



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$5.60

WINDHOEK - 17 July 2009

No. 4297

CONTENTS

Page

GENERAL NOTICE

No. 150 Village of Maltahöhe: Personnel Rules: Local Authorities Act, 1992 1

General Notice

VILLAGE OF MALTAHÖHE

No. 150

2009

PERSONNEL RULES: LOCAL AUTHORITIES ACT, 1992

The Village Council of Maltahöhe 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.

A. GABASES
CHAIRPERSON

BY ORDER OF THE COUNCIL

Maltahöhe, 11 May 2009

SCHEDULE

PART I

PRELIMINARY PROVISIONS

Rule

1. Definitions

PART II
DETERMINATION OF REMUNERATION AND BENEFITS

2. Grading system
3. Wage structure and grading committee
4. Basic Salary
5. Calculation of remuneration
6. Advance on salary
7. Overtime
8. Annual bonus
9. Performance bonus
10. Housing benefit
11. Medical aid fund
12. Pension fund
13. Motor vehicle allowance
14. Transport allowance
15. Subsistence and travelling allowance
16. Foreign experts
17. Acting allowance
18. Cell phone allowance
19. Classification of leave
20. Vacation leave
21. Cancellation, interruption or postponement of vacation leave
22. Compulsory vacation leave
23. Sick leave
24. Special leave
25. Maternity leave
26. Compassionate leave
27. Payments of vacation leave on termination of service

PART III
DISCIPLINE, DISCHARGE AND SUSPENSION

28. Discipline
29. Guidelines in dealing with actions that constitutes misconduct
30. Warnings with regard to types of inquiries
31. Types of warnings
32. Procedural fairness during disciplinary inquiry
33. Substantive fairness in disciplinary inquiry
34. Suspension
35. Persons conducting disciplinary inquiry
36. Appeals

ANNEXURE

PART I
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;

“Council” means the Village Council of Maltahöhe;

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

“management cadre” includes the chief executive officer and any head of department;

“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 II DETERMINATION OF REMUNERATION AND BENEFITS

Grading system

2. The Council must, after consultation with the relevant trade unions, approve 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 who will be the chairperson of the committee and one additional 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 posts in terms of key performance areas; and

(c) grade the posts created in the establishment.

Basic salary

4. (1) The Council must pay any monetary remuneration to which a staff member is entitled to him or her personally or deposit into his or her bank account or other financial institution on the last Friday of every calendar month or where the last day of a calendar month falls on a weekday, on that day, which ever day is the earliest.

(2) Each staff member must furnish the human resources department with his or her banking details.

(3) On the termination of service of a staff member his or her final salary is paid at the end of the month in which such service was terminated 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 may be paid back to the Council; and 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 close 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 (3).

(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 state 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) Subject to rule 20(3), a staff member on leave may be called upon to perform work and notwithstanding rule 20(3) a staff member may not be called upon to perform overtime work.

(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 management committee 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, other than a staff member who occupies accommodation provided by 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.

- (2) A staff member that does not own a house receives a housing allowance of ten 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 (30%) 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 (20%) of a staff member's annual pensionable salary where he or she purchases a house.
- (5) A 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 -
- (a) where he or she occupies a residence with air-conditioning, four per cent (4%) of his or her basic monthly salary to the Council; or
 - (b) where he or she occupies a residence without air-conditioning, must pay two per cent (2%) of his or her basic monthly salary to the Council.
- (8) A 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 -
- (a) may belong to a medical aid fund of his or her choice; and
 - (b) may not be forced to be a member of the medical aid fund of the Council.
- (2) A staff member must apply to the Council on a form provided by the Council to indicate his or her intention to be a member of the medical aid fund of the Council.
- (3) A permanent staff member must contribute thirty per cent (30%) of the total monthly contribution to the medical aid fund and the Council must contribute the remaining seventy per cent (70%) of the total monthly contribution in respect of each permanent staff member.
- (4) The Council 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 between the Council and the former staff member.

Pension fund

- 12.** The Council must, in respect of each permanent staff, contribute to the approved pension fund 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 management cadre.

(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\$53 772 |
| (b) | head of department | N\$48 000 |
| (c) | specialist staff member | N\$48 000 |

(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 municipal vehicle unless he or she uses such municipal vehicle 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 (75%) 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 cancel such allowance, in writing, within three months after the date of allocation of the allowance, if the conditions set for the allocation of the allowance is not met by the relevant staff member.

(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 benefit from the motor vehicle allowance.

(2) The transport allowance is linked to the salary of a staff member and will be reduced proportionately against any 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 (Performance Management System Circular No. 13 of 2003), as follows:

- (a) to the chief executive officer a subsistence and travelling allowance equivalent to that of a Director in the Performance Management System;
- (b) to a head of department a subsistence and travelling allowance equivalent to that of a Deputy-Director in the Performance Management System; and
- (c) to a staff member a subsistence and travelling allowance equivalent to that of a staff member in the Performance Management System.

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

(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\$1, 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 with expert knowledge or expertise in a field where there is a lack of such knowledge or expertise in Namibia who is not a Namibian citizen or a permanent resident of Namibia.

(2) The Council may, in line with Namibia’s affirmative action laws and policies, appoint subject to certain conditions of employment, 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, he or she must file a report, setting out 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 such duties in an acting capacity.

(2) The chief executive officer may appoint in an acting capacity, in terms of the powers delegated to him or her, a staff member to perform such duties required in a higher post for a period not exceeding three months.

(3) The chief executive officer may extend the period during which a staff member is appointed in an acting position after the lapse of such period with a further period not exceeding three months.

(4) The Council must pay an acting allowance to a staff member in an acting position such amount 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 to a staff member in such acting capacity where the staff member for whom he or she is acting is on leave or on a course during which period he or she is paid, or on suspension or any other temporary absence.

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

(9) An acting allowance allocated to a staff member in an acting position 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 a department recommended by the chief executive officer, with the approval of the Council and the Minister.

(2) A cell phone purchased or made available by the Council to a staff member may not exceed a value of N\$3 000.

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

(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 to the public when requested.

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

- (a) N\$350 for the chief executive officer; and
- (b) an amount approved by the Council for the head of departments.

(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 leave classified under any other rule, except as specifically provided for.

(3) A staff member must -

- (a) at least five working days before he or she intends to take leave, apply for such leave on the form provided by the Council and submit such application to the head of department for consideration; and
- (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 an application for leave depending on the grounds 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 of leave taken by a staff member and kept in terms of subrule (6) must be available during office hours for inspection by the staff member concerned.

(8) Where the Council erroneously grant 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 (50%) 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 to a staff member leave 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 which the staff member cannot recover 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 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 agreed 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 any other evidence of proof of illness as may be prescribed 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 days 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 staff member's certificate of incapacity issued by that staff member's medical practitioner 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 perform his normal duties which he was contracted to perform, 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 of not more than 3 months upon diagnosis by a registered medical practitioner, to go for rehabilitation processes, with full remuneration; or

- (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 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 a registered medical practitioner's medical instructions or 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 charges 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, subject to the approval of the Council;
- (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 and who must attend board meetings or conferences of a company in which the Government holds shares or a professional body established by law;
- (h) is attending a congress, seminar, or conference or workshop on behalf of the Council; or
- (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 such leave 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 of 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; or

(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 III
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 staff members of the disciplinary code and the possible actions against all acts 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 public.

(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(5) and (6) of the Act.

(5) Except for subrule (1) and rule 35, where the term "staff member" is used 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 a 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 major offences are the following -

(a) theft of Council property;

(b) fraud, bribery, malicious damage to the Council's property or any contravention of the Anti Corruption Act, 2003 (Act No. 8 of 2003);

(c) misuse of Council property for private purposes;

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

- (e) intimidation at the work place;
- (f) incitement to do an unlawful act at the work place;
- (g) perjury;
- (h) assault at the work place;
- (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 at the work place;
- (l) sexual harassment at the work place;
- (m) revealing confidential information about Council to unauthorized persons;
- (n) illegal strikes under the Labour Act, 2007 (Act No. 11 of 2007);
- (o) racism, tribalism and nepotism at the work place;
- (p) gross abuse of authority at the work place; and
- (q) gross negligence of duty.

(2) In relation to major 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) Serious offences at the work place are set out below -
 - (a) disregard of safety standards;
 - (b) unauthorised possession of Council property;
 - (c) being under the influence of alcohol or a stupefying substance without any prescription during working hours;
 - (d) abuse of sick leave;
 - (e) sleeping on duty;
 - (f) repeated absence from the workplace while on duty;
 - (g) repeated unauthorised or excommunicated absenteeism;
 - (h) using abusive language;
 - (i) failure to report an accident or damage to Council property;
 - (j) reckless driving of the Council's vehicles; and

(k) insolence to other Council staff members.

(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; and
- (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 at the work place 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; and
- (e) dressed in a unclean, indecent and untidy 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; and
- (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), serve 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 the disciplinary form, Form A of the Annexure, and issue such form to the staff member concerned after the conclusion of an informal disciplinary inquiry referred to in subrule (10) 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 who is being charged, the management committee or its representative, or 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. The Council may issue -

- (a) a warning 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; or
- (b) a warning set out under rule 29(11) and (12) and 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 an informal disciplinary inquiry.

Types of warnings

31. (1) The 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) a verbal warning given in less serious circumstances and it is valid for a period not exceeding three months;
- (b) a first written warning is valid for a period not exceeding six months in the case of a first serious offence or where verbal warnings for minor offences have been unsuccessful; or
- (c) a final written warning is valid for a period not exceeding 12 months where written warnings for serious offences have been unsuccessful, or in the case of a gross misconduct offence.

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

(3) A staff member has the right to an interpreter where he or she requires such an interpreter during a disciplinary inquiry.

(4) A staff member facing a disciplinary inquiry must be in a fit, proper and sober frame of mind during such inquiry.

(5) A staff member or his or her representative, who requires additional time to prepare his or her case, may request to 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 not to unduly delay the inquiry; or
- (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 before the disciplinary inquiry committee can find him or her guilty of misconduct.

(2) The staff member against whom a charge of misconduct is made 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 found guilty, the person charging such staff member must ensure that there is sufficient proof of misconduct on a 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 of suspension.

(4) A staff member may be suspended without pay for -

(a) the duration of the formal disciplinary inquiry; or

(b) a period not exceeding six months,

whichever period is the shortest.

(5) 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.

(6) Upon considering the staff member's appeal in subrule (5), 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.

(7) 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; or

(d) if an action under section 29(6)(g)(i)(aa) or (bb) of the Act is taken against such staff member.

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

(9) 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.

(10) 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 does not affect any proceedings in connection with the charge of misconduct.

Persons conducting disciplinary inquiry

35. (1) Subject to section 29(7) of the Act, the following persons must be appointed for purposes of conducting an informal disciplinary inquiry, 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) With regard to the chief executive officer or a head of department under this rule, the person designated by the Minister in section 27(1)(a) of the Act 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; or
- (d) such other person that the chairperson may appoint in the circumstances, if necessary.

(3) The staff member designated to inquire into the charge, as contemplated in section 29(6)(d) 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 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;
- (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 after such conviction that could lead to an acquittal of the charges against him or her.

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

VILLAGE OF MALTAHÖHE

vs.

.....

Be informed that in terms of section 29(6)(a) of the Local Authorities Act, 1992, and the Personnel Rules of the Village of Maltahöhe, 2009, you are hereby charged with misconduct in that you contravened the following section(s) of the Act / rule(s) of the Personnel Rules, 2009*:

- 1.
- 2.

Particulars of the alleged Misconduct

.....

.....

.....

.....

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

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

I attach / do not attach* a statement hereto:

.....
SIGNATURE

.....
DATE

Be further informed that at the hearing, you:

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

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

(* *Delete whichever is not applicable.*)

.....

And

THE VILLAGE OF MALTAHÖHE

NOTICE OF APPEAL

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

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

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

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

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

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

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

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

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

3. Appeal on the grounds that the disciplinary inquiry was substantively or procedurally unfair, in terms of but not limited to the provisions in rules 32 or 33 of the Maltahöhe Personnel Rules, 2009

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

Dated at Maltahöhe, on this of 20

.....
SIGNED APPELLANT/ REPRESENTATIVE
