



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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WINDHOEK - 22 February 2011

No. 4654

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## General Notice

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### OMUTHIYA TOWN COUNCIL

No. 22

2011

#### PERSONNEL RULES: LOCAL AUTHORITIES ACT, 1992

The Town Council of Omuthiya has, 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, made the personnel rules set out in the Schedule.

**S.P. SHIVUTE**  
**CHAIRPERSON**

**BY ORDER OF THE COUNCIL**

Omuthiya, 7 December 2010

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PART 1  
PRELIMINARY PROVISIONS

**Definitions**

**1.** In these rules a word or phrase defined in the Act has the same 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;

“grading system” means the job grading system in terms of rule 2;

“medical practitioner” means a medical practitioner as defined in section 1 of the Medical and Dental Act, 2004 (Act No. 10 of 2004); and

“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 and such wage structure must include market related benefits.

(2) After the implementation of the wage structure provided in subrule (1), the Council must establish a grading committee to implement such structure.

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

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

(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 to him or her personally or deposit into his or her bank account or other financial institution on the 25th of every calendar month, or on an earlier day where the 25th day of a calendar month falls on a weekend.

(2) The staff member must furnish the human resources department with his or her banking details, if any.

(3) On the termination of service of a staff member, his or her final salary is paid at the end of the month, as prescribed in subrule (1).

(4) The salaries of staff members are subject to incremental progression and as determined by the grading committee provided for in rule 3.

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

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

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

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

(9) Where a staff member is paid a salary of a higher scale or notch than he or she 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 such staff member must be paid back to the Council.

(10) Where a staff member is paid a salary of a lower scale or notch than he or she was graded for, the Council must adjust the salary to the correct scale or grade and such staff member must be paid back the arrears.

### 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 in writing to the chief executive officer for an advance on salary and the chief executive officer must consider such application and may either approve or disapprove such advance.

(3) An advance on a staff member's salary is only payable if a close relative falls ill with a serious illness or if a relative dies.

(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 subrule (2).

(5) The same requirements regarding proof for compassionate leave, set out 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 indicate 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 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 when such staff member is still on leave except in an emergency.

(5) The Council must ensure that proper record is 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 gross salary, is payable to the staff member at the end of his or her birthday month.

(2) An annual bonus is only payable to a permanent staff member.

(3) An annual bonus 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 where he or she receives a performance bonus in terms of his or her conditions of service.

### **Performance bonus**

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

### **Housing benefit**

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

(2) A staff member who does not own a house receives a housing allowance of fifteen per cent of his or her basic monthly salary.

(3) The chief executive officer of the Council receives a housing allowance of thirty per cent of his or her 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 upon application by a staff member provide collateral of twenty per cent of a staff member's annual pensionable salary where he or she purchases a house.

(5) The staff member must submit proof of a bond or a lease agreement to the human resources department when he or she 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 he or she occupies a residence with air-conditioning, four per cent of his or her basic monthly salary to the Council, or, where he or she occupies a residence without air-conditioning, must pay two per cent of his or her basic monthly salary to the Council.

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

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

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

#### **Medical aid fund**

**11.** (1) A staff member may belong to a medical aid fund of his or her choice.

(2) Where a staff member wishes to become a member of a medical aid he or she must apply on the form provided by the Council.

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

(4) The Council has no obligation with regard to providing a medical aid towards a retired former staff member or a staff member that resigned, except where such an obligation was included in a separation agreement entered into between the Council and the former staff member.

#### **Pension fund**

**12.** The Council must pay contributions to the approved retirement fund, in respect of each permanent staff member, an amount equal to twenty-one comma seven per cent of the total pension contribution made by the permanent staff members.

#### **Motor vehicle allowance**

**13.** (1) The Council must provide a motor vehicle allowance to the senior management staff members.

(2) The total annual motor vehicle allowance, set out below, is payable in 12 monthly instalments to the relevant staff members:

- (a) chief executive officer N\$73 845 per month;
  - (b) head of department N\$65 757 per month; and
  - (c) specialist staff member N\$53 772 per month.
- (3) The motor vehicle allowance scheme is subject to the approval of the Minister.
- (4) A specialist staff member means a registered professional staff member performing a recognised professional trade of specialisation.
- (5) A staff member who benefits from a motor vehicle allowance may not make use of a town council vehicle unless with the approval of the Council.
- (6) Only a permanent staff member may benefit from the motor vehicle allowance scheme.
- (7) Seventy five per cent of the motor vehicle allowance awarded is taxable but no pension may be deducted from the allowance.
- (8) A staff member who benefits from the motor vehicle allowance scheme must have a reliable vehicle available at all times to enable such staff member to perform his or her official duties.
- (9) The Council may at any time, three months after the date of allocation of the allowance, when the conditions set for the allocation of the allowance is not met by the relevant staff member, cancel such allowance in writing.
- (10) In order for a staff member to qualify for a motor vehicle allowance, such staff member must provide proof of the purchase of a motor vehicle, or, where that staff member already owns a motor vehicle, he or she must provide proof of his or her ownership of or the monthly instalment paid for such motor vehicle.
- (11) The motor vehicle allowance is linked to a staff member's salary and it will be reduced proportionately with any leave of absence without remuneration.
- (12) The motor vehicle allowance forms part of the calculation of the leave gratuity.

### **Transport allowance**

- 14.** (1) The Council must pay a monthly transport allowance of N\$300 to every permanent staff member, except those staff member who benefits from the motor vehicle allowance.
- (2) The transport allowance is linked to the salary of a staff member and will be reduced proportionately against leave taken without remuneration.
- (3) The transport allowance is taxable but the Council may not deduct pension from such allowance.
- (4) The transport allowance forms part of the calculation of the 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, 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 referred to in this rule as P.S.M. (P.S.M. Circular No. 11 of 2006 and Circular No. 25 of 2008), 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.;
  - (c) to a 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 where a delegation on an official trip such delegation does 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 may only be undertaken with the approval of the Minister.
  - (5) The Council may pay to a staff member, upon prior written approval, N\$2, 50 per kilometre travelled by such staff member for the use of his or her 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 such official trip to the Council.

#### **Foreign experts**

- 16.** (1) For the purposes of this rule “foreign expert” means a person, who is not a Namibian citizen or a permanent resident, 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 six months, starting from the date of appointment of the foreign expert, the foreign expert must file a report with the Council denoting the progress of all the understudies assigned under him or her.

#### **Acting allowance**

- 17.** (1) A staff member may not claim extra remuneration from the Council for performing additional duties beyond his or her job description or expectation, unless the Council has entered into an agreement with a staff member for him or her to perform duties in an acting capacity.
- (2) The chief executive officer may appoint, in terms of the powers delegated to him or her, 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 period as referred to in subrule (2) with a further period not exceeding three months.



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

(5) A staff member appointed in an acting position is not entitled to any 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 following staff members qualify for a cell phone allowance -

- (a) the chief executive officer;
- (b) a head of department recommended by the chief executive officer, with the approval of the Council and the Minister.

(2) The Council must purchase a cell phone of a value not exceeding N\$3 000 for a staff member referred to in subrule (1) or make such cell phone available to such 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.

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

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

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

- (a) N\$500 for the chief executive officer; and
- (b) N375 to the head of departments, subject to the approval of the Minister.

(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 classified under subrule (1) by the Council does not influence the granting of a leave classified under any other rule, except as specifically provided for.

(3) A staff member must-

(a) at least 10 working days before he or she intends to take leave, apply for such leave on the form provided by the Council for that purpose and submit such application to the head of department for consideration;

(b) when it is impossible to apply for leave as contemplated in paragraph (a), apply for leave not later than two working days after he or she has returned from the leave taken, subject to the staff member having acquired prior verbal approval by his or her head of department.

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

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

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

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

(8) Where the Council erroneously grants more leave than the staff member is entitled to, the Council may, after informing the staff member of such 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 (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 such 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 his or her 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 the remuneration in respect of his or her leave, in advance, where such leave is for a period of not less than 10 consecutive working days and where that staff member works a five day working week.

(7) Subject to subrule (6), the staff member concerned must request the payment of an advance in salary not later than one week before his or her last working day before the commencement of his or her leave.

(8) When making an advance payment under subrule (7), the Council may not pay more than fifty per cent of the monthly net salary earned by such staff member during the month he or she applied for such advance.

**Cancellation, interruption or postponement of vacation leave**

21. (1) A staff member cannot accumulate paid leave days in excess of 60 days leave.

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

(3) Despite subrule (2), a staff member is granted an additional four months after the lapse of the leave cycle in which he or she may take the leave in excess of the leave contemplated under subrule (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 he or she was notified of the cancellation, postponement or interruption; or

(b) where the staff member was required to travel in order to resume duty, pay the staff member's travelling expenses and such staff member is regarded as being on duty while 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 such refusal, cancellation, postponement or interruption of leave in the leave register.

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

### **Compulsory vacation leave**

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

### **Sick leave**

**23.** (1) Subject to subrule (2) 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'."

(2) Sick leave accrues to a staff member from the first day of a sick leave cycle as follows -

(a) 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; and

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

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

(4) Despite subrule (3) -

(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.

(5) 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 such staff member only if he or she submits a certificate of incapacity by a registered medical practitioner or registered dentist in which the nature

of the incapacity is described, it is declared that such staff member is unable to perform his or her official duties and which indicates the period necessary for recovery.

(6) Despite subrule (5), the Council may require the staff member to submit a certificate of incapacity for a period of less than two consecutive day's sick leave taken.

(7) Despite subrules (4) and (5), 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 such staff member from the submission of such certificate in respect of a continuous period of sick leave, not exceeding 14 consecutive days.

(8) The Council may require a staff member who applied for sick leave to subject him or herself to a medical examination by a registered medical practitioner of the Council's choice and where the certificate of incapacity differs significantly from the chosen registered medical practitioner's diagnosis, the Council may cancel or withdraw such sick leave granted to such staff member and replace it with vacation leave with or without remuneration, where such vacation leave is available.

(9) The Council may on application by a staff member, where such staff member becomes incapacitated during his or her vacation leave, convert that portion of such staff member's vacation into sick leave, on condition that such staff member submits a certificate of incapacity by a registered medical practitioner in terms of this rule.

(10) The Council may grant on application by a staff member vacation leave to such staff member where he or she has sufficient vacation leave to his or her credit, where sick leave was granted with no remuneration or with half remuneration.

(11) 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.

(12) In the instance where the Council's appointed registered medical practitioner declares a staff member medically unfit to continue in the position he or she was appointed in, that staff member's service may be terminated by the Council from the date on which he or she is so declared to be medically unfit.

(13) At the commencement of these rules, every staff member retains the existing sick leave of the former three year sick leave cycle under his or her former conditions of service with the Council, where applicable.

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

(15) Despite the definition for "incapacity" in subrule (14), alcoholism or an addiction to an intoxicating substance is regarded as incapacity and the Council may -

(a) grant to a staff member sick leave with full remuneration;

(b) where a staff member is on probation, terminate his or her service upon a diagnosis by a registered medical practitioner of such 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 he or she 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 criminal charge and he or she is subsequently acquitted or the charge is withdrawn;
- (d) is subpoenaed as a 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 such examination;
  - (ii) the special leave under this paragraph may be granted only once per approved paper per subject;
- (f) has no vacation leave to his or her credit and the Council is satisfied that due to special circumstances not otherwise referred to in these rules, special leave should be granted to him or her;
- (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;
- (i) is unable to perform his or her 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 must in support of his or her 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 six months continuous service with the Council, with a view to her confinement, at least four weeks of maternity leave before the expected date of her confinement and at least eight weeks after such date of confinement.

(2) The date of confinement mentioned in subrule (1), must be certified by a registered medical practitioner.

(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 a basic salary for the period of maternity leave, that has vested in her by virtue of her conditions of service directly before the date on which her maternity leave commences and such rights continues as if her service is uninterrupted during the maternity leave granted to her.

(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 she resumes service.

(6) These rules are subject to the labour laws Namibia, where these rules are more advantageous to a staff member than the labour laws, these rules takes precedence.

### **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 such staff member has fallen ill with a serious illness and such staff member has to personally attend to such close relative.

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

(b) in the case where a close relative has fallen ill with a serious illness, submit a certificate by a registered medical practitioner treating the close relative in which certificate the medical practitioner 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 his or her service.

### **Payments of vacation leave on termination of service**

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

(2) Where a staff member's service with the Council is terminated, except when such 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 such staff member's termination, which leave days may not exceed 40 days.

PART 3  
DISCIPLINE, DISCHARGE AND SUSPENSION

**Discipline**

**28.** (1) The Council, 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 its staff members of the disciplinary code and the possible actions against each act of misconduct.

(2) A staff member must execute his or her duties and assignments with the necessary diligence and dedication and he or she 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 relevant labour laws and the relationship of trust between the staff member and the Council form 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 subrule and rule 35, where the term "staff member" is used in this part it includes a chief executive officer and a head of department, and where the term -

- (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 head of department.
- (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) For the purposes of guidelines when dealing with actions that constitute misconduct, offences that are considered as 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 vehicle under the influence of a 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 being under the influence of a stupefying drug without a prescription;
- (i) sexual harassment;
- (m) revealing confidential information to unauthorized persons;
- (n) illegal strikes under the Labour Act, 2007 (Act No. 11 of 2007);
- (o) racism;
- (p) tribalism;
- (q) nepotism;
- (r) gross abuse of authority; and
- (s) gross negligence.

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

(3) The serious offences are set out below -

- (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 absenteeism;
- (h) using abusive language;
- (i) failure to report an accident or damage;
- (j) reckless driving of the Council's vehicles;
- (k) insolence;
- (l) indolence.

(4) In relation to the serious offences set out under subrule (3), the management committee or the chief executive officer may -

- (a) upon a first offence, issue a first written warning to the staff member concerned;

- (b) upon a second offence, issue a final written warning to the staff member concerned;
  - (c) upon 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, upon which a formal disciplinary inquiry must follow.
- (5) The minor offences are set out below -
- (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;
  - (e) not dressed in a clean, decent and tidy manner.
- (6) In relation to the minor offences set out under subrule (5), the management committee or the chief executive officer may -
- (a) upon a first offence, convey a verbal warning to the staff member concerned;
  - (b) upon a second offence, issue a first written warning to the staff member concerned;
  - (c) upon a third offence, issue a final written warning to the staff member concerned;
  - (d) upon 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 upon which a formal disciplinary inquiry must follow.
- (7) The types of misconduct set out in subrules (1), (3) and (5) and the possible actions to be taken against a staff member by the management committee or chief executive officer, or by the Council, set out in subrules (2), (4) and (6), serves as a guideline only and 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 set out its disciplinary action on, Form A of the Annexure and issue such 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, Form B of the Annexure, and such charge sheet must set out the charge or charges against a staff member and the procedure to be followed by the staff member.
- (10) In the circumstances where the Council or 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 his or her case.
- (11) An informal inquiry contemplated in subrule (10), must be attended by the staff member, the management committee or by its representative, or, by the chief executive officer or a

person designated by him or her, who intends to convey a verbal warning or to issue a written or final written 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 him or her, is upon the conclusion of such informal inquiry not satisfied with the staff member's explanation, such relevant person may convey a verbal warning or issue a written or final warning to such staff member, and such warning must be recorded on the staff member's personal file.

(13) The staff member may appeal to the Council in writing if he or she does not agree with the verbal warning or written or final warning, upon which the Council must make a final decision regarding the validity of such 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 against him or her and an action in terms of section 29(6)(g)(i)(aa) is taken against such 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 him or her, upon the conclusion of such informal disciplinary inquiry.

### **Types of warnings**

**31.** (1) The types of warnings set out 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.

(2) The types of warnings are set out below -

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

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

(3) A staff member has the right to an interpreter where he or she requires such 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 his or her representative, who requires additional time to prepare his or her case, must request the chairperson of the formal disciplinary inquiry in writing for a postponement of such inquiry after the disciplinary inquiry committee has convened for the first time.

(6) Despite subrule (5), a chairperson of a formal disciplinary inquiry may where he or she suspects that a staff member is unduly delaying the inquiry -

- (a) warn the staff member to not unduly delay the inquiry;
- (b) where such delay continues, the chairperson may set a time frame within which such 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 he or she has transgressed in order for the disciplinary inquiry committee to find him or her guilty of misconduct.

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

(3) Before a staff member is charged with misconduct, the person charging such 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 sets out 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 such 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 his or her 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 six 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 seven days after he or she is notified of such suspension, appeal in writing to the Council against the validity of his or her suspension or against his or her suspension without pay.

(5) Upon considering the staff member's appeal in subrule (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) Any staff member who has been suspended must be permitted to reassume his or her official duty and must be paid his or her full remuneration for the period of his or her suspension -

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

(7) Any 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.

(8) Where a staff member who was suspended without pay is found guilty of misconduct and such staff member is not discharged in terms of section 29(6)(g)(dd) of the Act, his or her 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 deemed not to have been a period during which he or she was employed by the Council.

(9) The suspension of any staff member may at any time be cancelled by the Council if in its opinion the reason for such suspension has lapsed, but such cancellation of the suspension may 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 designated 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, who acts as chairperson of the proceedings;
- (b) a staff member from the human resources department;
- (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) Where the chief executive officer or a head of department is being charged with misconduct under this rule, the person designated by the Minister in section 27(1)(d) to inquire into the charge, must act as the chairperson of such disciplinary committee and must appoint the following persons to conduct the formal disciplinary inquiry -

- (a) the head of the human resources department, or where he or she is charged with misconduct, another head of department in the Council;
- (b) the chief executive officer, or where he or she 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;
- (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 set out in section 29(6)(g)(ii) and (h)(ii) of the Act.

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

(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)(ii);
- (b) severity of the penalty or the action taken, in terms of section 29(6)(h)(ii);
- (c) procedural and substantive inconsistencies and unfairness in terms of, but not limited to, the provisions of rule 32 or 33;
- (d) discovery of new evidence, discovered after such conviction, that could lead to an acquittal of the charges against him or her.

**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 three months, maximum six months)

Final Warning (Expires six to twelve months from the date when the warning was issued) Period of warning .....  
(Minimum six 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 OMUTHIYA**

vs.

.....

Be informed that in terms of section 29(6)(a) of the Local Authorities Act, 1992, and the Personnel Rules of Omuthiya Town Council, 2010, you are hereby charged with misconduct in that you contravened the following section(s) of the Act / rule(s) of the Personnel Rules, 2010\*:

- 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;
- \* the right to appeal against the decision, if found guilty of misconduct; and
- \* the right to appeal against the action taken after being found guilty of misconduct.

(\* *Delete whichever is not applicable.*)

**FORM C**

.....

And

**THE TOWN COUNCIL OF OMUTHIYA**

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**NOTICE OF APPEAL**

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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 Personnel Rules, 2010**

(a) .....

(b) .....

(c) .....

Dated at Omuthiya on this ..... of ..... 20 .....

.....  
**SIGNED APPELLANT/ REPRESENTATIVE**

\_\_\_\_\_