

# UMZIMVUBU LOCAL MUNICIPALITY



**UMZIMVUBU**  
— LOCAL MUNICIPALITY —

## SEXUAL HARASSMENT POLICY

# MUNICIPAL SEXUAL HARRASSMENT POLICY

## TABLE OF CONTENTS

TOPIC	PAGE
1. Background of this policy.....	3
2. Objectives of this policy.....	3
3. Application of this policy.....	3
4. Definitions.....	3
5. Definition of harassment .....	4
6. What constitutes sexual harassment? .....	5
7. Other forms of harassment .....	6
8. Procedure for reporting and dealing with harassment .....	7
9. Prevention strategies .....	9
10. Commencement of this policy.....	10
11. Interpretation of this policy .....	10
12. Permanent/ Temporary Waiver or Suspension of this Policy .....	11
13. Amendment and or abolition of this Policy .....	11
14. Compliance and Enforcement .....	11

## 1. BACKGROUND

- 1.1 All employees have the right to work in a pleasant and productive work environment where the individual rights and dignity of each employee are respected. This includes the right to work in an environment that is free from conduct of a harassing or abusive nature. In order to maintain an atmosphere of mutual respect, conduct characterised as sexual harassment will not be condoned or tolerated.

## 2. OBJECTIVES OF THIS POLICY

- 2.1 To provide a working environment that is free of any form of harassment within Umzimvubu Local Municipality.
- 2.2 To provide appropriate procedures to deal with problems of harassment and prevent its recurrence.
- 2.3 To encourage and promote the development and implementation of policies and procedures that will lead to creation of the workplace that is free of any form of harassment where the Municipality and its employees respect one another's integrity, privacy and the right to equality in the workplace.

## 3. APPLICATION OF THIS POLICY

- 3.1 The policy shall apply to all Municipal Employees and Councillors irrespective of the nature of attachment to the Municipality.

## 4. DEFINITIONS

- 4.1 **Advance:** Give active support to a person, cause or plan.
- 4.2 **Brushing:** Graze or touch in passing.
- 4.3 **Coerces:** Persuade or restrain an unwilling person by force.
- 4.4 **Conduct:** Behaviour.
- 4.5 **Employee:** For the purpose of this policy, the meaning of an employee shall include a functionary and an employee of an associate
- 4.6 **Functionary:** A person acting in an official capacity or in an organization.
- 4.7 **Hostile:** Unfriendly or opposed.
- 4.8 **Indecent:** Offending against recognized standards.
- 4.9 **Intimidate:** To frighten; overawe; subdue or influence.
- 4.10 **Isolating:** Cutting or separating off from others.

- 4.11 **Leering:** Look slyly or maliciously.
- 4.12 **Obscene:** Offensively indecent by offending accepted sexual morality.
- 4.13 **Offensive:** An aggressive action, forceful action in pursuit of a cause.
- 4.15 **Patting:** A sign of affection by striking gently with the inner surface of the hand.
- 4.16 **Proctor:** A member of staff designated to assist in handling harassment cases.
- 4.17 **Suggestive:** Conveying a suggestion of an indecent or improper remark.
- 4.18 **Unsolicited:** Not asked for; given or done voluntarily.
- 4.19 **(Un)reciprocate:** Offer or give something in return.

## 5. DEFINITION OF HARASSMENT

### 5.1 Sexual Harassment

Sexual Harassment may be broadly defined as constituting unwanted sexual attention or any unwanted pressure involving one's sexuality and/or unwanted, unsolicited and unreciprocated conduct of a sexual nature which substantially interferes with an employee's work performance, and/or has a detrimental effect on the terms and conditions of employment, and/or creates an intimidating, hostile or offensive work environment. The unwanted nature of sexual harassment distinguishes it from behaviour that is welcome and mutual. Although sexual harassment encompasses a broad range of conduct it usually falls into two broad categories, that is **power relationships** and a **hostile working environment**:-

5.1.1 A **power relationship** is where a person with authority coerces a subordinate to render sexual favours as an implicit term or condition of employment:-

5.1.1.1 If the employee accedes to the request, tangible job benefits follow.

5.1.1.2 If the employee refuses he/she may face adverse job related consequences which may range from assignment change, transfer, demotion, denial of promotion or withholding confirmation from probationary status and finally to dismissal or threat of dismissal.

5.1.2 A **hostile working environment** is where a co-employee and/or subordinate's conduct has the purpose or effect of interfering with an employee's work performance or creates a sexually intimidating or

hostile or offensive work  
the victim's

environment which negatively affects  
psychological health.

- 5.2 It is the Umzimvubu Local Municipality's belief that employees should be able to work in an environment that is free of all forms of harassment, particularly those involving:-

~~5.2.1 Unwelcome, unwanted, unsolicited and unreciprocated sexual advance/attention in return for money, promotions, or other workplace opportunities.~~

~~5.2.2 Workplace decisions affecting an individual's employment the same individual believes that these were made because his/her reactions to those kinds of advances.~~

~~when  
of~~

5.2.3 A hostile, intimidating, or offensive work environment because actions of the other.

of the

5.2.4 Other sexually harassing conduct in the workplace that may create an offensive work environment, whether it be in the physical, verbal or visual harassment by supervisors, and/or non-employees.

form of  
co-workers

5.2.5 Should any of these become a concern, the Municipality has to know about the circumstances that are affecting the performance or making him/her uncomfortable at

a need  
employee's  
work.

## 6. WHAT CONSTITUTES SEXUAL HARASSMENT?

6.1 Any action or behaviour that involves:

6.1.1 verbal abuse or innuendos of a sexual nature.

6.1.2 display of sexually offensive material (e.g. posters, magazines, cartoons, drawings, sms, e-mails etc).

6.1.3 sexist or suggestive remarks regarding a person's sex or private life.

6.1.4 sexual teasing and jokes.

6.1.5 obscene gestures.

6.1.6 indecent exposure

6.1.7 suggestive comments regarding a persons appearance or body

6.1.8 unwanted physical touching, patting or brushing up against another person.

- 6.1.9 leering, suggestive looks, whistling.
- 6.1.10 direct sexual proposition or continued pressure for dates and / or sexual favour.
- 6.1.11 letters, sms, e-mails or telephone calls of a sexual nature.
- 6.1.12 sexual demands or requests or propositions in return for hiring or promotion or as a condition of employment.
- 6.1.13 employment decisions based on submission to or rejection of a request.
- 6.1.14 indecent assaults.
- 6.1.15 rape
- 6.2 The following do **not** constitute sexual harassment:-
  - 6.2.1 behaviour acceptable to the recipient, such as occasional compliments.
  - 6.2.2 the mutual attraction between employees, which is a private concern.
- 6.3 Sexual attention becomes sexual harassment if:
  - a) The behaviour is persisted in, although a single incident of harassment can constitute sexual harassment under exceptional circumstances; and or
  - b) The recipient has made it clear that the behaviour is considered offensive; and or
  - c) The perpetrator should have known that the behaviour is regarded as unacceptable.

## 7. OTHER FORMS OF HARASSMENT

- 7.1 Harassment, in general, is defined as a behaviour that is intimidating, humiliating and failing to respect the rights of others. Other forms of harassment include a behaviour based on the following:-
  - 7.1.1 race, ethnic origin, nationality
  - 7.1.2 Gender
  - 7.1.3 sexual orientation
  - 7.1.4 group membership or non-membership (e.g.Trade Union)
  - 7.1.5 physical disabilities and health

7.1.6 physical characteristics

7.1.7 age

7.1.8 HIV and AIDS status

~~7.1.9 personal and religious beliefs~~

7.2 The above list is not exhaustive as many other factors can lead to harassment.

~~7.3 This policy prohibits all forms of harassment in and outside of the workplace, whether committed by those in authority, co-workers or subordinates:-~~

7.3.1 The Umzimvubu Local Municipality recognizes that harassment and/or sexual harassment may not only be perpetrated by those in authority but also by co-workers, subordinates and even non-employees.

7.3.2 Appropriate levels of disciplinary action may be taken up to and including dismissal depending on the findings of a hearing set up to handle the matter.

## **8. PROCEDURE FOR REPORTING, AND DEALING WITH HARASSMENT**

8.1 Allegations of sexual harassment will be dealt with seriously, expeditiously, sensitively and confidentially.

8.2 Employees will be protected against victimization, retaliation for lodging grievances and from false accusations.

8.3 Employees who have a complaint about sexual harassment should report it to their Manager or HR Division. The discussion should be treated as private and strictly confidential and should not result in a formal complaint, unless the complainant wishes to pursue the matter through formal investigation. In this case only those people necessary to the investigation will be informed. Immediate follow up by the Municipality is necessary to establish its concern for prevention.

8.4 There should, however, be no immediate judgment that sexual harassment has or has not occurred. Careful and deliberate consideration must be given to protect both the person bringing the allegation, and the person accused.

### **8.5 Advice and Assistance**

8.5.1 Sexual harassment is a serious and a sensitive issue and a victim may feel unable to approach the perpetrator and lodge a formal grievance or turn to colleagues for support. The Human Resources Division shall in consultation with employee representatives appoint a male and a female and have them trained as proctors to deal with sexual and other harassment complaints and whom victims may approach for confidential advice.

### **8.6 Options to resolve a problem**

- 8.6.1 Employees should be advised that there are two options to resolve a problem relating to sexual harassment. Either an attempt can be made to resolve the problem in an informal way or a formal procedure can be embarked upon.
- 8.6.2 The employee should be under no duress to accept one or the other option.

- **Informal Procedure**

The employee should furnish a description of the incident. This procedure is intended to resolve matters before any disciplinary steps are invoked in a non-threatening atmosphere. It may be sufficient the grievant to have an opportunity in the presence of the HR or Proctor to state that the unwanted conduct or behaviour in question is not welcome and that it should stop immediately.

Should there be no resolution to the grievant's satisfaction, formal procedures will be instituted. In addition, should the alleged harassment be of a serious nature, e.g physical assault, then the formal procedure will be instituted immediately, without informal route.

- **Formal Procedure**

If the HR or Proctor cannot resolve the dispute, a formal complaint should be submitted in writing to Municipal Manager, who will investigate the matter expeditiously and decide within three (3) working days whether there is sufficient evidence to hold a disciplinary hearing. Notice to attend a hearing must be given to the accused employee clearly setting out the allegations.

A notice must be per the appropriate Umzimvubu Local Municipality disciplinary Code and with due regard to Schedule 8 of the Labour Relations Act.

## 8.7 **Criminal and Civil charges**

A victim of sexual assault has the right to press separate criminal and or civil charges against an alleged perpetrator, and the legal rights of the victim are in no way limited by the disciplinary code.

## 8.8 **Dispute resolution**

Should a complaint of alleged sexual harassment not be satisfactorily resolved by the internal procedures set out above, either party may within 30 days of the dispute having arisen, refer the matter to the SALGBC for Conciliation in accordance with the provisions of section 135 of the Labour Relations Act. Should the dispute remain unresolved, either party has the right to refer the matter to the Labour Court.

## 8.9 **Confidentiality**

8.9.1 The Council, Management and employees must ensure that grievances about sexual harassment are investigated and handled



in a manner that ensures that the identities of persons involved are kept confidential.

8.9.2 In cases of sexual harassment, Management, Employees and the parties concerned must endeavour to ensure confidentiality in the disciplinary enquiry. Only appropriate members of management as well as the aggrieved person, representative, alleged perpetrator, witnesses and interpreter (if required), must be present in the disciplinary enquiry.

8.9.3 The Council is required to disclose to either party or their representatives, such information as may be reasonably necessary to enable the parties to prepare for any proceedings in terms of the disciplinary code.

8.9.4 The relevant provisions of section 16 of the Labour Relations Act will apply to the disclosure of information in terms of this policy.

#### 8.10 **Additional sick leave**

Where an employee's sick leave entitlement has been exhausted, the Municipality shall give due consideration to the granting of sick leave in cases of serious sexual harassment where the employee on medical advice requires trauma counseling.

#### 8.11 **Victimisation**

Employees will be protected from intimidation, victimization or discrimination following the complaint or their assisting in an investigation of harassment. Any action constituting retaliation against an employee for lodging a complaint about harassment will constitute a disciplinary offence and will be treated accordingly.

### 9. **PREVENTION STRATEGIES**

#### 9.1 Training

##### 9.1.1 **Councillors, Managers, Workers**

9.1.1.1 basic information on harassment.

9.1.1.2 knowledge of rights and personal responsibilities

9.1.1.3 expectations of interpersonal behaviour.

9.1.1.4 knowledge of the procedure and the names of the proctors

#### 9.2 Distribution and the communication strategy around the policy statement

9.2.1 The policy must be made available from the Human Resources Department upon request by any affected party.

9.2.1 Appropriate occasions should be used to reinforce the policy:-

9.2.1.1 employee orientation

9.2.1.2 appropriate information sessions

9.2.2 Treat the policy as need-to-know for all, especially managers.

9.2.3 Senior management is expected to mention the policy and the Municipality's commitment to it in an appropriate and natural way especially at management meetings.

9.2.4 Managers must avoid discussing specific cases or situations.

## **10. COMMENCEMENT OF THIS POLICY**

10.1 This policy will come into effect on the date of adoption by Council.

## **11. INTERPRETATION OF THIS POLICY**

11.1 All words contained in this policy shall have an ordinary meaning attached thereto, unless the definition or context indicates otherwise.

11.2 Any dispute on interpretation of this policy shall be declared in writing by any party concerned.

11.3 The Office of the Municipal Manager shall give a final interpretation of this policy in case of written dispute.

11.4 If the party concerned is not satisfied with the interpretation, a dispute may then be pursued with the South African Local Government Bargaining Council or Arbitration

## **12. PERMANENT/TEMPORARY WAIVER OR SUSPENSION OF THIS POLICY**

12.1 This policy may be partly or wholly waived or suspended by the Municipal Council on a temporary or permanent basis after consultation with Management and Trade Unions.

12.2 Notwithstanding clause No. 12.1 the Municipal Manager may under circumstances of emergency temporarily waive or suspend this policy subject to reporting of such waiver or suspension to Council and Trade Unions.

**13. AMENDMENT AND/OR ABOLITION OF THIS POLICY**

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

**14. COMPLIANCE AND ENFORCEMENT**

~~14.1 Violation of or non-compliance with this policy will give a just cause for disciplinary steps to be taken.~~

~~14.2 It will be the responsibility of all Managers, Supervisors, Executive Committee and Council to enforce compliance with this policy.~~

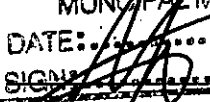
**APPROVAL OF THE POLICY**

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 ULMC 036/19

USIBENI LOCAL MUNICIPALITY  
MUNICIPAL MANAGER  
DATE: .....  
SIGN: 

Mr. G.P.T. Nota  
Municipal Manager



Cllr. N.F Ngonyolo  
Speaker of the Council

