



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## General Notice

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### MUNICIPAL COUNCIL OF WINDHOEK

No. 277

2012

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

The Municipal Council of Windhoek, 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, has made the personnel rules set out in the Schedule.

**BY ORDER OF THE COUNCIL**

**E. TREPPER**  
**CHAIRPERSON**

Windhoek, 4 August 2012

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## CHAPTER I

### Definitions

1. In these Rules, unless the context indicates otherwise -

“annual leave cycle” means each period of 12 consecutive months for which a staff member is employed by Council from the day the staff member commenced his or her employment with Council, but excludes any period of absence from work without pay or suspension and the anniversary date for calculation of any leave cycle shall be extended with the total number of days of such absence preceding all anniversary dates;

“Band” means the job grade allocated to a specific post on the fixed establishment;

“basic wage” means, for the purpose of calculating any basic condition of employment, that part of a staff member’s remuneration in money including the cash equivalent of payment in kind, if any, as calculated in terms of rule 5, paid in respect of work done during the hours ordinarily worked, but does not include -

- (i) allowances, including travel and subsistence, housing, motor vehicle, transport, and professional allowances, whether or not based on the staff member’s basic wage;
- (ii) pay for overtime, as contemplated in section 17 of the Labour Act, 2007;
- (iii) additional pay for night work, as contemplated in terms of section 19(1) of the Labour Act, 2007; or
- (iv) additional pay for work on a Sunday or a public holiday, as provided for in terms of sections 21 and 22 of the Labour Act, 2007 respectively;
- (v) payments in respect of pension, annuity or medical benefits or insurance;

“Chief Executive Officer” means the Chief Executive Officer of Council, appointed in terms of section 27(1) of the Local Authorities Act, 1992 (Act No. 23 of 1992), or his or her duly authorised representative or a staff member to whom such Chief Executive Officer has delegated a function or power;

“continuous service” means the period of service with Council from the date of appointment on the fixed establishment to the date of terminating the contract of employment, which service is uninterrupted by any form of termination of the contract of employment, any period of leave without payment of basic wage or any period of suspension without payment of basic wage;

“Council” means the Municipal Council of Windhoek and includes its management committee and any staff member authorized or delegated to act on its behalf;

“employee” means, in relation to the Labour Act, 2007, a staff member as defined in these rules;

“essential service” means essential service as defined in section 1 of the Labour Act, 2007;

“fixed establishment” means the posts created for the normal and regular permanent requirements of the Council;

“former conditions of service” means the conditions of service contained in the Conciliation Board Agreement of 1985, or any other agreement containing conditions of service of staff members with Council, which were in force before these Rules came into operation;

“Labour Act” means the Labour Act, 2007 (Act No. 11 of 2007);

“medical practitioner” means a medical practitioner registered or authorised to practise as a medical practitioner under the Medical and Dental Act, 2004 (Act No. 10 of 2004) and for the purposes of rule 30, includes a nurse or a midwife registered or authorised to practise as a nurse or midwife under the Nursing Act, 2004 (Act No. 8 of 2004);

“municipal area” means the area declared under section 3 of the Act to be the area of the Municipality of Windhoek;

“overtime” means time worked in excess of the hours a staff member ordinarily works in any ordinary working day, but does not include any work done on -

- (a) a Sunday, if it is not an ordinary working day for that staff member; or
- (b) a public holiday;

“pensioner” means a pensioner as defined in the rules under the Pension Fund Act, 1956 (Act No. 24 of 1956);

“Pension Fund” means the Retirement Fund for Local Authorities and Utility Services in Namibia or any other pension fund established under section 27(1)(c)(ii)(bb) of the Act and includes a united pension fund to which Council contributes on behalf of its staff members;

“public holiday” means any public holiday referred to in or declared under section 1 of the Public Holidays’ Act, 1990 (Act No. 26 of 1990);

“remuneration” means the total value of all payments in money or in kind made or owing to a staff member arising from the employment of that staff member;

“retirement age” means the retirement age of any given category of staff members of Council as may from time to time be set out in the rules of the Pension Fund Act, 1956 (Act No. 24 of 1956) to which Council’s staff members belong or the retirement age negotiated by Council with the Retirement Fund;

“Rules” means these Personnel Rules contained in this Schedule, and Conditions of Services shall have a similar meaning;

“staff member” means any natural person employed permanently or temporarily on a full -time or part -time basis or under a contract of employment, in a post on or additional to the establishment of Council and includes a Chief Executive Officer and, except as otherwise provided in section 94C of the Act, the members of a municipal police service and excluding independent contractors;

“severance” means the amount payable under rule 37;

“spread -over” means the period from the time a staff member first starts work in anyone 24 hour -cycle to the time the staff member finally stops work in that cycle;

“standby duty” means the period determined by Council during which a staff member shall be available for urgent work outside his or her normal working hours;

“Strategic Executive” means a staff member designated in terms of section 28(2) of the Local Authorities Act, 1992 (Act No. 23 of 1992) as head of a department established in terms of section 28(1) of the Act, or a person duly authorized to be the Strategic Executive’s representative or acting in that capacity;

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

“urgent work” means emergency work, which if not attended to immediately, could cause harm to or endanger the life, personal safety or health of any person or could cause serious damage or destruction to property;

“week” in relation to a staff member, means the period of seven days within which the working week of that staff member falls; and

“weekly interval” means the interval between the end of one ordinary working week and the start of the next.

**CHAPTER 2****APPOINTMENTS, VACANCIES, REMUNERATION, ALLOWANCES AND LONG SERVICE AWARDS****Appointments**

2. (1) Where a staff member is appointed or where a staff member is transferred from one post to another, whether in the same department or not, and subject to section 27 of the Act, Council shall, subject to Councils Affirmative Action Policy and in accordance with its Recruitment Policy and Guidelines, only appoint such a person permanently, if the person -

- (a) has completed the probation period required by these rules; or
- (b) the Strategic Executive concerned, or in the case of a Strategic Executive the Chief Executive Officer, has issued a certificate as prescribed by Council confirming the suitability of the person for appointment in that specific post;
- (c) is a Namibian citizen or is in possession of a permanent residence permit or an employment permit; and
- (d) is older than 16 years of age and not over 55 years of age, but -
  - (i) if over 55 years of age, is otherwise already a member of an approved pension fund and his or her benefits from such membership are transferred to the Pension Fund or;
  - (ii) Council may consider appointing a person who is over the age of 55, provided that Council pay such person an amount equal to the amount Council would have contributed to the Pension Fund for the period of employment;

(2) A person may not, for the purposes of subrule (1) be appointed unless he or she has submitted a certificate by a medical practitioner in the form prescribed by Council in which it is certified that he or she is free of any mental or physical disability, illness, or infirmity, which would hamper the execution of his or her duties in view of his or her job requirements or circumstances or, which would necessitate his or her retirement from such post on a date earlier than the prescribed retirement age provided that:

- (a) this subrule shall not apply in respect of appointments of disabled persons to the extent required by the Council's Affirmative Action Policy; and
- (b) the cost of the medical examination must be borne by the Council.

(3) Every staff member shall, before he or she assumes duty, hand to the Chief Executive Officer or to a staff member designated for such purpose by the Chief Executive Officer the following documents for entry in Council's records:

- (a) a birth certificate or other satisfactory proof of his or her full names and date of birth;
- (b) proof of naturalisation, if not a Namibian citizen through birth;
- (c) proof of such staff member's marital status;
- (d) proof of his or her qualifications as mentioned in his or her application;

- (e) a medical certificate as referred to in subrule (2); and
- (f) any other document reasonably required by Council.

(4) All staff members, including such staff members who are appointed on probation, shall contribute to and become a member of the Pension Fund and a medical aid fund approved by Council or in terms of the Social Securities Act, 1994 (Act No. 34 of 1994), except where the rules of the Pension Fund Act, 1956 (Act No. 24 of 1956) or the Medical Aid Rules provide otherwise.

### **Prohibition of certain actions**

3. (1) A person who has applied for employment with Council shall not offer a reward, benefit, or unduly influence or attempt to offer a reward, benefit, or unduly influence any Councillor or a staff member of Council for the purpose of being appointed.

(2) A person, who contravenes subrule (1), shall be regarded as unfit for appointment and may be subject to disciplinary action if already appointed.

### **Retirement**

4. (1) Subject to subrules (2), (3) and (4) hereof and the applicable rules of the Pension Fund Act, 1956 (Act No. 24 of 1956) a staff member who has reached retirement age, shall leave the service of Council and thereupon all benefits accruing to him or her under these Rules, shall be paid out to him or her.

(2) Subject to the Rules of the Pension Fund Act, 1956 (Act No. 24 of 1956) Council may where the position occupied by such staff member is a scarce skill, which is not readily available in the market, or due to an organisational need or requirement -

- (a) re -employ, in a temporary capacity, any staff member who has reached retirement age and has left Council's service; or
- (b) where a staff member has reached retirement age, extend any staff member's contract of service;

on such conditions as Council may consider reasonable: Provided that such staff member will not receive any risk benefits in respect of death and disability.

(3) Notwithstanding the provisions of subrule (2), the period for which a staff member may be re -employed or the contract of service extended under that subrule may be for a period of twelve months or such period as may be required by Council and to be reviewed annually, but such period re -employment or extension may not continue where such staff member reaches the age of 65 years.

(4) Notwithstanding the provisions of subrule (1) where a staff member's contract of service is extended under subrule (2), the period by which the contract is extended shall, if the staff member has not taken the benefit that has accrued to him or her under these Rules, be regarded as continuous service.

### **Calculation of remuneration**

5. (1) Council shall pay its staff members in accordance with its Remuneration Policy.

(2) Subject to rules 17 and 20, Council shall, pay a staff member his or her remuneration for a completed working month on a date not later than the last working day of the relevant working

month, but Council must make such payment not later than one hour after completion of the ordinary hours of work on the agreed monthly pay day.

(3) Where the contract of employment of a staff member is terminated for any reason other than death, either by Council or by the staff member, that staff member shall be paid his or her remuneration on his or her last working day, during Council's normal office hours.

(4) For the purposes of these Rules, where it is necessary to calculate the comparable hourly, daily, weekly or monthly remuneration or basic wage of a staff member who is paid on an hourly, daily, weekly, fortnightly or monthly basis, section 10(3) of the Labour Act, 2007 shall apply.

### **Deductions from remuneration**

**6.** (1) All remuneration and other amounts owing and payable to a staff member shall be paid on such days and in such manner as may from time to time be decided by Council, but at least once a month.

(2) Council may, subject to section 12 of the Labour Act, deduct from a staff member's remuneration, such monthly amounts as may be owing by the staff member to Council, including amounts in respect of Councils premises, goods or services provided by Council, any instalment or instalments on loan taken up with Council, and all other monies legally owing to Council by the staff member from the staff members remuneration, if the staff member agrees thereto in writing.

(3) Council shall, subject to section 12 of the Labour Act, deduct any moneys owing by a staff member in respect of overpayments made in respect of income tax, and social security, contributions to Pension Fund, and Medical Aid from the staff member's remuneration.

(4) Council shall, upon request by a staff member, explain to him or her the calculation of any amount deducted in terms of subrule (2) and (3).

### **Payment of travelling costs**

**7.** (1) Council may pay a staff member who has been recruited within Namibia, but outside the municipal area and who has been appointed in a permanent capacity, the following moneys after assumption of duty -

- (a) where the staff member uses road transport, the transport cost calculated on the basis of the per kilometre tariff as determined from time to time by the Automobile Association of Namibia ; or
- (b) where the staff member uses rail transport, the transport costs to a maximum amount equal to the price of a first class train ticket for the staff member concerned and his or her dependants, from the railway station or railway bus halt nearest to the staff member's former place of residence to the railway station or railway; and
- (c) the transport costs, incurred by the staff member in bringing his or her personal effects to the municipal area, at an amount equal to the cheapest of three quotations quoted by at least three different furniture removal companies.

(2) Notwithstanding subrule (1) where a staff member makes use of means other than road or rail transport, he or she shall be repaid as if he or she and his or her family had travelled by road or by rail whichever is greater amount.

(3) Council may by way of a special agreement pay a staff member recruited from outside Namibia the following:

- (a) The actual travelling costs of the staff member, his or her spouse and his or her dependent children from the place where he or she has resided, to the municipal area;
- (b) The transport costs in respect of his or her personal effects from his or her former place of residence, as the case may be, according to the basis provided in this rule 7(1)(c).

(4) Council may in writing agree with any staff member to pay the transport costs and allowances, referred to in this subrule, on assumption of duty or some time thereafter and that a *pro rata* portion of, or the entire amount may be reclaimed upon termination of his or her contract of employment with Council within a period of two years from the date of his or her appointment.

(5) Every application for transport costs and allowances in terms of this rule shall be submitted in writing and shall be supported to the satisfaction of Council.

### **Subsistence and travelling allowance**

**8.** (1) Council shall pay to a staff member, whom it requires or directs to travel on official business or to attend a meeting or conference on behalf of Council and who is absent from his or her normal place of work for a period of one day or longer, a subsistence or special allowance at a daily rate and in accordance with the recommendations and directions given by the Management Committee.

(2) Where the period of absence referred to in subrule (1) is less than one day, Council shall pay to the staff member reasonable actual expenditure incurred by the staff member during the period of absence.

### **Inadequate subsistence and travelling allowance**

**9.** (1) If the subsistence or special allowance prescribed in terms of rules 7 or 8 is inadequate to cover the expenses which a staff member incurs over and above his or her normal living expenses when he or she is absent from his or her normal place of work in terms of rules 7 and 8, Council may refund to the staff member the difference between the amount payable as subsistence or special allowance in respect of the period of absence and the reasonable expenditure actually incurred by the staff member.

(2) The amount referred to in subrule (1) shall only be paid to a staff member when he or she supports the claim with the necessary receipts or vouchers.

### **Reimbursement for expenses incurred**

**10.** Council shall pay or reimburse a staff member who is required to travel on official duty, the costs of conveying himself or herself and his or her personal luggage, as well as all reasonable expenditure incurred in connection with taxi hire, air fare, rail costs, insurance, portage, gratuities, landing or shipping fees and other incidental services.

### **Cession, transfer or assignment of remuneration**

**11.** (1) A staff member shall not without the written permission of Council cede, transfer or assign his or her right or claim in respect of any wages or moneys due to him or her by Council, or which may become due to him or her by Council, and Council shall not pay any amount

owing to a staff member to any person except such staff member, unless such person submits a power of attorney from the staff member or unless Council is legally compelled thereto.

(2) A staff member shall not borrow money from any person whose activities or contracts such staff member has to supervise, or against whom such staff member has to take credit control measures to recover Council moneys, or request such person to stand surety for him or her, so that it may cause embarrassment to Council, or that any form of blackmail or bribery can be inferred or which may create disharmony in the working environment.

### **Overpayments**

**12.** When a staff member has received an overpayment on his or her wage, due to negligence, error or for whatever reason committed by a staff member on behalf of Council, the staff member concerned shall repay Council for such overpayment upon conditions to be agreed upon, but any deduction must be authorised by the staff member and the total deduction must not exceed one-third of the monthly basic wage of the staff member and no interest may be charged.

### **Acting allowances**

**13.** (1) Acting Allowances shall be in line with the Council's Remuneration Policy, when a staff member -

- (a) is appointed to act in a higher post for a period of not less than one month by resolution of Council or in terms of the powers delegated to the Chief Executive Officer by Council, that staff member shall be paid an acting allowance equal to the difference between his or her basic wage and the minimum notch of the basic wage scale pertaining to the post in which he or she is acting;
- (b) has in writing been appointed by the Chief Executive Officer, or his or her Strategic Executive to act in a higher post for a period of not less one month that staff member shall be paid an acting allowance equal to the difference between his or her basic wage and the minimum notch of the basic wage scale pertaining to the post in which he or she is acting.

(2) Subject to subrule (1) and unless Council has concluded an agreement with a staff member, no staff member shall have any claim to any remuneration in respect of additional duties performed by him or her for any reason.

(3) A staff member shall be paid an acting allowance for a maximum period of three months which period may be extended for a further period of three months only by the Chief Executive Officer.

### **Fringe benefits**

**14.** (1) Council shall, in accordance with its motor loan scheme allow a staff member who occupies the post of -

- (a) Chief Executive Officer;
- (b) Strategic Executive;
- (c) Divisional Manager;
- (d) Specialist position which grades on the D Band,

to participate in Council's Motor Loan Scheme.

(2) Subject to a Council resolution no staff member participating in councils motor loan scheme shall use for any purpose a municipal vehicle.

(3) Council shall, in accordance with its staff housing policy, grant guarantee in the form of collateral bond, surety bond or other deed of security, to a staff member who wishes to purchase or build a dwelling.

(4) Council shall, in respect of each period of 12 continuous months, on date determined by it, pay to a staff member who is in the permanent employment of Council, a thirteenth cheque, in these Rules referred to as the annual bonus, equivalent to one month's basic wage of the staff member.

(5) Notwithstanding subrule 4 -

(a) where a staff member only works for a portion of the 12 month period, before the date determined under subrule 4, his or her annual bonus shall be calculated on a *pro rata* basis of the continuous period worked by the staff member;

(b) a staff member whose contract of employment is terminated either at the instance of Council or at his or her own instance and who is not in the employment of Council at the date determined in terms of rule 14(5)(a) shall be entitled to a *pro rata* payment of

(c) where a staff member was, during any 12 month period, on annual leave without remuneration, except maternity leave, for a period exceeding 20 consecutive working days or on suspension for a period exceeding 20 consecutive working days Council may, *pro rata*, reduce that staff member's annual bonus, in respect of that 12 month period.

(6) Council shall contribute a percentage, as may be determined by it, of the medical aid premium payable by a staff member in respect of any medical aid fund contributions.

### **Long service endowment**

**15.** (1) Council shall grant to a staff member, who has been in the service of Council for a period of 20 years or more, at intervals of five years, a long service endowment.

(2) The endowment referred to in subrule (1) may be paid out in cash or may be converted into leave days calculated on basic wage.

(3) Where the staff member elects to be paid out in cash, the cash value shall be calculated as follows:

(a) In the case of a staff member who has been in Council's service for a period of 20 years, an amount equal to 20% of the staff member's basic monthly wage;

(b) In the case of a staff member who has been in Council's service for a period of 25 years, an amount equal to 25% of the staff member's basic monthly wage;

(c) In the case of a staff member who has been in Council's service for a period of 30 years, an amount equal to 30% of the staff member's basic monthly wage;

- (d) In the case of a staff member who has been in Council's service for a period of 35 years, an amount equal to 35% of the staff member's basic monthly wage;
- (e) In the case of a staff member who has been in Council's service for a period of 40 years, an amount equal to 40% of the staff member's basic monthly wage.

(4) Where a staff member elects to convert the endowment into leave days as contemplated in rule 15(2) the leave days shall be as follows:

- (a) In the case of a staff member who has been in Council's service for a period of 20 years -
  - (i) 4.167 working days annual leave if the staff member works a five-day working week;
  - (ii) 5.000 working days annual leave if the staff member works a six-day working week;
  - (iii) 5.834 working days annual leave if the staff member works a seven-day working week; or
- (b) in the case of a staff member who has been in Council's service for a period of 25 years -
  - (i) 5.209 working days annual leave if the staff member works a five-day working week;
  - (ii) 6.251 working days annual leave if the staff member works a six-day working week; or
  - (iii) 7.293 working days annual leave if the staff member works a seven-day working week;
- (c) in the case of a staff member who has been in Council's service for a period of 30 years -
  - (i) 6.250 working days annual leave if the staff member works a five-day working week;
  - (ii) 7.500 working days annual leave if the staff member works a six-day working week; or
  - (iii) 8.750 working days annual leave if the staff member works a seven-day working week;
- (d) in the case of a staff member who has been in Council's service for a period of 35 years -
  - (i) 7.292 working days annual leave if the staff member works a five-day working week;
  - (ii) 8.750 working days annual leave if the staff member works a six-day working week; or

- (iii) 10.209 working days annual leave if the staff member works a seven -day working week;
- (e) in the case of a staff member who has been in Council's service for a period of 40 years -
  - (i) 8.334 working days annual leave if the staff member works a five -day working week;
  - (ii) 10.001 working days annual leave if the staff member works a six -day working week;
  - (iii) 11.668 working days annual leave if the staff member works a seven -day working week.

### CHAPTER 3

## WORKING HOURS, SPREAD -OVERS, OVERTIME, WORK ON SUNDAYS AND PUBLIC HOLIDAYS

### Working hours and Spread -overs

**16.** (1) Council shall, subject to section 16 of the Labour Act, 2007, determine the ordinary working hours of its staff members.

(2) Council shall not require or permit a staff member to work for a spread -over of more than 12 hours as set out in section 20 of the Labour Act, 2007.

(3) The provisions of subrule (2) shall not apply in respect of a staff member who performs urgent work, but Council may still not require or permit such staff member to work without a weekly interval of at least 36 consecutive hours of rest.

### Overtime

**17.** (1) Council may, with the staff member's consent and agreement, request, such staff member to work overtime not exceeding the overtime, as set out in section 17(1) of the Labour Act, 2007, unless exempted under section 17(3) of that Act.

(2) Council will pay to a staff member who works overtime, overtime payment as set out in section 17(2) of the Labour Act, 2007.

(3) A staff member who is performing urgent work must work overtime and rule 17(1) in respect of required consent thereto does not apply.

### Meal intervals

**18.** Each staff member who works a continuous shift of more than Five and a half hours, shall be entitled to a meal interval of one hour, except staff members who -

- (a) are engaged in urgent work; or
- (b) works on a continuous shift, or
- (c) is exempted under section 18(2) of the Labour Act 2007.

### **Standby duty**

**19.** Council shall, in respect of a staff member who must be available for standby duty after ordinary working hours, in addition to any stand -by allowance that may be paid to him or her, also pay him or her in respect of the period he or she actually worked overtime as contemplated rule 17.

## **CHAPTER 4**

### **TERMINATION OF SERVICE**

#### **Basis for terminating contract of employment, notice of intention to terminate contract of employment**

**20.** (1) Council or its management committee, respectively may, subject to section 29 of the Act and the rules and regulations of the Pension Fund Act, 1956 (Act No. 24 of 1956) terminate a staff member's contract of employment -

- (a) on account of continued ill health;
- (b) on account of unfitness for his or her duties or incapacity to carry out his or her duties efficiently;
- (c) owing to the abolition of his or her post or any reduction in or reorganisation or rearrangement of departments or posts on the fixed establishment;
- (d) on account of misconduct;
- (e) in the case of a staff member appointed on probation if his or her services are unsatisfactory, or in the case of a staff member appointed temporarily, for any reason deemed reasonable by Council.

(2) A Chief Executive Officer who absents himself or herself from his or her duties without the permission of the management committee or the council, or any other staff member who absents himself or herself from his or her duties without permission of the Chief Executive Officer or responsible Strategic Executive shall be dealt with as set out in section 29(4) of the Act.

(3) When Council or a staff member intends terminating a contract of employment, the provisions of section 30 of the Labour Act shall apply.

(4) The provisions of subrule (3) shall not apply to a staff member whose services are terminated on account of misconduct, and any disciplinary action against a staff member shall be in accordance with council's industrial relations policy and procedures.

(5) The services of a staff member appointed temporarily may, upon the staff member having been given notice in terms of subrule (3), be terminated at the expiry of the term of appointment.

(6) The period over which a staff member is employed on probation shall not be less than 6 months and shall not exceed 12 months, and where Council is not prepared to appoint the staff member permanently after the 12 months probation period, the probation period shall not be extended.

### Shorter notice period

21. Notwithstanding the provisions of rule 20(3), Council may in its discretion and on such terms and conditions as are not in conflict with these Rules, section 30 of the Labour Act or the Act accept a notice period, which is shorter than the period mentioned in rule 20(3).

### Suspension

22. (1) Council may, at any time before or after a staff member is charged with misconduct under these rules, suspend the staff member for a total period not exceeding 180 calendar days if Council has a *bona fide* reason to believe that the staff member is guilty of serious misconduct, which may lead to his or her dismissal, for an act that is of such a serious nature that a verbal or written warning would not suffice, or if Council has reason to believe that the staff member -

- (a) may interfere with or destroy evidence which may be used against him or her in a disciplinary hearing or court proceedings;
- (b) may interfere with any prospective witness in disciplinary or court proceedings;
- (c) may cause labour unrest;
- (d) acts or may act in any manner that may cause loss, damage or harm to another staff member or to Council's property or interests.

(2) Every staff member shall be informed of the reasons for possible suspension and may be afforded an opportunity to personally state his or her case against being suspended by Council, before he or she is suspended.

(3) Representation referred to in paragraph (2) shall be made to the Chief Executive Officer or the Strategic Executive in whose department the staff member is employed.

(4) The period of suspension shall be deemed to commence on receipt of the written advice from the Chief Executive Officer or the responsible Strategic Executive, as the case may be, to that effect.

(5) Any staff member who is suspended under these Rules shall not be entitled to any basic salary for the period during which he or she is on suspension, except where Council, based on written representations made to it by the staff member, decides otherwise.

(6) Any staff member who has been suspended -

- (a) is entitled to have a disciplinary hearing into his or her conduct held as soon as reasonably possible, but not later than a period of the 180 days referred to in subrule (1); and
- (b) may, where the delay in conducting a hearing as contemplated in paragraph (a) is occasioned by Council -
  - (i) be permitted to resume his or her duties; and
  - (ii) may have his or her remuneration reinstated; or
- (c) shall if he or she is acquitted of any charge which gave rise to the suspension for misconduct in accordance with council's industrial relations policy be

paid his or her salary in respect of the period during which the staff member was on suspension; or

- (d) shall, if he or she is not dismissed on the grounds of misconduct be paid his or her salary in respect of the period during which the staff member was on suspension; and
- (e) shall, where the delay in conducting a hearing as contemplated in subrule (6)(a) is occasioned by the staff member or his or her representative, carry the cost incurred by Council as a result of such delay;

(7) Where a staff member who is suspended is found guilty on the charge of misconduct and Council decides to terminate that staff member's contract of employment the termination shall be deemed to be effective from the date of suspension.

(8) The suspension of a staff member may at any time be cancelled by Council, but the proceedings in connection with the charge of misconduct may be proceeded with, notwithstanding the cancellation of the suspension.

## CHAPTER 5

### LEAVE OF ABSENCE

#### Application of chapter

23. The provisions of the rules contained in this Chapter shall apply to all staff members.

#### Classification of leave

24. (1) All leave of absence under these Rules shall be classified under one of the following headings:

- (a) annual leave with or without remuneration;
- (b) sick leave;
- (c) compassionate leave
- (d) bonus leave;
- (e) special leave with or without remuneration; and
- (f) maternity leave.

(2) The granting of leave of absence classified under any heading referred to in subrule 1 shall not influence the granting of leave of absence, classified under any other such heading, except insofar as it is specially otherwise provided in these Rules.

(3) Subject to rule 25(2) -

- (a) a staff member shall, before he or she takes leave, apply for leave of absence in the form provided by Council; or
- (b) when, in the opinion of Council, it is impossible to apply for leave of absence, as contemplated in paragraph (a), the staff member shall apply for leave of absence not later than 2 working days after he or she has returned from the leave.

(4) Where Council incorrectly grants to a staff member more days of leave of absence than the staff member is entitled to, Council may 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.

### **Annual Leave**

**25.** (1) Council shall grant to its staff members annual leave on full remuneration in respect of each period of 12 consecutive months for which the staff member is employed by Council, in these Rules referred to as the leave cycle, and the minimum number of leave days shall be as follows:

#### **Group A:**

Leave of 36 working days per annum, in respect of a staff member who is on the E and F Bands.

#### **Group B:**

Leave of 32 working days per annum, in respect of a staff member who works a five day working week and who is on the D or Lower Band.

#### **Group C:**

Leave of 38.40 working days per annum, in respect of a staff member who works a six day working week and who is on the D or Lower Band.

#### **Group D:**

Leave of 44.80 working days per annum, in respect of a staff member who works a seven day working week and who is on the D or Lower Band.

(2) Every staff member shall, take at least 24 consecutive working days annual leave during any leave cycle, but the period of leave may be reduced by the number of days which the staff member was, during the relevant leave cycle, granted occasional leave on full remuneration at his or her request.

(3) Council may determine when the annual leave is to be taken provided that it is taken not later than -

- (a) four months after the end of the annual leave cycle; or
- (b) six months after the end of the annual leave cycle, if, before the end of the four month period contemplated in paragraph (a), the staff member agreed in writing to such extension as set out in section 23(5) of the Labour Act.

(4) Subject to Rule 27 Council shall not, require or permit a staff member to perform any work as its staff member during such staff member's annual leave, referred to in subrule (1).

(5) When calculating annual leave granted to a staff member -

- (a) who works a five day working week, public holidays, Saturdays and Sundays shall not be included in the leave period;
- (b) in the case of a staff member who works a six -day working week, public holidays and Sundays shall not be included; and

- (c) in the case of a staff member who works a seven -day working week, public holidays shall not be included in the calculation of the leave period.

(6) A staff member who intends to take annual leave shall, at least 14 days prior to the date on which he or she intends to take annual leave apply for leave of absence in the form provided by Council and such staff member may not proceed in taking the leave until approved, except where it is not reasonably practicable or possible to apply for leave in advance.

(7) When a staff member is transferred or promoted from one leave group to another, or when the working times of a staff member are changed so that he or she works more or fewer working days in a working week, he or she shall retain his or her existing leave credit days, as it was on the day before his or her transfer or change of working week.

(8) Where a staff member proves that good reasons exist Council may, in its sole discretion, on application made by that staff member, grant to that staff member annual leave without remuneration, but such leave shall not exceed 60 working days during a period of 12 months.

(9) Council may pay a staff member to whom the leave of absence is granted, as referred to in rule 26(1) or rule 34(1), the remuneration in respect of his or her leave not later than the last working day of the staff member, before the commencement of his or her leave and for a period of not less than -

- (a) 10 consecutive working days in the case of a staff member who works a five day working week;
- (b) 12 consecutive working days in the case of a staff member who works a six day working week; or
- (c) 14 consecutive working days in the case of a staff member who works a seven day working week,

provided that not more than 50% of the monthly net pay is paid to the staff member during the month in which the leave is applied for.

### **Application for annual leave**

**26.** (1) Subject to rule 27, the granting of leave referred to in rule 25 shall be subject to approval by the Chief Executive Officer or the responsible Strategic Executive or the person to whom the responsible Strategic Executive has delegated that function and such staff member may not proceed in taking the leave until approved.

(2) When application for annual leave has been approved, the application form shall be forwarded to the Human Resources Officer, who is responsible for keeping leave records, and that staff member shall ensure that the necessary entry is made in the leave records.

(3) All leave owing to and leave granted to and used by a staff member shall be recorded either manually or electronically in a leave record and such staff member's leave record must, at all reasonable times during office hours, be available for inspection by the staff member.

### **Cancellation, interruption or postponement of annual leave**

**27.** (1) Council shall, on application by a staff member, grant to the staff member leave referred to in rule 25, on a date determined by it under rule 25(3), but a staff member may, before the four months expire, agree in writing to extend the four month period by a further two months.

(2) Notwithstanding rule 24(2), Council shall not grant to a staff member the leave referred to in rule 25(1) to run concurrent with any period of sick leave granted in terms of rule 30 or with a period of notice of termination of the contract of employment.

(3) When a staff member's annual leave granted, as contemplated in subrule (1), is cancelled, postponed or interrupted as contemplated in subrule (3), that staff member -

- (a) shall be compensated by Council for irrecoverable expenses or commitments incurred by the staff member before he or she was notified of the cancellation, postponement or interruption; and
- (b) if he or she was required to travel in order to resume duty, he or she shall be paid his or her travelling expenses for the forward and return journey and he or she shall be regarded as being on duty while travelling.

(4) Cancellation, postponement or interruption of annual leave shall be confirmed in writing.

(5) If the leave of absence applied for by a staff member is refused, cancelled, postponed or interrupted the reasons for the refusal, cancellation, postponement or interruption shall be noted in the leave register and the staff member shall be credited with the number of leave days remaining after the cancellation or interruption of the annual leave and be permitted to take it within 12 months after the refusal, cancellation, postponement or interruption.

### **Compulsory annual leave**

28. Council shall, where a staff member has more than 130 working days annual leave to his or her credit, require that staff member to take at least 30 working days annual leave, during the period to be determined by Council.

### **Retention of leave privileges**

29. If these Rules result in a staff member having fewer annual leave privileges than under the former conditions of services, that staff member shall retain his or her leave privileges under the former conditions of service as a personal privilege.

### **Sick leave**

30. During any sick leave cycle, a staff member is entitled to -

- (a) one day's sick leave for every 26 days worked during the staff member's first 12 months of employment; and
- (b) thereafter -
  - (i) not less than 30 working days, if the staff member works not more than five days during a week;
  - (ii) not less than 36 working days, in the case of any other staff member;
- (c) an amount equal to that staff member's basic wage rate for each day's sick leave, but Council shall not pay a staff member for sick leave if the staff member -
  - (i) has been absent from work for more than two consecutive days; and

- (ii) fails to produce a medical certificate by a medical practitioner;

### 2003 -Benefits

31. The following benefits shall apply to members appointed under the 2003 Conditions of Service:

- (a)
  - (i) Council shall grant to a staff member who is absent from work through incapacity 120 calendar days sick leave in the aggregate on full remuneration, and 120 calendar days in the aggregate on half remuneration during each period of 36 consecutive months.
  - (ii) a staff member who is granted sick leave in terms of these Rules shall not, except with the permission of Council or where the medical practitioner recommending the sick leave stipulates otherwise, leave the municipal area.
- (b) Sick leave accrues to a staff member on the first day of the sick leave cycle and as from that day the full complement for the sick leave cycle concerned may be granted to him or her if the provisions of these Rules are complied with.
- (c)
  - (i) Subject to paragraph (b), sick leave which is prescribed for any particular sick leave cycle, but is not used during that cycle, lapses at the end of that cycle and shall not be carried forward to the next cycle.
  - (ii) Notwithstanding paragraph (a), a staff member shall, at the end of a sick leave cycle, be credited with the following sick leave days, which must be carried forward to the next sick leave cycle -
    - (aa) one day accumulated sick leave on full remuneration for every eight days sick leave with full remuneration that are standing to the staff member's credit at the end of the sick leave cycle; and
    - (bb) one day accumulated sick leave with half basic pay for every eight days sick leave on half remuneration that are standing to the staff member's credit at the end of the sick leave cycle.
- (d)
  - (i) Where a staff member is absent from duty through incapacity for a period of more than two calendar days, sick leave may be granted to him or her only if, on application for sick leave, he or she submits a certificate from a medical practitioner in which the nature of the incapacity is clearly defined and in which it is declared that such staff member is unable to perform his or her duties and which also indicates the period necessary for his or her recovery.
  - (ii) Council may, in its discretion, require the submission of a certificate of incapacity in respect of periods of less than two days.
- (e) Notwithstanding paragraphs (d) and (f) Council may, if it is satisfied that the staff member's absence was *bona fide* due to incapacity and that good reasons exist why a certificate of incapacity was not submitted, exempt such

staff member from the submission of a certificate of incapacity in respect of a continuous period of sick leave of not more than 14 consecutive days.

- (f) Sick leave with or without remuneration, in respect of which a certificate of incapacity was not submitted, may be granted only for a maximum of 14 calendar days during any year ending on 31 December and any further absence shall be covered by the granting of vacation leave or, if the staff member has no vacation leave to his or her credit, vacation leave without basic wage.
- (g) Council may, at any time, compel any applicant for sick leave to subject himself or herself to examination by a medical practitioner appointed by Council and if the certificate from such medical practitioner differs significantly from the certificate of incapacity accompanying the application, Council may curtail or refuse to grant such sick leave or, if the sick leave has already been granted, curtail or cancel such sick leave according to the certificate of incapacity issued by the medical practitioner appointed by Council.
- (h) Where a staff member to whom vacation leave is granted in terms of rule 25(1), becomes incapacitated after his or her vacation leave has begun, that portion of his or her vacation leave during which he or she is incapacitated, may be converted into sick leave if -
  - (i) the staff member submits a certificate of incapacity in which a medical practitioner certifies that the applicant had to stay in bed during the period for which sick leave is applied; and
  - (ii) the necessary sick leave is available.
- (i) A staff member to whom sick leave is granted on half remuneration or without remuneration and who has the necessary vacation leave to his or her credit, may choose whether he or she wishes to take vacation leave in place of sick leave on half remuneration or without remuneration.
- (j) Nothing contained in these rules shall preclude a staff member from leaving the service on the grounds of ill health, before the maximum or any period of sick leave has been granted.
- (k) In instances where the Council's medical doctor declares a staff member medically unfit, to perform his or her duties as provided for in section 29 of the Act, that staff member's service shall be terminated by Council on the date when he or she has been declared medically unfit by the medical doctor.
- (l) At the commencement of these rules, every staff member shall retain his or her existing sick leave cycle of three years under the former conditions of service, if applicable, and his or her sick leave credit available for the new cycle shall be the number of days referred to in paragraph (a) subparagraph (ii) less the number of days sick leave which he or she has taken during the former sick leave cycle.
- (m) Where a staff member was not entitled to sick leave on the basis of any particular number of days during a cycle of three years, a cycle of three years shall be determined with due allowance from the date of beginning of his or her continuous service.

- (n) If the effect of paragraphs (l) and (m) is that a staff member would receive less sick leave than under his or her former conditions of service, he or she shall retain his or her sick leave benefits under the former conditions of service.
- (o) For the purpose of this rule “incapacity” means inability to work owing to any sickness or injury.
- (p) Notwithstanding the definition of “incapacity” in subrule (o), Council may regard alcoholism or drug addiction as incapacity and may in terms of this rule grant to a staff member who is an alcoholic or drug addict, sick leave with full remuneration, but -
  - (i) where medically certifiable symptoms for alcohol addiction or drug abuse occur after the staff member has been permanently appointed, that person may be granted sick leave with full remuneration only once during his or her period of service with Council for the purposes of receiving specialised treatment at an approved institution; or
  - (ii) when medically certifiable symptoms for alcohol addiction or drug abuse occur during a staff member’s probation period or while the staff member has not been appointed permanently, Council may, in accordance with these Rules, terminate that staff member’s contract of service.

### **Compassionate leave**

**32.** A staff member is, during each period of 12 months of employment by Council entitled to compassionate leave with full remuneration as set out in section 25 of the Labour Act.

### **Bonus leave**

**33.** (1) Subject to subrule (2), Council shall grant to a staff member, who is in the service of Council on the date these Rules come into operation, bonus leave.

(2) The leave referred to in subrule (1) shall:

- (a) subject to paragraph (b), only be granted to a staff member who has completed a minimum of five years continuous service with Council at intervals of five year period; and
- (b) after, the date these Rules come into operation, only be granted to maximum of two terms for every staff member who is entitled to the bonus leave, where after the right to bonus leave shall lapse.

(3) The number of leave days to be granted for the leave referred to in subrule (1) shall be -

- (a) for the first five years of service -
  - (i) 61.64 working days for a staff member who works a five -day working week;
  - (ii) 73.97 working days for a staff member who works a six -day working week; or

- (iii) 86.30 working days for a staff member who works a seven -day working week;
- (b) for each completed year or portion thereof of continuous service after the period referred to in paragraph (a) -
  - (i) 12.33 working days per year for a staff member who works a five -day working week;
  - (ii) 14.79 working days per year for a staff member who works a six -day working week; or
  - (iii) 17.26 working days per year for a staff member who works a seven -day working week.
- (4) Council shall, in lieu of granting to a staff member the leave referred to in subrule (1), at the written request of the staff member made at least 14 days before the date, which date shall be on the relevant anniversary date, payment is required, pay that staff member a cash amount, which amount shall not exceed one day's basic wage of the staff member for every day of bonus leave to the credit of that staff member.
- (5) Bonus leave, which has not been used or where Council has not paid out the cash amounts in terms of subrule (4), may be accumulated to a maximum of twice the number of days referred to in subrule (1).
- (6) Bonus leave which has accumulated under the former conditions of service shall be deemed to have accumulated in accordance with these Rules.
- (7) Where a staff member dies, the value of all bonus leave due to his or her credit in the absence of a staff members testament, shall be paid to -
  - (a) the staff member's surviving spouse; or
  - (b) if there is no spouse, to the staff member's children; or
  - (c) if there are no children, to the staff member's estate.
- (8) Upon termination of a staff member's contract of employment by either the staff member or council -
  - (a) where the staff member has not yet completed five years continuous service with Council, he or she shall not be entitled to any cash value of the bonus leave;
  - (b) where the staff member has completed five years continuous service, Council shall pay out to that staff member, in accordance with subrule (4) and (5), the cash value of the bonus leave accruing to the staff members credit.
- (9) Notwithstanding paragraph (a) of subrule (8), Council shall, where it has terminated a staff member's contract of service as contemplated in rule 20(1)(c), and who has not yet completed the required first period of five years continuous service, pay a *pro rata* share of the cash value of the bonus leave that would have accrued to the staff member had Council not terminated his or her contract of service.
- (10) (a) For the purpose of this rule -

- (i) when calculating the period of five continuous years service, annual leave without remuneration or special leave without remuneration, shall not be taken into consideration;
- (ii) any cash value of bonus leave shall be calculated according to the following formula:
  - (aa)  $\frac{a \times b}{250}$  where the staff member works a five -day working week; or
  - (bb)  $\frac{a \times b}{300}$  where the staff member works a six -day working week; or
  - (cc)  $\frac{a \times b}{350}$  where the staff member works a seven -day working week;
- (b) in the formula mentioned in paragraph (a) -
  - (i) 'a' represents the number of bonus leave days to the credit of the staff member; and
  - (ii) 'b' represents the annual basic wage received by the staff member on the day his or her contract of employment is terminated.

### Special leave

**34.** (1) Council shall grant to a staff member special leave with full remuneration for the following purposes:

- (a) When the staff member is selected by a recognised non -professional sports association, affiliated to the Namibian National Sports Council or the Namibia Sports Commission, to -
  - (i) take part, as a member of an organised sports group in a sports tour outside Namibia whether as competitor, coach or manager or any other official;
  - (ii) represent Namibia, as a competitor, coach or manager or any other official at an international sporting event in Namibia;
  - (iii) accompany a foreign national team visiting Namibia, as a representative of the Namibian sports association organising the tour
- (b) When a staff member is absent from duty as a result of quarantine or 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 or contagious disease, and a medical certificate from a medical practitioner accompanies the application for special leave.
- (c) When the staff member is summoned as witness in proceedings before a court of law or has to produce documents on behalf of Council or connected with such staff member's official duty.

- (d) When a staff member has to study and sit for an examination as approved by Council in accordance with council's training and study aid policy—
  - (i) the special leave under this paragraph shall not be taken earlier than 60 days before the date on which the examination in respect of which leave is granted is held;
  - (ii) the special leave under this paragraph may be granted only once per approved paper.
- (e) When a staff member is appointed as a member of a board of a company in which the Government holds shares or a professional body established by law for board meetings and conferences.
- (f) When a staff member is attending a congress, seminar, or conference or workshop on behalf of Council.
- (g) When a staff member is on any official duty as approved by Chief Executive Officer.

(2) Special leave granted under paragraph (a) and (e) of subrule (1) shall not exceed ten working days in total in every financial year: Provided that, where the ten days period is exceeded, the staff member concerned shall in writing to the Chief Executive Officer motivate the grounds for exceeding the period for approval or refusal.

(3) Council may grant to a staff member special leave -

- (a) without basic wage where such staff member has no annual leave to his or her credit and Council is reasonably satisfied that the circumstances justify the granting of leave of absence; or
- (b) on full remuneration or without basic wage where Council so approves; or
- (c) without basic wage where such staff member has no annual leave to his or her credit for purposes accompanying his or her spouse abroad on a diplomatic mission.

(4) Subject to rule 31(o), Council may grant to a staff member special leave on full remuneration if the staff member is unable to perform his or her duties -

- (a) on account of an accident to which the Employees' Compensation Act, 1941 (Act No. 30 of 1941) applies; or
- (b) which is covered by Council's insurance policy in respect of a staff who is not covered by section 3 of the Employees Compensation Act, 1941 (Act No. 30 of 1941).

(5) A staff member referred to in subrule 4 must not, during the period of incapacity, receive payment from Council, the Employees' Compensation Commissioner, or Council's insurer which will result in his or her total income for the period of incapacity to exceed the amount of remuneration which he or she normally receives from Council.

(6) Every staff member who applies for special leave, shall, in support of his or her application, submit a certificate stating the action to be taken or such other proof as may be required by Council.

### **Maternity leave**

**35.** Council shall grant to a female staff member, with a view to her confinement, maternity leave or extended maternity leave subject to and as set out in sections 26 or 27 of the Labour Act.

### **Payment of leave credit at termination of agreement of service**

**36.** (1) Council shall pay a staff member, in line with section 37 of the Labour Act, on termination of service, the remuneration due to him or her.

(2) Annual leave may not accrue more than as set out below and a leave credit payment made to or in respect of a staff member in terms of this Rule shall not exceed the following maxima -

- (i) 130 working days in the case of a staff member having worked five working days per week;
- (ii) 156 working days in the case of a staff member having worked six working days per week; and
- (iii) 182 working days in the case of a staff member having worked seven working days per week.

### **Severance Pay**

**37.** (1) Council must pay severance pay to a staff member who has completed 12 months of continuous service if the staff member -

- (a) is dismissed or service is terminated for being medically incapacitated;
- (b) dies while employed; or
- (c) retires on reaching the age of 55 years or, instead of retiring, resigns at the age of 55.

(2) Subrule (1) does not apply -

- (a) to a fair dismissal on grounds of misconduct or poor work performance;
- (b) if the staff member unreasonably refuses to be reinstated; or
- (c) if the staff member unreasonably refuses to accept employment on terms no less favourable than those applicable immediately before the termination of employment.

(3) Severance pay, in terms of subrule (1), must be in an amount equal to at least one week's remuneration for each year of continuous service with the Council.

(4) When calculating the length of a staff member's service, for the purposes of subrules (1) and (3), and if the Council's business has been transferred to another person and the staff member continues in the service of that business, after the transfer, the staff member retains any service acquired before the transfer of that business.

(5) The payment of severance pay in terms of this rule does not affect a staff member's right to any other amount that the Council is obliged to pay the staff member.

(6) If the contract of employment is terminated as a result of the death of the staff member and in the absence of a staff members testament, the Council must pay the severance pay to -

- (a) the staff member's surviving spouse; or
- (b) if there is no spouse, to the staff member's children; or
- (c) if there are no children, to the staff member's estate.

## **CHAPTER 6**

### **LEGAL AID: CRIMINAL AND CIVIL CASES**

#### **Legal aid in criminal cases**

**38.** (1) When a staff member, in the course of his or her duty, commits an act or omits to do an act and the commission or omission amounts to a criminal offence for which the staff member is prosecuted, the Chief Executive Officer may, subject to subrule (2), arrange for the staff member's legal representation by Council's legal practitioners at Council's cost.

(2) A staff member referred to in subrule (1) -

- (a) shall, as soon as possible after his or her arrest or receipt of summons, through his or her Strategic Executive, inform the Chief Executive Officer in writing of the arrest and the charge or summons and the date of appearance in court;
- (b) shall, subject to subrule (5), personally remain liable for any penalty that the court may impose on him or her as a result of a conviction;
- (c) where he or she elects to be legally represented by a legal practitioner other than Council's legal practitioners, may not be covered by Council for his or her legal costs;
- (d) must not, except with the written permission of Council's legal practitioner, make any acknowledgement of guilt in respect of the action or omission.

(3) The Chief Executive Officer, after the conclusion of the trial of a staff member referred to in subrule (1), shall -

- (a) prepare a report which covers the cause of the prosecution and the findings of the trial court;
- (b) submit that report to the Management Committee.

(4) The staff member referred to in subrule (1) has the right of access to a report referred to in subrule (3) before the report is submitted to the Management Committee.

(5) Where the report, referred to in subrule (3), reveals that the staff member knowingly exceeded his or her authority or the scope of his or her duty or was under the influence of alcohol or drugs at the time of the commission or omission of the act, which gave rise to the prosecution, then the staff member shall, where Council covered his or her legal costs, refund Council the amount of such costs.

**Legal aid in civil cases**

**39.** (1) When a staff member, in the course of his or her duty, commits an act or omits to do an act, and the commission or omission results in a civil claim against that staff member, the Chief Executive Officer may, subject to subrule (2), arrange for the staff member's legal representation by Council's legal practitioners at Council's cost.

(2) A staff member referred to in subrule (1) -

- (a) must not, except with the written permission of Council's legal practitioner admit liability, offer or promise any payment, offer or promise indemnity in respect of the commission or omission of the act;
- (b) shall, not later than seven days after the date of the commission or omission of the act, or the date on which the summons is served on him or her, or whichever date occurs the earliest, in writing inform his or her Strategic Executive of the commission or omission of the act;
- (c) shall, as accurately as possible, furnish the Chief Executive Officer with all information in respect of the commission or omission of the act.

(3) Where the Chief Executive Officer is of the opinion or there is evidence to prove that the staff member referred to in subrule (1), knowingly exceeded his or her scope of duty or was at the time of the commission or omission of the act, under the influence of alcohol or drugs, the Chief Executive Officer may, after having heard representations from the staff member concerned, refuse to render any legal assistance to that staff member and may disclaim any responsibility.

(4) When a staff member, in the course of his or her duty, suffers any injury or damage as a result of the action or omission of another person, the Chief Executive Officer may arrange for that staff member to be legally represented by Council's legal practitioner at Council's cost, if the staff member wishes to institute a civil claim for damages or injury suffered, but where the staff member is successful in his or her claim and the staff member has been awarded costs, he or she shall reimburse Council the recovered cost of legal representation.

**Forfeiture of legal aid benefits**

**40.** Rules 39 and 40 shall not apply -

- (a) where the commission or omission of an act by a staff member giving rise to a criminal charge, amounts to driving a vehicle under the influence of alcohol or intoxicating drugs and such driving results in an accident or causes other damage;
- (b) where Council institutes criminal proceedings or a civil claim against a staff member; or
- (c) disciplinary action against a staff member as a result of a commission or omission of an act referred to in rules 39 or 40.

## CHAPTER 7

### JOB GRADING, JOB DESCRIPTIONS & HUMAN RESOURCES DEVELOPMENT

#### Purpose of job grading

41. (1) Council shall use a job grading system to link ranks on its fixed establishment to its remuneration structure and assign or cause to be assigned a specific job grade to each rank on the fixed establishment.

(2) Council must, when determining the grade of any rank on the fixed establishment, measure the relative weight of one rank against the relative weight of another rank, taking into consideration the requirements, responsibilities and job contents of the different ranks.

#### Grading system

42. (1) Council may from time to time and after consultation with the staff members or a trade union representing the staff members, by resolution, determine the grading system and the procedures, which it shall use for grading posts on its fixed establishment.

(2) The Patterson's grading system is used at the date of implementation of these rules.

#### Job description and performance of duties

43. (1) Council shall, develop a job description for each post on its fixed establishment, and every staff member shall perform his or her duties in accordance with the job description attached to his or her post.

(2) Notwithstanding the provisions of rule 42(1) -

(a) council may, by resolution, appoint a staff member to act in a post, which is higher than the post, which the staff member occupies; or

(b) the Chief Executive Officer or a Strategic Executive may in writing appoint a staff member to act in a position which is higher than the post which the staff member occupies;

(3) Where a staff member has been appointed to act in a post as contemplated in subrules 2(a) or 2(b), the period, over which the staff member shall act, may not exceed six consecutive months.

## CHAPTER 8

### GENERAL PROVISIONS

#### Destruction of Council property

44. A staff member shall not wilfully or negligently destroy, or damage or permit the destruction or damage of any vehicles, tools or implements or any property of Council.

#### Gifts, commissions, and copy rights or patents

45. (1) A staff member may not, subject to a Council Resolution to the contrary claim or accept any commission, money or compensation, whether monetary or otherwise, not being his or her remuneration, allowance or other moneys payable to him or her by the Council, in respect of the performance of his or her work.

(2) Any moneys or payment received by a staff member, not being remuneration or allowances payable to a staff member in the course of his or her performance of work, must be declared in writing to the Chief Executive Officer.

(3) Where a staff member, in the course of his or her duty, produces any work or makes an invention, over which a copyright or a patent is registered, that copyright or patent vests in Council.

### **Working hours and duties**

**46.** A staff member may not, without the written permission of the responsible strategic Executive, change his or her fixed hours of service, his or her duties as set out in his or her job description or exchange duties with another staff member.

### **Attendance records**

**47.** Every staff member shall record, in the form and manner determined by Council, his or her time of arrival and departure at his or her place of work on a daily basis.

### **Grievances**

**48.** (1) A staff member, except a Strategic Executive who has any grievance or complaint arising from his or her service, shall submit the grievance in accordance with the industrial relations policies and procedure of council.

(2) Any Strategic Executive Officer who has any grievance or complaint arising from his or her service may submit his or her case to the Management Committee through the Chief Executive Officer.

(3) A staff member shall not make any representations to a Councillor or other person on any matter concerning him or her in his or her capacity as staff member, except as provided in subrules (1) and (2).

### **Contravention of Laws**

**49.** A staff member shall not commit an act or omit to do an act in the course of his or her duties which act or omission may amount to a contravention of any law applicable in Namibia.

### **Testing for alcohol or drugs**

**50.** (1) Where Council suspects that a staff member is under the influence of alcohol or intoxicating drugs during normal working hours, such staff member shall be obliged, upon request of a duly authorised official and a traffic officer, to be tested using an alcohol meter or such other medical examinations as may be required.

(2) When a staff member is tested for alcohol as contemplated in subrule (1) two readings must be taken.

### **Other Agreements**

**51.** Council may, in addition to these Rules, enter into an agreement with a staff member or groups of staff members, which agreement may provide for conditions of employment that are not covered by these Rules or that are more favourable than the conditions provided for in these Rules, and that agreement and these Rules shall form the contract of service between Council and the staff member.

**Misconduct**

**52.** Where a staff member contravenes any provisions of these Rules, the Act, or any council resolution, such staff member commits an act of misconduct and shall in accordance with the Council's Industrial Relations Policy and Procedures, be charged with misconduct.

**Disputes**

**53.** Depending on the nature and context of a dispute, such dispute will be dealt with as per Chapter 8 of the Labour Act.

**Confidentiality**

**54.** (1) A staff member may, in the course of his or her ordinary duties, be subject information which is -

- (a) classified or confidential consisting of, but not limited to, technical information, accounts, invoices, letters, contracts, methods, processes, formulae, compositions, inventions, systems, computer programmes, research projects;
- (b) any information disseminated in management committee or Local Tender Board meetings or other Committee or Work Group meetings or meetings with clients or consultants, not open to the public;
- (c) contained in agenda or minutes or any other forms of communication, whether in writing or orally;
- (d) intellectual property whether belonging to the Council or a third party or parties; and
- (e) information which is private and or confidential to other persons or customers but in possession of Council,

(2) A staff member, referred to in subrule (1), who had access to any such information referred to in that subrule, undertakes to hold confidential all information in trust and confidence and agrees that such information shall be used only for municipal purposes and shall not be used for any private purposes or disclosed to any other person except -

- (a) on instruction or with the approval of the Chief Executive Officer or such staff member's Strategic Executive;
- (b) if it is reasonably necessary for the proper execution of such staff member's duties in terms of his or her job description and in the course of his or her employment with the Council.
- (c) if he or she is ordered to disclose it by order of a court having jurisdiction or other similar legal process.

(3) A staff member undertakes not to make media statements or address public meetings on any of the information set out in subrule(1) or to provide or make available such information to the media unless expressly authorised to do so by the Chief Executive Officer or his or her Strategic Executive.

(4) A staff member undertakes to take all reasonable steps to ensure that any confidential information does not become known to third parties or the media through his or her negligence.

(5) A staff member undertakes not to attempt to access any confidential information or other information of the Council that does not fall within his or her job description and is not necessary for the execution of any lawful instruction given on behalf of the Council by a person authorised to do so.

(6) The staff member undertakes not to discuss any confidential information with any other staff member of the Council, unless it is necessary for the proper execution of the other staff member's official duties.

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