A person may not, within the precincts of a council—
- (a) arrest a councillor; or
  - (b) serve any summons, subpoena or other document issued by a court upon a councillor, 20
- while the council, or any of its committees or subcouncils or its mayoral committee is sitting.
- (2) A person who contravenes subsection (1) is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding six months or to both the fine and the imprisonment. 25

### **Short title**

- 5.** This Act is called the Western Cape Privileges and Immunities of Councillors Act, 2011.

# WET

**Om gevolg te gee aan artikel 161 van die Grondwet van die Republiek van Suid-Afrika, 1996, en artikel 28 van die Wet op Plaaslike Regering: Munisipale Strukture, 1998, deur die voorregte en immunitete van munisipale raadslede te omskryf; en om voorsiening te maak vir aangeleenthede wat daarmee verband hou.**

**D**AAR WORD BEPAAL deur die Provinsiale Parlement van die Wes-Kaap, soos volg:—

## Woordomskrywings

1. In hierdie Wet, tensy dit uit die samehang anders blyk, beteken—
  - “**burgemeesterskomitee**” ’n komitee wat ingevolge artikel 60 van die Wet op Munisipale Strukture deur ’n uitvoerende burgemeester aangestel is; 5
  - “**gebied**”, met betrekking tot ’n raad, enige lokaal of kamer waar die raad of enige van sy komitees of subrade of sy burgemeesterskomitee ’n vergadering hou;
  - “**Gedragskode**” die Gedragskode vir Raadslede soos vervat in Bylae 1 by die Wet op Plaaslike Regering: Munisipale Stelsels, 2000 (Wet 32 van 2000); 10
  - “**komitee**”, met betrekking tot ’n raad, ’n komitee wat ingevolge enige wet deur die raad ingestel is en uit slegs raadslede bestaan, met inbegrip van—
    - (a) ’n uitvoerende komitee ingestel ingevolge artikel 42 van die Wet op Munisipale Strukture;
    - (b) ’n appèlkomitee ingestel ingevolge artikel 62(4)(c)(ii) van die Wet op Plaaslike Regering: Munisipale Stelsels, 2000; en
    - (c) ’n spesiale komitee ingestel ingevolge item 14 van die Gedragskode;
  - “**raad**” die munisipale raad van ’n munisipaliteit wat ingevolge artikel 12(1) van die Wet op Munisipale Strukture ingestel is;
  - “**raadslid**” ’n lid van ’n raad; 20
  - “**reëls en orders**”, die reëls en orders van ’n raad beoog in artikel 160(6) van die Grondwet van die Republiek van Suid-Afrika, 1996;
  - “**subraad**” ’n metropolitaanse subraad ingestel ingevolge artikel 62 van die Wet op Munisipale Strukture en ook ’n komitee wat ingevolge artikel 71 van daardie Wet aangestel is; en 25
  - “**Wet op Munisipale Strukture**” die Wet op Plaaslike Regering: Munisipale Strukture, 1998 (Wet 117 van 1998).

## Vryheid van spraak van raadslede

2. (1) ’n Raadslid het vryheid van spraak in enige vergadering van die raad waarvan hy of sy ’n lid is, en in enige komitee of subraad of burgemeesterskomitee van daardie raad. 30
- (2) ’n Raadslid se reg tot vryheid van spraak ingevolge subartikel (1)—
  - (a) sluit in deelname aan die beraadslaging en stemming oor enige resoluësie, besluit, verslag, stuk of notule wat deur die raad of enige van sy komitees of subrade of sy burgemeesterskomitee aangeneem of goedgekeur word; en 35
  - (b) is onderworpe aan die raad se reëls en orders en die Gedragskode.

### **Immunititeit van raadslede**

3. (1) 'n Raadslid is nie blootgestel aan siviele of strafregtelike verrigtinge, inhegtenisneming, gevangesetting of skadevergoeding vir—
- (a) enigiets wat die raadslid in, voor of aan die raad waarvan hy of sy 'n lid is, of enige komitee of subraad of burgemeesterskomitee van daardie raad, gesê, blootgelê of voorgelê het nie; of 5
  - (b) enigiets wat aan die lig gebring is as gevolg van enigiets wat die raadslid gesê, blootgelê of voorgelê het in, voor of aan daardie raad of enige van sy komitees of subrade of sy burgemeesterskomitee nie.
- (2) 'n Raadslid wat nie andersins ingevolge hierdie Wet beskerm word ten opsigte van enige besluit van 'n raad, komitee of subraad of burgemeesterskomitee nie, is nie blootgestel aan siviele of strafregtelike verrigtinge ten opsigte van daardie besluit nie, indien die raadslid—
- (a) teen die besluit gestem het; of
  - (b) waar die betrokke aangeleentheid nie tot stemming gebring is nie, voordat die besluit geneem is, versoek het dat sy of haar teenkanting teen die besluit genotuleer word. 15

### **Inhegtenisneming van raadslede en betekening van hofdokumente in gebied van raad**

4. (1) Niemand mag in die gebied van 'n raad— 20
- (a) 'n raadslid in hegtenis neem; of
  - (b) enige dagvaarding, subpoena of ander dokument wat deur 'n hof uitgereik is aan 'n raadslid beteken,
- terwyl die raad, of enige van die raad se komitees of subrade of sy burgemeesterskomitee in sitting is nie. 25
- (2) 'n Persoon wat subartikel (1) oortree, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens ses maande, of met beide die boete en die gevangenisstraf.

### **Kort titel**

5. Hierdie Wet staan bekend as die Wes-Kaapse Wet op Voorregte en Immuniteite van Raadslede, 2011. 30

# UMTHETHO

Ofezekisa icandelo 161 loMgaqo-siseko weRiphabhliki yoMzantsi Afrika ka 1996, kunye necandelo 28 lomthetho iLocal Government: Municipal Structures Act, ka-1998 (uMthetho Nomb. 117 ka 1998); ngokucacisa ngamalungelo nokungabi nakuchukunyiswa kooCeba bakaMasipala; nokubonelela ngemicimbi ephathelele kuwo.

**K**UWISWA UMTHETHO yiPalamente yePhondo laseNtshona Koloni, ngolu hlobo:—

## Iinkcazo-magama

1. Kulo Mthetho, ngaphandle kwalapho ingatshoyo indlela elisetyenziswe ngayo igama okanye ibinza 5
  - “**uMgaqo Wokuziphatha**” ubhekisele kuMgaqo Wokuziphatha kooCeba oqulathwe kwiShedyuli 1 yoLawulo loRhulumente woMmandla: uMthetho weNdelela yokuSebenza kukaMasipala ka-2000 (uMthetho Nomb. 32 ka 2000);
  - “**ikomiti**”, ngokunxulumene nebhunga, ithetha ikomiti esekwe libhunga ngokwemigaqo yawo nawuphi na umthetho kwaneyenziwa ngoceba kuphela, 10 kuquka—
    - (a) ikomiti yesigqeba esekwe ngokwemigaqo yecandelo 42 loMthetho weZiseko zikaMasipala;
    - (b) ikomiti yezibheno esekwe ngokwemigaqo yecandelo 62(4)(c)(ii) uRhulumente woMmandla: uMthetho weeNkqubo zikaMasipala, 2000; 15 kwakunye
    - (c) nekomiti eyodwa esekwe ngokwemigaqo yesolotya 14 loMgaqo wokuziPhatha;
  - “**ibhunga**” lithetha ibhunga leKhansile kaMasipala elimiswe ngokwecandelo 12 (1) loMthetho oyiMunicipal Structure Act; 20
  - “**uceba**” lilungu lebhunga
  - “**ikomiti kasodolophu**” ithetha ikomiti eyonyulwe ngusodolophu osisigqeba ngokwemigaqo yecandelo 60 lomthetho oyiMunicipal Structures Act;
  - “**uMthetho oyiMunicipal Structure Act**” uthetha ooRhulumente boMmandla: uMthetho oyiMunicipal Structure Act, 1998 (uMthetho 117 ka 1998) 25
  - “**amasango**”, ngokunxulumene nebhunga likamasipala athetha nayiphi na indawo okanye igumbi apho ibhunga okanye enye yeekomiti zalo okanye amabhungana okanye ikomiti kaSodolophu yayo libambela khona intlanganiso;
  - “**imithetho nemiyalelo**” ithetha imithetho nemiyalelo yekhansile njengoko ibonakalisiwe kwicandelo 160 (6) loMgaqo-siseko weRiphabhliki yoMzantsi Afrika, ka-1996 (uMthetho Nomb. 108 ka 1996); 30
  - “**ibhungana**” lithetha ibhungana likamasipala ombaxa osekwe ngokwemigaqo yecandelo 62 loMthetho oyiMunicipal Structure Act; ze kuqukwe ikomiti eyonyulwe ngokwemigaqo yecandelo 71 yoMthetho.

## Ilungelo looceba lokuvakalisa izimvo 35

2. (1) UCeba unelungelo lokuvakalisa izimvo kuyo nayiphi na intlanganiso yebhunga apho alilungu khona, nakweyiphi na ikomiti, okanye ibhungana okanye ikomiti kaSodolophu lelo bhunga.

- (2) Ilungelo likaCeba lokwenza lokuvaklisa izimvo ngokukhululekileyo ngokwecandelwana (1)—
- (a) kuquka uthatho-nxaxheba kwiingxoxo nokuvotela nasiphi na isisombululo, isigqibo, ingxelo, iphepha okanye imizuzu eyamkelweyo nevunyiweyo libhunga okanye nakweziphi na iikomiti okanye amabhungana okanye ikomiti kaSodolophu; yaye 5
  - (b) kuxhomekeke kwimithetho nakwimiyalelo yebhunga nakuMgaqo wokuzi-Phatha

### **UKhuseleko looCeba**

3. (1) UCeba akafanelanga kuthathelwa amanyathelo amatyala embambano okanye olwaphulo-mthetho, ukubanjwa, ukuvalelwa entolongweni okanye iintlawulo ngayo— 10
- (a) nayiphi na into ethethwe nguCeba, eveliswe ngaphambi okanye engeniswe kwibhunga apho alilungu khona okanye nayiphi na ikomiti okanye ibhungana okanye ikomiti kaSodolophu yelo bhunga; okanye
  - (b) nayiphi na into etyhilekileyo njengesiphumo sayo nayiphi na into ethethwe nguCeba, eveliswe ngaphambi okanye engeniswe kwelo bhunga okanye nakweziphi na iikomiti zalo okanye amabhungana okanye ikomiti kaSodolophu yayo 15
- (2) Uceba onganalukhuseleko ngokwemiqathango yalo Mthetho ngokumayela nasiphi na isigqibo esenziwe libhunga, ikomiti okanye ibhungana akafanelekanga ukuba athathelwe amanyathelo amatyala embambano okanye olwaphulo-mthetho ngenxa yeso sigqibo, ukuba ngaba uceba lowo— 20
- (a) uvotele ukuchasana neso sigqibo okanye,
  - (b) ngaphambi kokuba isigqibo eso sithatyathwe, uye wacela ukuba inkcaso yakhe ibhalwe phantsi. 25

### **Ukubanjwa nokukhutshelwa imisila yengwe kooceba kumasango eendawo zokuhlala ibhunga**

4. (1) Umntu akangekwazi, ngaphakathi kwamasango eendawo zokuhlala ibhunga, ukuba—
- (a) abambe uceba 30
  - (b) okanye akhuphe nawuphi na umsila wengwe, isamani yengqina okanye olunye uxwebhu elikhutshelwe uceba yinkundla, ngeli xesha lihleli ibhunga, okanye nayiphi na enye yeekomiti zalo okanye elinye lamabhungana alo okanye ikomiti kaSodolophu yayo. 35
- (2) Umntu otyeshele eli candelwana (1) unetyala lokwaphula umthetho, yaye xa athe wagwetywa kuya kufuneka akhuphe isohlwayo esiyintlawulo okanye abheke entolongweni kangangexesha elingadlulanga kwiinyanga ezintandathu okanye afumane zozibini ezi zohlwayo: isohlwayo sentlawulo nokuvalelwa entolongweni.

### **Isihloko esifutshane**

5. Lo Mthetho ubizwa ngokuba nguMthetho waMalungelo noKhuseleko looCeba, weNtshona Koloni ka-2011. 40