

Legal Briefs

WHEN DOES A COUNCILLOR TAKE OFFICE?

Does a candidate become a councillor on the day of election or on the day that he or she is sworn in? This matter is important in relation to matters such as remuneration. It may also arise during the council's term when a vacancy in the council is filled.

The Independent Electoral Commission's (IEC) declaration of the result of the election is the decisive date. Importantly, it makes no difference whether the IEC's declaration deals with a general election, a by-election or the determination as to who fills a PR seat that became vacant. Though the swearing in may be an important ceremonial and political event it is not the municipality that formally makes a candidate a councillor. The Constitution reserves that task for the IEC, with good reason: elections must be conducted independently. An election must not be dependent on whether or not the municipality 'adopts' the outcome of the election by swearing in the councillor.

Political office bearers, however, are entitled to the remuneration and privileges associated with their function only from the day of their election to that office.

FROM EXECUTIVE MAYOR TO EXECUTIVE COMMITTEE?

Recent discussions in the City of Cape Town centered on changing the City's system of executive governance. How does it work?

A municipality is established by the MEC for local government by means of a 'section 12 notice', referring to section 12 of the Municipal Structures Act. This notice determines aspects such as the name, boundary and number of councillors of the municipality. It also settles the choice between having an executive mayor, executive committee or no separate executive at all.

The Municipal Council can only elect an executive committee if that is permitted in terms of the municipality's section 12 notice. Therefore, if a municipality wishes to change from an executive committee to an executive mayor, the MEC for local government must first change the section 12 notice.

Before changing a municipality's section 12 notice the MEC must consult organised local government (SALGA) and any affected municipality, and publish the changes for public comment.