



CAPE WINELANDS DISTRICT
MUNICIPALITY • MUNISIPALITEIT • UMASIPALA

POLICY FOR MUNICIPAL COUNCILLORS ACTING IN THEIR CAPACITY AS COMMISSIONERS OF OATHS

**POLICY ADOPTED BY COUNCIL ON 25 FEBRUARY 2021 AT
ITEM C.15.3**

NOTE: This Policy is based on and subject to powers conferred by the Minister of Justice and Constitutional Development to commissioners of oaths in terms of the following:

1. Justice of Peace and Commissioners of Oaths Act, 1963 (Act No 16 of 1963);
2. Designation of Commissioners of Oaths Government Notice 903 in GG 19033, dated 10 July 1998; and
3. Regulations governing the Administration of an Oath or Affirmation GN R1258 in GG 3619 of 21 July 1972.

1. PURPOSE

- 1.1 The purpose of the Policy is to outline the operational exercise of powers of Councillors within the jurisdiction of the Cape Winelands District Municipality when acting as commissioners of oaths and the legal implications of the exercise of such powers in accordance with the Act and the regulation issues thereunder.

2. OBJECTIVES

- 2.1 To ensure that Councillors are aware of their powers as commissioners of oaths and general rules applicable to them.
- 2.2 To educate Councillors about the legal implications as commissioners of oaths including penalties for non-compliance with the relevant legislation.
- 2.3 To outline the roles of Councillors as commissioners of oaths in assisting members of the local communities by administering an oath and affirmation or taking a solemn or attested declaration from any person.

3. DEFINITIONS

“Councillor” means a member of a municipal council as defined in the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000);

“ECT Act” means the Electronic Communication and Transactions Act, 2002 (Act No 25 of 2002);

“Ex officio Commissioner of Oaths” means an *ex officio* commissioner of oath designated by the Minister of Justice and Constitutional Development in terms of section 6 of the Act and as referred to in item 5(a)(ii)(aa) of the Notice;

“Local community” or **“community”** means local community or community as defined in the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000);

“Municipal Council” or **“Council”** means the Municipal Council of the Cape Winelands District Municipality referred to in section 18 of the Local Government: Municipal Structures Act, 1998 (Act No 117 of 1998);

“Municipality” means the Cape Winelands District Municipality established in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act No 117 of 1998);

“Notice” means the Designation of Commissioners of Oaths Government Notice 903 in GG 19033, dated 10 July 1998;

“Proportional representative (PR) councillor” means a councillor who proportionally represents the parties contesting the election in the District Municipality in terms of section 23(1)(a) of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“Regulations” means Regulations Governing the Administering of an Oath or Affirmation GN R1258 in GG 3619 of 21 July 1972; and

“The Act” means the Justice of Peace and Commissioners of Oaths Act, 1963 (Act No 16 of 1963).

4. DESIGNATION OF COUNCILLORS AS COMMISSIONERS OF OATHS

4.1 In terms of section 6 of the Act, the Minister of Justice and Constitutional Development may, by notice in the Gazette, designate the holder of any office as a commissioner of oaths for any area specified in such notice, and may in like manner withdraw or amend any such notice.

4.2 Section 6 specifically provides for designation of *ex officio* commissioners of oaths which means *“by virtue of the characteristics inherent in the holding of a particular office without the need of specific authorisation or appointment”*.

- 4.3 Hence, the Minister has designated commissioners of oaths as published in the Notice as amended. Item 5(a)(ii)(aa) of the Notice designated any council member of a municipality established by or under any law, as an *ex officio* commissioner of oaths.

5. POWERS OF COUNCILLORS AS COMMISSIONERS OF OATHS

- 5.1 According to section 7 of the Act, any commissioner of oaths may, within the area for which he/she is a commissioner or oaths, administer an oath or affirmation to or take a solemn or attested declaration from any person, provided that he/she shall not administer an oath or affirmation or take a solemn or attested declaration in respect of any matter in relation to which –

5.1.1 He/she is in terms of any regulation made under section 10 prohibited from administering an oath or affirmation or taking a solemn or attested declaration; or

5.1.2 He/she has reason to believe that the person in question is unwilling to make an oath or affirmation or such a declaration.¹

- 5.2 Regulations governing the administering of an oath or affirmation outline the process of the administration of oaths and affirmations.²

- 5.3 The role of a Councillor as a commissioner of oaths is to -

5.3.1 Assist community members in a municipality by administering an oath or affirmation or taking a solemn or attested declaration from any person; and

5.3.2 Certify copies of documents as true copies of original documents.

¹ Section 7 of the Justice of Peace Commissioners of Oaths Act.

² Regulations governing the administering of an oath or affirmation GN R1258 in GG 3619 of 21 July 1972.

6. RESTRICTIONS OF POWERS OF COUNCILLORS AS COMMISSIONERS OF OATHS

6.1 A Councillor cannot administer an oath or affirmation to or take a solemn or attested declaration from any person –

6.1.1 In relation to which he/she is in terms of any regulation, prohibited from administering an oath or affirmation or taking a solemn or attested declaration; or

6.1.2 If he/she has reason to believe that the person in question is unwilling to make an oath or affirmation or such a declaration.

6.2 A Councillor may not force or compel any person to make an oath or to affirm anything or to make any declaration.

6.3 A Councillor shall not charge any fee for administering any oath or affirmation or attesting any declaration.³

6.4 A Councillor shall not administer an oath or affirmation relating to any matter in which he/she has an interest.⁴

6.5 A Councillor can **ONLY** administer an oath or affirmation to or take a solemn or attested declaration from any person within the geographical area of a municipality.

7. ADMINISTRATION OF OATH OR AFFIRMATION BY A COUNCILLOR (ANNEXURE “A”)

7.1 An oath is administered by causing the deponent to utter the following words: *“I swear that the contents of this declaration are true, so help me God”*.⁵

³ Regulation 6 of the Regulations governing the administering of an oath or affirmation.

⁴ Regulation 7(1) of the Regulations governing the administering of an oath or affirmation.

⁵ Regulation 1(1) of the Regulations governing the administering of an oath or affirmation.

- 7.2 An affirmation is administered by causing the deponent to utter the following words: “*I truly affirm that the contents of this declaration are true*”.⁶
- 7.3 Before an oath or affirmation is administered by a Councillor to any person, such Councillor must ask whether such person:
- 7.3.1 Knows and understands the contents of the declaration;
 - 7.3.2 Has any objection to taking the prescribed oath; and
 - 7.3.3 Considers the prescribed oath to be binding on his/her conscience.
- 7.4 If a person acknowledges that he/she knows and understands the contents of the declaration, but objects to taking the oath, or informs the Councillor that he/she does not consider the oath to be binding on his/her conscience the Councillor shall administer the prescribed affirmation instead (see clause 6.2 above)⁷.
- 7.5 A Councillor must ensure that a person to whom a declaration is administered, signs the declaration in his/her presence.⁸
- 7.6 A Councillor must –
- 7.6.1 Sign the declaration and print his/her full name and business address below his/her signature; and
 - 7.6.2 State his/her designation and the area for which he/she holds his/her appointment or the office held by him/her if he/she holds his/her appointment *ex officio*.⁹

⁶ Regulation 1(2) of the Regulations governing the administering of an oath or affirmation.

⁷ Regulation 2(3) of the Regulations governing the administering of an oath or affirmation.

⁸ Regulation 3(1) of the Regulations governing the administering of an oath or affirmation.

⁹ Regulation 4(2) of the Regulations governing the administering of an oath or affirmation.

7.7 Councillors must only utilise the commissioner of oath stamps provided to them by the District Municipality for this purpose.

8. CERTIFYING DOCUMENTS

8.1 Before certifying a document, a Councillor must ensure that the documents are the same by comparing the copy with the original document.

8.2 Once a Councillor is satisfied that a copy is the true copy of the original document and no unauthorised amendments have been made, a Councillor must write down or affix a stamp that he/she certifies that the document is a true copy of the original document.

8.3 A Councillor must then append a signature and also print out his/her name, designation, contact particulars and date.

8.4 Councillors must only utilise the commissioner or oath stamps provided to them by the District Municipality for this purpose.

8.5 Subject to what has been provided for in the Electronic Communication and Transactions Act, 2002 (Act No 25 of 2002) (ECT Act), no document may be certified a true copy of another document which is not an original document.

9. CERTIFYING A PRINT AS A TRUE COPY OF AN ELECTRONIC DOCUMENT

9.1 The Electronic Communication and Transactions Act, 2002 (Act No 25 of 2002) recognises that an electronic document can, subject to section 14 of the ECT Act, also be confirmed as an original.¹⁰

¹⁰ Section 14 of the Electronic Communication and Transaction Act, 2002 (Act 25 of 2002) provides:

“(1) Where a law requires information to be presented or retained in its original form, that requirement is met by a data message if –

(a) the integrity of the information from the time when it was first generated in its final form as a data message or otherwise has passed assessment in terms of subsection (2); and
(b) that information is capable of being displayed or produced to the person to whom it is to be presented.

(2) For the purpose of subsection 1(a), the integrity must be assessed –

(a) by considering whether the information has remained complete and unaltered except for the addition of any endorsement and any change which arises in the normal course of communication, storage and display;
(b) in the light of the purpose for which the information was generated; and
(c) having regard to all other relevant circumstances.

- 9.2 Whereas, in order to certify that a printed copy is a true original, a Councillor needs to see the original document, insofar as an electronic document is concerned, the ECT Act requires that a Councillor must satisfy himself/herself as to the authenticity of the original electronic document.
- 9.3 A Councillor must therefore –
- 9.3.1 Check and be sure that the original electronic document is complete and unaltered;
 - 9.3.2 Satisfy himself/herself that the printed copy that has been presented to him/her is an exact copy of the electronic original; and
 - 9.3.3 Consider the purpose for which the information was generated and all other relevant circumstances.

10. LEGAL IMPLICATIONS

- 10.1 Below are possible scenarios and consequences where there are contraventions of the Act and the Regulations (the list is not exhaustive):
- 10.1.1 If an oath or affirmation is not taken correctly as prescribed, and the matter goes to court, the affidavit may be declared invalid by a court;
 - 10.1.2 If a Councillor forces a person to take an oath or affirmation, and the matter goes to court, the court may declare the affidavit invalid;

Section 1 of the Electronic Communication and Transaction Act defines “data” and a “data message” as follows:

“**data message**” means data generated, sent, received or stored by electronic means and includes –

- (a) voice, where the voice is used in an automated transaction; and
- (b) a stored record;”

“**data**” means electronic representations of information in any form.”

- 10.1.3 Failing to sign the declaration as prescribed, and the matter goes to court, the declaration may be declared invalid by a court;
- 10.1.4 Failing to state the required details of the Councillor as commissioner of oaths may lead to an affidavit being declared invalid by a court;
- 10.1.5 It is required that a commissioner of oaths must be impartial, unbiased and entirely independent of the office where an affidavit was drawn up, failing which, and if the matter goes to court, the court may order that the affidavit be re-attested before a competent commissioner of oaths; and
- 10.1.6 If a copy of a document is not certified correctly as a true copy of the original, a Councillor who certified the document, may find him or herself in court as a co-accused for assisting someone to commit fraud or as a witness to give evidence of the falsified document.

11. ISSUING OF STAMPS TO COUNCILLORS

- 11.1 Each **proportional representative (PR) councillor** will be provided with a commissioner of oaths stamp if so required.
- 11.2 Any other Councillor may make use of the commissioner of oaths stamp available at the various office buildings of the Cape Winelands District Municipality, subject to availability of such stamp.
- 11.3 Councillors may only use the commissioner of oaths stamps within the jurisdiction of the Cape Winelands District Municipality.

12. VACATION OF OFFICE

When a Councillor ceases to be a Councillor in terms of section 27(a), (b), (c) or (d) of the Local Government: Municipal Structures Act, 1998 (Act No 117 of 1998), and he/she has been provided with a commissioner of oaths stamp by the District Municipality, that Councillor must return the stamp to the District Municipality within five (5) days of him/her ceasing to be a Councillor.

13. COMMENCEMENT

This Policy takes effect on the date it is approved by Council.

ADMINISTRATION OF AN OATH OR AFFIRMATION:

1. I certify that before administering the oath/affirmation I asked the deponent the following questions and wrote down his/her answers in his/her presence:

1.1 Do you know and understand the contents of the declaration?

ANSWER:

1.2 Do you have any objection to taking the prescribed oath?

ANSWER:

1.3 Do you consider the prescribed oath to be binding on your conscience?

ANSWER:

1.4 Do you want to make an affirmation?

ANSWER:

2. I certify that the deponent has acknowledged that he/she knows and understands the contents of this declaration, which was sworn to/affirmed before me and the deponent’s signature/thumbprint/mark was place thereon in my presence.

.....
SIGNATURE

.....
FULL NAMES

Commissioner of Oaths

Designation (rank) ex officio: Republic of South Africa

Date:

Place

Business Address:

CERTIFICATION OF DOCUMENTS:

CERTIFIED TRUE COPY OF THE ORIGINAL DOCUMENT.

THERE ARE NO INDICATIONS THAT THE ORIGINAL DOCUMENT HAS BEEN ALTERED BY UNAUTHORISED PERSONS.

Designation (rank) ex officio: Republic of South Africa

Date:

Place

Business Address:

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Commissioner of Oaths

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SIGNATURE

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FULL NAMES