



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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General Notice

TOWN COUNCIL OF NKURENKURU

No. 15 2009

PERSONNEL RULES: LOCAL AUTHORITIES ACT, 1992

The Town Council of Nkurenkuru, under section 27(1)(c)(i) and (ii)(bb) of the Local Authorities Act, 1992 (Act No. 23 of 1992), with the approval of the Minister of Regional and Local Government, Housing and Rural Development, has made the personnel rules set out in the Schedule.

S.E. KANDYIMI
CHAIRPERSON OF THE COUNCIL
BY ORDER OF THE COUNCIL

Nkurenkuru, 23 October 2008

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PART 1
DEFINITIONS

Definitions

1. In these rules a word or an expression defined in the Act has the that meaning, and unless the context otherwise indicates -

“close relative” means a spouse, a child, a parent, a grandparent, a grandchild, a sibling, a sister or brother in law, an uncle, an aunt, a cousin, a nephew or a niece of the staff member concerned;

“Council” means the Town Council of Nkurenkuru;

“grading committee” means the grading committee established in terms of rule 3;

“grading system” means the job grading system referred to in rule 2;

“head of department” means the head of a department of the Council;

“registered health professional” means a health professional registered in terms of the laws relating to health professions in Namibia;

“the Act” means the Local Authorities Act, 1992 (Act No. 23 of 1992).

PART 2 DETERMINATION OF REMUNERATION AND BENEFITS

Grading system

2. The Council must, after consultation with the relevant trade unions, approve of a job grading system and determine procedures to grade posts on its fixed establishment, with the approval of the Minister.

Wage structure and grading committee

3. (1) The Council must adopt a wage structure that includes market related benefits.

(2) After the implementation of the wage structure referred to in sub rule (1), the Council must establish a grading committee to implement the wage structure.

(3) The grading committee must consist of the following seven members -

- (a) The head of the human resources department as the chairperson of the committee and additional two representatives from that department;
- (b) two trade union representatives;
- (c) the chief executive officer or his or her deputy; and
- (d) a head of department, as determined by the chief executive officer.

(4) The grading committee must -

- (a) evaluate job descriptions;
- (b) grade the post in terms of key performance areas; and
- (c) grade the posts created on the establishment.

Basic salary

4. (1) The Council must pay a basic monthly salary to a staff member on the last Friday of every calendar month, or, where the last day of a calendar month falls on a weekday, on that day, whichever day is the earliest.

(2) Payment of a basic salary contemplated in sub rule (1) must be made into a staff member's bank account provided by the staff member to the head of the human resource department, or in any other manner determined by the Council and approved by the Minister.

(3) On the termination of service of a staff member, the staff member's final salary must be paid at the end of the month, as prescribed in sub rule (1), in which the service was terminated.

(4) The salaries of staff members are subject to incremental progression and as determined by the grading committee.

(5) The grading committee may determine and award rewards based on performance and the rewards are independent of salary structures or salary notches.

(6) A salary notch increase is not influenced by an additional qualifications obtained, unless the staff member successfully applies for a higher position where the qualification is a prerequisite.

(7) The Council may after five years of service of a staff member horizontally adjust the staff member's salary on the salary structure.

(8) A salary increase must be made by a structural percentile adjustment or an across the board percentile adjustment that applies to all staff members.

(9) If a staff member is paid a salary of a higher scale or notch than that for which the staff member was graded for, the Council must adjust the salary to the correct scale or grade and the staff member and the Council must together agree on how the excess salary paid to the staff member must be paid back to the Council.

Calculation of remuneration

5. The salary of a staff member is calculated in accordance with one of the following methods:

(a) Monthly remuneration = $\frac{\text{annual remuneration}}{12}$

(b) Weekly remuneration = $\frac{\text{annual remuneration}}{52}$

(c) Daily remuneration = In the case of a staff member who works a five day working week:

$$\frac{\text{annual remuneration}}{250}$$

(d) Hourly remuneration = In the case of a staff member who works a five day working week:

$$\frac{\text{annual remuneration}}{250} \times \frac{1}{\text{number of working hours per working day}}$$

Advance on salary

6. (1) Only a permanent staff member qualifies for an advance on salary.

(2) A staff member must apply to the chief executive officer for an advance on salary and the chief executive officer must consider the application and may approve or refuse to approve the advance.

(3) An advance on a staff member's salary is only payable in the circumstances of a serious illness or death of a close relative.

(4) An advance on salary may not exceed an amount equal to the pro-rata salary earned at the date of the application referred to in sub rule (2).

(5) The same requirements regarding proof for compassionate leave, specified in rule 26, apply to the application for an advance in salary.

(6) The Council may recover an advance on salary by deducting the amount in one instalment at the end of the month following the month in which the advance was approved by the chief executive officer.

Overtime

7. (1) The chief executive officer must on a regular basis assess the workforce and financial state of affairs of the Council and specify the departments within the Council in which staff members may perform work on an overtime basis.

(2) The annual budget for overtime payments may not exceed two per cent (2%) of the annual wage or salary budget of the Council.

(3) The management cadre of the Council is excluded from overtime payments.

(4) A staff member on leave may not be called back to work overtime if the staff member is on leave.

(5) The Council must ensure that records are kept of staff members working overtime.

Annual bonus

8. (1) An annual bonus or a thirteenth cheque, equal to a staff member's monthly basic salary, is payable to the staff member at the end of the staff member's birthday month.

(2) An annual bonus referred to in sub rule (1) is only payable to a permanent staff member.

(3) An annual bonus, referred to in sub rule (1), received by a staff member is taxable but pension may not be subtracted from the bonus.

(4) The chief executive officer does not qualify for an annual bonus if the chief executive officer receives a performance bonus, referred to in rule (9), in terms of the conditions of service.

Performance bonus

9. The Council may pay, with the approval of the Minister, a performance bonus to a staff member based on the staff member's grading in terms of the Council's performance management system, or, in the case of a chief executive officer, in terms of the chief executive officer's conditions of service.

Housing benefit

10. (1) Subject to this rule, every staff member of the Council is entitled to a housing allowance where the staff member owns and occupies a house or leases and occupies a house, unless the staff member occupies accommodation provided by the Council.

(2) A staff member that does not own a house receives a housing allowance of fifteen per cent (15%) of the staff member's basic monthly salary.

(3) The chief executive officer of the Council receives a housing allowance of thirty per cent (30%) of the chief executive officer's basic monthly salary, but may not receive collateral for the purchasing of a house.

(4) Subject to the housing schemes contemplated in Part XII of the Act, the Council may on application by a staff member provide collateral of twenty per cent (20%) of a staff member's annual pensionable salary where the staff member purchases a house.

(5) The staff member must submit proof of a bond or a lease agreement to the human resources department when the staff member applies for a housing allowance from the Council.

(6) An exemption from normal tax, wholly or partly, in terms of a staff member's housing benefit is subject to section 16A of the Income Tax Act, 1981 (Act No. 24 of 1981).

(7) A staff member who resides in accommodation provided by the Council must pay, where the staff member occupies accommodation with air-conditioning, four per cent (4%) of the staff member's basic monthly salary to the Council, or, where the staff member occupies accommodation without air-conditioning, two per cent (2%) of the staff member's basic monthly salary to the Council.

(8) The staff member to whom accommodation is provided in terms of sub rule (7) is responsible for the payment of water or electricity consumed on the premises.

(9) The Council may not deduct pension from the housing allowance offered by the Council.

(10) The housing allowance forms part of the calculation of leave gratuity.

Medical aid fund

11. (1) A staff member -

(a) may belong to a medical aid fund of the staff member's choice; and

(b) may not be forced to be a member of the medical aid fund of the Council.

(2) A staff member must apply on the form determined and provided by the Council to indicate the staff member's intention to be a member of the medical aid fund of the Council.

(3) A permanent staff member must contribute thirty per cent (30%) of the total monthly contribution to the medical aid fund and the Council must contribute the remaining seventy per cent (70%) of the total monthly contribution in respect of each permanent staff member.

(4) The Council is not obliged to provide a medical aid towards a retired former staff member or a staff member that resigned, except where the obligation was included in a separation agreement between the Council and the former staff member.

Pension fund

12. The Council must contribute to a retirement fund approved by Council, in respect of each permanent staff member, an amount equal to twenty-one comma seven per cent (21.7%) of the total pension contribution made by the permanent staff member.

Motor vehicle allowance

13. (1) For the purpose of this rule a “specialist staff member” means a registered professional staff member performing a recognised professional trade of specialisation.

(2) The Council must provide motor vehicle allowance to senior management staff members.

(3) The total annual motor vehicle allowance, specified as follows, is payable in 12 monthly instalments to the relevant staff member:

- | | |
|--|-----------|
| (a) chief executive officer: | N\$73 845 |
| (b) head of department: | N\$65 757 |
| (c) specialist staff member of Council, referred to in sub rule (1): | N\$53 772 |

(4) The motor vehicle allowance scheme is subject to the approval of the Minister.

(5) A staff member who benefits from a motor vehicle allowance may not make use of the Council’s motor vehicles.

(6) Only a permanent staff member may benefit from the motor vehicle allowance scheme.

(7) Seventy five per cent (75%) of the motor vehicle allowance awarded is taxable but pension may not be deducted from the allowance.

(8) A staff member who benefits from the motor vehicle allowance scheme must at all time have a reliable vehicle available to enable the staff member to perform the staff member’s official duties.

(9) The Council may at any time three months after the date of allocation of a motor vehicle allowance, when the conditions specified for the allocation of the allowance is not complied with by the relevant staff member, cancel the allowance in writing.

(10) To qualify for a motor vehicle allowance, a staff member must provide proof of the purchase of a motor vehicle, or, where that staff member already owns a motor vehicle, the staff member must provide proof of ownership of or the monthly instalment paid for the motor vehicle.

(11) The motor vehicle allowance is linked to a staff member’s salary and is to be reduced proportionately with any leave of absence without remuneration.

(12) The vehicle allowance forms part of the calculation of leave gratuity.

Transport allowance

14. (1) The Council must pay a monthly transport allowance of N\$300 to every permanent staff member, except for staff members who benefits from the motor vehicle allowance referred to in rule 13.

- (2) The transport allowance is linked to the salary of a staff member and is to be reduced proportionately against any leave taken without remuneration.
- (3) The transport allowance is taxable but the Council may not deduct pension from the allowance.
- (4) The transport allowance forms part of the calculation of leave gratuity

Subsistence and travelling allowance

15. (1) Where the Council requires or directs a staff member to travel on official business outside the borders of the local authority area of the Town of Nkurenkuru, the Council must pay to that staff member a subsistence and travelling allowance at the daily rate in accordance with the Central Government Policy Position (P.S.M. Circular No. 11 of 2006, “hereinafter referred to as the P. S. M”), as follows:

- (a) to the chief executive officer, a subsistence and travelling allowance equivalent to that of a director in the P.S.M.;
- (b) to a head of department, a subsistence and travelling allowance equivalent to that of a deputy-director in the P.S.M.; and
- (c) to any other staff member a subsistence and travelling allowance equivalent to that of a staff member in the P.S.M.

(2) The Council must ensure that the delegation on an official trip may not exceed three staff members unless otherwise approved by the Minister.

(3) The Council must limit the usage of the subsistence and travelling allowance to necessary official trips only.

(4) All official trips outside the borders of Namibia must only be undertaken with the approval of the Minister.

(5) The Council may pay to a staff member, on prior written approval by the Council, N\$1,50 per kilometre travelled by the staff member for the use of the staff member’s private motor vehicle on an official trip and the staff member must submit a declaration of the distance travelled and proof of the fuel purchased during the official trip to the Council.

Foreign expert

16. (1) For the purposes of this rule “foreign expert” means a person, who is not a Namibian citizen or a permanent resident of Namibia, with expert knowledge or expertise in a field where there is a lack of such knowledge or expertise in Namibia.

(2) The Council may, in line with Namibia’s affirmative action laws and policies, appoint a foreign expert to train staff members of the Council in a field where there is a lack of knowledge or expertise in Namibia.

(3) The Council may appoint a staff member as an understudy to a foreign expert.

(4) At the end of every 6 months starting from the date of appointment of the foreign expert, the expert must file a report with the Council denoting the progress of all the understudies assigned to the expert.

Acting allowance

17. (1) A staff member may not claim extra remuneration from the Council for performing additional duties beyond the staff member's job description or expectation, unless the Council has entered into an agreement with a staff member for the staff member to perform duties in an acting capacity.

(2) The chief executive officer may appoint, in terms of the powers delegated to the chief executive officer under section 31 of the Act, a staff member to act in a higher post for a period not exceeding three months.

(3) The chief executive officer may only extend the acting period of a staff member after the lapse of the first three months and the chief executive officer may only extend the acting period once more for a period not exceeding three months.

(4) The Council must pay an acting allowance to an acting staff member equal to the difference between the acting staff member's basic monthly salary and the minimum notch of the basic monthly salary of the post in which the staff member is acting.

(5) A staff member appointed in an acting position is not entitled to allowances, special conditions of service or any other form of remuneration linked to the higher position.

(6) The acting allowance is not paid to the acting staff member where that staff member is absent for a continuous period in excess of 30 days.

(7) An acting allowance is not payable in the circumstances where the staff member in the higher position is on leave, on a course, on suspension or any other temporary absence.

(8) The chief executive officer may not retrospectively appoint a staff member as an acting staff member.

(9) An acting allowance allocated to an acting staff member does not form part of the calculation of leave gratuity upon resignation, retirement, death or the discharge of a staff member.

(10) The Council must take all necessary steps to ensure that the vacant position is filled as expeditiously as possible.

Cell phone allowance

18. (1) The chief executive officer, a head of department and staff members recommended by the chief executive officer with the approval of the management committee and the Minister, qualify for a cell phone allowance.

(2) The Council must purchase a cell phone of a value not exceeding N\$3000 for a staff member referred to in sub rule (1) or make such cell phone available to the staff member.

(3) A cell phone purchased by the Council and allocated to a staff member remains the property of the Council and that cell phone must be returned to the Council in good repair when the relevant staff member becomes disqualified for a cell phone allowance or where the staff member's service is terminated.

(4) A staff member to whom a cell phone has been allocated must at all time take proper care of the cell phone.

(5) A staff member to whom a cell phone is allocated must keep the cell phone with the staff member during working hours, and make the cell phone number of that cell phone available to the Council, and to the public when requested.

(6) The Council must pay the relevant contract charges relating to the cell phone allowance and pay the monthly airtime charges not exceeding -

- (a) N\$450 for the chief executive officer; and
- (b) N\$300 for a head of department; and
- (c) an amount approved by the Minister for staff members referred to in sub rule (1).

(7) The Council must settle the amount paid for the cell phone, the contract fees and the airtime with the relevant service providers and no amount in this regard may be paid out to the staff member concerned.

(8) The cell phone allowance does not form part of a staff member's salary.

(9) The cell phone allowance is only allocated for official purposes and is not payable during a period of unpaid leave.

Classification of leave

19. (1) The categories of leave within the Council are as follows -

- (a) vacation leave with or without remuneration;
- (b) sick leave;
- (c) special leave with or without remuneration;
- (d) maternity leave;
- (e) one-year full time study leave; and
- (f) compassionate leave.

(2) The granting of leave by the Council classified under sub rule (1) does not influence the granting of a leave classified under any other rule, except insofar it is specifically otherwise provided for.

(3) A staff member must -

- (a) at least 5 working days before the staff member intends to take leave, apply for leave on the form determined and provided by the Council and submit the application to the head of department for approval; and
- (b) when it is impossible to apply for leave in the manner stated in paragraph (a), apply for leave not later than two working days after the staff member has returned from the leave taken, subject to the staff member having acquired prior verbal approval by the staff member's head of department.

(4) The Council or the relevant head of department may approve or not approve the leave applied for under sub rule (3), depending on the grounds for leave applied for and the staff member's work commitments.

(5) When application for leave has been approved, the application form must be forwarded by the approving officer to the human resources department of the Council.

(6) The human resources department of the Council must record the leave taken by every staff member.

(7) The record kept in terms of sub rule (6) must be available during office hours for inspection by the staff member.

(8) Where the Council erroneously grant more leave than the staff member is entitled to, the Council may after informing the staff member of the error deduct the number of excess leave days granted from the leave days which stand to the credit of the staff member or which may in future accrue to that staff member.

Vacation leave

20. (1) The Council must grant 25 working days leave with full remuneration to a staff member in respect of each period of 12 consecutive months, (hereinafter referred to as “a leave cycle”), for which the staff member is in service of the Council.

(2) Every staff member must take at least 18 days vacation leave after a leave cycle has lapsed, but the period of leave is reduced by the number of days which the staff member is granted occasional leave on full remuneration during the relevant preceding leave cycle.

(3) The Council may not, except in an emergency, require or permit a staff member to perform work during vacation leave taken by the staff member.

(4) Where a staff member works a five-day working week from Monday to Friday, a workday constitutes a day within that five-day working week and leave taken does not include Saturdays, Sundays and Public Holidays.

(5) Where a staff member shows good reason for the intention to take leave without remuneration, the Council may grant such leave for a period not exceeding 60 working days in a leave cycle.

(6) The Council may pay to a staff member in advance the remuneration in respect of the staff member’s leave where leave is for a period of not less than ten (10) consecutive working days and where that staff member works a five (5) day working week.

(7) Subject to sub rule (6), the staff member concerned must request the payment of an advance in salary not later than one week before the staff member’s last working day before the commencement of the staff member’s leave.

(8) When making an advance payment under sub rule (7), the Council may not pay more than fifty per cent (50%) of the monthly net salary earned by the staff member during the month the staff member applied for the advance.

Cancellation, interruption or postponement of vacation leave

21. (1) A staff member does not accumulate more than 60 days vacation leave with remuneration in all.

(2) Vacation leave days with remuneration in excess 60 days lapses after a leave cycle.

(3) Despite sub rule (2), a staff member is granted an additional four months after the lapse of the leave cycle in which the staff member may take the leave in excess of the leave contemplated under sub rule (1).

(4) The Council may not grant leave to a staff member that runs concurrent with any period of sick leave granted in terms of these rules, or with a period of notice of termination of service.

(5) Where in an emergency, the Council cancels, postpones or interrupts a staff member's vacation leave the Council must -

(a) compensate the staff member for expenses irrecoverable by the staff member for commitments incurred by the staff member before the staff member was notified of the cancellation, postponement or interruption; and

(b) where the staff member was required to travel in order to resume duty, pay the staff member's travelling expenses and the staff member is regarded as being on duty during the travelling.

(6) The Council must confirm the cancellation, postponement or interruption of vacation leave in writing.

(7) Where the Council refused, cancelled, postponed or interrupted an application for leave or approved leave, the Council must record the reasons for the refusal, cancellation, postponement or interruption of leave in the leave register.

(8) Where the Council has refused, cancelled, postponed or cancelled leave of a staff member, the Council must credit the number of leave days remaining to the staff member and that staff member must take that leave within 12 months from the date of crediting.

Compulsory vacation leave

22. The Council may require a staff member who has more than 60 days vacation leave to the staff member's credit, to take leave for the days that are in excess of the provided 60 days during a period determined by the staff member and the Council.

Sick leave

23. (1) For the purposes of this rule "incapacity" means inability to work resulting from an illness or injury.

(2) Subject to sub rule (3) and the conditions of service applicable to a staff member on the day immediately before the commencement of these rules, the Council must grant sick leave to every staff member who is absent from work through incapacity on the basis of 120 working days in aggregate on full remuneration and 120 working days in aggregate on half remuneration during each period of 36 consecutive months (in this rule referred to as the "sick leave cycle").

(3) Sick leave accrues to a staff member from the first day of a sick leave cycle, and for the first year of service four days sick leave on full remuneration and four days sick leave on half remuneration may be granted to a staff member for every completed month of service.

(4) After the first year of service and the accrual of sick leave the full complement of the sick leave accrued may be granted to the staff member.

(5) Sick leave lapses at the end of the sick leave cycle and is not transferable to the next sick-leave cycle.

- (6) Despite sub rule (5)-
- (a) one day accumulated sick leave with full remuneration for every eight days sick leave with full remuneration not used by the staff member by the end of the former sick leave cycle must be transferred to the next sick leave cycle;
 - (b) one day accumulated sick leave with half remuneration for every eight days sick leave with half remuneration not used by the staff member by the end of the former sick leave cycle must be transferred to the next sick leave cycle.
- (7) Where a staff member is absent from service through incapacity for a period of more than two consecutive days, sick leave may be granted to the staff member only if the staff member submits a certificate of incapacity by a registered health professional in which the nature of the incapacity is described, it is declared that the staff member is unable to perform official duties and which indicates the period necessary for recovery.
- (8) Despite sub rule (7), the Council may require the staff member to submit a certificate of incapacity for a period of less than two consecutive days sick leave taken.
- (9) Despite sub rules (6) and (7), the Council may where it is satisfied that the staff member's absence was in good faith due to incapacity and that good reasons exist why a certificate of incapacity was not submitted, exempt the staff member from the submission of the certificate in respect of a continuous period of sick leave, not exceeding 14 consecutive days.
- (10) The Council may require a staff member who applied for sick leave to subject him or herself to a medical examination by a registered health professional of the Council's choice and where the certificate of incapacity differs significantly from the chosen professional's diagnoses, the Council may cancel or withdraw the sick leave granted to the staff member and replace it with vacation leave with or without remuneration, where vacation leave is available.
- (11) The Council may on application by a staff member, where the staff member becomes incapacitated during the staff member's vacation leave, convert that portion of the staff member's vacation into sick leave, on condition that the staff member submits a certificate of incapacity by a registered health professional in terms of this rule.
- (12) The Council may grant on application by a staff member vacation leave to the staff member where the staff member has sufficient vacation leave to the staff member's credit, where sick leave was granted with no remuneration or with half remuneration.
- (13) Nothing in this rule may preclude a staff member from leaving service on the grounds of ill health before the maximum or any period of sick leave has been granted.
- (14) Where the Council's appointed registered health professional declares a staff member medically unfit, that staff member's service may be terminated by the Council from the date on which the staff member is so declared to be medically unfit.
- (15) At the commencement of these rules, every staff member retains the existing sick leave of the former three year sick leave cycle under the staff member's former conditions of service with the Council, where applicable.
- (16) Despite the definition for "incapacity", the Council may regard alcoholism or an addiction to an intoxicating substance as incapacity, and -
- (a) may grant to a staff member sick leave with full remuneration; and

(b) where a staff member is on probation, may, terminate in accordance with the Act and these rules, the staff member's service when the staff member is diagnosed by a registered health professional of alcoholism or addiction to an intoxicating substance.

Special leave

24. (1) The Council may, subject to such conditions as it may determine, grant special leave of up to 21 days per 12 month cycle to a staff member who -

- (a) is selected by a recognised non-professional sports association to -
 - (i) take part, as a member of an organised sports group in a sports tour outside Namibia, whether as competitor, coach or manager;
 - (ii) represent Namibia, as a competitor, coach or manager at an international sporting event in Namibia;
 - (iii) accompany a foreign national team visiting Namibia, as a representative of the Namibia sports association organising the tour;
- (b) is absent from duty as a result of isolation on medical instructions where the staff member was in contact with a person who has contracted or is suspected of having contracted an infectious disease;
- (c) is arrested or has to appear before a court on a criminal charge and the staff member is subsequently acquitted or the charge is withdrawn;
- (d) is subpoenaed as witness in proceedings before a court of law or a commission of enquiry;
- (e) has to study and sit for an examination approved by the Council, but
 - (i) the special leave under this paragraph may not be taken more than 60 days before the examination;
 - (ii) the special leave under this paragraph may be granted only once per approved paper per subject;
- (f) does not have vacation leave to the staff member's credit and the Council is satisfied that due to special circumstances not otherwise referred to in these rules, special leave must be granted to the staff member;
- (g) is appointed as a board member of a company in which the Government holds shares or a professional body established by law for board meetings and conferences;
- (h) is attending a congress, seminar or conference or workshop on behalf of the Council; or
- (i) is unable to perform the staff member's duties on account of an accident to which the laws providing for employees compensation provides for.

(2) Every staff member who applies for special leave contemplated in this rule must in support the application submit a certificate or written reasons for the action to be taken or such other proof as may be required by the Council.

Maternity leave

25. (1) The Council must grant to a female staff member who has completed 6 months continuous service with the Council, with a view to her confinement, at least 4 weeks of maternity leave before the expected date of her confinement and at least 8 weeks after the date of confinement.

(2) The date of confinement mentioned in sub rule (1), must be certified by a registered health professional.

(3) Maternity leave is taken with basic benefits but without basic salary.

(4) A female staff member who has been granted maternity leave may not be deprived of any right, except the right to basic salary for the period of maternity leave, that has vested in the staff member by reason of the staff members conditions of service directly before the date on which staff member's maternity leave commences and the staff member's rights continues as if the staff member's service is uninterrupted during the maternity leave granted to the staff member.

(5) A female staff member's monthly contribution towards the pension fund and the medical aid fund, is suspended during the maternity leave granted to her, until the staff member resumes service.

(6) If these rules are more advantageous to a staff member than the applicable labour laws, these rules have precedence, otherwise these rules are subject to the applicable labour laws of this country.

Compassionate leave

26. (1) The Council may on application by a staff member, grant compassionate leave with full remuneration of not more than 10 days in one 12 month cycle.

(2) Compassionate leave is granted to a staff member where a close relative of such staff member has died or where a close relative of the staff member has fallen ill with a serious illness and the staff member has to personally attend to the close relative.

(3) A staff member must apply for compassionate leave on the form determined and provided by the Council and must together with the application -

(a) in the case where a close relative of the staff member has died, submit a copy of the deceased close relative's death certificate; and

(b) in the case where a close relative has fallen ill with a serious illness, submit a certificate by a registered health professional treating the close relative in which certificate the professional names the serious illness and states why the staff member must personally attend to such close relative.

(4) Compassionate leave lapses at the end of a 12 month cycle and is not transferable to the next 12 month cycle.

(5) The compassionate leave cycle starts on 1 January and ends on 31 December on which day the compassionate leave for that cycle lapses.

(6) Compassionate leave does not form part of vacation leave and is not paid out to a staff member on termination of the staff member's service.

Payments of vacation leave on termination of service

27. (1) Where a staff member dies while the staff member is in the service of the Council, the Council must pay to the estate of the staff member the value of the vacation leave with full remuneration to the credit of the staff member at the date of the staff members death, which vacation leave days may not exceed 60 days.

(2) Where a staff member's service with the Council is terminated, except when the staff member's service was terminated on misconduct, the Council must pay to that staff member the value of the vacation leave with full remuneration to the credit of the staff member at the date of the staff member's termination, which leave days may not exceed 40 days.

PART 3
DISCIPLINE, DISCHARGE AND SUSPENSION

Discipline

28. (1) The Council, the management committee and the chief executive officer must maintain discipline in the staff establishment, ensure that all staff members are treated in a fair and consistent manner, and must inform all staff members of the disciplinary code and the possible actions against all acts of misconduct.

(2) A staff member must execute the staff member's duties and assignments with the necessary diligence and dedication and the staff member must behave in a seemly and proper manner towards the Council, other staff members and the Council's customers.

(3) The conditions of service, the applicable labour laws and the relationship of trust between the staff member and the Council forms the basis for the service relationship between the parties.

(4) This Part must be applied subject to section 29(6) of the Act.

(5) Except for paragraphs (a) and (b) of this sub rule and rule 35, the expression "staff member", as used in this Part includes the chief executive officer and a head of department, and where the expression -

(a) "management committee" or "chief executive officer" is used in relation to a staff member, the term "Council" must be used where the rule is applied to a chief executive officer or a head of department; and

(b) "Council" is used in relation to a staff member, the term "Minister" must be used where the rule is applied to a chief executive officer or a head of department.

Guidelines in dealing with actions that constitutes misconduct

29. (1) The following offences can be used as guidelines when dealing with actions that constitute misconduct, and very serious offences are the following -

(a) theft;

(b) fraud, bribery, malicious damage to the Council's property;

(c) unauthorised possession of Council property;

(d) driving an official motor vehicle under the influence of stupefying substance without prescription;

- (e) intimidation;
- (f) incitement;
- (g) perjury;
- (h) assault;
- (i) making false statements when applying for employment or undergoing medical examinations;
- (j) disobeying or disregarding work-related orders;
- (k) intoxication or under the influence of a stupefying drug without a prescription;
- (l) sexual harassment;
- (m) revealing confidential information to unauthorised persons;
- (n) illegal strikes under Namibia's applicable labour laws;
- (o) racism;
- (p) tribalism;
- (q) nepotism;
- (r) gross abuse of authority;
- (s) gross negligence.

(2) In relation to the very serious offences specified under sub rule (1), the relevant person contemplated in section 29(6)(a) of the Act may charge a staff member on a first offence with misconduct and a formal disciplinary inquiry must be held on the charge.

(3) The serious offences are as follows:

- (a) disregard of safety standards;
- (b) misuse of Council property for private purposes;
- (c) being under the influence of alcohol or a stupefying substance without any prescription during working hours;
- (d) abuse of sick leave;
- (e) sleeping on duty;
- (f) repeated absence from the workplace while on duty;
- (g) repeated unauthorised or excommunicated absenteeism;
- (h) using abusive language;
- (i) failure to report an accident or damage;

- (j) reckless driving of the Council's vehicles;
- (k) insolence; and
- (l) indolence.

(4) In relation to the serious offences specified under sub rule (3), the management committee or the chief executive officer may -

- (a) on a first offence, issue a first written warning to the staff member concerned;
- (b) on a second offence, issue a final written warning to the staff member concerned;
- (c) on a third or further offence, cause the relevant person contemplated in section 29(6)(a) of the Act to charge the staff member concerned with misconduct, on which a formal disciplinary inquiry must follow.

(5) The minor offences are as follows:

- (a) poor time control;
- (b) improper conduct;
- (c) carelessness;
- (d) not reporting for overtime without a reasonable excuse, after agreeing in writing to work overtime; and
- (e) not dressed in a clean, decent and tidy manner.

(6) In relation to the minor offences specified under sub rule (5), the management committee or chief executive officer may -

- (a) on a first offence, convey a verbal warning to the staff member concerned;
- (b) on a second offence, issue a first written warning to the staff member concerned;
- (c) on a third offence, issue a final written warning to the staff member concerned;
- (d) on a fourth or further offence, cause the relevant person contemplated in section 26(6)(a) of the Act to charge the staff member concerned with misconduct on which a formal disciplinary inquiry must follow.

(7) The types of misconduct specified in sub rules (1), (3) and (5) and the possible actions to be taken against a staff member by the management committee or the chief executive officer, and stated in sub rules (2), (4) and (6), serves as a guideline only and the chief executive officer may, depending on the seriousness of the offence and on consideration of the circumstances, take a course of action more suitable for a particular situation of misconduct.

(8) The Council, the management committee or the chief executive officer, as the case may be, must specify its disciplinary action on the disciplinary form, similar the to Form A of the Annexure, and issue the form to the staff member concerned after the conclusion of an informal disciplinary inquiry or a formal disciplinary inquiry, as the case may be.

(9) The relevant person contemplated in section 29(6)(a) of the Act must, where applicable under this Part, charge a staff member on a charge sheet in the form similar to Form B of the Annexure, and the charge sheet must specify the charge or charges against a staff member and the procedure to be followed by the staff member.

(10) In the circumstances where the management committee or the chief executive officer intends to convey a verbal warning or a written or final warning to a staff member, the management committee or the chief executive officer must first conduct, or cause to be conducted, an informal inquiry into the alleged misconduct during which the staff member must be granted an opportunity to present the staff member's case.

(11) An informal inquiry contemplated in sub rule (10), must be attended by the staff member, the management committee or its representative or by the chief executive officer or a person designated the chief executive officer, who intends to convey a verbal warning or to issue a written or final warning, and a third impartial party to record the proceedings.

(12) Where the management committee or its representative, or the chief executive officer or the person designated by the chief executive officer, is on the conclusion of an informal inquiry referred to in sub rule (11) is not satisfied with the staff member's explanation, the relevant person may convey a verbal warning or issue a written or final warning to the staff member, and the warning must be recorded on the staff member's personal file.

(13) The staff member may appeal to the Council in writing if the staff member does not agree with the verbal warning or written or final warning referred to in sub rule (12), on which the Council must make a final decision regarding the validity of the warning.

Warnings with regard to types of inquiries

30. There are two types of warnings under these rules, the first type of warning is upon the conclusion of a formal disciplinary inquiry, where a staff member is found guilty of the charge of misconduct and an action in terms of section 29(6)(g)(i)(aa) is taken against the staff member, and the second type of warning is set out under rule 29(10) to (12) and is conveyed or issued by the management committee or its representative, or the chief executive officer or the person designated by the chief executive officer on the conclusion of the informal disciplinary inquiry.

Types of warnings

31. (1) The types of warnings specified in this rule serves as a guideline for the application of section 29(6)(g)(i)(aa) of the Act after the conclusion of a formal disciplinary inquiry and serves as a guideline for the application of an informal disciplinary inquiry as contemplated in rule 29(10) to (12).

(2) The types of warnings are as follows:

- (a) the first type of warning is a verbal warning given in less serious circumstances and it is normally valid for a period not exceeding three months;
- (b) the second type of warning is a first written warning and is normally given where verbal warnings for minor offences have been unsuccessful or in the case of a first serious offence and it is normally valid for a period not exceeding 6 months;
- (c) the third type of warning is a final written warning and is normally given where written warnings for serious offences have been unsuccessful, or in the case of a very serious offence, and it is normally valid for a period not exceeding 12 months.

Procedural fairness during disciplinary inquiry

32. (1) The Council, the management committee or the chief executive officer, as the case may be, and the staff member concerned must strictly follow the disciplinary inquiry procedures specified in the Act and in these rules.

(2) The persons conducting a formal disciplinary inquiry may only after the inquiry has been finalised consider or apply punitive measures.

(3) A staff member is entitled to an interpreter where the staff member requires an interpreter during a disciplinary inquiry.

(4) The staff member must be in a fit, conscious and sober frame of mind during an inquiry.

(5) A staff member or the staff member's representative, who requires additional time to prepare the case of the staff member, must request the chairperson of the formal disciplinary inquiry in writing for a postponement of the inquiry after the disciplinary inquiry committee has convened for the first time.

(6) Despite sub rule (5), a chairperson of a formal disciplinary inquiry may where the chairperson believes that a staff member is unduly delaying the inquiry -

(a) warn the staff member to not unduly delay the inquiry; and

(b) where the delay continues, the chairperson may set a time frame within which the inquiry must be concluded.

(7) The charged staff member has the right to a procedurally fair disciplinary inquiry even though evidence exists that warrants an immediate dismissal.

Substantive fairness in disciplinary inquiries

33. (1) A staff member must have been reasonably aware of the rule that the staff member has transgressed in order for the disciplinary inquiry committee to find staff member guilty of misconduct.

(2) The staff member must fully understand the charge against the staff member, and the person charging the staff member must, where requested, explain the charge to the staff member.

(3) Before a staff member is charged with misconduct, the person charging the staff member must ensure that there is sufficient proof of misconduct on the balance of probabilities.

Suspension

34. (1) In terms of section 29(6)(b) of the Act, the Council specifies the suspension procedure under this rule.

(2) The management committee or the chief executive officer may, at any time before or after a staff member is charged with misconduct, suspend the staff member with or without pay, as the case may be, where the nature of the misconduct dictates that the staff member be removed from the staff member's place of duty or if the possibility exists that the staff member may interfere or tamper with witnesses or evidence.

(3) The management committee or the chief executive officer must determine a specific period for suspension.

- (4) A staff member may be suspended without pay for -
- (a) the duration of the formal disciplinary inquiry; or
 - (b) for a period not exceeding 6 months,

whichever period is the shortest.

(4) A staff member who has been suspended with or without pay, as the case may be, may within 7 days after the staff member is notified of the suspension, appeal in writing to the Council against the validity of the staff member's suspension or against the suspension without pay.

(5) On considering the staff member's appeal in sub rule (4), the Council must make a final decision as to the validity of the suspension of that staff member or to the suspension of that staff member without pay.

(6) A staff member who has been suspended must be permitted to reassume official duty and must be paid full remuneration for the period of suspension -

- (a) if no charge of misconduct is brought against the staff member under section 29(6)(a) of the Act;
- (b) if the staff member is found not guilty on a charge of misconduct;
- (c) if the staff member's appeal is upheld against any finding that the staff member is guilty on a such charge of misconduct; or
- (d) if an action under section 29(6)(g)(i)(aa) or (bb) of the Act is taken against the staff member.

(7) A staff member who has been suspended and against whom an action under section 29(6)(g)(cc) has been taken, must assume duty at the reduced salary or the lower grade or both at the reduced salary and in the lower grade and the reduced salary must be paid to the staff member for the period of suspension unless payment at the former higher salary has already taken place during that period.

(8) Where a staff member who was suspended without pay is found guilty of misconduct and the staff member is not discharged in terms of section 29(6)(g)(dd) of the Act, the staff member's next annual salary increase must be deferred by a period equal to the period of suspension and that period must for the purpose of the calculation of his or her sick, vacation or bonus leave, be regarded not to have been a period during which the staff member was employed by the Council.

(9) The suspension of a staff member may at any time be cancelled by the Council if the reason for the suspension has lapsed, but the cancellation of the suspension does not affect any proceedings in connection with the charge of misconduct.

Persons conducting disciplinary inquiry

35. (1) Subject to section 29(7) of the Act, the following persons must be appointed, unless already designate under that section in which case the management committee must appoint an alternative person, in addition to a person designated to conduct an inquiry -

- (a) the relevant head of department of the Council, who acts as chairperson of the proceedings;

- (b) a staff member from the human resources department of the Council; and
- (c) a staff member who is considered in the circumstances to have skill or knowledge in the field in which the staff member is charged with misconduct.

(2) With regard to the chief executive officer or a head of department under this rule, the person designated by the Minister in terms of section 29 to inquire into the charge, must act as the chairperson of a disciplinary committee and must appoint the following persons to conduct the formal disciplinary inquiry -

- (a) the head of the human resources department of the Council, or where he or she is charged with misconduct, another head of department in the Council;
- (b) the chief executive officer, or where the chief executive officer is charged with misconduct, a head of department, other than the head of department appointed under paragraph (a);
- (c) a person who is considered in the circumstances to have skill or knowledge in the field in which the chief executive officer or the head of department is charged with misconduct; and
- (d) such other person that the chairperson may appoint in the circumstances, if necessary.

(3) The staff member designated to inquire into the charge, contemplated in section 29(7) of the Act, must act as an investigating officer, collecting evidence and leading the inquiry against the staff member so charged with misconduct.

Appeals

36. (1) This rule is subject to the appeal procedures specified in section 29(6)(g)(ii) and (h)(i) of the Act.

(2) An appeal in terms of section 29(6)(f)(ii) or (g)(ii) must be lodged on a form similar to Form C in the Annexure or in writing closely resembling the format of Form C, and must be delivered within 7 days of notification of the decision in section 29(6)(f)(i) or within 7 days of the notification of the action taken in section 29(6)(g)(i) to the Council and to the head of the human resources department of the Council.

(3) A staff member appealing against the outcome of the inquiry, may appeal on the following grounds -

- (a) an error of fact or in law which lead to a wrongful conviction, in terms of section 29(6)(g)(i);
- (b) severity of the penalty or the action taken, in terms of section 29(6)(g)(i);
- (c) procedural and substantive inconsistencies and unfairness, in terms of but not limited to rule 32 or 33; or
- (d) discovery of new evidence discovered after the conviction that can show an acquittal of the charges against the staff member.

ANNEXURE

FORM A

DISCIPLINARY FORM

To: **From:**

Staff member's name: **Division:**

Nature of Disciplinary Measure: [Indicate with an **X** the action taken]

Counselled [no disciplinary action taken]

Verbal Warning

Written Warning (Expires three to six months from the date when the warning was issued) Period of warning
(Minimum 3 months, maximum 6 months)

Final Warning (Expires six to twelve months from the date when the warning was issued) Period of warning
(Minimum 6 months, maximum 12 months)

Demotion / reduction in salary / fine / transfer to another department. If applicable salary reduced to N\$ per year

Dismissal

The above action has been taken for the following reason(s):

.....
.....
.....

.....
Date of Misconduct

.....
Expiry date after action taken

Issued by:.....
Authorised person

Confirmed by:
Relevant Head of Department

Date of issuing

Received by:..... on (date)
Name of staff member

Witnessed by:

1 Satisfied / Not satisfied
Human Resources Officer

2 Satisfied / Not satisfied
Shop Steward/Representative

Copy send to Human Resources Department and the Secretary to the Management Committee on:

.....
HOD [Relevant Department]

FORM B

CHARGE SHEET

TOWN COUNCIL OF NKURENKURU

vs.

.....

Be informed that in terms of section 29(6)(a) of the Local Authorities Act, 1992, and the Personnel Rules of the Town Council of Nkurenkuru, you are hereby charged with misconduct in that you contravened the following section(s) of the Act / rule(s) of the Personnel Rules, 2008*:

- 1.
- 2.

Particulars of the alleged Misconduct

.....

.....

.....

.....

You are requested to plead to the abovementioned charges. Upon a plea of guilty, you are requested to furnish the Head of the Human Resources Department with a written explanation (why you are pleading guilty) within seven (7) days from the date you receive this notice.

- 1. I plead guilty / not guilty to charge 1.
- 2. I plead guilty / not guilty to charge 2.

I attach / do not attach* a statement hereto:

.....
SIGNATURE

.....
DATE

Be further informed that at the hearing, you:

- * have the right be represented by your shopsteward, work place trade union representative, fellow staff member of your choice or any other person of your choice;
- * the right to present your case;
- * the right to call witnesses to give evidence in support of your case;
- * the right to controvert evidence produced against you;

- * the right to cross-examine witnesses;
- * the right of access to documents produced in evidence or in connection with the alleged misconduct; and
- * the right to appeal against the decision, if found guilty of misconduct;
- * the right to appeal against the action taken after being found guilty of misconduct.

(* *Delete whichever is not applicable.*)

.....

And

TOWN COUNCIL OF NKURENKURU

NOTICE OF APPEAL

Kindly take Notice that I
(full names and surname of staff member) hereby note an appeal against -

- (a) being found guilty of misconduct; or
- (b) the action taken upon being found guilty of misconduct; or
- (c) both (a) and (b),

during a Formal Disciplinary Inquiry held on, on the following grounds:

1. Appeal against a decision made in terms of section 29(6)(f)(i) of the Local Authorities Act, 1992

The management committee or the chief executive officer has not proven on a balance of probabilities that I am guilty of misconduct, for the following reasons -

- (a)
- (b)
- (c)

2. Appeal against an action taken in terms of section 29(6)(g)(i) of the Local Authorities Act, 1992

The management committee or the chief executive officer has taken the wrong or an unreasonable action after I was found guilty of misconduct for the following reasons:

- (a)
- (b)
- (c)

3. Appeal on the grounds that the disciplinary inquiry was substantively or procedurally unfair, in terms of but not limited to the provisions in rules 32 or 33 of the Town Council of Nkurenkuru Personnel Rules -

- (a)
- (b)
- (c)

Dated at, on this of 20

.....
SIGNED APPELLANT/ REPRESENTATIVE
