



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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General Notice

MUNICIPALITY OF WALVIS BAY

No. 310

1999

PERSONNEL RULES

The Council of the Municipality of Walvis Bay under section 27(1)(c), of the Local Authorities Act, 1992 (Act 23 of 1992) has made the following personnel rules as set out in the Schedule.

BY ORDER OF THE COUNCIL

THERESIA SAMARIA
CHAIRPERSON OF THE COUNCIL

Walvis Bay, 31 May 1999

SCHEDULE

1. DEFINITIONS

In these regulations and rules, unless the context otherwise indicates a word expression to which a meaning has been assigned in the Local Authorities Act, 1992, shall bear that meaning and -

“casual employee” means a day worker who is employed for a specific project at a predetermined wage for not more than two days in any week;

“Chief Executive Officer” has a corresponding meaning as “Town Clerk”.

“continuous service” means the period from the date of assumption of service, up to and including the date of termination of service with the council and includes a period of absence on authorised vacation leave, sick leave, bonus leave and special leave without pay;

“Contractor” means a person who is contracted for a specific project and period at a predetermined contract sum;

“Council” means the municipal council of Walvis Bay and includes any committee or employee of the Council exercising, performing or fulfilling any power, duty or function on behalf of the Council;

“employee” means a natural person who is employed by or working for the council and who is receiving or is entitled to receive remuneration or who assists the council in the conduct or carrying out its business;

“former conditions of service” means the staff rules or agreements contained in conditions of service of employees with the local council which were in force before these regulations came into operation;

“head of department” means an employee of the local council designated as head of a department in terms of section 28 of the Act;

“incremental date” means the date in every year which corresponds to the date of assumption of service unless otherwise provided in these regulations: provided that a date falling on 29 February be amended to 28 February in subsequent years;

“municipal area” means the area under the jurisdiction of the Council;

“municipality” means the Municipality of Walvis Bay;

“pension fund: means a pension fund instituted under section 27(1)(c)(ii)(bb) of the Act and includes an united pension fund of two or more councils;

“public holiday” means any public holiday referred to in or declared under section 1 of the Public Holidays Act, 1991 (Act 26 of 1991);

“stand-by duty” means the period before and after normal daily working hours through which an employee shall keep himself or herself ready for urgent duties in respect of services decided upon by the Council;

“temporary employee: means a person who is appointed in a vacancy on the permanent establishment for a maximum period of 3 months and whose service is terminated after completion of a specific project:

“the Act” means the Local Authorities Act, 1992 (Act 23 of 1992);

“Town Clerk” means the Town Clerk of the Municipality of Walvis Bay appointed in terms of section 27(1)(a) of the Act and in his or her absence, for whatever reason, the person officially acting in his or her stead: and the present Town Clerk appointed prior to the coming into force of the Act; Chief Executive Officer shall have a corresponding meaning;

“week” in relation to an employee means the period of seven days within which the working week of that employee falls.

2. APPOINTMENTS

- (a) Subject to section 27 of the Act, a person shall only be appointed in permanent employment if the person -
 - (i) has completed the probation period required by the Council; and

- (ii) the head of the department concerned has issued a certificate as prescribed by the Council, in respect of that person; and
 - (iii) he or she is a citizen of Namibia; and
 - (iv) he or she is not under 16 years of age and not over 50 years of age or otherwise is already a member of an approved pension fund and his or her benefits from such membership are transferred to the pension fund.
- (b) No person may be appointed in a permanent capacity unless he or she has submitted a certificate by a medical practitioner in the form prescribed by the council, in which it is certified that he or she is free of any mental or physical disability, illness or infirmity which would probably hamper the execution of his or her duties or which would necessitate his or her retirement from such post on a date earlier than the prescribed retirement age.
- (c) Every employee shall, not later than thirty days from the day the employee assumed duty or within such extended period as the Council may grant, hand to the Town Clerk or to an employee designated for such purpose by the Town Clerk the following documents for entry in the Council's records:
- (i) A birth certificate or other satisfactory proof of his or her full name and date of birth;
 - (ii) proof of naturalisation, permanent residence or employment permit, if applicable;
 - (iii) a marriage certificate, if married;
 - (iv) proof of his or her qualifications as mentioned in his or her application;
 - (v) a medical certificate as referred to in rule 2(b), and
 - (vi) any other document reasonably required by the Town Clerk.
- (d) Where an employee fails to submit the documents mentioned in rule 2(c) within the required period the Council may, in accordance with section 47 of the Labour Act, 1992, (act 6 of 1992) terminate the contract of employment of that employee.
- (e) Any employee who is appointed on probation as referred to in rule 2(a)(i), shall contribute to and become a member of the pension fund and a medical aid fund approved by the Council.
- (f) Probation is only applicable to new appointments and not to the transfer or promotion of existing staff.

3. CANVASSING

- (a) A person who has applied for a post or vacancy with the Council shall not solicit any member of the council or any official for the purpose of obtaining the post or vacancy.
- (b) A person who contravenes rule 3(a) shall be regarded as unfit for appointment to the post or vacancy.

4. RETIREMENT AND EMPLOYMENT AFTER RETIRING AGE

Subject to the provisions of the statutes, rules or regulations of the pension fund an employee who has reached retiring age shall leave the service and thereupon all benefits accruing to him or her under these regulations shall be paid out to him or her.

5. SALARY INCREASES

- (a) The annual salary increases of the Town Clerk and Deputy Chief Executive Officer shall be approved by the management committee and of a head of department by the Town Clerk.
- (b) The Town Clerk, Deputy Chief Executive Officer or the head of a department may, in respect of staff under his or her control, annually grant salary increases to a maximum of one notch of the appropriate approved salary scales if an employee has performed his or her duties satisfactorily in the previous period of twelve months and who qualifies for an increase under his or her conditions of service; provided that the management committee, on the recommendation of the Town Clerk, may grant more than one notch of the appropriate approved salary scale.
- (c) Where the Town Clerk, Deputy Chief Executive Officer or the head of a department has refused to grant a salary increase to an employee who under his or her conditions of service, is entitled to an increase the Town Clerk, Deputy Chief Executive Officer or head of department shall in writing inform that employee why the salary increase was not granted and report the matter to the management committee.
- (d) The management committee upon receipt of information in terms of rule 6(c) may, after having made its own investigation, grant such employee's salary increase either wholly or in part or withhold it for such period as it may deem fit.
- (e) Where an employee's annual salary increase is withheld because he or she does not possess the necessary qualifications required by the Council, he or she shall, as soon as he or she does subsequently qualify, not be entitled to an increase of more than one notch of the approved salary scale.
- (f) When an employee passes an examination and obtains a qualification which, in the opinion of the Council, exceeds the requirements for the post occupied by him or her, the Council may grant to such employee a special increase approved by it with effect from the date on which he or she obtained such qualification.
- (g) When an employee takes special leave without pay for 14 days or longer, his or her incremental date and the date on which his or her bonus leave becomes payable shall be extended with the same number of days for which special leave without pay has been taken, and such leave shall not be deemed to be service for the purpose of calculating the leave standing to the credit of such employee.
- (h) Where the salary cycle of an employee runs from the first up to and including the last day of every month and his or her incremental date falls -
 - (i) within the first fifteen days of any such month, the date with effect from which an annual salary increase may be granted to him or her shall be the first day of the current month, or
 - (ii) after the fifteenth day of any such month, the date with effect from which an annual salary increase may be granted to him or her shall be the first day of the following month.
- (i) Where an incremental date is extended in terms of the provisions of rule (7), the date with effect from which the employee concerned may be granted an annual salary increase shall be adapted in accordance with rule 6(h).
- (j) For the purposes of this subsection, "salary cycle" means the period with effect from the first up to and including the last day of every month in respect of which an employee's salary is calculated and becomes payable.

6. WORKING HOURS AND OVERTIME

- (a) Subject to Part V of the Labour Act, 1992 (Act 6 of 1992) Council shall from time to time determine the ordinary working hours of its employees, and the employees shall comply with the working hours.
- (b) Subject to sections 32 and 33 of the Labour Act, 1992 (Act 6 of 1992) council shall pay to an employee who works overtime an amount calculated at a rate of not less than -
 - (i) in the case of any day other than a Sunday or a public holiday, one and half times his or her remuneration for one hour in respect of the overtime the employee worked;
 - (ii) in the case of a Sunday or a public holiday, double his or her remuneration for one hour in respect of the overtime the employee worked.
- (c) Council may determine that a fixed amount be paid monthly to an employee in respect of overtime which may be worked, but that amount shall not be less the equivalent of the amount referred to in rule 6(b).
- (d) Subject to sections 30 and 33 of the Labour Act, 1992, council shall not require or permit an employee to work on a Sunday or a public holiday.
- (e) Where an employee works for any period of time on a Sunday or a public holiday as provided in section 33 of the Labour Act, 1992, council may -
 - (i) pay the employee an amount of not less than double his or her rate of remuneration in respect of the period of time actually worked by him or her on the Sunday or public holiday;
 - (ii) pay the employee an amount of not less than one and one-half of his or her remuneration and grant the employee in respect of the period of time so worked on the Sunday or public holiday an equal period of time of leave of absence in the next succeeding week.
- (f) Council may in respect of an employee, who has to be available for stand-by duty after ordinary working hours, in addition to any allowance paid to him or her to be at all times available, also remunerate him or her in respect of the period he or she actually worked on the usual basis of overtime remuneration.

7. TERMINATION OF SERVICE

- (a) Subject to part VI of the Labour Act, 1992, section 28 of the Act and the pension fund rules and regulations, Council may terminate an employee's contract of employment -
 - (i) on account of continuing bad health or illness or continuing unfitness for work;
 - (ii) on account of the abolition of his or her post or any reduction in or reorganisation or rearrangement of departments or posts on the fixed establishment;
 - (iii) on account of misconduct;
 - (iv) in the case of an employee appointed on probation whose services are unsatisfactory, or in the case of an employee appointed temporarily, for any reason deemed reasonable by the Council.

- (b) Subject to section 29 of the Act, the service of an employee appointed permanently or on probation may, in the cases mentioned in rule 9(a), be terminated on 30 days notice in writing, and, in the case of an employee appointed temporarily on 24 hours notice in writing; but the Council may dismiss an employee summarily if he or she is found guilty of an act of misconduct.
- (c) The services of an employee appointed temporarily or on probation shall terminate on the expiry of such period of temporary appointment, or at the expiration of the probation period, unless such period is extended or unless the employee appointed on probation is appointed permanently.
- (d) The probation period shall be at least six months and not longer than 12 months, and where a Council is not prepared to appoint an employee permanently after 12 months on probation, the period of probation shall not be extended.
- (e) An employee appointed permanently or on probation may terminate his or her contract of employment with Council by giving the Council 30 days notice in writing, the Town Clerk may, in consultation with the relevant Head of Department, however accept a shorter period of notice.
- (f) An employee who is not appointed permanently or on probation may terminate his or her contract of employment with the Council by giving the Council 24 hours notice in writing unless his or her contract of employment with the Council provides otherwise.

8. LEAVE OF ABSENCE

- (a) The provisions of the regulations contained in this chapter shall apply to all employees except when provided otherwise by agreement.
- (b) Leave of absence shall be granted subject to the exigencies of the service.
- (c) All leave of absence under these rules shall be classified under one of the following headings:
 - (i) vacation leave;
 - (ii) sick leave
 - (iii) bonus leave, or
 - (iv) special leave with or without pay.
- (d) The granting of leave of absence classified under any heading shall not influence the granting of leave of absence classified under any other heading except in so far as it is specially provided otherwise in these rules.
- (e) Subject to section 39 of the Labour Act, 1992 Council shall grant to its employees vacation leave on full remuneration in respect of each period of 12 consecutive months for which the employee is employed by the Council (in these rules referred to as the leave cycle), the minimum number of leave days shall be as follows:
 - (i) Employees working a five-day week:

Group A	:	Scales 1 and 2	:	35 working days a year
Group B	:	Scales 3 to 6	:	30 working days a year
Group C	:	Scales 7 to 9	:	25 working days a year
Group D	:	Scales 10 to 12	:	20 working days a year
Group E	:	Scale 13	:	18 working days a year

provided that the provisions relating to vacation leave previously stipulated which are more favourable than this grouping shall remain in force for those employees for whom they are more favourable.

- (ii) Employees working a six-day or seven-day week:

The same grouping as determined by rule 10(e)(i), and the formulae for the calculation of leave shall be as follows:

Six-day week

Seven-day week

a x 6\5

a x 7\5

In the abovementioned formula, "a" represents the number of days' leave granted under rule 10(e)(i) (fractions of a day are to be left out of account).

- (f) In the calculation of vacation leave the following provisions shall apply:
- (i) in the case of employees working a five-day week, public holidays, Saturdays and Sundays shall not be included as vacation leave;
 - (ii) in the case of employees working a six-day week, public holidays and Sundays shall not be included as vacation leave.
 - (iii) In the case of employees working a seven-day week, public holidays shall not be included as vacation leave;
 - (iv) if an employee assumes service before or on the fifteenth day of the month, he or she shall be deemed, for leave purposes, to have assumed services on the first day of that month, and if an employee assumes service after the fifteenth day of the month, he or she shall be deemed, for leave purposes, to have assumed, service on the first day of the ensuing month;
 - (v) if the service of an employee terminates before or on the fifteenth day of the month, his or her service shall be deemed, for leave purposes, to have terminated on the last day of the previous month, and if an employee service terminates after the fifteenth day of the month, his or her service shall be deemed, for leave purposes, to have terminated on the last day of that month, and
 - (vi) where it becomes necessary for any purposes to calculate the leave which is due to an employee for any period of less than twelve months, any fraction of a day in the total so arrived at shall be disregarded.
- (g) Vacation leave shall accumulate on a pro rata basis in accordance with the period of completed service; provided that an employee shall not without the special approval of the Council at any stage take more than the following number of days vacation leave:
- (i) 130 working days where the employee works a five-day week;
 - (ii) 156 working days where the employee works a six-day week, and
 - (iii) 182 working days where the employee works a seven-day week.
- (h) All employees shall be paid out the value of the vacation leave standing to their credit when they leave the service for any reason whatsoever. If an employee dies, the value of such vacation leave standing to his or her credit shall be paid out to his or her widow or widower, or, if there is no widow or widower, to his or her estate.

(i) The amount payable in accordance with rule 10(h) shall be calculated according to the following formula:

(i) $\frac{a \times b}{250}$ where the employee works a five-day week,

(ii) $\frac{a \times b}{300}$ where the employee works a six-day week, and

(iii) $\frac{a \times b}{350}$ where the employee works a seven-day week

In the above formula -

a = the number of days vacation leave standing to the employee's credit on the date of his or her death or the date on which he or she leaves the service, and

b = the annual salary received by the employee on the date of his or her death or the date on which he or she leaves the service.

- (j) When an employee is transferred from one leave group to another, or when the working times of an employee are changed so that he or she works more or fewer working days a week, he or she shall retain the leave standing to his or her credit on the day before his or her transfer or the change in his or her working week; provided that where such employee now works more or fewer days a week, his or her leave should be adjusted on a *pro-rata* basis.
- (k) An employee who is granted vacation leave for a period of at least fourteen consecutive days may be paid in advance on the day before his or her leave begins the salary in respect of the period for which vacation leave has been granted to him or her; provided that where an employee resigns and vacation leave is approved for the last part of his or her period of notice until the date of his or her resignation, such employee's last salary may be paid to him or her in advance.
- (l) If an employee resigns or leaves the service before vacation leave is due to him or her, he or she shall repay to the Council all the salaries, allowances, etcetera, which he or she has received in respect of leave on full pay granted to him or her in advance under this section.
- (m) If an employee is absent from duty without authorised leave, he or she may in respect of such absence be granted vacation leave: provided that the granting of such leave shall not prevent the Council from taking disciplinary measures against such employee if the circumstances warrant such measures.
- (n) If an employee has been granted vacation leave in excess of the vacation leave standing to his or her credit, such leave in excess may, as far as may be necessary, be deducted from vacation leave which is subsequently due to him or her: provided that if such employee's services terminates before sufficient vacation leave accrues to him or her, such leave in excess that cannot be so deducted shall be treated as leave without pay and the overpayment shall be recovered from him or her.
- (o) Notwithstanding any other provision contained in these regulations, no vacation leave standing to the credit of an employee shall be paid out to him or her if he has absconded from the service of the Council and he or she shall forfeit any such vacation leave.
- (p) The Council may, where an employee has more than 45 working days

vacation leave standing to his or her credit, require such employee to take at least 21 working days leave during such period as the Council may determine.

- (q) If the provisions of these regulations result in the vacation leave benefits of an employee being less favourable than those under his or her former conditions of service, such employee shall retain his or her vacation leave benefits under the former conditions of service as a personal privilege.

9. SICK LEAVE

- (a) Sick leave shall be granted as set out below:

- (i) All employees may be granted sick leave on the following basis within a cycle of three years which, subject to the provisions of rule 9, shall be calculated from the date of commencement of such employee's continuous service:

Scales 1 to 13 : 120 days on full pay
120 days on half pay

- (ii) Sick leave shall accrue to an employee on the first day of a cycle, and as from that day the full number of days for the cycle concerned may be granted to him or her: provided that no employee shall be granted sick leave on full pay or half pay before he or she has completed thirty days service, which shall count as service for leave purposes, and then only in respect of absences after completion of such service.

- (iii) Every employee shall be credited at the end of the cycle determined in rule 11(a)(i) with the following sick leave (hereinafter referred to as cumulative sick leave):

- (aa) One day sick leave on full pay for every four full days sick leave on full pay then standing to his or her credit, and
(bb) One day sick leave on half pay for every four full days sick leave on half pay then standing to his or her credit;

provided that cumulative sick leave shall not lapse upon the expiring of the ensuing cycles.

- (iv) Cumulative sick leave may only be granted to an employee on the following conditions:

- (aa) That prior approval of the Council be obtained for the granting of such leave, and
(bb) that all sick leave on full pay due to an employee in the cycle concerned first be used in full.

- (b) Sick leave shall be granted only in connection with an employee's absence from service on account of an illness, indisposition or injury not due to misconduct or a lack of proper precaution.

- (c) Sick leave shall be granted in connection with nervous complaints, insomnia, infirmity and similar less well-defined illnesses or indispositions, only if the Council is satisfied that the applicant's state of health -

- (i) makes him or her unfit for his or her work, and
(ii) does not arise from his or her failure to make use of vacation leave.

- (d) In respect of alcoholism and addiction to drugs, non-recurrent sick leave may be granted to an employee for specialist treatment in an approved institution.
- e) If an employee is absent from duty on account of illness for a continuous period of more than two days, sick leave may be granted to him or her only if he or she submits a certificate by a medical practitioner or a dental practitioner in which the nature of the illness is clearly defined and such employee is declared unable to perform his or her official duties, and which also indicates what period is necessary for his or her recovery (hereinafter referred to as a certificate of indisposition).
- (f) The Council may in its discretion also require the submission of a certificate of indisposition in respect of periods of two days or less.
- (g) The Council may at any time compel any employee who applies for sick leave to subject himself or herself to an examination by a medical practitioner or dental practitioner designated by the Council. If the certificate by such medical practitioner or dental practitioner differs from the certificate of indisposition accompanying the application, the Council may curtail or refuse the sick leave applied for, or, if the sick leave has already been granted, curtail or cancel such sick leave according to the certificate of such medical practitioner or dental practitioner.
- (h) If an employee to whom vacation leave has been granted becomes indisposed after his or her vacation leave has begun, that portion of the said vacation leave during which he or she is indisposed may be converted into sick leave if -
 - (i) the employee submits a certificate of indisposition in which a medical practitioner or dental practitioner certifies that such employee has to stay in bed during the period for which sick leave is applied for, and
 - (ii) the necessary sick leave is available.
- (i) An employee to whom sick leave is granted on half pay or without pay and who has the necessary vacation leave standing to his other credit may choose whether he or she wishes to take vacation leave instead of sick leave on half pay or without pay.
- (j) If all vacation leave, all sick leave on full pay and all accumulated sick leave standing to the credit of an employee have been exhausted and such employee requires further sick leave, the Council may in meritorious cases convert the sick leave on half pay referred to in rule 11(a)(i) to sick leave on full pay, in so far as this is necessary, on the basis of one day sick leave on full pay for every two days sick leave on half pay.
- (k) If the sick leave of an employee has been exhausted and he or she requires further sick leave, the Council may grant him or her special sick leave for such period and on such conditions as it may approve.
- (l) Unused sick leave over and above such sick leave as an employee may accumulate in accordance with rule 11(a)(iii) shall lapse at the end of a cycle of three years.
- (m) Any period of absence on account of illness, whether on full pay or half pay, shall in all respects be deemed to be service.
- (n) When sick leave is granted, the period of absence shall be calculated from the first working day on which the employee is absent from work up to and including the working day preceding the working day on which the employee returns to work and shall include Saturdays, Sundays and public holidays falling within that period.

- (o) Nothing contained in these regulations shall preclude an employee from leaving the service on the grounds of ill-health before the maximum or any period of sick leave has been granted.
- (p) At the commencement of these regulations every employee who is then in service shall retain his or her existing sick leave cycle of three years under the former conditions of service, if applicable, and the sick leave standing to his or her credit for the cycle concerned shall be the number of days referred to in rule 11(a)(i) minus the number of days sick leave which he or she has taken during the cycle concerned; provided that where an employee was not entitled to sick leave on the basis of any particular number of days during a cycle of three years, a cycle of three years shall be determined, regard being had to the date of commencement of his or her continuous service, and the sick leave standing to his or her credit shall be calculated by the deduction of the number of days sick leave actually taken during the cycle determined as aforementioned from the number of days referred to in rule 11(a); provided further that if the foregoing provisions result in the sick leave benefits of an employee being less favourable than those under his or her former conditions of service, such employee shall retain his or her sick leave benefits under his or her former conditions of service.

10. BONUS LEAVE

- (a) The Council may grant bonus leave to its employees after completion of each period of five years continuous service (leave without pay excluded) with due allowance for such circumstances as it may deem fit; provided that after the expiry of the second period of five years continuous service, bonus leave may be granted pro rata after each year of service completed; provided further that -

- (i) not more than the following number of calendar days bonus leave in respect of each period of five years continuous service completed (leave without pay excluded) shall accrue to any employee:

Group A	:	Scales 1 and 2	-	90 days
Group B	:	Scales 3 to 6	-	72 days
Group C	:	Scales 7 to 9	-	54 days
Group D	:	Scales 10 to 13	-	36 days

provided that the provisions relating to bonus leave previously stipulated which are more favourable than this grouping shall remain in force for those employees for whom they are more favourable;

- (ii) bonus leave shall not be granted in advance;
- (iii) the council may, instead of granting bonus leave, pay to an employee a cash amount equal to one day's pensionable salary and pensionable allowances of the employee concerned on the date of payment, for each day's bonus leave standing to the credit of the employee;
- (iv) no employee shall be entitled to more than one cash payment instead of bonus leave in any one income tax year, or shall take any bonus leave of less than eighteen continuous days in any income tax year;
- (v) bonus leave shall lapse if not taken or paid out within five years;
- (vi) if an employee dies, the value of all bonus leave standing to his or her credit shall be paid to his or her widow or widower, or, if there is no widow or widower, to his or her estate;
- (vii) notwithstanding anything to the contrary contained in this section,

the Council shall pay a cash amount as determined in rule 12(a)(iii), but calculated on a pro rata basis according to an employee's period of service since his or her last bonus leave accrued to him or her (or, in the case of an employee who has not yet qualified for bonus leave, since the date on which he or she assumed service) in the following cases:

- (aa) To an employee who retires on pension or whose service is terminated by the Council for reasons of ill-health or on account of the retrenchment of staff or the abolition of his or her post, and
- (bb) to the next of kin or to the estate of an employee who dies while he or she is in the service of the Council, as determined in rule 12(a)(vi) above, and

11. SPECIAL LEAVE

- (a) Special leave on full pay may be granted to an employee for the following purposes and on the following conditions:
 - (i) When an employee attends sports gatherings recognised by the Council as a delegate of the national team or representative or participant, and for the purposes of this paragraph, "representative" shall include a manager, submanager or trainer of a national sports team.
 - (ii) For purposes of isolation under a medical direction in the interests of public health where the employee was in contact with any person suffering from an infectious or contagious disease or stayed in an area where any person suffered from an infectious or contagious disease, and in such case a medical certificate by a medical practitioner shall accompany the application for special leave.

12. SPECIAL SICK LEAVE

- (a) An employee who contracts an illness or sustains an injury in the course of his or her official duties shall be granted special sick leave for the period stipulated in a medical certificate.
- (b) Special sick leave shall be limited to 12 months in respect of any single illness or injury.
- (c) Special sick leave shall not be deducted from the sick leave standing to the credit of an employee.
- (d) The Council shall pay to an employee for any period or periods of absence on special sick leave an amount not exceeding -
 - (i) the difference between the normal pay he or she receives from the Council and any periodical payments in respect of loss of pay received by him or her under the Social Security Act, 1994 (Act 34 of 1994), or under a stated benefits policy, or
 - (ii) the normal remuneration he or she receives from the Council, if he or she is not entitled to any payments under the aforesaid Act or under a policy as aforesaid.

13. WITNESSES IN COURT CASES AND ACTIONS

Every employee who is subpoenaed or receives any other order to attend a criminal court sitting or who has to attend a court sitting or a meeting or a body or board of

inquiry to give evidence or submit documents on behalf of the Council or otherwise in connection with his or her official duties shall attend the court or meeting in the course of and as part of his or her duties and shall receive therefore his or her normal remuneration and also a subsistence allowance as prescribed in rule 22(a). All witness and other fees which he or she may receive from the State or some other body shall be repaid by him or her to the Council.

14. COMPASSIONATE LEAVE

If absence from duty is necessitated on account of the serious illness or death of any person other than the employee and the employee has no vacation leave standing to his or her credit which he or she can take for the purpose, Council shall consider the circumstances and may grant him or her special leave which shall be considered unpaid leave.

15. STUDY LEAVE

- (a) Study leave on full pay shall be granted as follows in order to enable employees to study and sit for examinations approved by the Council:
 - (i) One working day for every working day on which the employee sits for an examination, plus
 - (ii) two additional working days, apart from the day on which the employee sits for the examination, for every subject or part thereof concerned.
- (b) The study leave referred to in rule 17(a)(ii) shall not be taken earlier than 60 days before the day on which the employee is to sit for the examination in respect of which it has been granted.
- (c) Study leave may be granted only twice in respect of the same subject or course.

16. OTHER SPECIAL PURPOSES

- (a) Special leave with or without pay may be granted to employees in the following circumstances:
 - (i) Without pay if an employee has no vacation leave standing to his or her credit and the Council is satisfied that extraordinary circumstances exist which justify the granting of leave;
 - (ii) an employee who has been granted the maximum period of sick leave to which he or she is entitled and who, after the expiry thereof, is on account of ill-health still unfit to perform his or her duties efficiently, may be granted a further period of leave without pay in the discretion of the Council and on production of a satisfactory certificate of indisposition to the effect that further leave is essential;
 - (iii) with or without pay in the discretion of the Council for any special purpose approved by the Council.
- (b) As application for special leave shall be supported by such certificate or proof as will satisfy the Council that the leave applied for is in accordance with the provision of this subparagraph.

17. GENERAL PROVISIONS IN RESPECT OF LEAVE OF ABSENCE

- (a) All leave due, leave granted and leave used shall be recorded in a leave register kept for the purpose. Such register shall at all reasonable times during office hours be available for inspection by any employee. All leave

- due shall at the completion of every year of service rendered by the employee be recorded in the leave register.
- (b) When an employee has by oversight but in good faith been granted more leave than is due to him or her under these regulations and such leave is used by him or her, such overgrant of leave shall be deducted from leave subsequently earned by such employee.
 - (c) Leave, with the exception of sick leave, granted to an employee may at any time be withdrawn if the exigencies of the service required it; provided that when an employee is recalled from his or her leave, he or she shall be credited with the unexpired part of his or her leave in the leave register, and the Council shall bear all reasonable additional expenses incurred by the employee which, in the opinion of the Council, had to be incurred because of his or her recall.
 - (d) Applications for leave under these regulations shall be approved by the authority designated by the Council, and any reference to the Council in this Chapter may in the discretion of the Council be deemed to be a reference to such authority.
 - (e) Application for leave shall be made on a form prescribed by the Council. Before the authority approving leave considers such leave, the responsible employee shall certify that the leave applied for is available.
 - (f) Immediately after an application for leave has been approved, the application shall be forwarded to the responsible employee who shall ensure that the necessary entry is made in the leave registers and that the application is filed for record purposes.
 - (g) Subject to the provisions of any law, the Council may, if it is of the opinion that the exigencies of the service are such that an employee cannot be granted the leave standing to his or her credit, refuse such leave; provided that if the Council has transferred this power to refuse leave to a lower authority, the employee shall have the right to appeal to the Council through the Town Clerk.
 - (h) Where leave which, under these regulations, has been granted for any particular purpose, is the opinion of the Council being abused, it may forthwith be withdrawn and the Council may write off any leave already taken against accumulated vacation leave or bonus leave or against vacation leave or bonus leave which may still accumulate.
 - (i) Every employee who institutes or defends a court case shall use his or her vacation leave for the purpose, or, if he or she has no leave standing to his or her credit, take leave without pay.
 - (j) Every employee who is subpoenaed or receives any other order to attend a court sitting shall immediately notify his or her head of department thereof in order that, if necessary, arrangements may be made for the performance of his or her duties while he or she attends the court sitting.
 - (k) Unless otherwise stated, all periods of leave shall be calculated with effect from the first working day on which the employee is away on leave up to and including the working day before the working day on which he or she returns to work.
 - (l) Once in every period of three years, calculated from the date on which he or she entered the service of the Council, an employee may convert not less than twenty days or more than 60 days of the vacation leave standing to his or her credit into cash if -

- (i) at the same time he or she takes vacation leave, and
- (ii) at the date of commencement of the leave taken in terms of rule 19(m)(i), he or she retains not less than 30 days vacation leave after the vacation leave has been so converted and the vacation leave so taken has been deducted.

18. REPAYMENT OF TRANSPORT COSTS

- (a) Subject to rule 18(c), the Council may pay an employee who has been recruited in Namibia but outside the municipal area or in special cases outside the borders of Namibia, and who has been appointed in a permanent capacity, the following moneys after assumption of duty -
 - (i) Transport costs to a maximum amount as determined by Council from time to time;
 - (ii) transport costs incurred by the employee in bringing his personal effects from his former place of residence to the municipal area but not exceeding an amount equal to the lower of three written quotations by registered transport contractors: that are submitted; provided that the Council may, in its discretion, approve any other tariff, and
 - (iii) a subsistence allowance as determined by the Council from time to time.
- (b) The Council may by way of a special agreement pay an employee recruited from outside Namibia the following:
 - (i) The actual travelling costs of the employee, his or her spouse and his or her dependent children from the place where he or she resided to Walvis Bay;
 - (ii) a subsistence allowance as approved by the Council from time to time, and
 - (iii) the transport costs in respect of his or her personal effects from his or her former place of residence on the basis provided in rule 20(a)(ii).
- (c) The Council may come to an agreement with an employee to pay the transport costs and allowances referred to in rules 18(a) and (b) on assumption of service or some time thereafter and that a portion of or the whole amount may be reclaimed if the employee leaves the Council's service within a certain time which may be determined by Council from time to time.
- (d) Every application for transport costs and allowances under rules 18(a) and (b) shall be submitted in writing and shall be supported to the satisfaction of the Council.

19. ALLOWANCES DURING ABSENCE ON THE COUNCIL'S BUSINESS

The Council shall pay to employees whom it directs to travel on official business or allows to attend conferences an allowance as approved by the Council from time to time.

20. ALLOWANCES FOR USE OF PRIVATE MOTOR VEHICLE

To an employee who with the approval of the Council uses his or her private motor vehicle in or outside the municipal area in the performance of his or her duties, a travelling allowance shall be paid at a tariff approved by the Council from time to time.

21. ALLOWANCE FOR ACTING IN A HIGHER POST AND ALLOWANCES IN CONNECTION WITH ADDITIONAL DUTIES

- (a) When an employee acts in a higher post, the Council may in its discretion pay such employee an allowance; provided that such allowance shall not exceed the difference between the minimum salary attached to such employee's own post and the minimum salary attached to the post in which he or she acts.
- (b) Allowances may be paid in respect of additional duties performed for any reason by employees.
- (c) Subject to rule 21(b) and unless the prior approval of Council has been obtained, no employee shall have any claim to any remuneration in respect of additional duties performed by him or her for any reason whatsoever.

22. VACATION BONUS

The Council annually, with due allowance for circumstances and on the date it has fixed, pay a vacation bonus to its employees at a rate of 8 1/3% of the pensionable salary and pensionable allowances of such employees on the date of payment, to be calculated on a pro rata basis according to the actual period of continuous service (leave without pay excluded) during the calendar year ending on the date of payment; provided that no employee shall be entitled to vacation bonus unless he or she has completed at least 90 days continuous service (leave without pay excluded) on the date of payment; provided further that the Council shall in the following instances pay vacation bonus on a pro rata basis in accordance with an employee's period of service since vacation bonus last accrued to him or her:

- (i) To an employee who retires on pension or whose service is terminated by the Council for reasons of ill-health or on account of the retrenchment of staff or the abolition of his or her post, and
- (ii) to the next of kin or estate of an employee who dies.

23. LEGAL ASSISTANCE IN CRIMINAL CASES

- (a) When an employee is charged with and prosecuted for committing a criminal offence of whatever nature as a result of anything he or she has done or failed to do in the performance of his or her duties and within the scope of his or her powers, the Town Clerk may arrange for his or her defence by the Council's attorneys for the account of the Council; provided that -
 - (i) as soon as possible after his or her arrest or on receipt of the summons or warning to appear in court, he or she shall notify the Town Clerk through his or her head of department in writing that he or she has been so charged;
 - (ii) if he or she chooses to be defended by an attorney or advocate other than the one appointed by the Council, he or she shall not be entitled to defence for the account of the Council unless otherwise agreed upon.
- (b) If the Council at the close of the hearing, whether or not such employee has been released or found guilty, in its discretion and after consideration of a report of the Town Clerk finds that the employee wilfully acted outside the scope of his or her duties, or that he or she wilfully exceeded his or her powers, or that at the time of the act or omission that gave rise to the prosecution, he or she was under the influence of intoxicating liquor or drugs, the Council may recover the costs of such defence from his or her salary or from any other moneys (including pension or leave money) due to him or her in a single amount or in instalments.

- (c) If such employee is found guilty, the Council may, with a view to special circumstances, in its discretion and after consideration of a report of the Town Clerk, refund the employee the amount of any fine imposed or part thereof.

24. LEGAL ASSISTANCE IN CIVIL ACTIONS

- (a) When a civil action of whatever nature is instituted against an employee in his or her private capacity as a result of anything he or she has done or failed to do in the performance of his or her duties and within the scope of his or her powers (of which the Council for the purposes of these regulations shall be the sole judge), the Town Clerk may arrange for the employee's defence in such action by the Council's attorneys and the Council shall accept liability for the concomitant costs, including any fine to be paid by the employee; provided that the employee -
 - (i) shall not have acted wilfully outside the scope of his or her duties, or wilfully exceeded his or her powers, or that at the time of the act or omission which gave rise to such civil action he or she shall not have been under the influence of intoxicating liquor or drugs, and
 - (ii) shall have notified his or her head of department in writing or had him or her so notified within seven days of the date of the incident which gave rise to the said prosecution.
- (b) At the defence of an action contemplated in rule 24(a) -
 - (i) the employee shall furnish the Council with such information and give it such assistance as may be required, and
 - (ii) the Council shall have the power to act in its discretion.

25. LIMITATION OF LEGAL ASSISTANCE RENDERED

The provisions of rules 23 and 24 shall not apply in the case of any civil or criminal action instituted by the Council against an employee.

26. USE OF COUNCIL'S PROPERTY

- (a) No employee shall use, or permit the use of, or order any subordinate employee to use any vehicle, tool, implement or any goods or materials whatsoever, being the property of the Council, for any purpose except in the service of the Council; provided that the Council may allow an employee to transport his or her family on approved trips on condition that the Council is properly indemnified against claims.
- (b) No employee shall remove, or permit the removal of, or order any subordinate employee to remove, any vehicle, tool, implement or any goods or materials whatsoever, being the property of the Council, except for the purpose of using it elsewhere in the service of the Council or of taking it to an approved place of storage belonging to or under the control of the Council for the purpose of storing it.

27. PRIVATE WORK DURING WORKING HOURS

No employee shall permit any other employee to do any work which is not connected with the service during his or her normal working hours or during times for which the employee concerned is paid overtime.

28. DAMAGING OF COUNCIL'S PROPERTY

No employee shall wilfully or negligently destroy, damage or spoil any vehicle,

tool or implement or any property of the Council or permit it to be destroyed, damaged or spoilt.

29. USE OF COUNCIL'S VEHICLES

- (a) If the Council is of the opinion that it is necessary for any employee to use a motor vehicle in the performance of his or her duties, the Council may make a vehicle which is the property of the Council available to the employee concerned for use in the service.
- (b) The employee shall be obliged to drive such vehicle on condition that he or she has the necessary licence and shall not be entitled to any compensation in addition to his or her normal remuneration for driving the vehicle.
- (c) The Town Clerk may, if he deems it necessary, require an employee to keep a proper record of all trips taken with the vehicle in the form and manner prescribed by the Town Clerk in a book known as a logbook.
- (d) Any employee who is required to keep a logbook for any purpose whatsoever and who fails to do so or who makes any false entry therein shall be guilty of a contravention of these regulations.

30. PROTECTIVE CLOTHING AND UNIFORMS

- (a) In addition to the wearing of protective clothing as provided in the Labour Act, 1992 -
 - (i) the council may provide employees with such protective clothing or uniforms as it may deem necessary, or
 - (ii) pay an allowance to employees who in terms of a resolution of the Council shall wear protective clothing or uniforms and who shall provide such protective clothing or uniforms themselves.
- (b) Every employee who is ordered to use protective clothing or uniforms shall wear such protective clothing or uniforms when necessary or when the Council orders the wearing thereof.
- (c) The head of department concerned shall ensure that the protective clothing or uniforms, whether provided by the Council or by the employee, shall at all times, according to circumstances, offer sufficient protection to the employee, and to carry this provision into effect the head of department concerned shall be entitled, if an employee who receives an allowance to provide protective clothing or uniforms himself or herself, fails to maintain such protective clothing or uniforms to the satisfaction of the head concerned, to purchase protective clothing or uniforms on behalf of the employee and to withhold his or her allowance until the cost thereof has been redeemed.
- (d) Protective clothing or uniforms shall remain the property of the Council except where the employee pays for it himself or herself, but the Council may, as a concession, allow an employee to keep his or her protective clothing or uniforms when he or she retires. In other cases, protective clothing or uniforms shall be returned to the head of department concerned on receipt of new protective clothing or uniforms or when the employee leaves the service.
- (e) An employee who has been provided with uniforms and identification marks shall, when he or she is on duty, appear in a neat, clean and complete uniform with identification marks properly displayed.
- (f) For the purpose of this section the expression "protective clothing" shall

include all prescribed clothing such as overalls, protective shoes, uniforms, safety helmets, identification marks, welding shields, gloves, belts and any other similar clothing or equipment or identification marks which may from time to time be prescribed either by legislation or by resolution of the Council.

31. COMMISSION OR OTHER MONEYS

- (a) An employee shall not claim or accept any commission, money or compensation, whether monetary or otherwise (not being his or her remuneration, allowances or other moneys payable to him or her by the Council) in respect of the performance of his or her work. An employee shall forthwith inform his or her immediate head of any offer of such commission, money or compensation.
- (b) Any moneys or payments received by an employee by reason of his or her having acted in any capacity on behalf of the Council or in respect of any service rendered during working hours shall be paid into the Council's revenue.

32. CHANGE OR EXCHANGE OF SERVICE

An employee shall not change his or her fixed hours of service or exchange service with any other employee without the permission of the head of his or her department.

33. ATTENDANCE REGISTER

Each head of department shall keep attendance registers of such classes of employees as the Council may determine, and every employee in any such class shall sign the register concerned when he or she comes on duty or goes off duty.

34. MUNICIPAL ELECTIONS

Except in the performance of their official duties, employees shall not participate actively in the election of Councillors, whether by public speech or in writing, or be a member of any committee which has as its purpose the promotion or prevention of the election to the Council of any particular candidate.

35. REMUNERATION

- (a) All remuneration and other amounts owing and payable to employees shall be paid on such days and in such manner as may from time to time be determined by the Council, but at least once a month; provided that if any employee leaves the service of the Council, all wages, salary or other moneys earned by him or her up to the date on which he or she leaves the service of the Council, less any deductions authorised by these regulations, shall be paid to him or her immediately or as soon as possible after the return of protective clothing, uniforms, tools and equipment. An explanation of the way in which any amount paid to an employee has been calculated shall be given to the employee at his or her request.
- (b) The Council may, subject to section 37 of the Labour Act, 1992, if any employee agrees thereto in writing, deduct from the employee's remuneration such monthly amounts as may be owing by the employee to the Council, including amounts in respect of the Council's premises, goods or services provided by the Council, any instalment or instalments on a loan taken up with the Council, or any subscription payable to the pension fund or medical fund, and the Council shall have the authority and shall be obliged to pay on behalf of the employee the subscriptions and amounts owing to the parties concerned.
- (c) Subject to the provisions of any law and the provisions of section 48, an employee shall not without the written permission of the Council cede,

transfer or assign his or her right or claim in respect of any wages or salary or moneys due to him or her by the Council or which will become due to him or her by the Council. The Council shall not pay any amount owing by it to an employee or any person except such employee, unless such person submits a proper power of attorney from the employee or unless the Council is legally obliged thereto.

- (d) An employee shall not borrow money from a subordinate employee or from any person outside the service whose activities or contracts he or she has to supervise, or request such person to stand surety for him or her.

36. COMPLAINTS AND GRIEVANCES

- (a) Any employee, except the Town Clerk, Deputy Chief Executive Officer or the head of a department, who has a grievance or complaint in connection with his or her employment, may submit such grievance or complaint in writing to the head of the department in which he or she is employed, or in case of an employee who is not employed in a department, the Town Clerk who may take such steps as he or she considers appropriate: Provided that such head or the Town Clerk shall immediately notify the employee in writing thereof.
- (b) If an employee is not satisfied with the steps contemplated in rule 38(a), he or she may submit his or her grievance or complaint to the management committee by addressing his or her representations to the Town Clerk for submission to the management committee.
- (c) Any head of a department who has a grievance or complaint in connection with his or her employment, may submit such grievance or complaint to the management committee by addressing his or her representations to the Town Clerk for submission to the management committee, and if the Town Clerk has a grievance or complaint, he or she may submit his or her grievance or complaint directly to the management committee.
- (d) If the head of a department is not satisfied with the decision of the management committee, such head may submit his or her grievance or complaint to the Council by addressing his or her representations to the Town Clerk for submission to the Council, and if the Town Clerk is not so satisfied, he or she may submit his or her grievance or complaint directly to the Council.
- (e) No employee shall make any representations on any matter concerning a grievance or complaint in connection with his or her employment except as provided in this rule.

37. MISCONDUCT

- (a) An employee shall be guilty of misconduct if he or she -
- (i) disobeys any lawful order given to him or her in the course of his or her official duties by any person authorised thereto;
 - (ii) is negligent in the performance of his or her official duties;
 - (iii) allows or orders any person subordinate to him or her to do any work not connected with his or her official duties;
 - (iv) without the permission of the Council, makes any statement -
 - (aa) at any public meeting on any matter relating to the policy, activities or management of the Council; or

- (bb) to the media in connection with the policy, activities or management of the Council;
 - (v) is guilty of scandalous, improper or unseemly conduct, whether in the performance of his duties or in public, or in the performance of his duties exhibits gross incivility towards another employee or a member of the public;
 - (vi) is under the influence of alcohol or drugs when on official duty, or when he or she reports or has to report for official duty;
 - (vii) becomes insolvent or if his or her estate is placed under administration, unless he or she can prove to the satisfaction of the Council that it was caused by unavoidable circumstances;
 - (viii) discloses information gained by him or her in the course of his or her official duties, otherwise than in the performance of such duties;
 - (ix) uses information gained or obtained by him or her in the course of his or her official duties for any purpose other than the discharge of his or her official duties;
 - (x) misappropriate or improperly uses the property or funds of the Council whether such misappropriation or improper use amounts to a criminal offence, or not;
 - (xi) is convicted of an offence of which dishonesty is an element, or any other offence in respect of which he or she is sentenced to actually serve a term of imprisonment without the option of a fine;
 - (xii) absents himself or herself from his or her office or official duty without leave or valid cause;
 - (xiii) accepts without permission of the Council, or demands in respect of the carrying out of his or her duties, any commission, fee or reward, pecuniary or otherwise, to which he or she is not entitled by virtue of his or her office or official duties, or fails to report the offer of any such commission, fee or reward to the Council;
 - (xiv) wilfully makes an incorrect or false statement, whether for the attainment of some privilege or benefit in connection with his or her position of official duties or for any other reason;
 - (xv) borrows money from a subordinate employee or from any other person who renders services to Council which are supervised by him or her, or if he or she requests such subordinate employee or person to stand surety for him or her;
 - (xvi) takes part, except in the performance of his or her official duties, in activities relating to the election of persons as members of the Council or, if he or she has accepted nomination for such election, takes part in such activities during any period other than the period of leave referred to in section 7(3) of the Act;
 - (xvii) refuses to answer satisfactorily questions lawfully put to him or her in connection with an alleged contravention of these rules;
- (b) Subject to section 29 of the Act, in any charge of misconduct, an employee shall be formally charged or a formal charge shall be served on him or her in which a reasonable period, named in the charge, shall be afforded such employee to send or deliver to the Town Clerk a written admission or denial of the charge.

- (c) All investigations into charges of misconduct shall be made in accordance with section 29 of the Act.
- (d) When an employee is found guilty of misconduct and he or she is not dismissed, in the case of the Town Clerk, Deputy Chief Executive Officer and head of a department by the Council, in the case of other employees by the Management Committee, the Council or Management Committee shall act in accordance with section 29 of the Act.
- (e) The acquittal or the conviction of an employee by a court of law upon a charge of any offence shall not be a bar to proceedings against him or her under the Act, on a charge of misconduct, notwithstanding the fact that the facts set forth in the charge of misconduct would, if proved, constitute the offence set forth in the charge on which he or she was so acquitted or convicted or any other offence of which he or she may have been convicted on his or her trial on the said first mentioned charge.
- (f) If the misconduct with which an employee is charged amounts to an offence of which he or she has been convicted by a court of law, a certified copy of the record of his or her trial and conviction by that court shall, upon the identification of such employee as the person referred to in the record, be sufficient proof of the conviction by him or her of such offence, unless the conviction has been set aside by a superior court.

38. SUSPENSION

- (a) The Council may, at any time before or after an employee is charged under this rule, suspend the employee if the Council has reason to believe that he or she is guilty of misconduct.
- (b) Any employee who has been suspended shall forthwith be permitted to reassume his or her official duty -
 - (i) if no charge of misconduct is brought against him or her under section 29 of the Act within a reasonable time;
 - (ii) if he or she is found not guilty on any such charge;
 - (iii) if his or her appeal is allowed against any finding that he or she is guilty on any such charge;
 - (iv) if he or she is dealt with in accordance with paragraph (g)(i)(aa), (bb), (cc) of section 29(6) of the Act: Provided that where he or she is dealt with in accordance with paragraph (g)(i)(cc) of that section, duty shall be assumed at the reduced salary or in the lower grade or both at the reduced salary and in the lower grade and the reduced salary shall also be paid for the period of suspension unless payment at the former higher salary has already taken place during that period.
- (c) The suspension of an employee may at any time be cancelled by the Council, but the proceedings in connection with the charge of misconduct may be proceeded with notwithstanding the cancellation.
- (d) If an employee is suspended, the date of his or her next annual salary increase shall be deferred by a period equal to the period of suspension and that period shall, for the purpose of the calculation of his or her sick, vacation or bonus leave, be deemed not to have been a period during which he or she was employed by the Council.

39. Repealed of Provincial Notice 175 of 1988.

The Municipal By-Law Relating to Staff promulgated by Provincial Notice 175 of 1988, in Official Gazette 4519 dated 12 February 1988, is hereby repealed.
