UMZIMVUBU LOCAL MUNICIPALITY

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LABOUR RELATIONS POLICY

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LABOUR RELATIONS POLICY

PART ONE

1. DEFINITIONS

1.1 **"Aggravating Circumstances"** – means negative circumstances which may be cited by a prosecutor in the hearing in favour of a severe sanction.

1.2 **"Balance of Probabilities"** – means a highly probable situation whereby there is a likelihood that certain circumstances exist due to the nature of facts presented in comparison with the facts of the opposite case.

1.3 **"Bargaining Council"** – means the South African Local Government Bargaining Council and its divisions as established in terms of the Labour Relations Act, No 66 of 1985.

1.4 **"Conditions of Employment"** – means terms and conditions of service in respect of which an employee is required to observe and abide by.

1.5 **"Ill Health"** – means a negative condition of an employee's health which adversely affects his/her work performance.

1.6 **"Incapacity"** – means inability to perform a job by an employee due to ill health or poor work performance.

1.7 **"Injury"** – means a condition of physical infirmity resulting from any form of danger.

1.8 **"Mitigating Circumstances"** – means positive circumstances of which an employee representative may present as evidence in favour of a lenient sanction.

1.9 **"Municipal Manager"** – means a person appointed in the position of a Municipal Manager in terms of the Municipal Systems Act, No 32 of 2000.

1.10 **"Municipal Official"** – means a person appointed as Municipal employee in terms of the Municipal Systems Act No. 32 of 2000 and other labour laws.

1.11 **"Municipality"** – means the Umzimvubu Local municipality as established in terms of the Municipal Structures Act No. 117 of 1998.

1.12 **"Poor Work Performance"** – means deteriorating and unsatisfactory standard of performance by an employee resulting from negligence or incompetence.

1.13 **"Presiding Officer"** – means a person appointed to preside over a grievance or a disciplinary hearing.

1.14 **"Procedural Unfairness"** – means unfairness arising out of failure to comply with the procedural requirements.

1.15 **"Prosecutor"** – means a person appointed by the employer to press chares in the disciplinary hearing.

1.16 **"SALGA"** – means South African Local Government Association as established in terms of Section 2(1)(a) of the Organised Local Government Act, No 52 of 1997

1.17 **"Substantive Unfairness"** – means unfairness arising out of failure to notice material aspects about the case.

1.18 **"Superior"** – means a senior Municipal official in relation to the employee concerned.

1.19 **"Negligence"-** Negligence arises where someone acts without taking ***proper care*** – they have not acted as a ***"reasonable person***" would have acted under the circumstances.

1.20 **"Gross Negligence"-** Gross negligence can be described as a ***conscious and voluntary disregard of the need to use reasonable care,*** which has or is likely to cause ***foreseeable grave injury, damage or harm to persons, property or both.*** It is conduct that is ***extreme when compared to ordinary negligence***

1.21 **"Reasonable person"-** A reasonable person is a fictional person that is: the average man or woman, not reckless or overcautious, aware of their surroundings and the dangers inherent in various activities.

1.22 **"Working tool"-** Working tool is an item used for a specific purpose. It is a tangible (hardware) or intangible (software) object used to extent the ability of an individual.

2. OBJECTIVES

2.1 The Umzimvubu Local Municipality's (ULM) Labour Relations Policy is intended to form a basis for the consistent implementation of Labour Relations objectives throughout the Municipality.

2.2 The Labour Relations Policy is also an expression of the Municipality's philosophy towards its Human Resources (HR).

2.3 Labour Relations is a management function, which seeks to maximize the effectiveness of the relationships between Employer and Employees/Employees' Representative Unions (employees).
In this regard, the Municipality promotes the following principles:

2.3.1 To ensure the existence of sound relationships between the Municipality, employees and employee representatives (Trade Unions).

2.3.2 To contribute to the achievements of the Municipality's goals and long term stability.

2.3.3 To facilitate effective and meaningful negotiations between the Municipality and employees.

2.3.4 To enable management to manage in a way commensurate with their responsibility.

2.3.5 To ensure that the Labour Relations Policy and practices are consistent with the requirements of all labour legislation and the rapidly changing Socio-Political environment.

2.4 To this end, both the ULM and the Employees/Employees' Representative Unions (employees), shall observe the following OBLIGATIONS; RIGHTS and; DUTIES:

2.5 This policy shall apply to all the UMZIMVUBU LOCAL MUNICIPALITY employees, middle managers and senior managers.

2.6 Legislative framework :the following prescripts provide a legislative framework and guidelines for the implementation of the disciplinary and grievance:

- Constitution of the Republic of South Africa Act 108 of 1996
- Labour Relations Act 66 of 1995
- Basic Conditions of Employment Act 75 of 1997
- Municipal Finance Management Act 56 of 2003
- Code of Good Practice.

3. RIGHTS, DUTIES AND OBLIGATIONS

3.1 The Municipality recognizes that the relationships between employer and employees contain elements of common interest and elements of conflicting interest, and by virtue of this, is dynamic in nature. The parties recognize that they have the following rights, duties and obligations:

3.1.1 Employer Rights

In order to meet its obligations in keeping with management responsibility, the employer has ***inter alia:***

3.1.1.1 The right to manage.
3.1.1.2 The right to control employment.
3.1.1.3 The right to grant/refuse leave of absence.
3.1.1.4 The right to direct access/exit to employees.
3.1.1.5 The right to enter into employment contracts.
3.1.1.6 The right to maintain efficiency.

3.1.1.7 The right to further the Municipality's business/service delivery interests.
3.1.1.8 The right to expect employees to carry out legitimate and reasonable instructions.
3.1.1.9 The right to maintain discipline.
3.1.1.10 The right to lock-out where all prescribed procedures have been exhausted.

3.1.2 Employer Duties

3.1.2.1 To establish sound relationships with employees.
3.1.2.2 To facilitate contact with employees.
3.1.2.3 To discuss matters of mutual interest with all stakeholders.
3.1.2.4 To understand the real and legitimate needs of employees.
3.1.2.5 To assist, where required, employee representatives understand their own responsibilities.
3.1.2.6 To provide facilities for employer/employees meetings.

3.1.3 Employer Obligations

3.1.3.1 To pay employees for their services rendered and not deduct any unlawful amounts from their salaries/wages.
3.1.3.2 To abide by: all legislation; Bargaining Council's resolutions collective resolutions; Employer Organisations resolutions; internal agreements and Council resolutions.
3.1.3.3 Conform to the terms of contracts of employment of the employees.
3.1.3.4 Provide a safe working environment and conditions.
3.1.3.5 To deal with employees and their representatives in a fair manner and in good faith.

3.1.4 Employee Rights

3.1.4.1 The right to work and job security.
3.1.4.2 The right to fair remuneration and conditions of service.
3.1.4.3 The right to safe working environment.
3.1.4.4 The right of access to training and re-training.
3.1.4.5 The right to organize and belong to a trade union.
3.1.4.6 The right to association and disassociation.
3.1.4.7 The right to negotiate and bargain collectively.
3.1.4.8 The right to protection against unfair labour practices.
3.1.4.9 The right to withhold labour where all prescribed procedures have been exhausted.
3.1.4.10 The right to engage in discussions in relation to decisions which directly affect their lives.

3.1.5 Employee Duties

3.1.5.1 To communicate grievances to the next level of seniority if these cannot be immediately resolved.
3.1.5.2 To maintain regular communication with supervisors/management.
3.1.5.3 To help others where possible, to understand the importance of economic considerations.

3.1.5.4 To ascertain the views and feelings of other employees towards the Municipality and to brief management of employees' customs and cultures, where and whenever possible.

3.1.6 Employee Obligations

3.1.6.1 To implement the Municipality's operational plans as directed by supervisor/management.
3.1.6.2 To comply with the terms of the employment contract.
3.1.6.3 To meet standards of work requirements.
3.1.6.4 To abide by the Municipality; SALGA and SALGBC's procedures, policies and resolutions.
3.1.6.5 To carry out legitimate and reasonable management's instructions.
3.1.6.6 To observe all legal requirements.

3.2 STRIKE

Every employee has the right to strike after following the procedure laid down in the Labour Relations Act 66 of 1995, but the principle of "No work, no Pay" shall still be applied to employee participated in a strike. Employees performing essential or maintenance services shall not take part in a strike

3.2.1. Where Employees embarked on an unprotected strike the Employer shall inform the trade union and allow them a period of 48 hours to try and get their members back to work.

3.2.2 If the trade union cannot succeed with getting their members back to work, the trade union shall be requested to indicate within a period of 48 hours why ultimatum should not be issued to Employees to return to work or be dismissed.

3.2.3 The employer shall consider the written submissions from the trade union and if not persuaded the Employer shall again indicate its intention to issue the ultimatum within 48 hours

3.2.4 The Municipal Manager or his authorized representative shall issue the ultimatum. The ultimatum must be clear and allow the Employees a reasonable time of 48 hours to comply

3.2.5 Employees who fail to return to work after the time stipulated in the ultimatum shall, together with their trade union/s be informed in writing of the charges against them and shall be given the opportunity to make any written submission(either personally or through their representatives

3.2.6 to the Municipal Manager/ his authorized representative within ten (10) day from receiving the charges.

3.2.7 The Municipal Manager/ his authorized representative shall appoint an independent presiding officer to consider the submissions by employees and come to a finding on the charges by taking into consideration the length and duration of the unprotected strike, the reasons thereof aggravating or mitigation circumstance and compliance(where applicable)

with any ultimatum, and may further decide whether, having regard to all of the aforegoing, different sanctions should be applied to any of the employees involved,

3.2.8 The finding of the Presiding Officer shall be issued to the employees within ten (10) days of receipt of the submissions by employees.

3.2.9 The employees or their representatives shall be invited to submit any written mitigating circumstances within ten (10) days of receiving the finding from the Presiding Officer.

3.2.10 The Presiding Officer shall consider the written mitigating circumstances submitted by the employees/ their representatives and shall issue his sanction determination within ten (10) days from receiving the submissions on mitigating circumstances from employees.

3.3 DEALING WITH NEGLIGENCE

3.3.1 Purpose and application

i) Is intended to establish internal mechanism for management of municipal property (working tools)
ii) Ensure a common understanding of negligence.

iii) This section applies to all employees of Umzimvubu Local municipality.

3.3.2 Handling Municipal Working Tools

i) In order to be negligent, it is not necessary for an employee to have intentionally or wilfully deviated from the standard of conduct that the notional reasonable man *[person]* would have adopted. It is sufficient that deviation took place.

ii) An employee who has been given working tools (computer, cellphone, data connection devices, machinery and any other working tool as required by the post, wherein the employee is an incumbent is expected to exercise a reasonable proper care.

iii) An employee who is using the property of the municipality (vehicle, printers, offices) is expected to exercise a reasonable care.

iv) An employee is expected to take reasonable precautions to ensure that the property of the municipality placed under his/her custody is safe and protected.

3.3.3 Test for Negligence

a) Would a reasonable person in the position of the employee foresee the possibility of his or her conduct causing damage to another person or the municipality.

b) Would a reasonable person have taken steps to guard against the possibility of harm or damage and

c) Did the employee fail to take the steps that a reasonable person would have taken to guard against this possibility of harm/damage.

3.3.4 Procedure for dealing with Negligence

Failure for an employee to exercise due care, which results to negligence the following procedure is to be followed:

i) The alleged negligence must be brought to the attention of the Municipal Manager immediately, using the prescribed incident report form.

ii) If the Municipal Manger is satisfied that there is a reasonable cause to believe that an act of misconduct in the form of negligence has been committed by the employee, the Municipal Manger must recommend for the investigation of the allegations.

iii) Investigation report with recommendations must be submitted to the office of the Municipal Manager for further determination.

3.3.5 Consequences of Negligence

Negligence is a form of misconduct and

i) Serious disciplinary measures will be taken against an employee who has allegedly committed an act of negligence.

ii) If a working tool has been lost and/or damaged due to the negligence of an employee, the working tool will be recovered from the employee concerned should the insurance disapprove the claim.

iii) Even if a claim has been approved by the insurance and it is believed that there was an act of negligence on the part of an employee disciplinary measures will be taken against the employee in terms of the above clause 3.3.5(i).

4. DISCIPLINARY REGULATION FOR ALL EMPLOYEES AND SENIOR MANAGERS

4.1 Purpose and application

(1) This Disciplinary Code –

(a) applies to all
(i) senior managers; and employees
(b) is intended to -
(i) provide an internal mechanism for management of misconduct;

(ii) establish standard procedures for the management of misconduct;
(iii) support constructive labour relations;
(iv) ensure a common understanding of misconduct and discipline;
(v) promote mutual respect between senior managers and council;
(vi) promote acceptable conduct;
(vii) avert and correct unacceptable conduct; and
(viii) prevent arbitrary or discriminatory actions.
(c) prevails in the event of any inconsistency with any systems and procedures adopted by a municipality in terms of section 67(1)(h) of the Act to the extent that those procedures apply to senior managers.

4.2 Principles

(1) This Disciplinary Code is informed by the following principles:

(a) Discipline-
(i) is fundamentally a corrective measure and not punitive;
and
(ii) must be applied in a prompt, fair, consistent and progressive manner.
(2) This Disciplinary Code is necessary for the efficient delivery of services, and ensure that senior managers and employees
(a) have a fair hearing in a formal or informal setting.
(b) are timeously informed of allegations of misconduct made against them; and
(c) receive written reasons for any decisions taken against them.
(3) A disciplinary hearing must -
(a) take place in the area of jurisdiction of the municipality; and
(b) be concluded within the shortest possible time.
(4) Except in exceptional circumstances, a disciplinary action may not be taken against a senior manager until a full investigation has been carried out.

4.3 Policy

(1) If a senior manager is alleged to have committed misconduct, the municipal council must institute disciplinary proceedings in accordance with this Disciplinary Code.
(2) The maintenance of discipline is the responsibility of the municipality.
(3) Discipline must be effected with due regard to -
(a) the Code of Conduct for municipal staff members as contained in Schedule 2 of the Act; and
(b) the Code of Good Practice provided for in Schedule 8 of the Labour Relations Act, 1995 (Act No. 66 of 1995).
(4) The principles of natural justice and fairness must be adhered to notwithstanding criminal or civil action having been instituted.
(5) Disciplinary procedures may not be dispensed with as a result of criminal, civil or other action having been instituted, or pending the outcome of such action.

4.4 Disciplinary procedure

(1) Any allegation of misconduct against a senior manager must be brought to the attention of the municipal council.
(2) An allegation referred to in sub-regulation (1) must be tabled by the mayor or the

Speaker to convene a special council meeting within seven [7] days to consider the said report.

(3) If the municipal council is satisfied that -

(a) there is a reasonable cause to believe that an act of misconduct has been committed by the senior manager, the municipal council must within seven [7] days appoint an independent investigator to investigate the allegation[s] of misconduct; and (b) there is no evidence to support the allegation[s] of misconduct against the senior manager, the municipal council must within seven [7] days dismiss the allegation[s] of misconduct.

(4) The investigator appointed in terms of sub-regulation

(3)(a) must, within a period of thirty [30] days of his or her appointment, submit a report with recommendations to the mayor or municipal manager, as the case may be.

(5) The report contemplated in sub-regulation (4) must be tabled before the municipal council in the manner and within the timeframe as set out in sub-regulation (2).

(6) After having considered the report referred to in sub regulation (4), the municipal council must by way of a resolution institute disciplinary proceedings against the senior manager.

(7) The resolution in sub-regulation (6) must-

(a) include a determination as to whether the alleged misconduct is of a serious or a less serious nature;

(b) authorise the mayor, in the case of municipal manager, or municipal manager, in the case of the manager, directly accountable to the municipal manager to -

(i) appoint -

(aa) an independent and external presiding officer; and

(bb) an officer to lead evidence; and

(ii) sign the letters of appointment.

4.5 Precautionary suspension

(1) The municipal council may suspend a senior manager on full pay if it is alleged that the senior manager has committed an act of misconduct, where the municipal council has reason to believe that-

(a) the presence of the senior manager at the workplace may -

(i) jeopardise any investigation into the alleged misconduct;

(ii) endanger the well-being or safety of any person or municipal property; or

(iii) be detrimental to stability in the municipality; or

(b) the senior manager may-

(i) interfere with potential witnesses; or

(ii) commit further acts of misconduct.

(2) Before a senior manager may be suspended, he or she must be given an opportunity to make a written representation to the municipal council why he or she should not be suspended,within seven [7] days of being notified of the council's decision to suspend him or her.

(3)The municipal council must consider any representation submitted to it by the senior manager within seven [7] days.

(4) After having considered the matters set out in sub regulation

(1), as well as the senior manager's representations contemplated in sub-regulation

(2), the municipal council may suspend the senior manager concerned.

(5) The municipal council must inform -
(a) the senior manager in writing of the reasons for his or her suspension on or before the date on which the senior manager is suspended; and
(b) the Minister and the MEC responsible for local government in the province where such suspension has taken place, must be notified in writing of such suspension and the reasons for such within a period of seven [7] days after such suspension.
(6) (a) If a senior manager is suspended, a disciplinary hearing must commence within three months after the date of suspension, failing which the suspension will automatically lapse.
{b) The period of three months referred to in paragraph (a) may not be extended by council.

4.6 Less serious misconduct
(1) If the municipal council decides that the alleged misconduct is of a less serious nature, the -
(a) mayor must, in the case of the municipal manager-
(i) bring the alleged misconduct to the senior manager's attention; and
(ii) give the senior manager the opportunity to respond to the allegations.
{b) municipal manager must, in the case of the manager directly accountable to the municipal manager-
{i) bring the alleged misconduct to the senior manager's attention; and
(ii) give the senior manager the opportunity to respond to the allegations.
2) If after having considered the response from the senior manager, the mayor, in the case of the municipal manager, or the municipal manager, in the case of the manager directly accountable to the municipal manager, decides that the senior manager is guilty of misconduct, the mayor or the municipal manager, as the case may be, may,
only after due processes, impose any of the following sanctions with or without conditions:-
(i) corrective counselling;
(ii) verbal warning;
(iii) written warning in a format compliant with Annexure B;
or
(iv) final written warning in a format: compliant with Annexure C.
(3) A copy of a written warning must be given to the senior manager, who must acknowledge receipt thereof by signing it.
(4) If the senior manager refuses to sign the written warning, the mayor or the municipal manager, whatever the case may be, must hand over the warning to the senior manager in the presence of a fellow staff member, who shall sign as confirmation that the written warning was conveyed to the senior manager.
(5) The written warning must be filed in the senior manager's personal file which remains valid for a period of six months.
(6) If during the six-months period, the senior manager is found guilty of a similar or related misconduct, the written warning may be taken into account in deciding on an appropriate sanction; or
(7) If at the expiry of the six-months period, the senior manager has not been found guilty of a similar or related misconduct, the written warning must be expunged from the senior manager's personal file and destroyed

4.7 Serious misconduct

(1) The officer leading evidence who has been appointed in terms of sub-regulation 5(7)(b) -

(a) must, within 30 days of his or her appointment, formulate and serve charges of the alleged misconduct in a format compliant with Annexure D; arid

(b) may summons any witness to appear before the disciplinary hearing in a format substantially compliant with Annexure E.

(2) The charge sheet contemplated in sub-regulation (1) must inform the senior manager of -

(a) the alleged act or acts of misconduct;

(b) the time, date and venue at which the hearing will be conducted;

(c) the name of the presiding officer and the officer leading evidence;

(d) the address at which notices and correspondence may be served on such officer;

(e) the right to appoint a representative of his or her choice, who may be a fellow staff member, shop steward, union official or any other suitably qualified person;

(f) the right to request further particulars or access to documentation or copies thereof from the officer leading evidence, in writing, within seven [7] days of receipt of the charge sheet;

(g) the right to an interpreter, whose presence must be requested by notice in writing, addressed to the officer leading evidence within seven [7] days of receipt of the charge sheet;

(h) the right to call witnesses to testify on his or her behalf;

(i) the fact that any request for a postponement should be directed to the officer leading evidence in writing not later than seven [7] days after receipt of the charge sheet; and

(j) the fact that the enquiry may be conducted in his or her absence if the senior manager or his or her representative fails to attend the hearing, which includes the making of a finding and the possible imposition of a suitable sanction.

(3) The charge sheet contemplated in sub-regulation (1) must be delivered by hand or registered mail to the senior manager together with the notice of the disciplinary hearing.

(4) Where a senior manager is accused of a financial misconduct which constitutes a criminal offence, the mayor or municipal manager, as the case may be, must report the matter to the South African Police in terms of the Municipal Finance Management Act, 2003.

4.8 Notice of disciplinary hearing

(1) The notice contemplated in sub-regulation 8(3) must be given to the senior manager in writing at least seven [7] days before the date of the hearing.

(2) The notice of the disciplinary hearing contemplated in sub-regulation (1) must substantially be compliant with Annexure F.

(3) If the notice was sent by registered mail, the date on which the registered letter was signed for will be regarded as the date of receipt by the senior manager.

(4)(a) If the notice is delivered by hand the senior manager must acknowledge receipt of the notice by signing a copy of the notice.

(b) If the senior manager refuses to sign the notice as acknowledgement of receipt of such a notice, it must be given to the senior manager in the presence of a fellow staff member, who must sign in confirmation that the notice was conveyed to the

senior manager.

4.9 Conducting disciplinary hearing

(1) The disciplinary hearing must commence-
(a) within three months of the resolution to institute disciplinary action; and
(b) on a date not less than seven [7] days and not more than ten
(10) days from the date of service of the charge sheet and the written notice of the disciplinary hearing on the senior manager.
(2) The hearing must be conducted by the presiding officer who may determine the procedures to be followed, provided that the-
(a) rules of natural justice are adhered to at all times;
(b) matter is speedily resolved with the minimum of legal formalities;
(c) presiding officer in discharging his or her obligations -
(i) exercises care, diligence and acts impartially; and
(ii) does not consult or confer with any of the parties or their representatives on the merits or demerits of the case.
3) The officer leading evidence -
(a) must commence the disciplinary hearing by reading out the charges to the senior manager;
(b) may call witnesses and produce book[s], document[s] or object(s);
(c) may cross-examine any witness called to testify on behalf of the senior manager;
(d) may inspect any book[s], document[s] or object[s] produced by the senior manager; and
(e) must present arguments on the merits of the case.
(4) The senior manager has the right to -
(a) be heard in person or through a representative;
(b) call witnesses and produce book[s], document[s] or object[s];
(c) cross-examine any witness called to testify by the officer leading evidence; and
(d) inspect any book[s], document[s] or object[s] produced by the officer leading evidence.
(5) The presiding officer-
(a) may, at any time during the hearing-
(i) ask any party any questions to clarify any matter;
(ii) ask any party or his or her witnesses any question on any matter relevant to the charges;
iii) proceed with the hearing if no satisfactory reasons are furnished for the absence of the party against whom charges of misconduct are being brought;
(iv) make such interim determinations or rulings as he or she deems necessary; and
(b) must-
(i) after having considered the evidence before him or her,make a finding;
(ii) in the event of a verdict of guilt, invite and hear any plea in mitigation or aggravation of sanction by the senior manager prior to imposing a sanction; and
(iii) impose an appropriate sanction.
(6) The presiding officer must, by not less than ten [10] days after the last day of the hearing, provide the municipality and senior manager or his or her representative with -
(a) written reasons for the finding contemplated in sub-regulation
(5)(b)(i); and
(b) a copy of the sanction.

4.10 Pre-dismissal arbitration

(1) The municipal council may, with the consent of the senior manager, request the Commission for Conciliation Mediation and Arbitration to conduct an arbitration into allegations of misconduct or poor performance against a senior manager as provided for under section 188A of the Labour Relations Act, 1995 (Act No. 66 of 1995).

(2) The decision of the arbitrator appointed in terms of subregulation (1) shall be final

and binding and only subject to review by the Labour Court.

(4) The provisions of section 138 of the Labour Relations Act, read with the changes

Required by the context, apply to any pre-dismissal arbitration.

4.11 Sanctions

(1) The presiding officer may impose any, or a combination
of the following sanctions, with or without conditions:
(a) suspension without pay for no longer than three months;
(b) demotion;
(c) transfer to another post;
(d) reduction in salary, allowances or other benefits;
(e) an appropriate fine; or
(f) dismissal.
(2) The presiding officer must -
(a) impose a sanction within ten [10] days of the completion of
the hearing;
(b) advise the municipal council and the senior manager in writing of the finding and sanction;
(c) advise the senior manager of the right to lodge a dispute;
(d) formally document the sanction, a copy of which must be handed to the senior manager in a format compliant with Annexure G; and
(e) submit a record of the proceedings to the municipal council, within ten [10] days after imposing the sanction.
(3) The municipality must -
(a) implement the sanction imposed by the presiding officer; and
(b) report the outcome of any disciplinary hearing within fourteen[14] days after the finalisation of such disciplinary hearing to the Minister and MEC responsible for local government in the province.
(c) where financial misconduct is involved, report to the MEC
responsible for finance in the province and the Auditor-General asprescribed in the Municipal Finance lvtanagement Act, 2003.

4.12 Dispute resolution mechanisms

(1) A senior manager has the right to refer a dispute against any disciplinary finding and/or sanction imposed on him or her at a disciplinary hearing to the Bargaining Council, Commission for Conciliation, Mediation and Arbitration or an accredited agency in terms of section 133 of the Labour Relations Act 1995 (Act No. 66 of

4.13 PROCEDURES FOR DEALING WITH SUBSTANDARD PERFORMANCE

4.13.1 Purpose

(1) These procedures-
(a) apply to all municipalities and senior managers; and
(b) are intended to -
(i) create an enabling environment to facilitate effective performance by the senior managers;
(ii) provide the senior managers with access to skills development and capacity building opportunities in order to promote efficient and effective performance;
(iii) provide remedial and developmental support to assist the senior managers to deal with substandard performance; and
(iv) ensure that the municipal council and senior managers work collaboratively to generate solutions to problems and improve the performance of senior managers.

4.13.2 Policy and principles

(1) These procedures must be read in conjunction with regulation 32 of the Municipal Performance Regulations for municipal managers and managers directly accountable to municipal managers, 2006.
(2) The Code of Good Practice provided for in Schedule 8 of the Labour Relations Act, 1995, constitutes part of this procedures, in respect of poor work performance.
(3) The municipality must assess the senior managers' performance by considering:
(a) the extent to which the substandard performance impacts on the work of the municipality and the achievement of municipal goals;
(b) the extent to which the senior manager fails to meet the required performance standards set by the municipal council;
(c) the extent to which the senior manager lacks the necessary skills, competencies and expertise to meet the performance
objectives and targets for his or her post as contained in the performance agreement; and
(d) the nature of the senior manager's work and responsibilities.

4.13.3 Procedures for dealing with substandard performance

(1) If the municipality has reason to believe that a senior manager is not performing in accordance with the minimum performance standards of his or her post, the mayor, in the case of
the municipal manager or the municipal manager, in case of the manager directly accountable to the municipal manager must -
(a) convene a meeting to give feedback to the senior manager on his or her performance;
(b) furnish the senior manager with reasons why it is necessary to initiate this procedure.
{2) In the meeting contemplated in sub-regulation {l){a), the mayor or the municipal manager, as the case may be, must
a) explain the requirements, level, skills and nature of the post;
(b) evaluate the senior manager's performance in relation to the performance agreement;
(c) explain the reasons why the performance is considered substandard; and

(d) afford the senior manager or his or her representative an opportunity to respond to the performance outcomes referred to in paragraph (c); and
(3) After considering the senior manager's reasons, the mayor or the municipal manager may, if necessary -
(a) initiate a formal programme of counselling and training to enable the senior manager to reach the required standard of performance, which must include-
(i) assessing the time that it will take for the senior manager to deal with substandard performance;
(ii) establishing realistic timeframes within which the municipality will expect the senior manager to meet the required performance standards; and
(iii) identifying and providing appropriate training for the senior manager to reach the required standard of performance.
(b) establish ways to address any factors that may affect the senior manager's performance that lie beyond the senior manager's control.
(4) If the senior manager fails to meet the required performance standard for the post after being subjected to a formal programme of counselling and training as contemplated in subregulation (3), the -
(a) mayor, in the case of the municipal manager, or municipal manager, in the case of the manager directly accountable to the municipal manager, may -
(i) regularly evaluate the senior manager's performance;Or
(ii) provide further remedial or developmental support to assist the senior manager to eliminate the substandard performance.
(5) If the senior manager's performance does not improve after he or she received appropriate performance counselling and the necessary support and reasonable time to improve his or her performance as contemplated in sub-regulation (4), or he or she refuses to follow a formal programme of counselling and training contemplated therein -
(a) the mayor, in the case of the municipal manager, or the municipal manager, in the case of the manager directly accountable to the municipal manager, must bring the allegations of substandard performance against the senior manager to the attention of the municipal council in the form of a report.
b) the mayor or the municipal manager, whatever the case may be, must table the report contemplated in paragraph (a) before the municipal council not later than seven [7] days after receipt thereof, failing which the mayor may request the Speaker to convene a special council meeting within seven [7] days to consider the said report.
(6) If the municipal council is satisfied that sufficient evidence exist to institute disciplinary proceedings against the senior manager on the basis of the alleged substandard performance -
(a) the municipal council must do so by way of a resolution; and
(b) the mayor, in the case of the municipal manager, or the municipal manager, in the case of the manager directly accountable to municipal manager, must -
(i) furnish the senior manager with written reasons why it is necessary to initiate this procedure; and
(ii) invoke the provisions of regulation 8 of these Regulations.

4.13.4Transitional arrangements
(1) Any disciplinary process instituted prior to the commencement of these Regulations must -

(a) be finalised in terms of the Code and Procedures or any policies which were applicable at the time when the proceedings were instituted]; or
(b) by mutual agreement in writing between the senior manager and the municipal council, be finalised in terms of these regulations.

4.13.5 Recording
(1) The proceedings at the hearing must be recorded by means of a mechanical or electronic device or any other method and must be transcribed in writing.
(2) Records of the proceedings contemplated in subregulation (1) must be kept in safe custody by the municipal council and may only be disposed of in terms of the National Archives of South Africa Act, 1996 (Act No. 66 of 1995); and
(3) A copy must be provided to the senior manager on written request.

Annexures that apply to the Disciplinary code and procedure for both, Senior Managers and Employees

Annexure A
Acts of Misconduct

Annexure B
Written Warning

Annexure C
Final Written warning

Annexure D
Charge Sheet

Annexure E
Summons to Appear before Disciplinary Hearing

Annexure F
Notice of Disciplinary hearing

5. SCOPE OF APPLICATION

This Procedure and Code shall apply to all employees of the Umzimvubu Local Municipality.

5A- DEALING WITH ABSCONDMENT

5A(a)
In the event that the employee has absented himself/herself for a period of more than ten (10) days without notifying the employer such an employee shall be deemed to have absconded from duty

5A(b)
The Employer will make every possible attempt to establish the whereabouts of the employee and shall issue a written letter to the employee informing the employee of his/her alleged absondment and the consequences thereof. If the Employee cannot be

located or has not responded to communication, the Employer shall proceed with the Disciplinary Hearing in his absence and terminate the services of the employee.

5A(c) The Employer shall try to find the whereabouts of the employee through letters to the last address provided by the employee or through email or through his/her next of kin written on the employee engagement form.

5A(d)
The employee, if he reports for duty after the steps referred to in clauses 5A (a) and 5A(b) above have already been taken, the employee shall be afforded the opportunity to make verbal or written representations either personally or through a representative, to the Municipal Manger or his authorized representative as to why he should be reinstated.

5A(e) The Municipal Manager or his authorized representative may after considering the Employees representation, either reinstate him or confirm his dismissal. The decision to reinstate or confirm the dismissal shall be in writing and communicated to the employee within five(5) days after it has been made.

5A(f) Should the dismissal be confirmed, the Employee may appeal the decision utilizing the appeal processes.

PART TWO

1. GRIEVANCE PROCEDURE

1.1 Definition

1.1.1. Grievance is any cause of dissatisfaction on the part of an employee or group of employees owing to the working situation or the application of Conditions of Employment other than that occasioned by a penalty confirmed in terms of the disciplinary procedure.

1.1.2 Grievance procedure is a set of measure through which a reported grievance of an employee or a group of employees is handled for the purpose of redress.

1.2 Objectives

1.2.1 To provide a procedural framework for redress of employees' grievances.

1.2.2 To give effect to ethos of mutual respect at the workplace.

1.2.3 To create a healthy atmosphere of interpersonal and human relations at work.

1.2.4 To facilitate and promote a culture of good practice and fellowship.

1.2.5 No employee shall suffer victimisation or occupational prejudice directly or directly as a result of lodging a grievance.

1.3 Procedure

The procedure of handling all grievances is provided for in the collective agreement concluded by the South African Local Government Bargaining Council (SALGBC).

1.3.1 STEP ONE: IMMEDIATE SUPERIOR

An aggrieved employee or group of employees must lodge a grievance in writing with his or her immediate superior on the prescribed form in Annexure A setting out the complaints and the desired result.
The immediate superior shall wherever practically possible endeavour , in consultation with the affected employee or employees, to resolve the grievance within **ten(10)** days of the grievance having been referred to him or her and shall inform the employee of the outcome in writing. An employee may, if he/she wishes to be assisted by a shop steward, fellow employee or union official.

(a) Should the grievance concern the conduct of the employee's immediate superior, the employee may proceed directly to step two(2) below provided that he or she submits the grievance on the prescribed form.

(b) Should the grievance concern the conduct of the Head of Department. The employee may proceed directly to step three (3) provided he or she submits the grievance on the prescribed form.

1.3.2 STEP TWO: HEAD OF DEPARTMENT

If a grievance has not been resolved to the satisfaction of the aggrieved employee or group of employees within ten(10) days of lodging in terms of clause 1.3.1 above, the employee or employees may refer the matter in writing within ten(10) days to the Head of Department or his/her nominee.
The Head of Department or his or her nominee shall arrange a meeting to consult and hold discussions with the affected parties in attempt to achieve a resolution. The employee or employees may be assisted by a shop steward, fellow employee or union official at such a meeting and the immediate superior may also be required to attend,

The Head of Department or his or her nominee shall endeavor to resolve the grievance within 10 days of the grievance being referred and shall inform the employee of the outcome in writing.

1.3.3 STEP THREE: MUNICIPAL MANAGER

If the grievance has not been resolved ,to the satisfaction of the aggrieved employee or group of employees within ten(10) days of the referral in terms of clause 1.4.3 above, the employee or employees may refer it in writing to the Municipal Manageror his or her nominee within ten(10) days. The Municipal Manager or his or her nominee shall hold a meeting attended by employee or employees and their representatives, if requires and any other persons who, in the opinion of the Municipal Manager or his or her nominee should attend. The Municipal Manager or his or her nominee shall hear details of the grievance including proposal to resolve the issue and shall endeavor to reach an agreed outcome within 10 days of the referral.

(a) The Municipal Manager or his or her nominee shall inform the employee or employees in writing of the outcome of the hearing as envisaged, and such outcome shall be final in terms of this procedure.

(b) If a grievance is against the Municipal Manager, the aggrieved employee may refer the grievance to the Mayor or Executive mayor, who may either seek to resolve the grievance himself or engage the assistance of an appropriate Senior Manager of another municipality to help resolve the grievance

(c) If the grievance has not been resolved to the satisfaction of the aggrieved party that party may refer to the Council for adjudication provided that dispute has been declared and the party is entitled in law to declare such a dispute.

2. DISCIPLINARY CODE AND PROCEDURE

2.1 Definition

Disciplinary procedure is a formal action plan through which employee's acts of misconduct and other deviant behaviour which constitute work offences, infringements and transgression of rules, regulations, standards of good practice violation of organizational order, discipline, interests, values and norms as enshrined and alluded to in the Disciplinary Code are redressed in a systematic and orderly manner.

2.2 Objectives

2.2.1 To make a provision for a reasonable and fair procedure for managing and effecting discipline in the workplace of the Municipality.

2.2.2 To exert efforts for correction of employee's deviant behavior through a system of graduated disciplinary measures ranging from counseling, verbal warning, written warning, final written warning, fine and dismissal or demotion or suspension from duty without pay.

2.2.3 To provide a framework for listing of examples of possible work offences and/or act of breach of discipline of the Municipality.

2.2.4 To provide a framework for a reasonable and fair process of investigation and inquiry into the alleged acts of misconduct and breach of organizational discipline.

2.2.5 To give effect to the Labour Relations Act No. 66 of 1995 of the Republic of South Africa.

2.2.6 To regulate administration and institution of disciplinary measures and proceedings within the Municipality.

2.2.7 To provide a procedural framework for uniform [illegible]

3. BREACH OF DISCIPLINE, INFRINGEMENTS, OFFENCES AND PENALTIES

Disciplinary proceedings and action shall be instituted against any employee who contravenes the code of conduct or acts against the interests of the Municipality, or who commits a social, criminal and economic or other offences to the detriment of the Municipality and its image in terms of, but not limited to the list of possible offence contained in the Disciplinary Code.

The disciplinary measures shall include a verbal warning, a written warning, final written warning, fine, demotion, suspension from duty without pay and dismissal.

4. CUMULATIVE NATURE AND GRADUATED SYSTEM OF DISCIPLINARY ACTION

Disciplinary action taken against any employee will be treated in a cumulative manner as provided for in the disciplinary code and procedure.

5. SCENARIO A

PROCEDURE FOR HANDLING ALLEGED WORK OFFENCE/S NOT WARRANTING A FULLY-FLEDGED DISCIPLINARY INQUIRY WHICH MAY LEAD TO VERBAL WARNING OR A FORMAL WRITTEN WARNING

5.1 If there are reasonable grounds arising from a report, formal or informal information, situation or circumstances to believe that a work offence has been allegedly committed by an employee of the Municipality, the person who is in the position of authority e.g. the foreman, supervisor, manager, or Head of the Department, unit or Directorate or any person designated to be in charge of a particular work domain/situation shall effect the following disciplinary procedure:

LEVEL 1

(a) In cases where the alleged work offence is relatively less serious or a verbal warning or informal reprimand is the preferred penalty in terms of the disciplinary code, the person in position of authority shall call the employee concerned to a meeting.

(b) The alleged act of deviation from the norms and standards of discipline shall be communicated to the employee in a friendly but serious manner by the respective Municipal official.

(c) The employee shall be shown the implications and possible disastrous consequences of his/her behaviour should it be continued by him/her.

(d) An employee shall be notified at least 5 working days before, about his/her invitation to attend the meeting.
(e) An employee shall be entitled to be represented by a fellow employee in the meeting.

A cordially verbal warning or informal reprimand must be issued by the official to the employee. A record of issuing of such warning must be produced and be forwarded to the Corporate Services Department for filing in the employee's personnel file.

LEVEL 2

(a) When the alleged act of transgression is relatively of serious nature, the person in a position of authority shall write to the employee about the alleged work offence and require the employee to respond to the correspondence bearing alleged contravention/s within 5 working days. Upon receipt of such response, the Municipal official shall set a date and time for deliberating on the acts of transgression in a meeting with the employee and his/her representative.

(b) Upon considering and evaluating merits and demerits of the case, an appropriate penalty shall be awarded to the employee by the Municipal official if circumstances warrant so. The issued formal written warning shall be acknowledged by the employee and his/her representative and signed by the Municipal official effecting disciplinary measures.

(c) The copy of the written warning shall be transmitted to the Municipality's Corporate Services Department for filing in the employee's personnel file.

(d) Cases of suspected or alleged drunkenness on duty shall in addition to this method be also dealt with in terms of application of alcohol tests in the presence of a shop steward or a witness.

6. SCENARIO B

PROCEDURE FOR HANDLING ALLEGED WORK OFFENCES WARRANTING A FULLY-FLEDGED DISCIPLINARY INQUIRY WHICH MAY LEAD TO THE IMPOSITION OF A FINAL WRITTEN WARNING, SUSPENSION FROM DUTY WITHOUT PAY, DEMOTION, FINE AND DISMISSAL AS ONE OR MORE OF THE PENALTIES TO A GUILTY EMPLOYEE

In cases where the alleged work offence is of a serious nature or one or more of the penalties listed above are likely to be imposed in the disciplinary inquiry, the person in position of authority or Municipal official shall conduct a comprehensive preliminary investigation in respect of the alleged work offences/s by doing the following:

6.1 Gathering of as much information as practicable about the alleged incidence from the relevant parties including possible witnesses.

6.2. Advising/informing the employee about the alleged breach of rules, regulations and disciplinary or a situation or circumstances relating to the breach of rules, regulations and discipline and concurrently instructing the employee to respond to the correspondence within a time-frame of 5 working days by portraying his/her side of the story with regard to the allegation/s or the extent to which she/he's concerned in respect to the breach of cited rules, regulations and standard of discipline and show cause why disciplinary charges cannot be laid against him or her in respect of the allegations.

6.3 Information gathered from other parties including possible witnesses shall not be given to the employee prior to making his/her written response to the correspondence implicating her/him in the scene of transgression of rules, regulations and standards of discipline written by his/her superior and prior to a disciplinary hearing.

6.4 The person in position of authority or Municipal official shall consult the Municipality's Corporate Services Department about the alleged violation of work standards by the employee concerned for the purpose of analysing the information gathered with regard to the possible charges against the employee.

6.5 The Municipality's Corporate Services Department together with the person in the position of authority or Municipal official/prosecutor shall phrase technically correct charges which will be laid by the prosecutor on behalf of the Municipality against the employee, in terms of, but not limited to the Disciplinary code and the procedure.

6.6 The charges shall be communicated to the employee concurrently with the date, time and venue of the disciplinary inquiry in a notice to appear before a disciplinary inquiry, at least 5 working days before the date of inquiry.

6.7 The Municipality's Corporate Services Department shall where necessary in consultation with the Municipal Manager appoint a suitable person to preside over the disciplinary inquiry as presiding officer in writing.

7. SUSPENSION PRIOR TO DISCIPLINARY HEARING

7.1 Anytime after the preliminary investigation which will have involved hearing of the employee's side of the story on contemplated allegations, the Municipality may suspend the employee from duty in writing, pending outcome of the disciplinary inquiry only if, in the objective opinion of the Municipality, continued presence of the employee at the workplace poses a serious threat to the interests of the Municipality in so far as employee's work and inherent standards of discipline are concerned.

7.2 An employee suspended in terms of Clause 7.1 shall be entitled to his/her full salary during the period of his/her suspension, unless the Municipality is of the objective opinion that it is practically unreasonable for the Municipality to be expected to continue remunerating the employee at his/her full or partial salary in the light of the nature of allegations and the need for the protection of interests of the Municipality.

7.3 An employee who is suspended from duty without pay, may undertake other work for remuneration only if such action will not inhibit the employee's free and easy accessibility for appearing before the pending disciplinary inquiry.

7.4 A suspended employee must be charged within seven working days and a disciplinary inquiry must be held within twenty-one (21) working days after the lapse of seven (7) working days reckoned from the date of suspension.

7.5 If a disciplinary inquiry cannot be held within a period specified in clause 8.4 owing to reasons arising from the employee's inability to attend an inquiry on grounds of sickness, injury or any other factor, such days of the employee's unavailability won't be counted as part of the 21 day-period cited in clause 7.4.

7.6 A suspended employee may seek a written permission from the Municipality to enter the workplace premises only for making preparations for the pending disciplinary inquiry.

7.7 Authority to suspend any employee of the Municipality shall be vested in the Municipal Manager or representative. The suspension or utilization of the Employee in another capacity shall be for a fixed and predetermined period and shall not exceed a period of three(3) months from the date that the Municipal Manager or his authorized representative is satisfied that there is a prima facie case that an act of misconduct has been committed.

8 STANDARD PROCEDURE AND REQUIREMENTS

8.1 Under all circumstances and in all cases where *prima facie*, it seems as if the appropriate penalty or penalties to be awarded to the employee concerned will be possible penalties or penalty mentioned in Scenario B of the disciplinary code and procedure, a fully fledged disciplinary inquiry with the involvement of the Municipality's Corporate Services Department must be convened.

8.2 The Municipal official concerned shall have the indispensable responsibility and burden to prove unequivocally that an offence has been committed before initiating appropriate disciplinary proceedings and action in terms of disciplinary code and procedure.

8.3 The regional or provincial office of the respective Trade Union should be informed and consulted when disciplinary proceedings against a trade union representative or office bearer or official are instituted.

8.4 No decision regarding the form of disciplinary proceedings/action will be instituted without first providing the employee with the opportunity of stating his/her side of the story in respect of the alleged contravention/s unless the Municipality cannot be reasonably be expected to provide this opportunity.

8.5 No decision regarding the award of penalty to the employee shall be made without affording the employee an opportunity of hearing his/her response to the allegation/s leading evidence and cross-examination of witness in a hearing session.

9 DISCIPLINARY INQUIRY PROCEDURE

Stage 1 – Preliminary Questions

Questions in regard to the following but not limited to, must be asked by the presiding officer from the employee:-

(1) Timeous receipt of written advice to appear before a disciplinary inquiry.

(2) Simultaneous advice about the charge or charges when advised to appear before a

(4) Whether the employee together with his/her representative had reasonable time to prepare for the case as opposed not to whether the employee and his/her representative have actually prepared for the case

Stage 2 – Putting of charge or charges

(1) Charge or charges must be put to the employee one – by – one by the presiding officer.

(2) The presiding officer must check for the employee's understanding of the charges.

(3) Opportunity for pleading must be afforded to the employee by the presiding officer.

(4) If the employee pleads guilty, the presiding officer must check the employee's understanding of his/her plea of guilt, and no further evidence must be heard.

(5) If the employee pleads not guilty, the evidence must be led by both parties to the disciplinary inquiry, that is, the employee and employer or Municipality together with their witnesses in as comprehensive manner as provided for in the disciplinary enquiry format of proceedings.

Stage 3 – Making of judgement

(1) Judgment in respect of whether the employee is found guilty or not must be made.

(2) If the employee is found not guilty, the case is dismissed forthwith.

(3) If the employee is found guilty, stage 4 must apply.

Stage 4 – Leading of evidence on mitigating and aggravating circumstances

(1) Opportunity for leading evidence on mitigation and aggravating circumstances must be given by the presiding officer to both parties respectively.

(2) The decision regarding the appropriate sanction as per the disciplinary code must be made at this stage.

Stage 5 – Awarding of penalty

(1) The employee is given his/her penalty in writing by the presiding officer.

(2) The employee is advised about a recourse to appeal if he/she is in discontent with the process and/or outcome of the disciplinary enquiry.

10 ROLE OF THE PRESIDING OFFICER

The presiding officer shall:-

10.1 Chair, open and co-ordinate the proceedings of the disciplinary inquiry by following and adhering to the disciplinary enquiry procedure.

10.2 Will firstly give opportunity of leading evidence to the prosecutor and his/her witnesses.

10.3 Give opportunity to the accused employee and his/her representative for cross-questioning the Municipal representatives and his/her one by one immediately after evidence presentation.

10.4 Give opportunity to the accused employee to respond to the charges and evidence led by the prosecutor and his/her witnesses and to call witnesses.

10.5 Give the same opportunity to the prosecutor to cross-question both the accused employee, his/her representative and witnesses.

10.6 Be free to cross-examine all parties to the inquiry including the witnesses from both sides on any matter related to the charges under inquiry.

10.7 Have authority to direct and control the disciplinary inquiry proceedings to ensure that they do not go astray and are always on the right track for the purpose of achieving the ends and objectives of the disciplinary inquiry.

10.8 Give further opportunity to both parties that is, the Municipal representative/prosecutor on one hand and the accused employee and his/her representative on the other hand to make concluding arguments on each party's submission to the Presiding Officer.

10.9 Apply his/her mind to the complete submissions and representations made by the parties to the disciplinary inquiry, depending on the given circumstances in relation to the case, its complication and complexity and the extent to which the presiding officer would like to consult on it, an adjournment of the disciplinary inquiry until a specific time or date or further notice can be made at this juncture.

10.10 Deliver his/her judgment in respect of whether the employee is guilty or not on charge/s laid against him/her

10.11 Give both parties the last opportunity to make submissions in mitigation on the part of the accused employee and his/her representative and in respect of aggravating circumstances on the part of the prosecutor before or after delivery of judgment.

10.12 Allow the employee and his/her representative to consult each other outside the inquiry proceedings upon receipt of request to do so and the same right shall apply to the prosecutor to consult with his/her principals as he/she wishes.

10.13 After listening to the last arguments and or submissions by both parties and applying his/her mind to evidence on both mitigation and aggravating circumstances, give consideration to the following factors:

1. Factors warranting leniency

- Length of service
- Influenced by others
- Person's calibre

- Lack of seriousness
- Cultural orientation
- Lack of appropriate experience
- Poor training and/or orientation
- First offence

2. Factors warranting heavier penalty

- Valid prior warning/s
- Seriousness of offence
- Damages/losses to the employer
- Consequences of the offence/s
- Breach of relations of mutual trust
- Repairability of employer – employee relations

10.14 Hand down the penalty or penalties against the employee in the disciplinary inquiry or outside the enquiry through written judgment, and findings and penalty to both parties.

11. APPEAL

11.1 An employee who is in disagreement/dissatisfied with the findings of a disciplinary inquiry or any penalty awarded may within three (3) working days of the decision lodge with the office of the Municipal Manager an appeal against the finding or penalty or even both.

11.2 The penalty awarded in the disciplinary inquiry shall remain intact and effective until reversed and changed by the outcome of the appeal if applicable.

11.3 All appeals shall be presided over by the Municipal Manager or a person acting as his/her nominee.

11.4 The appeal officer shall be furnished with the records of proceedings and other documentation at his/her disposal by the Corporate Services Department.

11.5 The appeal officer shall review the facts in relation to the findings of the disciplinary inquiry and penalty or penalties awarded to the employee.

11.6 The appeal officer shall interview the employee concerned and other witnesses when necessary as the case may be in order to establish whether there are any factors warranting leniency or amendment of judgment and/or change of penalty.

11.7 The appeal officer may set aside, confirm or reduce the penalty.

11.8 The decision of the appeal officer shall be final and bring the disciplinary proceedings in respect of the employee concerned to an end.

12. EXTERNAL REMEDIAL ACTION

12.1 If an employee is still in disagreement with the process and outcome of the disciplinary inquiry and its appeal he/she will be free to pursue the matter with the Eastern Cape division of the Bargaining Council.

12.2 If the employee is not satisfied with the outcome of the Bargaining Council, the dispute may be pursued in terms of the provisions of the Labour Relations Act, No 66 of 1995.

13. RETRENCHMENT PROCEDURE OR PROCEDURE FOR OPERATIONAL REQUIREMENTS – BASED DISMISSAL

Definition

Retrenchment procedure is a mechanism through which steps and measures to be followed and affected respectively when retrenching or dismissing one or more employees on grounds of operational requirements are set.

For the purpose of the Municipality and other parties to this procedure, this procedure shall be followed by the Municipality as an employer when there is a contemplation of dismissing one or more employees on grounds of operational requirements.

13.1 Objectives

13.1.1 To usher in a retrenchment procedure compliant with the Labour Relations Act, No 66 of 1995.

13.1.2 To give effect to the provisions of Section 189 of the Labour Relations Act, No 66 of 1995.

13.1.3 To provide a framework for the management of retrenchment or dismissal on grounds of operational requirements of the Municipality.

13.1.4 To create a stable and healthy atmosphere of labour relations with regard to retrenchment or dismissals on grounds of operational requirements within the Municipality.

13.2 Procedure

13.2.1 The Municipality shall make an endeavour to avoid retrenchment by *inter-alia* considering with the Union the transfer, retention of workers, working short time, elimination of overtime and offering of early retirement.

13.2.2 In the event of the Municipality contemplating to retrench any employee, the Trade Union, Local Labour Forum and the affected employees shall be consulted.

13.2.3 The Municipality and consulting parties shall attempt to reach consensus on appropriate measures to avoid the dismissal, to minimize a number of dismissals, to change the timing of the dismissal and to mitigate the adverse effects of the dismissals

13.2.4 The Municipality and other consulting parties shall agree on the method for selecting employees to be retrenched and on the severance pay for the employees concerned.

13.2.5 The Municipality shall disclose in writing to the other consulting parties the following relevant information.

(ii) reasons for the contemplated or proposed retrenchments
(iii) alternatives before resorting to retrenchment
(iv) number and job categories of employees
(v) proposed method of selection for retrenchment
(vi) timing of execution of retrenchments
(vii) proposed severance package
(viii) possible assistance from the employee to the employees to be retrenched.
(ix) measures of re-employability of workers when suitable vacancies arise in the Municipality.

13.2.6 The Municipality may disclose any other information to other consulting parties in so far as it is legally tenable.

13.2.7 The Municipality shall allow the other consulting parties to make representations about the matter of contemplated or proposed retrenchments.

13.2.8 The Municipality shall consider and respond to the representations of the other consulting parties, if the Municipality disagrees with the other parties, reasons for such disagreement shall be stated by the Municipality.

13.2.9 The Municipality shall select the employees to be retrenched according to the criteria agreed – upon between the Municipality and the other consulting parties.

13.2.10 If there is no agreed – upon criteria, the selection criteria to be followed must nevertheless be fair and objective.

13.2.11 Facilitator for facilitating the consultation process will be appointed if number of affected employees is 50 or above.

14 INCAPACITY DETERMINATION PROCEDURE

14.1 Definition

14.1.1 This is a procedure in which measures and guidelines for determining an employee's incapacity on grounds of poor work performance and ill health or injury are established.

14.1.2 This is a procedure that shall be followed when the Municipality monitors the performance of employees placed on a probationary period, any other regularly or permanently hired employee and any other employee who's standard of performance shows signs of deterioration as a result of ill health or injury or poor work performance.

emergency temporarily waive or suspend this policy subject to reporting of such waiver or suspension to Council and Trade Unions.

18 AMENDMENT AND/OR ABOLITION OF THIS POLICY

18.1 This policy may be partly amended or repealed by the Council after consultation and interaction with Management and Trade Unions.

19 COMPLIANCE AND ENFORCEMENT

19.1 Violation of or non-compliance with this policy shall give a just cause for disciplinary steps to be taken.

19.2 It shall be the responsibility of all Managers, Supervisors, and Executive Committee and Council to enforce compliance with this policy.

ANNEXURE A

ACTS OF MISCONDUCT

A senior manager/Employee will be guilty of misconduct if he or she -

PART I

Less serious misconduct

1. absents himself or herself from duty without leave/valid reason
2. Without written approval from his or her municipality, performs work for compensation in a private capacity for another person or organisation either during or outside working hours;
3. While on duty, conducts himself or herself in an improper, disgraceful and unacceptable manner;
4. demonstrates any rude, abusive, insolent, provocative, intimidating or aggressive behaviour to a fellow staff member; and that includes using abusive language
5. participates, either individually or with others, in any form of action, which will have the effect of disrupting the operations of the municipality, other than actions contemplated by the Labour Relations Act, 1995 (Act No. 66 of 1995);
6. Wrongfully discloses privileged information;
7. While on duty, is under the influence of intoxicating, illegal, unauthorised, habit-forming or stupefying drug, including alcohol;
8. Displays disrespect towards others in the workplace or displays abusive or insolent behaviour;
9. Intimidates or victimises fellow staff members;
10. Prevents other staff members from belonging to any trade union or body; or
11. Without permission, possesses or wrongfully uses the property of the municipality or that of another staff member or a visitor.
12. Persistent late coming for work or leaving early without permission
13. Malingering, tardiness or loafing on the job
14. Sleeping on duty
15. Failure to wear municipal uniform where supplied and required on duty

PART II

Serious misconduct

1. fails to comply with or contravenes any Act, regulation, or legal obligation relating to the employment relationship;
2. Bribes or commits a financial misconduct or fraud or corruption; theft
3. Wilfully, intentionally or negligently damages or causes loss of municipal property;
4. endangers the lives of self or others by disregarding safety rules or regulations;
5. prejudices the administration, discipline or efficiency of a municipality, office or institution of the municipality;
6. misuses his or her position in the municipality to promote or to prejudice the interest of any political party;
7. Accepts any compensation in cash or otherwise from a member of the public or another staff member for performing his or her duties without written approval from the municipal council;

8. Gross insubordination- fails to carry out a lawful instruction given by an authorized person /body without a just or reasonable cause;
9. Derelicts his or her duties, absents or repeatedly absents himself or herself from work without reason or prior permission;
10. commits an act of sexual harassment;

11. unfairly discriminates against others on the basis of race, gender, disability, pregnancy, marital status, ethnic and social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, birth, family responsibility, HIV status, political opinion or other grounds prohibited by the Constitution;
12. performs poorly or inadequately for reasons other than incapacity;
13. contravenes the Code of Conduct for municipal staff members contained in schedule 2 of the Act;
14. assaults, or attempts or threatens to assault, another staff member or person while on duty;
15. incites other municipal staff to engage in unprocedural and unlawful conduct;
16. Operates any money lending scheme for employees for own benefit during working hours or from the premises of the municipality;
17. Carries or keeps a firearm[s] or other dangerous weapon[s] on municipal premises, without the written authorisation of the municipal council;
18. refuses to obey security regulations;
19. gives false statements or evidence in the execution of his or her duties;
20. falsifies records or any other documentation;
21. Participates in unprocedural, unprotected or unlawful industrial action,
22. Fails or refuses to follow a formal programme of counselling contemplated in these Regulations/Code; or
23. Commits a common law or statutory offence while on municipal premises.
24. Bringing
25. Gross negligence
26. Taking instruction from councilor without authority
27. Communication of affairs of the Municipality to a councilor without authority
28. Communication with media on any municipal matter without authority or permission.
29. Gross act of unprofessional conduct which puts the municipality into disrepute or tarnish the good name and image of the municipality.
30. Misrepresentation
31. Abscondment

ANNEXURE B

WRITTEN WARNING

Name of senior manager/Employee: ..... : .....

Employee number: .....

Address.....
.....
.....
.....

Pursuant to a meeting between yourself {hereinafter referred to as the senior manager) and the Mayor/municipal manager held on..... (date), you are hereby formally issued with a written warning in terms of Regulation 6(2) in consequent of the following act of misconduct committed by you:

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

Should you commit a similar or related misconduct, this written warning may be taken into account in determining a more serious sanction.

The written warning will be placed in your personal file and will remain valid for a period of six months from the date of the written warning.

....
Mayor/Municipal manager/HOD Date

Receipt of the abovementioned charge sheet acknowledged.

....
Senior Manager/Employee Date

....
Witness (if applicable) Date

ANNEXURE C

FINAL WRITTEN WARNING

Name of senior manager/Employee:....." .....

Employee Number: .....

Address.....
.....
.....
.....

Pursuant to a meeting between yourself {hereinafter referred to as the senior manager/employee) and the Mayor/municipal manager/HOD held on..... (date), you are hereby formally issued with a final written warning in terms of Regulation 6(2) in consequent of the following act of misconduct committed by you:

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

Should you commit a similar or related misconduct, this final written warning may be taken into account in determining a more serious sanction.

The final written warning will be placed in your personal file and will remain valid for a period of six months from the date of the written warning.

....

[redacted]

ANNEXURE D

CHARGE SHEET

In the disciplinary hearing of

(Name of Municipality)

And

(Name of senior manager/Employee)

You, ... , (hereinafter referred to as "the senior manager/Employee") of the..... Municipality (hereinafter referred to as "the municipal council"), are hereby charged with misconduct as follows:

Charge 1:
That you are guilty of misconduct by
.....
.....
.....
.....
In that:

You
.....
.....
.....
Charge 2:
That you are guilty of misconduct by
.....
.....
.....
.....
In that:
You
.....
.....
.....
.....
Charge 3:
That you are guilty of misconduct by
.....
.....
.....
.....
In that:
You
.....
.....
.....
.....

.....
Person Leading Evidence

.....
Date

Receipt of the abovementioned charge sheet acknowledged.

.....
Senior Manager/Employee

.....
Date

.....
Witness {if applicable)

.....
Date

ANNEXURE E

SUMMONS TO APPEAR BEFORE A DISCIPLINARY HEARING

Name of witness ..... .

Address:

.....

.....

..... .

You are hereby summoned to appear before the presiding officer of a disciplinary hearing as a witness in respect of..... (Name of senior manager/Employee) who has been charged with the following misconduct:

.....

.....

.....

.....

The hearing has been scheduled as follows:

Date: ..... .

Time: ..... .

Venue: .....Municipality

During the hearing you will be required to provide evidence orally or by way of document(s), book(s), or object(s) in your possession, custody or control, which may have a bearing on the matter.

....

Person Leading Evidence Date

ANNEXURE F

NOTICE OF DISCIPLINARY HEARING

In the disciplinary hearing ·of

(Name of Municipality)
And

(Name of senior manager/Employee)

1. You, ... are hereby given notice to attend a disciplinary hearing in terms of regulation 8 scheduled as follows:
Date: ..... .

Time: ..... .

Venue: ..... Municipality

Charges: refer to attached charge sheet (Annexure D)

2. Your attention is drawn to the following:
(a) You have the right to be represented by a fellow employee or any other suitably qualified person, provided that any costs incurred will be borne by you.
(b) If you or your representative should fail to attend the hearing at the scheduled time and venue, the hearing may proceed in your absence.
(c) You will be required to plead to the charges set out against you in the charge sheet.
(d) The municipality will call witnesses and adduce evidence, orally or by way of documents, and you or your representative will have the right to cross-examine
the witnesses called on behalf of the municipality, subject to the rights of any such witnesses.(e) You have the right to present your case and to call witnesses and adduce evidence, orally or by way of documents.
(f) The proceedings will be conducted in English, and should you require an interpreter, you must inform the prosecutor in writing thereof, within 5 days of the date of receipt hereof.
(g) Your attention is specifically drawn to the fact that the municipal council has appointed ..... , to act as the person leading evidence and
..... to act as the presiding officer in the hearing.
(h) Any request for further particulars or access to documentation or copies thereof must be directed to the person leading evidence, in writing, within 7 days of the
date of receipt of the charge sheet.
(i) Any request for a postponement must be directed to the person leading evidence, in writing, forthwith but not later than 7 days after the date of receipt of the charge
sheet.
(j) Your attention is further drawn to the provisions of the Labour Relations Act, 1995 (Act No. 66 of 1995), as well as the Code of Conduct contained in Schedule 2 to the
Local Government: Municipal Systems Act, 2000 (Act
No. 3 of 2000) which provisions will, where applicable, apply to the hearing.
(k) Kindly note that the municipality reserves the right to amend the charges or add new charges, at any stage before you plead to the charges.
(l) Should you require any additional information, you are
welcome to contact the person leading evidence at the following contact details:

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

Thus done and signed at ..... on this ..... day of .....

(month) ..... (year)

.....

Person Leading Evidence

APPROVAL OF THE POLICY

The Municipal Council has approved this policy and amendments thereof.

AUTHENTICATION

The amendments of the policy and or the new policy was adopted by the Council on the 30-08-2019

As per Council Resolution number LLMC 036/19

Signed off, LOCAL MUNICIPALITY
MUNICIPAL MANAGER
DATE:
SIGN:

Mr. G.P.T. Nota

Municipal Manager

Cllr. N.F Ngonyolo

Speaker of the Council