

NOTULES VAN DIE / MINUTES OF THE

**SPESIALE RAADSVERGADERING VAN DIE CEDERBERG MUNISIPALITEIT SOOS
GEHOU OP**

SPECIAL COUNCIL MEETING OF THE CEDERBERG MUNICIPALITY, HELD ON

01 MAART / MARCH 2023

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CIRCULATED AGAIN**

**MINUTES OF THE SPECIAL COUNCIL MEETING OF THE CEDERBERG MUNICIPALITY HELD
ON 01 MARCH 2023 IN THE COUNCIL CHAMBER AT 2A VOORTREKKER STREET,
CLANWILLIAM.**

Resolutions taken at council meeting held 1 March 2023

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PRESENT AND IN ATTENDANCE:

As per the attendance register:

Cllr. M Heins
Cllr. W Farmer
Cllr. F Kamfer
Cllr. P Strauss
Cllr. A Scheepers
Cllr. R Richards
Cllr. M Bergh
Cllr. J Van Heerden
Cllr. L Venter
Cllr. J Hayes
Cllr. A Mouton

Mr. A Titus
Mr. C Sheldon
Miss J Cloete

APOLOGIES:

- Geen / None

ABSENT WITHOUT APOLOGY:

- Geen / None

1. OPENING AND WELCOMING

- The Chairperson, Cllr. M Heins welcomed all present and opened the meeting with a prayer.

2. ELECTION OF (ACTING) SPEAKER, IF NECESSARY

N/A

3. APPLICATIONS FOR LEAVE OF ABSENCE

- Geen / None

4. OFFICIAL NOTICES AND COMMUNICATIONS BY THE SPEAKER

RB4A/01-03-2023

REPORT COMPILED BY THE SPEAKER OF COUNCIL, CLLR HEINS, ON THE ALLEGED BREACH OF THE CODE OF CONDUCT BY CLLR HAYES

RESOLVED:

- a) It be noted that this report:
 - (1) At this point in time, is for cognisance only;
 - (2) Contains no guilty findings or verdict;
 - (3) Is obvious and very clear; and
- b) That the Speaker of Council will follow the necessary protocol pertaining an alleged breach of the Code of Conduct for Councillors; and
- c) That Council takes cognisance of the report.

(Report attached, hereto)

RB4B/01-03-2023

AMENDMENT TO APPLICATION FOR LEAVE OF ABSENCE ON 10 FEBRUARY 2023 BY CLLR. J VAN HEERDEN

RESOLVED:

- 1. It be noted that:
 - a) the Speaker rescind a ruling made by himself on 10 February 2023 that Cllr. J Van Heerden was not granted leave of absence; and

- b) That leave of absence for Cllr. J Van Heerden was granted for 10 February 2023 after receiving the necessary documentation.

RB4.1/01-03-2023

INAUGURATION OF CLLR. AG MOUTON

RESOLVED:

- a) That Council takes cognisance of the inauguration of Cllr. AG Mouton.

5. STATEMENTS AND COMMUNICATION BY THE EXECUTIVE MAYOR

- 5.1 The Executive Mayor, William Farmer, robustly, vigourously and at length raised essentially two matters for which he demanded a response from the Speaker. The debating process that ensued was interrupted by a number of caucus breaks and rulings by the Speaker interalia that the public as well as councillors must maintain order.
- 5.2 The two broad issues can be identified and summarised as:
- The 28 February 2023 council meeting which did not take place
 - The legality of the 29(1) council meeting as requested by the majority of councillors for 1 March 2023
- 5.3 **Debate 1: The 28 February 2023 council meeting:**

5.3.1 Adjustment Budget:

The critical question raised was: Why did the scheduled council meeting of 28 February 2023 to approve the Adjustment Budget not take place? And what are the implications for the Adjustment Budget as the 28 February is the deadline set for the submission of the the Adjustments Budget.

5.3.2 Extension granted by Provincial Treasury

The Speaker requested that the Acting Municipal Manager, Mr Titus, read out loud and into the record, the letter received from Provincial Treasury which granted an extension for the submission of the Adjustments Budget till 10 march 2023.

5.4 Debate 2: The 29(1) issue:

- 5.4.1 The Mayor questioned the legality of the 29(1) council meeting called by the majority of Councillors and permitted by the Speaker.
- 5.4.2 The legal advisor to the Municipality, Mr Craig Sheldon, offered the following response:

"The question raised by the Mayor, Councillors, Speaker this meeting as requested by the majority of Councillors in terms of section 29 of the Structures Act, was lawfully called and requested. However, there's a provisor. Section 29 states that the Speaker decides and determines the Council Meeting subject, onderhewig daaraan, but if the majority of Councillors request a meeting, so there is a provisal of subsection 18(2); but if the majority requests a meeting there is no option for the Speaker, or no discretionary powers for the Speaker.

The Act is quite clear, the Speaker must convene such a meeting as requested by the majority of Councillors.

Now, in terms of the Establishment Notice, we are 11 Councillors and 6 is the majority; and the majority of Councillors, as stipulated in this letter requested the Speaker and in terms of the Rules of Order submitted the request to the Municipal Manager and the Accounting Officer of Council.

So, the long and short is that this meeting is lawfully as been requested in Section 29. So, the law-makers, they must have foreseen for eventualities like these. In gevalle waar daar sulke situasies homself doen, word sekere artikels onderhewig aan sekere artikels en dis 1 klassieke voorbeeld wat hier gebeur. Die meerderheid van Raadslede het die vergadering versoek en die Speaker moet dit toestaan soos uiteengesit in hul versoek ...".

5.5 After allowing enough time for debate the Speaker ruled:

5.5.1 *Op die kwessie van die begroting wat gevra was oor die Burgemeester se mededeling is daardie item of gesprek afgehandel. Ek gaan nie weer 'n gesprek op dit entertain nie. Die MM het daarop reageer so daardie kwessie is afgehandel".*

5.5.2 *Ek gaan die gesprek rakende die mosie wat opgekom het, wat Mnr, Sheldon dan ook verduidelik het; daardie item of gesprek is ook afgehandel. Ek gaan geen kommentaar of gesprekvoering op daardie 2 punte aanvaar nie.*

5.6 When pushed by Cllr Richards for a ruling on whether or not the meeting will continue, Speaker Maxwell Heins responded as follows:

Rdl. Richards ek wil u so antwoord: Die vergadering gaan voort.

6. REPORT BY THE EXECUTIVE MAYOR ON DECISIONS TAKEN BY THE EXECUTIVE MAYOR, THE EXECUTIVE MAYOR TOGETHER WITH THE DEPUTY EXECUTIVE MAYOR AND THE EXECUTIVE MAYOR TOGETHER WITH THE MAYORAL COMMITTEE

Mayor:

"U laat dit toe, so ek wil sê Speaker, ek sien nie verder aan om voort te gaan met die meeting nie. Ek gaan hier sit en my snater toe hou of my tong agter my tande hou, want clearly het u alreeds besluit wat gaan gebeur in die Council Meeting vandag. U het geen gevoel vir die rule of law nie. U het besluit dit is wat gaan gebeur en u het u 'mind' op gemaak; en 1 ding wat ek moet sê ek respekteer u, want u het vanoggend al gesê u het u mind opgemaak en dis dit; en u hou by dit. So 'n pluimpie wat ek u kan gee, jy is regtig 'n man van jou woord."

7. MATTERS FOR CONSIDERATION

7.1 ITEMS SUBMITTED BY OFFICIALS OF COUNCIL

RB7.1.1/01-03-2023

MOTIONS OF NO CONFIDENCE

IN THE:

- **SPEAKER:** **CLLR. M HEINS**
- **EXECUTIVE MAYOR:** **CLLR. W FARMER**
- **DEPUTY EXECUTIVE MAYOR:** **CLLR. F KAMFER**


The Speaker proceeded to read into the record the request by the majority of councillors – see below Annex 1:

Date : 17 February 2023

To: The Municipal Manager
Cederberg Municipality
Private Bag X2
Clanwilliam
8135
andriest@cederbergmun.co.za

To: Cllr M Heins
The Speaker
Cederberg Municipality
Private Bag X2
Clanwilliam
8135
maxwellh@cederbergmun.gov.za

CEDERBERG
MUNISIPALITEIT / MUNICIPALITY
UMASIPALA
17 FEB 2023

RECEIVED
CLANWILLIAM
Signature: 

SUBJECT: REQUEST BY MAJORITY OF COUNCILLORS FOR A SECTION 29(1) COUNCIL MEETING

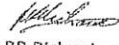
Dear Speaker (Maxwell Heins)

We, the undersigned majority of councillors of the Cederberg Municipality, herewith request a council meeting in terms of Section 29(1) of the Municipal Structures Act, Act 117 of 1998 as amended.


- The date of meeting: 1 March 2023
- Time of meeting: 15h00
- Place of meeting: Clanwilliam Council Chambers
- The agenda for the meeting will be the following matters:
 1. Inauguration of new councillor (i.e. AG Mouton)
 2. Processing of the motions of no confidence in the Executive Mayor (Cllr Farmer), Deputy Mayor (Cllr Kamfer) and the Speaker (Cllr Heins). [Attached please find the Intention and the Motion].
 3. Approval of Section 154 Support Plan
 4. Approval of policy regarding virtual attendance
 5. Approval of policy regarding dress code

We hereby request an acknowledgement of receipt of the above request and notification and confirmation of the requested meeting.

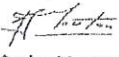
Thank you for your prompt attention.




RR Richards



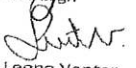
J Hayes




Andre Mouton



M Bergh



Leone Venter



Johan van Heerjien

The Speaker started to continue handling the item when Cllr. W Farmer asked him to read out part 4 (4) and(5) of the Rules of Order for Council and its Committees of Cederberg Municipality.

The Speaker asked the Legal Advisor to read out the requested extract from the mentioned document:

4. NOTICES OF MOTIONS

Unless contained otherwise in these Rules, written notice of intent by a member to introduce a motion must be provided accompanied with a motivation, signature of mover and member seconding the motion as well as the date. Such notice must be delivered to the Municipal Manager at least 7 (seven) working days prior to the date of the meeting on which it is intended to be introduced. It shall incorporate a motion, signature and date. The speaker may not accept any motion other than motions/s of exigency or motion/s of course unless notice has been provided.

5. MOTIONS

- 5.1. All notices of motion shall be listed on the agenda and shall lapse if the member who submitted it is not present at the meeting when such a motion is being debated.
- 5.2. The Speaker shall acknowledge receipt of the motion in writing should the same be requested.
- 5.3. Motions may only be submitted in relation to matters in respect of which the Municipal Council has jurisdiction.
- 5.4. A motion must be introduced by the member submitting the motion who is entitled to receive a reply to such motion.
- 5.5. The relevant political structures within Municipal Council must consider the motion subsequent to the referral of the motion by the Municipal Manager to such structure. The Municipal Manager must ensure that the motion is referred to the political structure that is legally competent to take the required decision.
- 5.6. Should a motion be introduced with the intent to rescind or amend a resolution passed by Municipal Council in the preceding 3 (three) month or a motion which was not passed in the preceding 3 (three) months, such motions will not be discussed or entertained.

- 5.7 No motion that was considered during the previous three months may be resubmitted.
- 5.8 The procedure that is to be adopted in relation to addressing motions is that the motion shall be read out together with its respective number and the name of the mover after which the Speaker shall ascertain which motions are unopposed and these shall be passed without debate. The Speaker shall subsequently call the opposed motions in their order on the agenda.

RESOLVED

- a) That the motions of no confidence in the following positions, and as tabled be accepted:
- (i) The Speaker, Cllr. M Heins;
 - (ii) The Executive Mayor, Cllr. W Farmer; and
 - (iii) The Deputy Executive Mayor

Proposed: Cllr. W Farmer

Seconded: Cllr. M Bergh

- b) It be noted that the seats/positions mentioned in point a, are now vacant:
- c) It be noted that the following comment be put on record by Cllr. F Kamfer and Cllr. A Scheepers who are in agreement:
- 1) The process of the meeting is unlawful and also the decision making on the motion is not in accordance with legislation.

- **No Counter Proposals**

RB7.1.1A/01-03-2023

ELECTION OF SPEAKER

Being that the seat of Speaker is vacant, the Municipal Manager facilitated the process of the election of the Speaker.

RESOLVED:

- a) It be noted that:
- (i) After only 1 nomination, Cllrs. J Hayes, for the position of Speaker was received;
 - (ii) Proposed by Cllr. M Bergh and Seconded by Cllr. L Venter;
 - (iii) The ANC component abstained from the process of the election of Speaker, putting on record that the process is unlawful. This statement is supported by the Patriotic Alliance component.
- b) Given that only 1 nomination was received and unopposed, Cllr. J Hayes is the newly elected Speaker of Cederberg Municipality.

It was further resolved:

- c) That Council takes note of the speech by the newly elected Speaker of Council, Cllr. J Hayes.

Proposed: Cllr. M Bergh

Seconded: Cllr. L Venter

RB7.1.1B/01-03-2023

ELECTION OF EXECUTIVE MAYOR

RESOLVED:

a) It be noted that:

(i) After only 1 nomination, Cllrs. R Richards, for the position of Executive Mayor was received;

(ii) Proposed by Cllr. M Bergh and Seconded by Cllr. L Venter

(iii) The ANC component abstained from the process of the election of Executive Mayor, putting on record that the process is unlawful. This statement is supported by the Patriotic Alliance component.

b) Given that only 1 nomination was received and unopposed, Cllr. R Richards is the newly elected Executive Mayor of Cederberg Municipality.

Proposed: Cllr. M Bergh

Seconded: Cllr. L Venter

RB7.1.1C/01-03-2023

ELECTION OF DEPUTY EXECUTIVE MAYOR

RESOLVED:

- a) It be noted that:
- (i) After only 1 nomination, Cllrs. A Mouton, for the position of Deputy Executive Mayor was received;
 - (ii) Proposed by Cllr. M Bergh and Seconded by Cllr. L Venter
 - (iii) The ANC component abstained from the process of the election of Deputy Executive Mayor, putting on record that the process is unlawful. This statement is supported by the Patriotic Alliance component.
- b) Given that only 1 nomination was received and unopposed, Cllr. A Mouton is the newly elected Deputy Executive Mayor of Cederberg Municipality.

Proposed: Cllr. M Bergh

Seconded: Cllr. L Venter

RB7.1.2/01-03-2023

REPORT TO COUNCIL ON THE SECTION 154 SUPPORT PLAN

RESOLVED:

1. Council take cognisance of the Report;
2. Council adopt the Section 154 Support Plan as proposed by MEC Bredell and be revised accordingly;
3. The impact of the National State of Disaster regarding the electricity crisis and the general impact on the delivery of basic service must also be incorporated into the Section 154 Support Plan and review mechanisms.
4. The strategic implementation of the Section 154 Support Plan must be reviewed on a monthly basis and adjusted accordingly.

It was further resolved:

5. That the impact on service delivery, as mentioned in point 3, be included in the Agenda at the next Council meeting.

Proposed: Cllr. R Richards

Seconded: Cllr. M Bergh

RB7.1.3/01-03-2023

REPORT TO COUNCIL ON THE VIRTUAL ATTENDANCE POLICY FOR COUNCIL MEETINGS AND THE DRESS CODE FOR COUNCILLORS

RESOLVED:

1. Council take cognisance of the Report;
2. Given the extreme weather conditions and various cultural beliefs and traditions, it will not be a requirement of councillors to wear a jacket and tie to meetings of council, but to dress neatly and appropriately;
3. Council will permit virtual attendance for meetings of council, in accordance with the draft Rules of Virtual Meetings and Sittings;
4. (2) and (3) above will be deemed to be incorporated into the amended Rules of Order as of this council meeting.
5. A revised draft of the Rules of Order, taking into account other amendments, must be submitted to Council by end of March 2023 for consideration and approval.

Proposed: Cllr. R Richards

Seconded: Cllr. M Bergh

Counter Proposal: Cllr. F Kamfer

(This policy pertaining virtual meetings must first be workshopped

in order to approve for
implementation and a policy for the
dress code is not included in the
Agenda)

Seconded: Cllr. A Scheepers

VOTE

FOR	AGAINST	ABSTAIN
CE - 3	ANC - 4	-
DA - 2	PA - 1	
FF+ - 1		

7.2 URGENT MATTERS SUBMITTED BY THE MUNICIPAL MANAGER

- Die Wnde. Munisipale Bestuur deel die volgende mee:
 - Dat almal bewus is van die 2 wesentliche komponente nl. die Administrasie en Politici in Cederberg Munisipaliteit en dat hy as die Rekenkundige Beampste sal verseker dat die Administrasie gefokus sal wees op hul werksverpligtinge en verlang dat Politici dieselfde sal optree.
 - Dat op die oomblik is daar selgs in die Snr. posises 'n wnde. Munisipale Bestuurder en wnde. Hoof Finansiële Beampste. Die werwingsproses van genoemde posisies sowel as die Direkteur Tegniese Dienste is reeds afgehandel en moet die Raad slegs 'n aanstelling maak. So, nie sal daar duidelik verkry moet word of daar 'n nuwe werwingsproses begin sal word al dan nie.

- Dat die Raad ook net kennis neem dat die Direkteur Ondersteuningsdienste is nie meer indiens van die munisipaliteit nie, en is die LUR van Plaaslike regering so in kennis gestel.
- Die belangrikheid rondom die aanstelling of werwingsproses in die topbestuur om stabiliteit in die instansie sowel as dienslewering te verseker.
- Dat die Raad vandag kennis ontvang het dat die Munisipaliteit grasie gekry het to 10 Maart om die Hersiene Begroting na die Raad te bring ter oorweging. Daar is wel ander items wat ook by die Raad moet dien, so die versoek is dat daar so gou moontlik, in terme van die Regelement van Orde vir Raadslede, 'n datum bepaal word.

7.3 MATTERS FOR NOTIFICATION

- Geen / None

7.4 CONSIDERATION OF MOTIONS OF EXIGENCY

- Geen / None

7.5 CONSIDERATION OF NOTICES OF QUESTIONS

- None

7.6 CONSIDERATIONS OF NOTICES OF EXIGENCY

- None

08. CLOSURE

- The newly elected Speaker (Cllr John Hayes) thanked Cllrs. Farmer, Scheepers, Kamfer, Strauss and Heins for the orderly manner in which the meeting was concluded.
- Meeting adjourned at 18h00.

VOORSITTER/CHAIRPERSON

DATUM/DATE

**REPORT COMPILED BY THE SPEAKER OF THE
CEDERBERG LOCAL MUNICIPALITY - ON THE ALLEGED
BREACH OF THE CODE OF CONDUCT FOR COUNCILLORS
ISSUED IN TERMS OF LOCAL GOVERNMENT: MUNICIPAL
STRUCTURES AMENDMENT ACT, 2021; COMMITTED BY
COUNCILLOR J. HAYES (“REPORT ON CLLR. J HAYES”)**

TABLE OF CONTENT OF THE REPORT

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I THE PURPOSE OF THE REPORT

1. This report has been prepared by me in my capacity as Speaker of the Municipal Council at the Cederberg Local Municipality.
2. Councillor John Hayes (“Cllr. Hayes”) is a member of the Cederberg Municipal Council and a member of the Democratic Alliance.
3. I reasonably suspected that Cllr. Hayes, may have contravened the prescripts of Schedule 7 in the Code of Conduct for Councillors (“the Code of Conduct”) issued in terms of the Local Government: Municipal Structures Amendment Act of 2021 (“the Amended Structures Act’). To be more lucid, I reasonably suspected that Cllr. Hayes may be guilty of:
 - 3.1 Unauthorised dissemination of privileged or confidential information which relates to the Municipality; its service providers; its employees;
 - 3.2 A failure to 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

4. I investigated the issues mentioned in sub-paragraph 3.1 and 3.2 above, amongst other things. The content of this document serves to report to Council on the finds which stems from my investigation.

II THE SPEAKER'S POWERS TO COMPILE THIS REPORT

5. The Speaker must ensure compliance with the Code of Conduct in the council and council committees.
6. Schedule of 7 the Code of Conduct at item 15 thereof mentions that: - if the speaker has a reasonable suspicion that the Code of Conduct has been breached, he or she [referring to the speaker] must:
 - 6.1 authorise an investigation into the facts and circumstances of the alleged breach;
 - 6.2 give the councillor a reasonable opportunity to respond in writing; and
 - 6.3 report to a council meeting.

7. The wording in Item 15 of the Code of Conduct places an unassailable obligation upon me as the Speaker to authorise and conduct an investigation, if I have a reasonable suspicion that a breach of the Code of Conduct may have been committed by a fellow member of council.
8. The present report is therefore done in accordance with the peremptory obligation which item 15 of the Code of Conduct, places upon me, as the Speaker.
9. **Nala Local Municipality and another v Lejweleputswa District Municipality and others 2005 (12) BCLR 1280 (O)** (Nala Municipality): - the Court distinguished between the speaker's investigation and the council investigation:

"Clause 13(1) (a) of the Code only authorises the speaker to investigate "the facts and circumstances of the alleged breach". He would then have to submit a report of his findings to the council, which could then appoint a committee to investigate. The provision does not envisage involvement of outsiders but the initial investigation has to be conducted by the speaker himself and the investigating committee would comprise of councillors only."

10. I interject to mention that the *dicta* in Nala Municipality refers to item 13(1) (a) of the Code of Conduct ("the previous Code of Conduct") issued in terms of the Local Government: Municipal Systems Act 32 of 2000 ("the Systems Act"). The Code of Conduct in the Systems Act has since been repealed and substituted by the Code of Conduct issued in terms of the Amended Structures Act.
11. The wording in item 13 (1) of previous Code of Conduct is a mirror image of the wording in item 15 of the Code of Conduct [issued in terms of the Amended Structures Act]. The Nala Municipality case is therefore applicable to the present scenario, based on what I mention below.
12. The *dicta* in Nala Municipality empowers me to investigate the facts and circumstances of the alleged breach of the Code of Conduct, committed by Cllr. Hayes; and to report my findings to council who must initiate an investigation into the findings contained in the said report, if there are grounds to sustain a committal of a breach of the Code of Conduct.

13. The investigation, which council needs to do, is peremptory and not discretionary. The said investigation cannot be avoided or circumvented by way of voting against the commencement of such an investigation [if there are grounds to sustain a committal of an act of a breach of the Code of Conduct].
14. I am therefore empowered to submit the said report based on what I have mentioned above.
15. The Municipal Council's Rules of Order at paragraph 17 thereof states as follows:

DISCIPLINARY CODE AND PROCEDURE

The Speaker remains responsible for discipline in the Council and is not only the Custodian of the disciplinary process, but in the event that the Rules of Order is not clear on any process. The Speaker will provide guidance and will be the final authority in respect of matters of discipline of Councillors.

The Speaker may refer the conduct of members to a disciplinary hearing. The disciplinary hearing will be held at a place and time referred to in the notice issued under the hand of the Speaker. The Speaker will determine the Chairpersonship of the disciplinary hearing on a case by case basis, but a minimum of two Councillors and a maximum of three persons could be appointed to chair the proceedings. The rules of natural justice will apply at any proceedings.

16. The Rules of Order empowers the Speaker to refer the conduct of any councillor to a disciplinary hearing, if circumstances dictate accordingly.

III. FACTS RELATING TO THE BREACH OF THE CODE OF CONDUCT

17. I commenced with an investigation into the facts mentioned under this heading.
18. I was alluded to the content of the social media platform Facebook page of Cllr. Hayes ("the Facebook page"). The Facebook page revealed that Cllr Hayes posted a number of egregious comments and privileged information. The relevant comments and information related to and referred directly to the Municipality, and to some of the Municipality's service providers; and employees.
19. Copies of the relevant Facebook page extracts are annexed hereto.
20. The relevant Facebook page posts [i.e. posted by Cllr. Hayes] raised the following allegations, amongst other things:
 - 20.1 There was, allegedly, a systemic fraud network at the Municipality;

- 20.2 The Speaker and the former Acting Municipal Manager, were requested to investigate certain allegations relating to the Municipality. Those allegations were apparently not investigated by the Municipality;
- 20.3 Mr. Andries Titus and Mercurur (both employed by the Municipality) had to provide an explanation relating to a tender at Lambert Bay;
- 20.4 The Chief Financial Officer had to provide an explanation about the Municipality's budget;
- 20.5 Mr. Titus and Ms. Maarman had to provide an explanation about a preferential tender given to Ekuseni;
- 20.6 Mr. Sheldon had to proffer an explanation pertaining to the volumes of legal work which the Municipality referred to Adv. M Doralingo;
- 20.7 The suspension of Ms. Maarman and Mr. Bino farmer pending an investigation was raised;
- 20.8 The Municipality's attorneys' apparently sent a letter [to Cllr. Hayes] purporting to intimidate him and his colleagues regarding the attendance of a council meeting;

20.9 The African National Congress and the Patriotic Alliance were unwilling to address alleged corruption, which makes them complicit;

20.10 The Municipality was allegedly "captured".

21. Screenshot photos of invoices which were rendered to the Municipality by service providers, namely *inter alia*, Ekuseni Enterprises were also posted on the Facebook page.

IV. COMMENT SOUGHT FROM CLLR HAYES AND HIS RESPONSE

22. I sent a letter dated 6 February 2023 to Cllr. Hayes. In that letter, I raised certain of the allegations mentioned above. I requested him to comment on the content of the said letter.

23. Cllr. Hayes received the letter of 6 February 2023. He responded thereto, by way of an email sent to me on 7 February 2023. His response was scant, and it dismally failed to address the pertinent issues put to him in the letter of 6 February 2023. His email reads as follows:

From: johpathay <johpathay@gmail.com>

Date: 2023/02/07 07:39 (GMT+02:00)

To: Maxwell Heins <maxwellh@cederbergmun.gov.za>

Subject: RE: ALLEGASIES EN BEWEERDE OORTREDINGE VAN GEDRAGSKODE

More , Ek neem kennis van u skrywe .

Ek ontken dat ek enige dokument wat as vertroulik of geklassifiseerde inligting gemerk van Cederberg mun in my besit het .

Ek het geen fisiese eiendom van Cederberg mun in my besit nie . Kan u kantoor my asb van n lys van die beweerde dokumente aan my verskaf sodat ek volledig op u skrywe kan reageer .

Raadslid J Hayes

24. The response from Cllr. Hayes is self-evident. He claims that he did not have any information which is classified as confidential by the Municipality in his possession. Cllr Hayes did not deny that he disseminated or posted information on his Facebook page nor did he proffer any acceptable explanation for doing so.
25. It is therefore insurmountably concluded that Cllr. Hayes is indeed the author of the posts on the Facebook page.
26. It is worth repeating that Cllr. Hayes responded in writing, as contemplated by item 15 in the Code of Conduct.

V. CLLR HAYES HAD OTHER REMEDIES

27. The conduct of Cllr. Hayes [irrespective of which political party the members are representing], must be viewed in an extremely serious light with no element of condonation.
28. There was no need to post the information and make the comments on his Facebook page.
29. Cllr. Hayes, should have gone about dealing with the situation differently; if he felt aggrieved about what he self-perceived to be alleged acts of alleged malfeasance perpetrated at the Municipality. He had a number of option at his avail to vindicate the self-perceived alleged acts of alleged malfeasance allegedly perpetrated at the Municipality.
30. Cllr. Hayes knows better and / or he should have known better, end of story. His actions are unjustifiable; irrational and malicious. His conduct has overtly compromised the credibility and integrity of the Municipality and brought the Municipality into disrepute.
31. It would be remiss not to mention that Cllr. Hayes is a hypocrite. He compliance of allege acts of malfeasance allegedly perpetrated at the Municipality, yet he acted in an egregious manner.

32. He has also disseminated private information of services providers and employees. In doing so, he raised Ms. Maarman's suspension publically. That violated her privacy. More so, service provider's invoices were made known publically which equally violated their privacy.

VI APPLICABLE LEGAL FRAMEWORK TO THE CONDUCT

General conduct of councillors

2. 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.
11. (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.

VII FINDINGS AND FURTHER CONDUCT

33. Cllr. Hayes has clearly contravened Item 2(b) and 11 (2) (c) and (d) of the Code of Conduct, and he thus in breach of the Code of Conduct.

34. A formal investigation must be done by council into the allegations, and disciplinary proceedings must be embarked upon.

Cllr. M Heins

Speaker

28 February 2023