



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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General Notice

MUNICIPAL COUNCIL OF WINDHOEK

No. 239

2026

AMENDMENT OF PERSONNEL RULES: LOCAL AUTHORITIES ACT, 1992

The Municipal Council of Windhoek, under section 27(1)(c)(i) and (ii)(bb) of the Local Authorities Act, 1992 (Act No. 23 of 1992) with the approval of the Minister of Urban and Regional Development, has amended the Personnel Rules published under General Notice No. 277 of 21 August 2012, as set out in the Schedule.

SAKARIAS UUNONA
CHAIRPERSON
BY ORDER OF THE COUNCIL

Windhoek, 23 March 2026

SCHEDULE**Definitions**

1. In these Rules “the Rules” mean the Personnel Rules published under General Notice No. 277 of 21 August 2012.

Amendment of rule 1 of Rules

2. Rule 1 of the Rules is amended by the -

(a) insertion after the definition of “Council” of the following definition:

“day” means an ordinary working day as applicable to the staff member in terms of his or her contract of employment and for that purpose is -

- (a) five consecutive working days, if the staff member works a five-day week;
- (b) six consecutive working days, if the staff member works a six-day week; or
- (c) the number of agreed consecutive working days, if the staff member works less than five days a week;”;

(b) insertion after definition of “Pension Fund” of the following definition;

““Pension Fund Rules” means the Rules made by the Pension Fund under section 4 of the Pension Fund Act, 1956 (Act No 24 of 1956);”;

(d) substitution for the definition of “Rules” of the following definition:

““Rules” means these Personnel Rules and includes policies incorporated by regulation 1A”;

Insertion of rule 1A in Rules

2. The Rules are amended by the insertion after rule 1 of the following rule:

“Incorporation of policies and policy guidelines in Rules

1A. (1) The Policies and policy guidelines in respect of -

- (a) labour relations and guidelines contained in Annexure 1;
- (b) incapacity due to poor work performance policy contained in Annexure 2;
- (c) incapacity due to continued ill health or injury contained in Annexure 3,

are incorporated into these Rules.

(2) In the event of a conflict between these Rules and the policies and policy guidelines incorporated under subrule (1), the provisions of the Rules prevail.”.

Substitution of rule 20 of Rules

3. The Rules are amended by the substitution for rule 20 of the following rule:

“Basis for terminating contract of employment, notice of intention to terminate contract of employment

20. (1) Council or the management committee respectively may, subject to sections 27(3)(b) and 29 of the Act, these Rules and the Pension Fund Rules, terminate a staff member’s contract of employment -

- (a) on account of continued ill health;
- (b) on account of unfitness for his or her duties or incapacity to carry out his or her duties efficiently;
- (c) owing to the abolition of his or her post or any reduction in or re-organisation or re-arrangement of departments or posts on the fixed establishment;
- (d) on account of misconduct;
- (e) on account of a staff member reaching the retirement age set out in the Pension Fund Rules;
- (f) on account of the expiry of the term of office or the expiry of a term of employment contained in an employment contract; or
- (g) in the case of a staff member appointed on probation if his or her services are unsatisfactory, or in the case of a staff member appointed temporarily, for any fair reason considered reasonable by Council.

(2) Section 29(4) of the Act shall apply in respect of -

- (a) the Chief Executive Officer who absents himself or herself from his or her duties without the permission of the management committee after such absence has continued for a period of seven days; or
- (b) any other staff member who absents himself or herself from his or her duties without the permission of the Chief Executive Officer after such absence has continued for a period of seven days.

(3) When Council, the management committee or the Chief Executive Officer, if the power to do so has been delegated to him or her by the management committee, intends to take action against any staff member or discharge a staff member or terminate a contract of employment of a staff member -

- (a) on account of misconduct;
- (b) on account of unfitness or incapacity to carry out his or her duties efficiently,
- (c) on account of continued ill health,

that action shall be done in accordance with the Act, these Rules and the Pension Fund Rules.

(4) When Council, the management committee or the Chief Executive Officer, if the power to do so is delegated to him or her by the management committee intends to terminate a contract of employment, the provisions of section 30 of the Labour Act shall apply.

(5) The provisions of subrule (4) shall not apply to a staff member whose services are terminated on account of misconduct and any disciplinary action against a staff member shall be done in accordance with the Act and these Rules.

(6) The services of a staff member appointed temporarily may upon the staff member having been given notice in terms of subrule (4) be terminated at the expiry of the term of appointment.

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

Substitution of rule 22 of Rules

4. The Rules are amended by the substitution for rule 22 of the following rule:

"Suspension or special leave pending suspension

22. (1) A staff member may at any time before or after he or she has been charged under section 29(6)(a) of the Act be suspended from duty, with or without basic salary, on such conditions as may be considered reasonable by -

- (a) Council, with the prior written approval of the Minister, in respect of the Chief Executive Officer;
- (b) the Strategic Executive or his or her delegate, in respect of staff members within the department of that Strategic Executive; or
- (c) the Chief Executive Officer, in respect of a Strategic Executive or a staff member reporting directly to the Chief Executive Officer.

(2) Council, the Chief Executive Officer or Strategic Executive may, before suspending a staff member under section 29(6)(b) of the Act and this rule, place that staff member on special leave with full remuneration with immediate effect pending -

- (a) in respect of the Chief Executive Officer, the receipt of the ministerial approval under section 29(6)(b) of the Act and any presentations made by the Chief Executive Officer as to why he or she should not be suspended; or
- (b) in respect of other staff members, the outcome of representations to be made under subrule (4).

(3) A suspension under subrule (1) or special leave under subrule (2) may be considered if Council, the Chief Executive Officer or Strategic Executive acting under subrule (1) or (2) has in good faith reason to believe that a staff member -

- (a) is being investigated for serious misconduct, which may lead to his or her dismissal or for misconduct that is of such a serious or repetitive nature that a verbal or written warning would not suffice;

- (b) may interfere with or destroy or tamper with evidence which may be used against him or her in a disciplinary inquiry or court proceedings;
 - (c) may interfere with, intimidate or influence any prospective witness in disciplinary or other legal proceedings;
 - (d) may cause labour unrest or may cause a deterioration of labour relations with other staff members; or
 - (e) acts or may act in any manner that may cause loss, damage or harm to another staff member or to Council's property or interests.
- (4) A staff member -
- (a) shall be informed of the reasons for being put on suspension with or without basic salary under subrule (1) or on special leave under subrule (2);
 - (b) may within three days, or within such extended period as may be allowed by the Council, the Chief Executive Officer or the Strategic Executive, of being informed of the intention to be suspended under subrule (1) be afforded an opportunity to in person or in writing state his or her case against being suspended with or without basic salary to Council, the management committee or the Chief Executive Officer acting under subrule (1) before the staff member is suspended with or without basic salary, and
 - (c) who does not submit representations under paragraph (b) within the three day period allowed or who fails to appear at a meeting scheduled for the representations in person or who without reason delays such attendance shall be deemed to have waived his or her right to make the representations and Council, management committee or the Chief Executive Officer or may proceed in terms of subrule (1) or subrule (2).
- (5) The representations referred to in subrule (4) are not a preliminary investigation or inquiry into the alleged misconduct and the staff member may be assisted internally by a fellow staff member or a workplace union representative but external representation by a legal practitioner or a labour practitioner is not allowed.
- (6) The period of suspension shall -
- (a) commence in the case of the Chief Executive Officer, on receipt of the written approval of the suspension by the Minister and the Council acts in accordance with subrule (1);
 - (b) commence in the case of other staff members, when the Strategic Executive or the Chief Executive Officer decides to act in accordance with subrule (1) in response to the representations made under subrule (4);
 - (c) supersede any special leave implemented under subrule (2) which special leave shall lapse upon commencement of a suspension letter issued under paragraphs (a) or (b) and the period of the special leave shall not be included in the calculation of the days of suspension; and
 - (d) last for the entire duration of the misconduct inquiry until the recommendations made by the inquiry committee are accepted or until the finalisation of any appeals against the finding or action as recommended but the period of suspension of basic salary shall not exceed 180 days from date of commencement of the suspension.

(7) Any staff member who is suspended under these Rules for alleged serious misconduct shall not be entitled to a basic salary for the period during which he or she is on suspension except where Council, the Chief Executive Officer or Strategic Executive acting under subrule (1) based on written representations made to it or him or her by the staff member under subrule (4) decides otherwise.

(8) For purposes of subrule (7), Council, the Strategic Executive or the Chief Executive Officer acting under subrule (1) must take into consideration whether there are any damages suffered by the Council as a result of the misconduct.

(9) A staff member who has been suspended under these Rules -

- (a) is entitled to have a disciplinary inquiry into his or her conduct held and finalised within a period not exceeding 180 days from the date of service of the charge sheet on the accused staff member but the delay may be condoned by the inquiry committee established under section 29(6)(d) of the Act or the person appointed under that section upon submission of reasons why such inquiry did not commence within the 180 days;
- (b) may, where the delay in commencing with the inquiry as contemplated in paragraph (a) is occasioned by Council or its staff members be permitted to resume his or her duties and may have his or her remuneration reinstated; and
- (c) is entitled to have all charges dropped should the Council not institute the disciplinary inquiry within the 180-day period contemplated under subparagraph (a) but if the staff member causes the delay the Council may continue beyond the 180 days.

(10) A staff member shall be paid his or her full remuneration for the period during which the staff member was on suspension if he or she is acquitted of all charges which gave rise to the suspension for misconduct in accordance with these Rules.

(11) If the delay in conducting an inquiry as contemplated in subrule (9)(a) is occasioned by the staff member or his or her representative -

- (a) the staff member shall carry the cost incurred by Council as a result of such delay, and
- (b) the calculation of the 180 days shall be done as contemplated in subrule 9(a).

(12) If a staff member who is suspended is found guilty on a charge of serious misconduct and the Council, management committee or Chief Executive Officer, where the power to do so has been delegated to him or her by the management committee, decides to terminate that staff member's contract of employment the termination shall be effective -

- (a) where a staff member was suspended without basic salary, from the date of suspension, or
- (b) where a staff member was suspension with basic salary, or not suspended at all, from the date of confirmation of a finding of guilty by Council, the management committee or the Chief Executive Officer.

(13) The suspension of a staff member may at any time be cancelled by Council, the management committee or the Chief Executive Officer but the proceedings in connection with the charge of misconduct may be continued notwithstanding the cancellation of the suspension.

Amendment of rule 34 of Rules

5. Rule 34 of the Rules is amended by the addition after subrule (6) of the following subrule:

“(7) Council, the management committee or the Chief Executive Officer acting under section 29(6)(b) of the Act and these Rules may require that a staff member be put on special leave not exceeding 30 days under rule 22 with full remuneration -

- (a) pending the receipt of the ministerial approval under section 29(6)(b) of the Act, or
- (b) pending the outcome of representations to be made under rule 22(4),

and the special leave shall lapse once the ministerial approval, in the case of the Chief Executive Officer has been received or has been denied or the outcome of the representations under rule 22(4) is known.

Amendment of rule 40 of Rules

6. Rule 40 of the Rules is amended by the substitution for the introductory sentence of the following introductory sentence:

“40. `Rules 38 and 39 shall not apply - ”.

Substitution of rule 52 of Rules

7. The Rules are amended by the substitution for rule 52 for the following rule:

“Misconduct

52. (1) A staff member who contravenes these rules commits misconduct and shall be charged with misconduct in accordance with the Act and these rules.

(2) If the management committee, in respect of a staff member other than a strategic executive or the Chief Executive Officer, has reason to believe that a staff member in its service -

- (a) is incapacitated or unfit for his or her duties due to continued ill-health or injury, the management committee may appoint persons to inquire into the reasons of such incapacity in terms of the policy contained in Annexure 3, or
- (b) is incapacitated or unfit for his or her duties due to continuing poor work performance, the management committee may inquire into the reasons of such incapacity, unfitness or incompetence in terms of the policy contained in Annexure 2.

Amendment of Rules by addition of rule 55

7. The Rules are amended by the addition after rule 54 of the following rule:

“Service of documents

55. The service of any documents for the purposes of these Rules shall be done in accordance with section 93 of the Act.”.

ANNEXURE 1

DEFINITIONS

In this Policy, the definitions of the Local Authorities Act, 1992 (Act No 23 of 1992) as amended read with the definitions of the Personnel Rules (Conditions of Service) published under General Notice No. 277 of 21 August 2012 apply and unless the context otherwise indicates, the following terms and definitions have the following meaning –

Term	Definition
Accused Staff Member	Any staff member who is alleged to have committed misconduct or contravened any rule in terms of these Rules.
Aggrieved Staff Member	A staff member who is dissatisfied and registered his/her grievance through formal grievance procedures.
Appointees or delegatee	A staff member – (a) appointed to act in the stead of the Chief Executive Officer under section 27(4) of the Local Authorities Act, or (b) to whom the Chief Executive Officer has delegated a function or power under section 27(5) of the Local Authorities Act, or (c) a staff member to whom the Council or Management Committee has delegated a function under sections 31 of the of the Local Authorities Act and who is authorized by the Local Authorities Act or by the Personnel Rules (Conditions of Services), or this Policy to take disciplinary action or attend to a grievance submitted under these Rules and designated or authorised staff member has a similar meaning.
Chief Executive Officer	The Chief Executive Officer of Council or his or her appointee or delegate.
Concerned Strategic Executive	Any Head of the Department designated under section 28(3) of Local Authority Act, 1992 (Act No. 23 of 1992) to administer a Department to which the Accused staff member is attached as per the Council's fixed establishment and includes the CEO deemed to be a SE in respect of a staff member (not being at SE), reporting directly to the CEO.
Conditions of Service	The Municipal Council of Windhoek: Personnel Rules: Local Authorities Act, 1992 as approved by the Minister of Regional and Local Government in accordance with section 27(1)(i) and (ii)(bb) of the Local Authorities Act, 1992 (Act No. 23 of 1992).
Corrective Disciplinary Measures	Possible sanctions to be meted for misconduct/offences classified as intermediate to serious misconduct as per Schedule 1 of these Rules.
Corrective Disciplinary /Informal Inquiry	Corrective Misconduct Inquiry for alleged minor misconduct/offences committed for the first time under classification of intermediate to serious misconducts as per Schedule 1 of these Rules.

Corrective Disciplinary/Informal Inquiry Attendees	<p>(a) Where corrective measures are to be taken against a staff member under Rule 10(1) for minor misconduct, it entails one-on-one meeting, with the direct supervisor of a staff member accused of such minor misconduct which may warrant a verbal warning only.</p> <p>(b) Where corrective measures are to be taken against a staff member under Rule 10(2) for minor misconduct, it entails a meeting that may take place in the presence of the line Manager who would preside over the Inquiry, a representative of HCCS and if so, elected by the staff member, by a co-staff member, or his or her Union Workplace Representative.</p>
Council	The Municipal Council of Windhoek or its Management Committee or any staff member authorized or delegated to act on its behalf under section 31 of the Local Authorities Act.
Day	<p>“day” means an ordinary working day as applicable to the staff member in terms of his/her contract of employment and means -</p> <p>(a) five consecutive working days, if the staff member works a five-day week;</p> <p>(b) six consecutive working days, if the staff member works a six-day week; or</p> <p>(c) the number of agreed consecutive working days, if the staff member works less than five days a week.</p>
Formal Disciplinary Inquiry	A formal inquiry, in the format of an inquiry held in line with the provisions of section 29(6) of the Local Authorities Act, to inquire into allegations for misconduct/offences classified as very serious and or repeated offences as per Schedule 1 of these Rules.
Formal Disciplinary Inquiry Committee	Consists of such person/persons appointed or designated under section 29(6)(d) of the Act read with Rule 7 to officiate over a formal disciplinary held under section 29(6) of the Act read with Rule 9 of these Rules.
Formal Disciplinary Measures	Possible measures to be considered and meted out for misconduct/offence classified as very serious and or repeated offences as per Schedule 1 of these Rules.
Initiator	Either the Line Manager or Supervisor or any appointee or delegatee who will be responsible to present Council’s case against the staff member who stands accused during the formal DI or corrective inquiry and in respect of the Accused CEO or SE may be a legal practitioner appointed by the Council or its delegatee.
Investigator	The appointee or delegatee designated to investigate the allegation of misconduct or grievance and to collect the evidence relating to the matter at hand and in respect of the Accused CEO or SE may be a legal practitioner appointed by the Council or its delegatee.
Labour Act	The Labour Act, 2007 (Act No. 11 of 2007) as amended from time to time.
Labour Relations Rules	This Labour Relations Rules promulgated as part of the Council’s Conditions of Service as Personnel Rules under section 27(1)(c)(ii) of the Local Authorities Act and “Industrial Relations Policy” or “Disciplinary Code” or “Grievance Code” has a similar meaning.

Line Manager	Includes staff member from the first level of supervision upward for the purposes of maintaining discipline.
Local Authority	Means the Local Authority Council as defined in section 1 of the Local Authorities Act read with sections 3 and 6(3) of the Local Authorities Act as amended.
Local Authorities Act	The Local Authorities Act, 1992 (Act No. 23 of 1992) as amended from time to time.
Management Committee	Means the Management Committee of the Municipal Council of City of Windhoek.
Minister	Means the Minister responsible for Local Government.
Staff Member	A staff member as defined in section 1 of the Local Authorities Act, 1992 (Act No. 23 of 1992) as amended and Personnel Rules (Conditions of Service).
Strategic Executive	A staff member designated in terms of section 28(2) of the Local Authorities Act, 1992 (Act No. 23 of 1992) as amended, as head of a department established in terms of section 28(1) of the Act, or a person duly authorized to be the Strategic Executive's delegatee or acting in that capacity.
Supervisor	Means: <ul style="list-style-type: none"> (a) in respect of the Chief Executive Officer, the Chairperson of Council and in respect of leave of absence the Chairperson of Council in consultation with the Chairperson of MC; (b) in respect of a Strategic Executive shall be the Chief Executive Officer including staff directly reporting to the Chief Executive Officer; and (c) in respect of other staff members, the first level of supervision and the supervisor.
Trade Union	Means an association or organization of staff members that is registered as a trade union in terms of the applicable Labour Act, whose principal purpose is to regulate relations between staff members and their employer; and to whom an Employee belongs to or may belong to as a member.
Workplace Union Representative	A staff member elected to represent a registered Trade Union in the workplace as a Workplace union representative under section 67 of the Labour Act and trade union representative has the same meaning.

Abbreviations

Abbreviation	Full Name
CEO	Chief Executive Officer
COS	Conditions of Service (Municipal Council of Windhoek: Personnel Rules: Local Authorities Act, 1992)
CMI	Corrective Misconduct Inquiry
DI	Disciplinary Inquiry
DIC	Disciplinary Inquiry Committee
HC	Human Capital
MC	Management Committee
SE	Strategic Executive

PERSONNEL RULES IN RESPECT OF LABOUR RELATIONS AND POLICY GUIDELINES

INTRODUCTION

Council is committed to enhance the quality of life for its residents through its dedicated staff members thereby ensuring efficient and effective delivery of Municipal services. Council believes in optimizing its customer satisfaction in a manner consistent with its values, policies and procedures and the attainment of this goal can only be achieved through the creation of a conducive employment environment to the benefit of its staff members and customers in general.

Council furthermore recognizes the multi-dimensional complexity of employment relationships which exist and arise from the employment situation. It further recognizes both the inherent nature of the conflicts that may arise out of its contractual relationship with its staff members and the responsibilities that both parties to the contract of employment have in the regulation of any conflict. In this regard Council's objective is to develop and maintain a labour relations system and procedures to regulate the relationship between itself and its staff members in an attempt to promote the development of the individual and the overall success of the organization.

In an endeavour to realise the above-mentioned objectives, the following fundamental principles have been adopted:

- (a) The staff members' right to information, consultation and negotiation on all the matters directly affecting staff members' conditions of employment and their responsibilities and obligations to Council.
- (b) The obligation on the staff members or Workplace Union Representatives and Council to maintain confidentiality. It is within this constraint of business confidentiality that Council seeks the exchange of ideas, information and feelings on matters of mutual concern between itself and all staff members at all levels.
- (c) The obligation on both the Employer and staff members to address and finalise alleged misconduct or a grievance in the workplace as soon as possible.

OBJECTIVES

The objectives of these Rules/Policy are:

- (a) To create a climate of mutual trust between Council, Management and staff members within which Labour Relations issues may be effectively managed.
- (b) To provide management with assistance in determining the severity or otherwise of specific offences and simultaneously, to provide staff members with a clear guideline of what Council's expectations are with regard to conduct at work.
- (c) To provide a coherent view of the nature and meaning of a well-developed labour relations system and procedures.
- (d) To implement and achieve consistency and uniformity in the application of labour relations standards and thereby reducing uncertainty and confusion regarding labour relations decisions.
- (e) To ensure a positive, orderly and acceptable behavior and mutual respect by all staff members by maintaining desirable standards of behavior or attitude for promotion of customer service, productivity, efficiency, and protection of assets of the Council.

- (f) To ensure that all labour related matters are handled soonest in full compliance with the Namibian Labour Act and in accordance with good labour practice in general.
- (g) To inform and educate staff members at all levels about labour relations aspects and functions.
- (h) To ensure the progression of healthy, equitable labour relations and the prevention of labour instability and unrest as well as the establishment of guidelines for the proper management of labour unrest where it unavoidably arises.

APPLICABILITY AND SCOPE

The Labour Relations Rules/Policy is to be regarded as an integral part of the terms and conditions of employment of all staff members as contained in its Personnel Rules and shall be equally applicable to all staff members. Furthermore, it should be regarded as a guideline and its interpretation must be adequately flexible to adjust to the various circumstances, facts and merits of each case, but maintaining equality within the employment environment.

APPLICABLE LEGISLATIONS

- (a) Labour Act, 2007 (Act No. 11 of 2007) as amended from time to time;
- (b) Local Authorities Act, 1992 (Act No. 23 of 1992) as amended from time to time;
- (c) Municipal Council of Windhoek: Personnel Rules: Promulgated under section 27(1)(c) of the Local Authorities Act, 1992 (Conditions of Services);
- (d) Staffing Policy of the Windhoek Municipal Council and the Recruitment Regulations contained in Government Notice 131 of 2019; and
- (e) Any other applicable legislations, Rules and or policy.

LABOUR RELATIONS SYSTEMS

A well founded and appropriate labour relations system must be supported by the following components:

5.1 Communication and Trust

- Documented induction and exit procedures;
- Briefing groups/sessions;
- Circulars and in-house publications;
- Formal and informal contact between staff members and line management;
- Working climate monitoring; and
- Trust relationship between both the Council and its staff members.

5.2 Consultation

Council holds the view that it should consult staff members and or the Trade Union representing the staff members on matters which significantly affect staff members' interests, and which contribute to a more effective operation and management of the Council's affairs.

5.3 Trade Unionism

- (i) **Freedom of association**

Council recognizes the fundamental right of staff members to associate themselves with a Trade Union of their choice, and also the right not to so associate.

(ii) **Collective bargaining**

Council will follow the guidelines as set out in the Labour Act, 11 of 2007. The terms and scope of any Recognition Agreement will be embodied in formal agreements concluded between Council and the recognized Trade Union(s) concerned from time to time.

5.4 Grievance Procedures

A discontented staff member must orally register his/her dissatisfaction to the Supervisor. Should the staff member still not be satisfied with the feedback by his/her Supervisor, the grievance must be submitted to the next level in writing by the aggrieved staff member.

5.5 Discipline

Discipline is an effort applied the soonest as possible by the Council and management, when other forms of correction and motivation have been tried and proven to be unsuccessful, in order to direct and correct a staff member's behavior towards acceptable conduct within the Council's Rules, to prevent the spread and recurrence of misconduct, infringements and serious malpractices which are contrary to the interest of the Council, its residents and its staff members.

(a) Staff member's conduct

- (i) Every staff member is expected to execute his or her duties and assignments diligently and with dedication and to behave in a seemingly and proper manner towards the Council, fellow staff members and Council's customers and residents.
- (ii) The contract of employment between Council and the staff member, the respect and adherence to all relevant laws and the relationship of trust between Council and the staff member form the basis and foundation of the relationship between Council and any staff member.
- (iii) It is noted that any conduct that contravenes the contract of employment may disturb or destroy the relationship between the Council and that staff member, which may result in disciplinary action being initiated against any staff member who contravenes the contract of employment, Council's Policies, Rules and Regulations, Guidelines laid down by Council or who commits criminal or other offences.

(b) Application and Responsibility

- (i) The maintenance and enforcement of discipline is primarily the sole responsibility of all Supervisors and Line Managers to be addressed in the shortest possible time once detected or reported on.
- (ii) The department responsible for HC and the division of Legal Services serve Line Management/Supervisor in advisory capacities at stages of disciplinary related matters or in general labour relations.

- (iii) The application of disciplinary action shall be administered through Supervisors and Line Management and shall include a clear explanation as to why the disciplinary action is necessary and desirable under the circumstances.
- (iv) Failure to apply the disciplinary procedures where valid grounds exist, in the shortest possible time once detected or reported on, shall result in disciplinary action being taken against such Supervisor or Line Manager.

PROGRESSIVE APPLICATION OF CORRECTIVE MEASURES AND DISCIPLINARY PROCEDURES

Disciplinary measures are categorized into two forms, **Corrective Disciplinary and Formal Disciplinary Measures**.

(a) Corrective Disciplinary Measures

- With the exception of a Verbal warning, although no formal disciplinary inquiry needs necessarily to be conducted prior to issuance of a Written Warning, at least a corrective inquiry must be held and a notice to attend same must be issued to provide the accused staff member the opportunity to state his or her case before a Written Warning is given to the Accused staff member.
- Both parties must be afforded an opportunity to present their case(s) and or respond to the allegations.
- At the inquiry, the Accused staff member may be represented by a fellow staff member or Union representative; and call any witnesses if applicable into the alleged misconduct.
- Representation by a legal practitioner, labour consultant or outside third party will not be allowed, as the process has as an objective to correct misconduct behaviour.

(b) Formal Disciplinary Measures

- A formal disciplinary inquiry must be preceded by a detailed investigation and should be conducted in terms of Clause 9 as stated in these Labour Relations Rules.
- Disciplinary measures must be implemented fairly, consistently and within a reasonable time.

COMPOSITION OF THE DISCIPLINARY INQUIRY COMMITTEE

7.1 For purposes of this Clause 7 and section 29(6)(d) of the Act, the Management Committee approved and delegated, with approval of Council under section 31(3) read with sections 29(2) and 27(5) of the Act that the composition of members of the Inquiry Committee will be as follows:

- (a) The members of a **Disciplinary Inquiry Committee for a staff member** (including a staff member who is not a SE but directly reporting to the CEO) shall consist of a minimum of three (3) members being:
 - (i) The concerned SE or his or her appointee (preferably from a different Department) who shall be the Chairperson;

- (ii) A person or persons having knowledge and experience in Labour Law or HC representative;
 - (iii) Where necessary and depending on the complexity of the case a Legal Practitioner enrolled under the Legal Practitioners Act, 1995 (Act No. 15 of 1995) as amended, or
 - (iv) Any other staff member as appointed by the Strategic Executive concerned preferably from a different Department and who should not have or be perceived to have any interest in the matter or a conflict of interest.
- (b) The members of a **Disciplinary Inquiry Committee for the SE and the CEO** shall consist of three (3) persons being either:
- (i) A person or persons having knowledge and experience in Labour law, or
 - (ii) a Legal Practitioner enrolled under Legal Practitioners Act, 1995 (Act No. 15 of 1995) as amended, as a Chairperson;¹ and
 - (iii) Two (2) other persons who are not in the employment of Council as appointed by Management Committee who are considered in the circumstances to have skill or knowledge in the field in which the SE or CEO is charged with misconduct.²

A staff member of HC or in respect of a SE or CEO a person procured for that purpose must be availed to the DIC to act take or record the Minutes of the proceedings, but such a staff member or person will not be part of the DIC or be allowed to participate in the discussions or proceedings itself and may not have or be perceived to have any interest in the matter or a conflict of interest.

POWERS OF THE DISCIPLINARY INQUIRY COMMITTEE

8.1 The DIC after finding a staff member guilty of misconduct as charged may, after affording the staff member concerned an opportunity to make representations in relation to any intended action to be taken against him or her, recommend the following to the relevant CEO or Council:

- (a) That no further action be taken in the matter;
- (b) That the staff member be cautioned or reprimanded;
- (c) That the staff member be transferred to another post³;
- (d) That the staff member's remuneration or grade or both his or her remuneration and grade be reduced to one grade and remuneration lower;
- (e) That any loss or damage occasioned by the misconduct be deducted, either as a single amount or installments, from his or her salary which recommendation, if accepted, either as recommended or as may have been amended by the CEO, shall be deemed to be an order of court; or

¹ Procured under the Public Procurement Act 2015 (Act Nr 15 of 2015) which could be appointed from a panel of service providers as approved by MC or CEO as delegated. Should be read with section 29(7) of the Act. See definition of local authority.

² See footnote 1: Ditto

³ Subject to the provisions of Clause 10.3.6

- (f) That the staff member be discharged or called upon to resign from the service of Council from a date to be fixed by Council.

8.2 During the proceedings of any inquiry, the DIC may, notwithstanding the provisions of these Rules:

- (a) Address and determine any interlocutory matters, which the Initiator or accused staff member or his/her representative may raise, in writing, at least three days from serving of the charge sheet and be replicated on by the other party within two days from receipt and be submitted to Human Capital prior to the commencement of the inquiry: Provided that all interlocutory matter must be raised and determined prior the commencement of the inquiry and new interlocutory issues (except objections in law or the recusal of a member or members of the inquiry committee) may only be raised with approval of the inquiry committee.
- (b) if in its opinion, good reasons exist condone the non-compliance with the provisions of Clause 9(1)(h) and 9(3)(a)⁴ herein below and Clause 22(8)(a) under Rule 22 of the amendments to the Personnel Rules: Local Authorities Act, 1992.
- (c) order, on application, the rectification of a defective charge sheet, but when the DIC makes such an order the Accused staff member must be given reasonable time, which may not be less than **seven (7) working days**, (unless the accused staff member elects to waive the days to a shorter period), to answer to the corrected charges.

FORMAL DISCIPLINARY INQUIRY

9.1 Investigation

- (a) When it is alleged that misconduct or an offence has been committed, the concerned SE or another staff member designated by the SE (Supervisor or Line Manager) or CEO or his/her delegate for that purpose, must swiftly investigate the matter and prepare the incident report of the alleged misconduct. If further information is required, the SE or another staff member as designated by the SE (Supervisor or Line Manager) or CEO or his/her delegate for that purpose may conduct interviews with possible witnesses, take statements and collect documentary and other evidence to be presented at the disciplinary inquiry. In respect of an Accused CEO or SE, the Council should appoint an external legal practitioner to act as Initiator and/or Investigator.
- (b) The Council may for purposes of an investigation into alleged misconduct of a staff member, which contain elements of a criminal nature and which was or is being investigated by either the Namibian Police or Anti- Corruption Commission, make use and present to the DIC such evidence, affidavits, witnesses, documents or other exhibits prepared in respect of such criminal investigation, by a member of the Namibia Police or an inspector of the Anti-Corruption Commission, if prior approval for such joint action was obtained from the Inspector General of the Namibia Police or the Commissioner of the Anti-Corruption Commission or his or her delegate.
- (c) When possible, should there be witnesses who are non-Council staff members, formal statements should also be obtained from them as they may be invited to attend the DI.

⁴ See Formal Disciplinary Inquiry - Investigations (Page 6 of this document)

- (d) The Accused staff member may also be approached and if she/he wishes to be afforded an opportunity to shed light on the allegations made against him/her. She/he is also entitled to have access to all the statements and documents that will be used in the inquiry as preparation for his/her case.
- (e) The Accused staff member may be suspended, with or without salary, in accordance with the Council's Conditions of Services and section 29(6)(b) of the Act, where such suspension is found necessary. Suspension of the CEO or SE may be considered and effected by Council, but for the CEO a suspension may only be effected with the prior written approval of the Minister. For any other staff member, suspension shall be imposed by the concerned SE unless good grounds exist why the concerned SE cannot effect such, then the CEO effect the suspension.
- (f) After gathering all the facts, the SE or another staff member designated by the SE (Supervisor or Line Manager) or CEO or his/her delegate for that purpose may prepare a draft of the charge(s) and submit same together with all relevant reports to the department responsible for HC or Legal Services for verification and advice. In respect of a CEO or SE, the external Initiator prepare the charge sheet and clarify same with the Chairperson of Council for finalisation.
- (g) After verification, the department responsible for HC or division of Legal Services shall return the verified charges back to the concerned drafter of the charge(s) with any comments or advice, as the case may be.
- (h) The SE or another staff member designated by the SE (Supervisor or Line Manager) or CEO or his/her delegate for that purpose has to serve the charge(s) on the Accused staff member as soon as possible, but by not later than **thirty (30) days** from the date the SE or another staff member designated by the SE (Supervisor or Line Manager) or CEO for that purpose detects the commission of the alleged misconduct or within which the investigation into the conduct is completed. In respect of a CEO or SE, the external Initiator must similarly serve the charges, as signed by the Chairperson acting on behalf of Council, on the Accused CEO or Accused SE by not later than **thirty (30) days** from the date the Council has resolved that an Accused CEO or SE should be charged with alleged misconduct.
- (i) The staff member shall send or deliver his/her statement in which he/she admits, denies or explains the alleged misconduct to the SE concerned or the designated staff member/ appropriate person who has charged him/her within **seven (7) days**.
- (j) If the Accused staff member pleads "**GUILTY**" to the charges against him/her, the designated staff member or in respect of an accused CEO or SE, the Initiator, shall refer the matter to the DIC and after the "**GUILTY**" plea has been confirmed by the DIC, the latter shall hear the mitigating and aggravating circumstances to consider an appropriate action.
- (k) If the Accused staff member pleads "**NOT GUILTY**" or explains the alleged misconduct, and the explanation amounts to a denial, or the staff member fails to comply with the direction made in paragraph (h) herein above, the SE or the designated staff member/appropriate person who charged him/her, shall refer the matter to the DIC to conduct a full inquiry.
- (l) If the Initiator or Accused staff member or his/her representative wishes to raise any interlocutory issues, such interlocutory issues must, once off, at least three days from receipt of the charge sheet and before the commencement of the inquiry be raised and be submitted to the Human Capital Department for submission to the Inquiry

Committee and for replication thereon by the other Party within two days of receipt and be submitted by Human Capital Department to the Chairperson and members of the Inquiry Committee at least three days before the commencement of the Inquiry.

9.2 Notice to attend a Disciplinary Inquiry

- (a) The notice can only be served to the Accused staff member after the investigation has been completed and the proper charges have been formulated and served.
- (b) The Accused staff member may be served with the written notice to attend a disciplinary inquiry at least **five (5) days** in advance.
- (c) The notice must summarise the misconduct and must provide details as to when and where the alleged misconduct took place. It must also indicate the date, time and the venue of the DI (**See Annexure A**).
- (d) The notice must further set out the staff member's rights and obligations in terms of the Disciplinary Inquiry such as:
 - The right to attend the inquiry, to be assisted or represented by **any other person**, to give evidence and, either personally or through a representative,
 - The right to present his/her case,
 - The right to defend himself/herself against the allegations through submission of evidence,
 - The right to controvert evidence produce against him/her,
 - The right to cross-examine witnesses,
 - The right to call witnesses in his/her defense,
 - The right of access to documents produced in evidence or in connection with the alleged misconduct,
 - The right of production of mitigation should he/she be found guilty on the allegations,
 - The right to representation on the intended action or sanction,
 - The right to appeal.
- (e) The notice and content thereof must be properly explained to the Accused staff member by the Supervisor or appropriate person and the Accused staff member should sign for receipt and a copy of the said notice should be provided to the department responsible for HC for record keeping. Should the Accused staff member refuse to sign for receipt or for whatever reason be unable to sign, such refusal or inability must be recorded as such.

9.3 Conducting of the Disciplinary Inquiry

- (a) The Disciplinary Inquiry must commence within a reasonable period, which commencement period shall not exceed **one hundred and twenty (120) days** after the charges have been served on the Accused staff member. In the event where the disciplinary inquiry cannot commence within the prescribed time period, reasons for delays should be tabled to enable the DIC to consider the reasons for such non-compliance and make a decision.
- (b) If the Accused staff member elects not to attend a DI, he/she should indicate as such in writing or upon failure to attend without a reason or failure to inform the reason for such absence, then the case will be heard in absentia and the outcome will be communicated to the Accused staff member in writing.

- (c) Once a Disciplinary Inquiry has commenced, it shall be concluded within a reasonable period and if it is clear to the Inquiry Committee that either the Council or Accused Staff Member or their respective representatives, delay the proceedings without reasonable cause or continued absence, then the chairperson of the DIC may issue a written warning to the party in default, that the Inquiry may be concluded at the next scheduled meeting, in his or her absence.

9.4 Procedure to be adopted at the Disciplinary Inquiry

- (a) In conducting the proceedings, the Chairperson may be guided as a guideline by the checklist attached to these Rules as “**Annexure B**”.
- (b) Upon conclusion of the evidence as produced by both the Initiator or Accused Staff Member or their respective representatives, both parties will be given the opportunity to present oral or written arguments to the DIC on the findings to be considered.
- (c) In event of a complicated matter or multiple witnesses, the DIC may request that the Minutes, first be availed to it for perusal, before the findings are to be considered.
- (d) Upon such conclusion of the arguments, or if Minutes were availed, the DIC, must make its findings known to both parties, which findings may be made known orally upon conclusion of the arguments or if Minutes has been requested be availed in writing within a reasonable time.
- (e) Upon the making available of the findings, the DIC shall, after affording the staff member concerned an opportunity to make representations in relation to any intended action to be taken against him or her, consider the appropriate actions to be recommended to the relevant CEO or Council iro a CEO or SE.
- (f) At the conclusion of the Inquiry the DIC shall inform the Accused Staff member charged of the finding and the action to be recommended to the relevant CEO or Council.

9.5 Appeal against DIC findings or recommended action (section 29(6)(g) of Local Authorities Act, 23 of 1992 as amended)

- (a) If the staff member charged has been found guilty by the DIC, he or she shall have the right to appeal against the recommended finding or action or both, within seven (7) days as from the date on which he or she is notified of the finding and the recommended action.
- (b) The appeal of an Accused Staff Member who is not a SE or CEO, shall be to the CEO or such appointee or delegatee having to decide on the intended finding and implementation of the recommended actions made by the DIC (delegated to CEO or delegatee under section 31 read with section 29(2) of the Local Authorities Act, 1992).
- (c) The appeal of an Accused Staff Member (who is not a SE, but reporting directly to the CEO), against the finding or recommended action of the DIC, shall be to the Management Committee, in the event where the CEO charged such staff member with misconduct.⁵
- (d) The appeal of an Accused SE and accused CEO against the finding or recommended action of the DIC shall be made to the Council.

⁵ Principle is that the CEO will have prior knowledge and access to information of the misconduct, hence CEO should not consider such appeals. The same should apply to delegatees

- (e) The notice of appeal mentioned in (c) herein above shall:
 - (i) be delivered to the department responsible for HC and
 - (ii) be in the prescribed form “**Annexure C1**” attached to these Rules.
- (f) In event of an appeal under sub-paragraphs (a) to (e) the Initiator may in writing:
 - (i) replicate and respond to an appeal as submitted, or
 - (ii) similarly submit representations to the CEO or MC or Council, respectively, based on reasonable grounds –
 - (aa) that the DIC erred on a point of law, or
 - (bb) that there is a defect in the inquiry proceedings based on alleged corruption by the DIC or a member thereof or on intimidation or victimisation against a member or members of the DIC,
 - (cc) that the DIC or a member of the DIC-
 - a. committed misconduct in relation to the duties as a member of the DIC,
 - b. committed a gross irregularity in the conduct of the inquiry proceedings; or
 - c. exceeded the powers as vested in the DIC in respect of fair labour procedures; or
 - d. had been improperly influenced by a third party to carry a view or making a finding or recommendation
 - (iii) that the finding or recommendations of the DIC have been improperly obtained.

9.6 **Recommendations of the DIC to the CEO or staff member who is not a SE or CEO**

The Chief Executive Officer:

- (a) After having regard to the documents relating to the finding or intended action as recommended by the DIC and any appeal lodged against same, may take such action as it may deem to be fair and equitable, with due regard to such DIC’s recommendations.
- (b) May not later than **fourteen (14) days** through the department responsible for HC inform the staff member of its decision.
- (c) Shall where its decision amounts to a finding of guilty and confirmation of the intended action, inform the staff member of his or her right of appeal to Council in writing against such finding or action or against both such finding and action.

- (d) An accused staff member has the right to any documents used and considered by the CEO before confirmation of the findings and actions recommended by the DIC.

9.7 Appeals against decision of CEO to Council (section 29(6)(gA) of Local Authorities Act, 23 of 1992 as amended)

- (a) An accused staff member has the right to appeal against the decision of the CEO/MC to the Council within seven days from the date on which he or she is notified of the finding and the action contemplated in Rule 9.6 (c) above.
- (b) An Accused CEO or SE has the right to similarly appeal to the Council against the findings, recommended action or both made by the DIC.
- (c) An accused staff member has the right to any documents used and considered by the CEO before confirmation of the findings and actions recommended by the DIC.
- (d) The notice of appeal mentioned in (a) or (b) herein above shall:
 - (i) be delivered to the department responsible for HC and
 - (ii) be in the prescribed form “**Annexure C2**” attached to these Rules.
- (f) The Accused staff member, SE or CEO should state the grounds against which he/she is lodging the appeal and should give reasons in support thereof. The Accused staff member, SE or CEO may appeal on any or all of the following grounds and the grounds of appeal mentioned hereunder are not exhaustive:
 - (i) **Procedural unfairness**
 - (ii) **Substantive unfairness**
 - (iii) **Severity of the sanction or action taken**
 - (iv) **New Evidence (New evidence will however only be accepted if discovered after the inquiry was heard and was not presented during the inquiry).**
- (g) Appeals will be dealt with on the record and written representations only, and verbal representations, the calling of witnesses or cross examination thereof will not form part of such appeal.
- (h) An accused staff member, SE or CEO has the right to any documents used and considered by the Council in consideration of an appeal lodged.

9.8 Deemed Dismissal under section 29(4)(b) of Local Authorities Act, 23 of 1992 as amended

- (a) A staff member referred to in section 29(4)(a) of the Local Authorities Act, 1992 (Act No. 23 of 1992) as amended and who has been discharged or is deemed to have been discharged in terms of the said Act subsection, may:
 - (i) in respect of the CEO or SE apply to the Council, or
 - (ii) in respect of any other staff member apply to the concerned SE or his or her delegatee,

within **fourteen (14) days** calculated from the date when such discharge became effective, to be reinstated in his or her former position and present in such application the written justifiable reasons explaining his or her absence of a period of thirty (30) days without following the required procedures to obtain approval for absence as provided in the Conditions of Service.

- (b) If the SE or his or her delegatee:
 - (i) refuse the application for reinstatement, or
 - (ii) in consultation with HC, approves a reinstatement in any other post or position on such conditions as may be determined, or
 - (iii) Approve such reinstatement in his or her former position and determine that the period of absence be converted to unpaid vacation leave,

then such staff member may appeal such decision to the Council within **fourteen (14) days** calculated from the date when such decision was taken.

- (c) The notice of appeal mentioned in (b) herein above shall:
 - (i) be delivered to the department responsible for HC; and
 - (ii) be in the prescribed form “**Annexure C3**” attached to these Rules.

9.9 Other appeals in respect of Corrective Misconduct measures

- (a) Any staff member who against whom any corrective misconduct measures or action has been taken and/or any decision that involves an entry on his/her disciplinary record and which may affect his/her future employment prospects, apart from a verbal warning issued, may submit an appeal similar to the provisions of Rules 9.5 to 9.8 hereof with the necessary adaptations.
- (b) The appeal against any corrective misconduct measures or action issued as stated in (a) herein above may be submitted and heard by the next reporting line or the SE of the respective department (whichever is applicable).
- (c) The notice of appeal mentioned in (a) herein above shall:
 - (i) be delivered to the department responsible for HC; and
 - (ii) be in the prescribed form “**Annexure C4**” attached to these Rules.

DISCIPLINARY ACTIONS/ SANCTIONS/ MEASURES

In general, the disciplinary action must in the first instance be corrective; formal disciplinary action shall only be taken when corrective measures have proved ineffective or where the nature of the misconduct is of a serious nature and warrant stricter disciplinary measures.

As a guideline the progressive imposition of corrective measures ought to be as follows:

10.1 Verbal Warning

- (a) Any direct Supervisor may, at any time and in his or her discretion, reprimand or issue a Verbal Warning to a staff member if the staff member contravenes the Conditions of Service and when such misconduct is of relatively minor nature.

- (b) Where a staff member repeatedly commits minor misconduct or where counselling has failed to achieve the desired effect then he or she may be given a warning.
- (c) The Supervisor who issues the Verbal warning must make a note of when the warning was given and the nature of the verbal warning.
- (d) The emphasis on this type of action is to correct the behavior of the staff member through positive engagement with the direct Supervisor.
- (e) A Verbal warning is valid for **thirty (30) days** and its validity should be indicated in the form attached as “**Annexure D**” to these Rules.

10.2 Written Warnings

- (a) When a staff member is accused of committing misconduct that on the face of the allegation, merits a Written Warning other than a Verbal Warning, the issuance of that written warning should be preceded by a Corrective Misconduct Inquiry (also known as Informal Inquiry).
- (b) The Supervisor must investigate the alleged misconduct and after the investigation has been completed, reflect the alleged charges committed by the staff member by serving him/her with a “**Notice of Inquiry**” attached as “**Annexure E**” to these Rules within five (5) working days after the alleged misconduct has been committed and/or detected or the investigation has been completed.
- (c) If a Written warning is a more progressive disciplinary corrective inquiry than a verbal warning and may take place in the presence of the line Manager who would preside over the Inquiry, a representative of HC and if so, elected by the co-staff member, or his or her union workplace representative.
- (d) Both the Supervisor and the staff member concerned should be allowed to state their cases and be allowed to call witnesses, if necessary.
- (e) The staff member should be informed of his/her right to be represented by a fellow staff member or Workplace Representative if the staff member so wishes.
- (f) No outside legal representation or representation by a labour consultant or any external party is allowed at the corrective misconduct inquiry.
- (g) Written Warning may be given for repetition of minor or similar misconduct when previous verbal warning has not achieved the desired correction of staff member’s behavior, or it may be given for a first intermediate or serious misconduct, which does not warrant a verbal warning.
- (h) Should the staff member upon the conclusion of the corrective inquiry, refuse to sign the written warning, that fact will be noted on the Form and the warning should then be witnessed by a third party. Refusal by the staff member to sign does not affect its validity and does not amount to misconduct.
- (i) Except for the Verbal Warning, any staff member who is issued with the Written Warning is having the right to appeal to the next level should he/she not be satisfied with the outcome of a Corrective Misconduct Inquiry. The following are the **types of written warnings**:

10.2.1 Recorded Warning

A Recorded Warning may be given for repetition of minor misconduct when a previous warning has not achieved the desired correction of staff member's behaviors, or it may be given for a first intermediate offence, which does not warrant a verbal warning. A Recorded Warning will remain in force for a period of **three (3) months**.

10.2.2 Severe Warning

A Severe Warning is given for the repetition of the similar offence during a period when a recorded written warning is still in effect, or for a first offence of a more serious nature. A Severe Warning will remain in force for a period of **six (6) months**.

10.3 Formal Disciplinary Inquiry Measures

10.3.1 Final Warning

Before issuing a Final Warning, a formal disciplinary inquiry under Rule 9 must be conducted where normal procedures in terms of reporting the alleged misconduct must be followed. A Final Warning is given for repetition of the same offence during a period when a Severe Warning is still in effect or depending on the nature thereof, for a first offence of a very serious nature. A Final Warning is effective for a period of **twelve (12) months**.

10.3.2 Comprehensive Final Warning

A Comprehensive final warning is given in the case of a staff member being found guilty of an offence of a dissimilar nature within the time period when the final warning is still valid. The DIC established under Rule 9 may, recommend for the staff member to be issued with a **Comprehensive Final Warning** in that any offence committed within the next **twelve (12) months** will render him/her liable for dismissal.

10.3.3 Compensation or reimbursement of damages or loss caused

The DIC may under section 29(6)(f)(i) recommend that any loss or damage occasioned by the misconduct be deducted, either as a single amount or in installments, from a staff member's salary, which recommendation, if accepted, either as recommended or as may have been amended by the Management Committee or Council, shall be deemed to be an order of court.

10.3.4 Dismissal

Dismissal is a final sanction and should be used:

- (a) When other forms of disciplinary action have failed;
- (b) When a staff member on Final or Comprehensive Final Warning commits a similar or dissimilar offence;
- (c) When a dismissible offence has been committed as per schedule 1;
- (d) When the offence committed is of a serious nature; or
- (e) In the case of any staff member who is criminally convicted for a period longer than **three (3) months** or is awaiting trial in detention for an unspecified period, section 29 (4) of the Local Authority Act, 23 of 1992 as amended applies.

10.3.5 Demotion

Demotion means alteration of a staff member's existing contract and appointing him/her into a lower position with associated reduction in remuneration. Demotion is not an acceptable corrective action and therefore should not be used as a punishment for a specific offence.

It is used only when the staff member is unable to meet his/her present job requirements of his/her present job but is suitable for continued employment in a lower capacity.

10.3.6 Transfer

Transfer is not permitted as a tool for disciplining staff members. A transfer should only be effected in terms of the Staffing Policy read with Council's Conditions of Service. Transfer as a result of the outcome of a disciplinary action will be considered in special circumstances.

Suspension

- (a) Council or its delegatee may, at any time suspend, with or without salary, a staff member in accordance with Rule 22 of the Conditions of Services alleged serious or dismissible misconduct.
- (b) Suspension needs to be dealt with, in a procedurally and substantive fair manner as set out in Rule 22 of the Council's Conditions of Service.
- (c) A staff member who is to be suspended may be invited to personally or in writing make representation to Council or CEO or SE or their delegatee within three (3) days after being served with such notice before suspension is effected.
- (d) No legal representation is allowed at a pre-suspension meeting, but a staff member may be represented by a Workplace Representative or a fellow staff member.
- (e) A salary suspension should not exceed a period of 180 working days.
- (f) Suspension of the CEO and the SE should be effected by Council, with prior written approval of the Minister, in respect of the CEO.
- (g) A suspension notice and decision to effect such, if suspension found to be appropriate are attached as "**Annexure F and G**".

10.5 Previous sanctions

- (a) When recommending or imposing a sanction or action, as the case may be, regard may be had to previous sanctions or actions of which the period of validity had not expired.
- (b) Notwithstanding the expiry of the period of validity of previous sanctions or actions they may nevertheless be taken into account in recommending or imposing a sanction or action if the previous sanctions or actions constituted proof of repeated misconduct having similar elements.

Note: In case of dismissal, Final Written Warning and Comprehensive Final Written Warning is an alternative if mitigating factors advanced warrant that.

STAFF MEMBER WHO CANNOT READ AND WRITE AND OR NOT FLUENT IN OFFICIAL LANGUAGE

Where a staff member is charged with misconduct of contravening the Rules as contemplated in these Rules the staff member may, if he/she is not able to comprehend the charges, request his or her Workplace Union Representatives, or a Human Capital Officer to explain the charges in the language he/she understands and assist him or her in complying with the procedure laid down in these Rules.

RECORD OF THE PROCEEDINGS

- (a) Disciplinary proceedings shall be recorded manually or electronically (not necessarily verbatim) but shall be a true reflection of the proceedings. A copy of the record of proceedings will be made available to the Accused staff member upon request.
- (b) For purposes of equity, consistency, fairness and labour relations auditing, copies of all actions taken by Supervisors and Managers against staff members where it relates to labour relations issues, shall be kept by the issuing person and filed by the department responsible for HC and such records shall be entered on the personal file of the staff member concerned.

RELATIONSHIP BETWEEN NON-WORK-RELATED CONDUCT AND DISCIPLINARY ACTIONS AND CRIMINAL PROCEDURES AND DISCIPLINARY ACTION

13.1 Non-work related conduct

- (a) As a general rule, Council has no right and may not institute disciplinary action against a staff member who commits an act or omits to act if the action or omission does not impact on the Council or the staff member's working environment, is personal in nature or is not related to his or her employment and not in the course of duty.
- (b) However, Council may institute disciplinary action against a staff member, whose act or omission is not related to his or her employment if Council has an interest in the conduct of the staff member. An interest may be proven by:
 - (i) establishing that a link exists between the staff member's conduct (act or omission) and Council's business or impacts on the Council's image; or
 - (ii) establishing that the staff member's conduct (act or omission) has an effect on the work situation;
 - (iv) establishing that the staff member's conduct (act or omission) negatively impacts on the trust relationship as between Council and the staff member or;
 - (v) any other similar act or omission under similar circumstances.

13.2 Criminal Proceedings and Disciplinary Action

- (a) When a staff member has, in the context of his/her employment committed/omitted an act where the act amounts to a criminal offence, Council may in accordance with the Rules charge the staff member with misconduct, notwithstanding the fact that criminal proceedings are pending.
- (b) Council reserves the right to lay a criminal charge against any staff member whose misconduct qualifies as a statutory offence or a common law offence in terms of Schedule 1 to 3 of the Criminal Procedure Act. In addition, Council may institute a civil claim against any staff member.
- (c) Where a staff member who has been charged with a criminal offence has been acquitted by a court of law, such acquittal does not preclude Council from charging the staff member with misconduct under these Rules.

- (d) When a staff member who has been charged with a criminal offence is convicted in a Court of law, Council shall still have the option to decide whether internal disciplinary proceedings will be instituted against the staff member in terms of these Rules, if the interest in terms of Clause 13.1 of these Rules is determined. But Council shall be obliged to hold an inquiry in accordance with these Rules to establish the guilt or innocence of the staff member.
- (e) Where a staff member is charged with misconduct and the misconduct also constitutes a criminal offence, and the staff member is, owing to the fact that he or she is imprisoned, not able to attend the inquiry or inquiry, Council may proceed with the inquiry in the absence of the staff member, provided that the staff member has been duly informed.

CLASSIFICATION OF MISCONDUCTS

- (a) Council recognizes that it is not possible to provide a strict definition/number / classification of actions or omissions covering all circumstances in which acts of misconduct occur. Consequently, therefore, to assist Supervisors/Line Managers in taking appropriate decisions when taking disciplinary actions, broad definitions of misconducts and penalties applicable to the offences are provided in the schedule attached to these Rules as **Schedule 1**.
- (b) In all instances the broad definitions, interpretation and Council's understanding will determine the severity of the sanction or action that Council may impose for a given misconduct.
- (c) Council furthermore reserves the right to institute disciplinary action against a staff member who commits an act of misconduct not covered hereunder and Council may impose such sanction or action or take such action as it deems equitable and fair in the circumstances.

14.1 Schedule of Misconducts and possible Sanctions

Council shall not interpret and apply the Rules/Policy in a rigid and inflexible manner but rather utilize it as a guideline only but maintaining equality in the working environment. The sanction or action decided upon will be determined by the circumstances surrounding each case as well as after careful consideration of all or any mitigation and aggravation circumstances. The guideline for possible misconducts and sanctions are as follows:

SCHEDULE 1

OF MISCONDUCTS AND POSSIBLE SANCTIONS

NATURE OF MISCONDUCT	PROPOSED SANCTION				
	1 st Misconduct	2 nd Misconduct	3 rd Misconduct	4 th Misconduct	5 th Misconduct
14.1.1 Minor Misconduct					
(a) Poor time keeping	Verbal Warning	Recorded Warning	Severe Warning	Final Warning	Dismissal
(b) Improper conduct	Verbal Warning	Recorded Warning	Severe Warning	Final Warning	Dismissal
(c) Low productivity	Verbal Warning	Recorded Warning	Severe Warning	Final Warning	Dismissal
(d) Carelessness	Verbal Warning	Recorded Warning	Severe Warning	Final Warning	Dismissal
(e) Loafing	Verbal Warning	Recorded Warning	Severe Warning	Final Warning	Dismissal

14.1.2 Intermediate Misconduct					
(a) Unauthorized absence from work (for a period not exceeding two consecutive working days)	Recorded Warning	Severe Warning	Final Warning	Dismissal	
(b) Poor work performance	Recorded Warning	Severe Warning	Final Warning	Dismissal	
(c) Incompetence (Failure to maintain set or agreed standards of performance)	Recorded Warning	Severe Warning	Final Warning	Dismissal	
(d) Wastage of materials	Recorded Warning	Severe Warning	Final Warning	Dismissal	
(e) Non-compliance with established work procedures or standards or safety measures	Recorded Warning	Severe Warning	Final Warning	Dismissal	
(f) Failure or Refusal to work agreed overtime or standby or callout duties	Recorded Warning	Severe Warning	Final Warning	Dismissal	
14.1.3 Serious Misconduct					
(a) Absenteeism (for a period in excess of 2 consecutive working days but not exceeding 15 consecutive working days)	Severe Warning	Final Warning	Dismissal		
(b) Disobedience (Refusal to execute lawful and reasonable instructions or ignoring such instructions or disregarding work-related orders)	Severe Warning	Final Warning	Dismissal		
(c) Negligence in performing duties or indolence	Severe Warning	Final Warning	Dismissal		
(d) Failure to maintain discipline and/or institute corrective disciplinary measures	Severe Warning	Final Warning	Dismissal		
(e) Being under the influence of alcohol or drugs while on duty or reporting for duty	Severe Warning	Final Warning	Dismissal		
(f) Abuse of sick leave	Severe Warning	Final Warning	Dismissal		
(g) Sleeping on duty	Severe Warning	Final Warning	Dismissal		

(h) Swearing or abusive language or both (Whether at fellow staff members or at customers)	Severe Warning	Final Warning	Dismissal		
(i) Intimidation (This includes the use of threats or violence against a person or persons with the aim of restraining or forcing their actions or decisions and Council's clients.)	Severe Warning	Final Warning	Dismissal		
(j) Bullying & Harassment	Severe Warning	Final Warning	Dismissal		
(k) Insolence (Rudeness, impudence, foul language, making disparaging remarks and making improper or indecent (gestures at a supervisor/colleague)	Severe Warning	Final Warning	Dismissal		
or acting disrespectful towards customers, councillors or management or other staff members)					
(l) Riotous behaviour	Severe Warning	Final Warning	Dismissal		
(m) Rough, boisterous play that endangers people's lives, or is likely to result in serious damage to properties	Severe Warning	Final Warning	Dismissal		
(n) Failure to report an accident or damage or reportable incident under the Employee Compensation Act 30 of 1941 or Health and Safety Regulations	Severe Warning	Final Warning	Dismissal		
(o) Driving Council's vehicle without authority or reckless or negligent driving of the Council's vehicles	Severe Warning	Final Warning	Dismissal		

(p) Indecent behaviour and or bringing the name of the Local Authority Council into disrepute	Severe Warning	Final Warning	Dismissal		
(q) Damage to Council Property	Severe Warning	Final Warning	Dismissal		
(r) Loss of Council's property	Severe Warning	Final Warning	Dismissal		
(s) Failure to comply with fire, health or other safety regulations.	Severe Warning	Final Warning	Dismissal		
(t) Unauthorized possession of firearms or dangerous weapons or drugs without a prescription or alcohol.	Severe Warning	Final Warning	Dismissal		
14.1.4 Very Serious Misconduct					
(a) Absenteeism (for a period in excess of 15 consecutive working days but not exceeding 30 consecutive working days)	Final Warning	Dismissal			
(b) Insubordination	Final Warning	Dismissal			
(c) Gross negligence	Final Warning	Dismissal			
(d) Sexual Harassment	Final Warning	Dismissal			
(e) Discrimination (racial or tribal or gender etc.) or racial or tribal or gender abusive language or practice.	Final Warning	Dismissal			
(f) Assault/attempted assault	Final Warning	Dismissal			
(g) Fighting of any person (whether staff member or not) at the place of work.	Final Warning	Dismissal			
(h) Attempting to bring or causing the name of Council into disrepute	Final Warning	Dismissal			

(i) Disclosing confidential information regarding the Council or a staff member or customer; or abusing information obtained in trust and by virtue of the Employment position	Final Warning	Dismissal			
(j) Misuse of Council property	Final Warning	Dismissal			
(k) Abscondment/ desertion (absent from work for more than 30 or more consecutive working days)	Dismissal				
(l) Theft	Dismissal				
(m) Intimidation of staff members and Council's clients	Final Warning	Dismissal			
(n) Unauthorized possession of Council Property	Dismissal				
(o) Misappropriation or mismanagement	Dismissal				
(p) Fraud	Dismissal				
(q) Forgery and falsification of any document or altering of records/ documents or use thereof (this may include medical certificates and educational qualifications, etc.)	Dismissal				
(r) False evidence or perjury or false statements or false allegations of sexual harassment	Dismissal				
(s) Dishonesty	Dismissal				
(t) Bribery	Dismissal				
(u) Corruption	Dismissal				
(v) Conflict of interest	Dismissal				
(w) Racism or tribalism or harassment for gender / sexual preference	Dismissal				
(x) Incitement to illegal strike	Dismissal				
(y) Illegal strike as per the Labour Act	Dismissal				
(z) Sabotage	Dismissal				

GRIEVANCE PROCEDURE

INTRODUCTION

The **Primary Objectives** of the Grievance Procedure is as follows:

- (a) To provide any staff member or a group of staff members with an effective channel through which he/she/they can address a grievance to more than one level of management.
- (b) He/she/they may lodge grievances without fear of victimization.
- (c) To solve a grievance as quickly as possible and as close as possible to its origin so that it does not develop into a major dispute.
- (d) To also create the opportunity for upward communication from staff members and awareness of staff problems or of problem areas, which could be subject to further investigation.

WHAT IS A GRIEVANCE

A **Grievance** means “*any feeling of dissatisfaction, injustice or unfair practice or working conditions experienced by a staff member or group of identified staff members relevant to his/her/their job or his/her/their working environment.*”

The Grievance Procedure is not used for the following (exclusions):

- (a) For appeals against disciplinary action in any individual case;
- (b) The filling of a vacancy in terms of the Council’s Recruitment guidelines;
- (c) Resolution of collective grievance related to wages or salaries as these form part of the collective bargaining system; and
- (d) For grievance relates to job grading process.

A staff member may lodge a grievance without fear of intimidation or victimization. Staff member (s) lodging a grievance have the right to be represented by a Workplace Union Representative or any other fellow staff member of his/her choice, but no legal or external representative shall be allowed during a grievance inquiry.

PURPOSE

- (a) To allow the staff member(s) to bring to the attention of the Supervisor any dissatisfaction or feeling of injustice which may exist in the workplace.
- (b) The Supervisor will attempt to resolve the grievance in a manner which is acceptable to the staff member(s) concerned and the Supervisor.
- (c) To deal with the grievance pertaining to any dissatisfaction with regard to matters, which are directly related to the employment between the parties.
- (d) The resolution of grievances, subject to the steps set out below, shall, wherever possible, be vested in line management.

- (e) The Grievance Procedure shall not be used by either party for the purpose of processing a disciplinary matter or dismissal through it.

GENERAL PRINCIPLES AND GUIDELINES

- (a) Any staff member should address his/her grievance to his/her direct Supervisor. The reason being that it eliminates undermining of the Supervisor's authority; in all probability the grievance is within the Supervisor's scope of authority and responsibility (something that the Supervisor can rectify) and the Supervisor will be more positive towards the grievance upon being approached in the first instance.
- (b) The aggrieved staff member may be assisted by a fellow staff member or Workplace Representative during all steps of the Grievance Procedure and during the solving of the grievance.
- (c) A staff member may not suffer prejudice in employment as a consequence of lodging a grievance in terms of this grievance procedure.
- (d) No legal or external representative is allowed during all steps of the Grievance Procedure.
- (e) The grievance must be addressed as soon as possible and should be resolved on the lowest possible level of authority. In this regard, a formal grievance inquiry need not be convened in each and every instance. Often an informal meeting between the staff member and his/her Supervisor is the most effective way of resolving minor complaints and encourages direct communication between management and staff.
- (f) Depending on the circumstances, the grievance cannot escalate to the next level of authority without proof of documentation proving that indeed attempts to resolve the matter at the previous level have failed.
- (g) The aggrieved staff member must be informed of the outcome of the grievance at every stage within **five (5) days** through the department responsible for HC.
- (h) The grievance procedure should be interpreted and applied in accordance with both the aggrieved staff member(s) and Respondent's reporting line.

FORMAL GRIEVANCE PROCEDURE

The following steps should be followed when applying the grievance procedure progressively:

15.5.1 Individual Grievance

Step One (1)

- (a) The aggrieved staff member shall discuss his/her grievance with his/her immediate Supervisor or the latter's Supervisor in the event of a grievance against an immediate Supervisor who shall endeavor to solve the problem as soon as possible.
- (b) The pre-discussion should be initiated by the aggrieved staff member and the immediate Supervisor shall attend to it within **five (5) days**, and the proceedings must be recorded and signed off by both parties.
- (c) The aggrieved staff member and his/her Shop Stewards(s) shall have the right to present the grievance and lead evidence, to call witnesses and to question witnesses,

and/or to have copies of any documents produced as evidence at the inquiry. In presenting his/her case, the grievant(s) will be required to state the grounds and reasons of his grievance, and where appropriate lead evidence and argument in this regard. The Supervisor hearing the grievance inquiry may request additional evidence and/or witnesses to be led in the inquiry to determine the merits of the grievance. The Supervisor will then make determination on the merits of the grievance and identify any appropriate remedial action.

- (d) The parties can consult department responsible for HC if necessary, for information or advice.

Step Two (2)

- (a) Should the staff member still not be satisfied with the outcome at **Step one (1)** he/she will launch a formal grievance within **five (5) days** from the date after which proceedings were signed off, to the next level of Supervisor (Divisional Head) by completing a prescribed grievance form (see “**Annexure G**”) in triplicate and submit same to the immediate Supervisor, next level of Supervisor and the Department responsible for Human Capital.
- (b) The next level of Supervisor shall endeavor to solve the problem within **seven (7) days** after receipt of the formal grievance.

Step Three (3)

- (a) Should the staff member still not be satisfied with the outcome at **Step two (2)** he/she may within **five (5) days**, after receipt of the decision in Step two (2) in writing appeal to his/her SE or next level of Supervisor by completing the prescribed grievance form attached as “**Annexure H**” to these Rules and serve a copy to the Department of HC.
- (b) The SE or next level of Supervisor should arrange for an appeal meeting with the aggrieved staff member and the respondent within **five (5) days from the date of receipt of the appeal notice**.

Step Four (4)

- (a) Should the staff member still not be satisfied with the result at **Step three (3)**, he/she may within **five (5) days** after receiving the decision in step three (3) in writing appeal to the CEO by completing the prescribed grievance form attached as “**Annexure I**” to these Rules and serve a copy to the Department responsible for HC. The latter should arrange for a meeting between the CEO, aggrieved staff member (s) and the Respondent within **five (5) days**.
- (b) The outcome of the grievance should be communicated to the aggrieved staff member(s) within **five (5) days** after the date of the grievance inquiry.
- (c) The decision taken at this step shall be **FINAL** in terms of the internal grievance procedure for a staff member in a category lower than D-band Paterson grading.

Step Five (5)

- (a) Should a staff member who is in D-band Paterson grading lodge a grievance against his/her immediate Supervisor and is not satisfied with the decision of the SE or the CEO, that staff member may within **five (5) days after receiving the decision** in writing appeal to the CEO or MC respectively.

- (b) In case of a grievance referral to the CEO, the Department responsible for HC should arrange for a meeting between the CEO, aggrieved staff member(s) and the Respondent within **five (5) working days** and the outcome thereof should be communicated to the staff member(s) within **five (5) working days** after the date of hearing the appeal grievance.
- (c) Should the staff member still not be satisfied with the outcome at the level of the CEO or MC, he/she may appeal to MC or Council respectively.
- (d) A grievance of a staff member in E band Paterson grading should be submitted to MC through the CEO and for the F band Paterson grading should be channeled to Council through MC.
- (e) The decision taken at Council shall be **FINAL** in terms of the internal grievance procedure for a staff member in category D-F bands Paterson grading.

15.5.2 Group Grievance

Should a group have a mutual problem, at least **two of them** with their Workplace Union Representative or any other fellow staff member should be appointed by the group to discuss the problem with their superior. Should the group not be satisfied with the solving of the problem by the Superior or if they do not agree therewith, the grievance should follow the same procedure as provided for in the formal Individual Grievance Procedure herein provided.

COMMUNICATION OF THE Rules

The Rules will be communicated to all the staff members and will also be made available on the intranet. It is every staff member's own responsibility to make sure that he/she is well conversant with the content of these Rules and/or any amendments thereto from time to time.

REVISION AND AMENDMENT

These Rules will be reviewed and updated as and when the need arises or when developments relating to the above necessitate Rules review.

ANNEXURE A

Mr/Ms
 Department of
 City of Windhoek

Date:

RE: NOTICE TO ATTEND A FORMAL DISCIPLINARY INQUIRY

You are hereby notified of and requested to attend a disciplinary inquiry to be held at:

Venue: **Date:**
Time:

Please be informed that you are hereby invited to attend a disciplinary inquiry to establish whether you have committed the following alleged misconduct, under the Labour Relations Rules, in that you have contravened:

- 1
- 2
- 3

Particulars of the Misconduct

.....

- 1 The inquiry will be conducted in English and if you require the services of an interpreter please arrange for such interpreter to be present at the date of the inquiry.
- 2 You will further be entitled to call witnesses and you are to arrange yourself for the availability of your own witnesses. Kindly advise the department responsible for Human Capital should it be found necessary for arrangement to be made to release any witness (s).
- 3 Please ensure you and your representative/witnesses (if any) are present at the inquiry as failure or refusal to attend the inquiry and failure to provide acceptable and reasonable explanation for your absence may result in the inquiry proceeding in your absence.

Your further rights at the inquiry are as follows:

- The right to attend and be present at the attend, to be assisted or represented by **any other person**; to give evidence and, either personally or through a representative;
- The right to present your case;
- The right to defend yourself against the allegations through submission of evidence
- The right to controvert evidence produced against you;
- The right to cross-examine witnesses,
- The right to call witnesses in your defence,
- The right of access to documents produced in evidence or in connection with the alleged misconduct,
- The right of mitigation should you be found guilty on the allegations,
- The right to representation on the intended sanction,
- The right to appeal against the finding or the sanction or both

You are requested to plead to the abovementioned charges. Upon a plea of guilty or not guilty, you are requested to furnish the Strategic Executive with a written explanation (why you are pleading guilty or not guilty or to indicate that you elect not to make any statement) within seven (7) days from the date you receive this notice.

- 1 I plead guilty / not guilty to Charge I.
- 2 I plead guilty / not guilty to Charge II.
- 3 I plead guilty / not guilty to Charge III

I attach / do not attach a statement hereto:

.....
SIGNATURE OF THE SUPERVISOR

.....
DATE

.....
NAME AND SURNAME

I ACKNOWLEDGE RECEIPT OF THE INQUIRY NOTICE TO BE CONDUCTED, CONFIRM THAT THE CHARGES HAVE BEEN READ TO ME AND FULLY UNDERSTAND MY RIGHTS AS CONTAINED IN THIS NOTIFICATION.

.....
SIGNATURE OF THE STAFF MEMBER **DATE & TIME**

(To be completed if the staff member refuses to acknowledge notification)

I HAVE WITNESSED THE ABOVE-NAMED STAFF MEMBER BEING INFORMED OF THE INQUIRY TO BE HELD AND OF HIS/HER RIGHTS

.....
SIGNATURE OF WITNESS **DATE**

NAME & SURNAME **TIME**

ANNEXURE B

DISCIPLINARY INQUIRY CHECKLIST

1. Record all parties present:

Date of Inquiry:		Starting Time:	
Venue:			
Chairperson:		HC Official:	
Legal Official:			
Initiator:		Witness 1:	
		Witness 2:	
		Witness 3:	
		Witness 4:	
Accused Staff Member:		Witness 1:	
Accused's Representative:		Witness 2:	
Interpreter:		Witness 3:	
		Witness 4:	

2. Introductions: (tick to confirm action took place)

Chairperson introduce himself/herself	<input type="checkbox"/>
Introduce parties in attendance (seeking the names of those unknown to him/her for the record)	<input type="checkbox"/>
Chairperson clarify the role/function of the participants as follows:	<input type="checkbox"/>

Chairperson:

- form part of the Disciplinary Inquiry Committee
- to chair the inquiry, acting impartially and control the proceeding
- to ask questions for clarification
- to determine the correct facts, if misconduct was committed, and if so, to determine the sanction/ action and ensure fairness throughout the proceedings

Human Capital Representative:

- form part of the Disciplinary Inquiry Committee
- to ensure procedural and substantive fairness by advising both parties
- to take minutes of the proceedings

Legal Official (if necessary):

- form part of the Disciplinary Inquiry Committee
- advise the inquiry on legal matters

OR**Concerned SE's Appointee/Nominee:**

- form part of the Disciplinary Inquiry Committee
- to ask questions for clarification

Initiator:

- to present Council's case at the inquiry
- to lead evidence of the alleged misconduct in order to prove that the accused committed the offence
- to call witnesses/produce evidence (documents) in support of the Council's case
- to cross-examine witnesses called by the staff member party
- to present arguments on behalf of Council

Accused's Representative:

- to defend the accused and assist him/her to tell his/her side of the story at the inquiry
- to call witnesses or produce evidence (documents) in support of the staff member's case
- to cross-examine witnesses called by the Initiator
- to present arguments on behalf of the accused

Accused's Representative:

- to defend the accused and assist him/her to tell his/her side of the story at the inquiry
- to call witnesses or produce evidence (documents) in support of the staff member's case
- to cross-examine witnesses called by the Initiator
- to present arguments on behalf of the accused

The Accused:

- to present his/her case of what happened
- to answer questions put to him/her
- to be cross-examined by the Initiator

Witnesses:

- to give evidence at the inquiry either in support of the CoW's case or the case of the staff member

Disciplinary Inquiry Committee:

- to listen to the evidence presented by both parties
- to ask questions for clarifications
- exercise power vested in terms of Clause 8.1 and 8.2 of this LR Rules
- to agree and make recommendations to the CEO or Council (whichever is applicable) with regards to the findings and appropriate sanction/actions

3. If no representative is present:

- Explain to the accused that he/she has a right to use a representative of choice to assist him/her in understanding the charge, the procedures and represent him in general during the proceedings

· Ask the accused whether he/she understands	<input type="checkbox"/>
· Ask the accused whether he/she would like to continue without a representative and whether the right of representation is waived. If not, determine when the accused will obtain a representative and when will he/she able to continue.	<input type="checkbox"/>

4. Confirmation of the Accused's Rights

Check and confirm the Accused's rights by asking the following:	
<ul style="list-style-type: none"> · Was notified of the charge(s) against him/her in time (at least five working days in advance) · Was given sufficient time to prepare for a disciplinary inquiry · Does he/she need to have an interpreter · His/her right for appeal. 	<input type="checkbox"/>

5. Procedure for the Disciplinary Inquiry

Chairperson briefly explain the following procedure for the inquiry:	<input type="checkbox"/>
<ul style="list-style-type: none"> · the charges will be read out by Initiator and proceedings recorded · the accused will be asked to state his/her plea to the charges · in event the accused pleads guilty, the Chairperson will ask clarification to ensure that the plea is understood and indeed accumulates to a plea of guilty and that mitigating and aggravating circumstances be presented in order for the Committee to decide an appropriate action · each party will be given an opportunity to make an opening statement · the Initiator will be given an opportunity to state his/her case by giving evidence through the witnesses 	
<ul style="list-style-type: none"> · at the end of each witness's evidence the Accused or his/her representative may cross-examine that particular Council's witness · the Initiator may re-examine each witness after they have been cross-examined If he/she wishes to clarify any uncertain legal issues · after all Council's witnesses have been called and cross-examined, the Accused or his/her representative will have the opportunity to lead all his/her evidence by calling his/her witnesses one at a time including the accused · at the end of each witness's evidence the Initiator may cross-examine that particular witness · Accused or his/her representative may re-examine each witness after they have been cross-examined by the Initiator if he/she wishes to clear up any uncertain legal issues. · Initiator will summarise the council's case followed by the staff member or his/her representative who will summarise the defence case. 	<input type="checkbox"/>
Chairperson requests witnesses to leave the room, thereafter the procedures outlined above gets under way	

6. Charges/Allegations

Chairperson requests the Initiator to read out charges as reflected in the Notice of the disciplinary charge sheet for the record.	<input type="checkbox"/>
After the Initiator read out the charges, the Chairperson should give the Accused/Representative an opportunity to enter a plea to the charges/allegations by asking how he/she pleads to the charges.	<input type="checkbox"/>
Accused pleads of " guilty or not guilty "	<input type="checkbox"/>
If the Accused pleaded " guilty ," the Chairperson would clarify if the explanation warranted a finding of guilty and invites the Accused or the representative to present evidence in mitigation followed by the Initiator presenting aggravating circumstances.	<input type="checkbox"/>
If the Accused pleads "not guilty," the Chairperson must ask the Initiator to present his/her Opening Statement followed by Accused or representative to present the opening statement.	<input type="checkbox"/>

<p>Initiator is given an opportunity to prove his/her case by leading the evidence as follows:</p> <ul style="list-style-type: none"> · Call in, the Council witness one by one and lead each witness to provide evidence through questioning · Allow the Initiator and his/her witness to provide exhibits where applicable · Procedure as explained in Point 5 herein above should be followed 	<input type="checkbox"/>
<p>If at any time during the proceedings the Chairperson is unclear on a point or seeks clarification of an answer given, he/she is free to ask questions to test his/her understanding and establish clarity.</p>	<input type="checkbox"/>
7. Accused Staff Member's case	
<ul style="list-style-type: none"> · Chairperson invites the Accused or his/her representative to lead the accused and tell his/her version of events · Call witnesses, one by one for examination by the accused/representative · Once the Accused or representative is done with cross-examination of the witnesses the Chairperson invites the Initiator to cross-examine the witnesses · After the Initiator is done to cross-examine the accused's witnesses · Chairperson invites the accused/ representative to re-examine the witnesses 	<input type="checkbox"/>
<p>If at any time in the proceedings the Committee is unclear on a point or seeks clarification of an answer given, he/she is free to ask questions to test his/her understanding and establish clarity.</p>	<input type="checkbox"/>
8. Closing Arguments	
<p>Once the leading of evidence by both parties has been concluded the Chairperson invites the Initiator to present his/her closing arguments followed by the staff member/representative's closing argument (or in the absence of the Chairperson they could do so)</p>	<input type="checkbox"/>
<p>After receiving final closing arguments, the Chairperson adjourns the inquiry for the Committee to consider the evidence and to come to a finding. In complex cases stretching over several days with multiple exhibits, the DIC may request the typed or electronic minutes be presented.</p>	<input type="checkbox"/>
9. Deciding of Guilty/Not Guilty	
<p>Having adjourned the inquiry to consider the evidence, the Committee examines the evidence for each of four elements that should be proven for each charge made, namely:</p> <ul style="list-style-type: none"> · That the rule or regulation has been broken · That the incidents or omission took place · That this was impliedly prohibited or clearly unacceptable · That the Accused was aware of the prohibition <p>The Committee on its own weigh up evidence and balance of probabilities.</p>	<input type="checkbox"/>
<p>Findings (i.e. guilty or innocence) in any allegation will be determined on the balance of probabilities and not be proven beyond a reasonable doubt.</p>	<input type="checkbox"/>
10 Informing the Parties, the Finding	
<p>The Chairperson gives the Committee's judgment/finding to the parties and motivate reasons for findings</p>	<input type="checkbox"/>
11. Mitigating and Aggravating Circumstances	
<p>At this stage, the Chairperson invites the accused/representative to present mitigating circumstances followed by the Initiator who will also present aggravating circumstances.</p>	<input type="checkbox"/>
12. Deciding on the Sanction	
<p>In deciding the appropriate sanction or action, the Committee must consult the Labour Relations Rules and Procedure for an appropriate sanction. At this stage Committee should not consult with the Initiator or the Accused. The Committee may be guided by the Human Capital Representative with regard to the principles, which should be applied.</p>	<input type="checkbox"/>
13. Representation by the Accused Staff Member on the recommended sanction	
<p>At this stage, the Chairperson invite the accused/represent to make representation on the intended action (sanction) and not the finding in accordance with section 29(6)(f)(i) of the Local Authority Act, 23 of 1992 as amended.</p>	<input type="checkbox"/>

14. Right to appeal

<p>Right to appeal against finding and recommended actions made by DIC The Chairperson explains the procedures to be followed, that the DIC will make its recommendations on the sanction to the CEO iro staff member who is not a CEO or SE. Should the Accused staff member not be satisfied with the decision of the DIC, the Accused staff member has the right to appeal to CEO against the recommendations or finding or both of the DIC, within seven (7) working days from being informed of the findings and recommended action. The appeal should be submitted to the HC department in writing on Form C1</p>	<input type="checkbox"/>
<p>Right to appeal against finding and confirmed actions made by CEO or Council in case of CEO or SE The Chairperson explains the procedures that the CEO or Council in respect of CEO or SE will be considering the minutes of the disciplinary inquiry and any appeal documents submitted. The CEO will either confirm or decide otherwise on the recommendations of the DIC. Should the Accused staff member not be satisfied with the decision of the CEO or DIC iro CEO or SE, the Accused staff member has the right to appeal to Council within seven (7) working days of being informed of the findings and actions. The appeal should be submitted to the HC department in writing on Form C2</p>	<input type="checkbox"/>

Signed off by:

.....
Chairperson of the DIC

.....
Date

ANNEXURE C1

DISCIPLINARY APPEAL FORM AGAINST THE OUTCOME OF THE INQUIRY COMMITTEE

(Section 29(6)(g)(i) of Local Authorities Act, 23 of 1992 as amended)

STAFF MEMBER'S NAME:

STAFF NO:

DEPART/DIVISION:

DESIGNATION:

DATE:

I wish to appeal against (mention finding or recommended action or both) of which I was notified on(Date) for the following offence:

.....

REASONS FOR APPEAL (Please mark with an X)

- 1. Procedural unfairness
- 2. Substantive unfairness
- 3. Severity of the sanction or action taken
- 4. New Evidence

DETAILS IN SUPPORT OF REASONS FOR APPEAL

.....

SIGNATURES:

.....
STAFF MEMBER

.....
REPRESENTATIVE

NB: This Appeal form should be completed within **seven (7) working** days after the staff member was informed of the findings and recommended actions made by the DIC.

ANNEXURE C2

DISCIPLINARY APPEAL FORM
(Section 29(6)(gA)(i) of Local Authorities Act, 23 of 1992 as amended)

STAFF MEMBER’S NAME: **STAFF NO:**
DEPART/DIVISION: **DESIGNATION:**
DATE:

I wish to appeal against (mention finding or action or both) issued to me on **(Date)** by the Chief Executive Officer or DIC iro CEO or SE for the following offence:

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

REASONS FOR APPEAL (Please mark with an X)	Mark with X applicable appeal ground
Procedural unfairness	
Substantive unfairness	
Severity of the sanction or action taken	
New Evidence	

DETAILS IN SUPPORT OF REASONS FOR APPEAL

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

SIGNATURES:

.....
STAFF MEMBER

.....
REPRESENTATIVE

NB: This Appeal form should be completed within **seven (7) working** days after the staff member was informed of outcome of appeal to CEO or iro CEO or SE against DIC of disciplinary measure to be taken against the Accused staff member.

ANNEXURE C3

APPEAL FORM IN TERMS OF SECTION 29 (4) OF THE LOCAL AUTHORITIES ACT, 23 OF 1992 AS AMENDED

STAFF MEMBER’S NAME: **STAFF NO:**
DEPART/DIVISION: **DESIGNATION:**
DATE:

For the following justifiable reasons, I had been absent without authorisation from my place of employment for a period longer than **thirty (30) days** and section 29(4) of the Local Authorities Act, 23 of 1992 applied.

Reasons for absence

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

I subsequently applied on.....tofor reinstatement in my former position. The outcome of my application was as follows:

	Mark with X applicable
Refusal to be reinstatement	
Reinstated in another position on the following conditions	
Reinstated but absence converted into vacation leave without salary	

I wish to appeal to Council against the above outcome.

DETAILS IN SUPPORT OF REASONS FOR APPEAL

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

SIGNATURES:
STAFF MEMBER **REPRESENTATIVE**

NB: This Appeal form should be completed within **seven (7) working** days after the staff member was informed of outcome of Application for reinstatement.

ANNEXURE C4

APPEAL FORM AGAINST THE CORRECTIVE MISCONDUCT MEASURES

STAFF MEMBER’S NAME: **STAFF NO:**

DEPART/DIVISION: **DESIGNATION:**.....

DATE:

I wish to appeal against (mention finding or recommended action or both) of which I was notified on(Date) for the following offence:

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

REASONS FOR APPEAL (Please mark with an X)

- 1. Procedural unfairness
- 2. Substantive unfairness
- 3. Severity of the sanction or action taken
- 4. New Evidence

DETAILS IN SUPPORT OF REASONS FOR APPEAL

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

SIGNATURES:

STAFF MEMBER

.....

REPRESENTATIVE

NB: This Appeal form should be completed within **seven (7) working** days after the staff member was informed of the findings and recommended actions made by the DIC.

ANNEXURE D

MISCONDUCT REPORT-DISCIPLINARY FORM

STAFF MEMBER’S NAME: **STAFF NO:**

DEPT/DIVISION: **DESIGNATION:**

DATE: **SUPERVISOR:**

INQUIRY HELD ON:

NATURE OF DISCIPLINARY MEASURE: [Indicate with an X the action taken]

Counseled [no disciplinary action taken]

Verbal Warning [Remain in force for **thirty (30) days** from the date when the warning was issued]

Recorded Warning [Expires **three (3) months** from the date when the warning was issued]

Severe Warning [Expires **six (6) months** from the date when the warning was issued]

Final Written Warning [Expires **twelve (12) months** from the date when the warning was issued]

Comprehensive Final Written Warning [Expires **twelve (12) months** from the date when the warning was issued]

REASONS FOR WARNING AND DESCRIPTION OF MISCONDUCT

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

CONSEQUENCE OF WARNING FOR FUTURE MISCONDUCT

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

The entry regarding the said Warning will be filed on your personal file, where it will remain in force for days from the date this warning had been issued.

DATE ISSUED: **EXPIRY DATE**

SIGNED BY: **DATE:**

SUPERVISOR/ DIV MANAGER **DATE:**

STAFF MEMBER **DATE:**

STAFF MEMBER’S REPRESENTATIVE

(To be completed if the staff member refuses to acknowledge receipt of or sign for the warning issued)

I HAVE WITNESSED THE ABOVE-NAMED STAFF MEMBER BEING ISSUED WITH THE ABOVE WARNING.

.....
SIGNATURE OF WITNESS **DATE**

.....
NAME AND SURNAME **TIME**

[NB: Copy must be forwarded to the Department responsible for Human Capital]

ANNEXURE E

NOTICE TO ATTEND A CORRECTIVE MISCONDUCT INQUIRY

TO: **Staff No.**

FROM: **Designation:**

1 Please note that you are required to attend a corrective disciplinary inquiry into your conduct.

DATE:
PLACE:
TIME:

2 Nature of the charge(s)/offence(s)

- (a).....
- (b).....
- (c).....
- (d).....

Particulars of Misconduct:

.....

You have the right without fear of victimization to:

- The assistance of a fellow staff member representative or Workplace union representative to help present your case. Note that this is an internal remedial inquiry and external legal representation or representation by an external third party will not be accommodated.
- Call witnesses and produce evidence in support of your case.
- An interpreter, should you feel you might not fully understand what is said at the inquiry.

- Lead evidence in mitigation if you are found to have committed the offence.
- If you
 - if you require the services of an interpreter please arrange for such interpreter to be present at the date of the inquiry.
 - have any queries of any nature whatsoever please contact me urgently.
- Please note that the proceedings of the inquiry will be recorded.
- You have the right to appeal within seven working days against any decision taken at the inquiry.

Yours faithfully

.....

NAME OF SUPERVISOR & DESIGNATION

.....

DATE

.....

SIGNATURE OF THE STAFF MEMBER:

(Signature hereto merely indicate having received the same)

ANNEXURE F

ENQ:

PHONE:

DATE:

REF:

Ms/Mr(Staff No.)

[Division]

[Department]

WINDHOEK CITY COUNCIL

Dear Sir/Madam

NOTICE OF INTENTION TO SUSPEND

We have reasons to believe that you have committed an act of serious misconduct and contravened the Council's Labour Relations Rules and Conditions of Service. The Department is currently busy with the investigation into the alleged misconduct i.e. **(insert the summary of the allegations)**

In light of the above and in terms of Clause 22 of Council's Conditions of Service read with Clause 10.4 of the Council's Labour Relations Rules, you are informed that the **CEO or SE: [Department]** has the intention to suspend you from duty in line with Clause 22(5) of the Conditions of Service. Note that this is an internal opportunity to explain your view why a suspension would be an inappropriate action to follow. External legal representation or representation by an external third party will not be accommodated, but you may be assisted by a co-staff member or workplace union representative.

You are however hereby invited to make a representation against being suspended should you so wish to do so in accordance with Clause 22(3) of the Conditions of Service. The representation is scheduled on **[date] at [time] at the [venue]**.

Yours faithfully,

Mr/Ms

STRATEGIC EXECUTIVE: [DEPT]

<u>ACKNOWLEDGEMENT OF RECEIPT</u>	
RECEIVED BY:
TIME:
DATE:

ANNEXURE G

ENQ:

PHONE:

DATE:

REF:

Mr/Ms (Pay No.)

..... Division

Department of

WINDHOEK CITY COUNCIL

Dear Sir

SUSPENSION IN TERMS OF RULE 22 OF THE PERSONNEL Rules: LOCAL AUTHORITIES ACT, 1992 AS AMENDED (CONDITIONS OF SERVICES)

Your representation against the suspension held **today, (date)** has reference.

After listening to your reasons why you should not be suspended, I arrived at the following decision:

- o That you be suspended from duty with immediate effect as from **(date)**.
- o That **suspension without basic salary** remains in force for the entire duration of the investigations and misconduct inquiry and until such time that you are duly informed of the outcome thereof.

You may however under Clause 22(5) of the Conditions of Service make written representations to Council showing cause why you should not be suspended without basic salary.

Furthermore, you are instructed –

- o To deliver to your supervisor all municipal assets in your possession including your staff member card, keys if any in your possession with immediate effect.
- o Not to leave Municipal area of Windhoek without the consent of your employer.

You are also forbidden to enter the premises and or interfere in activities of your Section/Division, its staff or potential witnesses in anyway whatsoever without prior approval of the Strategic Executive: **(insert)**.

Yours faithfully

MR/MS

STRATEGIC EXECUTIVE: (INSERT)

<u>ACKNOWLEDGEMENT OF RECEIPT</u>
RECEIVED BY:
TIME:
DATE:

ANNEXURE H

**STEP 2
GRIEVANCE FORM**

SECTION I

NAME STAFF NO

GRADE SECTION/DEPT

DATE

NATURE OF GRIEVANCE:

SOLUTION REQUIRED:

DATE REPORTED:

REPORTED TO:

.....
SIGNATURE OR THUMBPRINT OF STAFF MEMBER (MUST BE SIGNED BY HIM/HER PERSONALLY)

.....
SIGNATURE OF REPRESENTATIVE

SECTION II

WITH REFERENCE TO YOUR REPRESENTATION WHICH WAS MADE ON(DATE), MY DECISION IS AS FOLLOWS:
THE MOTIVATION FOR THIS DECISION IS:

IF YOU ARE NOT SATISFIED WITH THE DECISION, YOU CAN ADDRESS FURTHER REPRESENTATION TO

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

WITHIN SEVEN DAYS OF RECEIPT HEREOF, BY THE COMPLETION AND SUBMISSION SECTION I OF ANNEXURE II.

.....
SIGNATURE

.....
DESIGNATION

.....
DATE

STAFF MEMBER NOTIFIED ON

DATE

ANNEXURE I

STEP 3

GRIEVANCE FORM

SECTION I

NAME **STAFF NO.**.....

GRADE **SECTION/DEPT**

DATE

POSITION:.....

I AM NOT SATISFIED WITH THE DECISION OF

DATED **AND HEREBY REQUEST THAT THE CASE BE REFERRED TO THE DIVISIONAL HEAD.**

NATURE OF GRIEVANCE:

SOLUTION REQUIRED:

.....
SIGNATURE OR THUMBPRINT OF STAFF MEMBER (MUST BE SIGNED BY HIM/HER PERSONALLY

.....
SIGNATURE OF REPRESENTATIVE

FURTHER REPRESENTATIONS SUBMITTED ON
.....
.....
.....
SIGNATURE
HUMAN CAPITAL REPRESENTATIVE

SECTION II

DECISION ON GRIEVANCE:

MOTIVATION:

IF YOU ARE NOT SATISFIED WITH THIS DECISION, YOU CAN ADDRESS FURTHER REPRESENTATION TO
.....
.....
.....
WITHIN SEVEN DAYS OF RECEIPT HEREOF, BY THE COMPLETION AND SUBMISSION SECTION I OF ANNEXURE III THROUGH THE OFFICIAL CHANNELS.
.....
SIGNATURE OF NEXT SENIOR OFFICER
DESIGNATION DATE
STAFF MEMBER NOTIFIED ON (DATE)

**ANNEXURE J
STEP 4**

GRIEVANCE FORM

SECTION I

NAME **STAFF NO.**

GRADE **STATION/DEPT**

DATE

I AM NOT SATISFIED WITH THE DECISION OF

.....

.....

.....

**DATED AND HEREBY
REQUEST THAT THE CASE BE REFERRED TO THE DEPARTMENTAL HEAD**

NATURE OF GRIEVANCE:

SOLUTION REQUIRED:

..... SIGNATURE OR THUMBPRINT OF STAFF MEMBER (MUST BE SIGNED BY HIM/HER PERSONALLY)
--

..... SIGNATURE OF REPRESENTATIVE

FURTHER REPRESENTATIONS SUBMITTED ON
.....
.....
.....
.....

..... SIGNATURE HUMAN CAPITAL REPRESENTATIVE
--

SECTION II

DECISION ON GRIEVANCE:

MOTIVATION:

..... SIGNATURE
DESIGNATION DATE

STAFF MEMBER NOTIFIED ON (DATE)

ANNEXURE 2

DEFINITIONS

In this Policy, the definitions of the Local Authorities Act, 1992 (Act No 23 of 1992) read with the definitions of the Personnel Rules (Conditions of Service) published under General Notice No. 277 at 21 August 2012 apply and unless the context otherwise indicates, the following terms and definitions have the following meaning –

Term	Definition
Appointees or delegates	A staff member- (a) appointed to act in the stead of the Chief Executive Officer under section 27(4) of the Local Authorities Act, or (b) to whom the Chief Executive Officer has delegated a function or power under section 27(5) of the Local Authorities Act or (c) a staff member to whom the Council or Management Committee has delegated a function under sections 31 of the of the Local Authorities Act and who is authorised by the Local Authorities Act or by the Personnel Rules (Conditions of Services), or this Policy to take Incapacity action and designated or authorised staff member has a similar meaning,
Chief Executive Officer	The Chief Executive Officer of Council, appointed in terms of section 27(1) of the Local Authority Act, 1992 (Act No. 23 of 1992), or his or her appointee or delegatee.
Concerned Strategic Executive	Any Head of the Department designated under section 28(32) of Local Authority Act, 1992 (Act No. 23 of 1992) to administer a Department under to which the staff member is attached as per the Council's fixed establishment and includes the CEO to be deemed to be a SE in respect of a staff member (not being at SE) but reporting directly to the CEO.
Council	The Municipal Council of Windhoek or its Management Committee or any staff member authorized or delegated to act on its behalf under section 31 of the Local Authorities Act.
Day	"day" means an ordinary working day as applicable to the staff member in terms of his/her contract of employment and means - (a) five consecutive working days, if the staff member works a five-day week; (b) six consecutive working days, if the staff member works a six-day week; or the number of agreed consecutive working days, if the staff member works less than five days a week.
Designated Staff Member/ Appropriate Person	Any staff member in a department to whom the power or authority to institute and investigate an incapacity process has been delegated or who is authorised by the Incapacity Policy or by the Personnel Rules (Conditions of Services), to indicate or take appropriate action.
Incapacity Inquiry	An investigation being conducted by staff member(s) and or person(s) designated to inquire in terms of section 29(5) of the Local Authorities Act into reasons why a staff member is incapable or unfit of carrying out his/her duties efficiently.
Incapacity due to Poor Performance Policy	The Incapacity due to Poor Performance Policy is promulgated as part and deemed to be included in the Council's Conditions of Service as Personnel Rules under section 27(1)(c)(ii) of the Local Authorities Act.

Term	Definition
Incapacity under Poor Performance	The inability or incapability or failure or unfitness of a staff member to meet the required performance standards or outputs as determined by the staff member's performance agreement, job description or Conditions of Service due to incompetence, a lack of skill, knowledge, ability or efficiency. This include less than expected output or quality or quantity; failure to meet set targets; too much time spent on an activity; wastage of materials or ineffectiveness or any non-conformance to reasonable or agreed standards or work that needs constantly to be redone, repair or correction.
Initiator	Either the Line Manager or Supervisor or any appointee or delegatee or person designated who will be responsible to present Council's case during an incapacity inquiry and in respect of the CEO or SE may be a legal practitioner appointed by the Council or its delegatee.
Labour Act	The Labour Act, 2007 (Act No. 11 of 2007) as amended from time to time.
Line Manager	Includes staff member from the first level of supervision upward for purposes of instituting the incapacity process.
Local Authorities Act	The Local Authorities Act, 1992 (Act No. 23 of 1992) as amended from time to time.
Management Committee	The Management Committee of a Municipal Council of City of Windhoek.
Staff Member	A staff member as defined in section 1 of the Local Authorities Act and Conditions of Service.
Strategic Executive	A staff member designated in terms of section 28(2) of the Local Authorities Act, 1992 (Act No. 23 of 1992) as head of a department established in terms of section 28(1) of the Act, or a person duly authorized to be the Strategic Executive's delegatee or acting in that capacity;
Supervisor	Includes: (a) in respect of the Chief Executive Officer, the Chairperson of Council acting in consultation with the Chairperson of MC; (a) in respect of a Strategic Executive shall be the Chief Executive Officer including staff directly reporting to the Chief Executive Officer; and (b) in respect of other staff members, the first level of supervision and the supervisor.
Trade Union	Means an association or organization of employees that is registered as a trade union in terms of the applicable Labour Act in the Republic of Namibia, whose principal purpose is to regulate relations between employees and their employer; and to whom a Staff member belongs to or may belong to as a member.
Workplace Representative	Union A staff member elected to represent a registered Trade Union in the workplace as a Workplace union representative under section 67 of the Labour Act and trade union representative has the same meaning.

Abbreviations

Abbreviation	Full Name
CEO	Chief Executive Officer
II	Incapacity Inquiry
IIC	Incapacity Inquiry Committee
HC	Human Capital
SE	Strategic Executive
TPMP	Tulongeni Performance Management Policy

PERSONNEL RULES IN RESPECT OF INCAPACITY RELATING TO POOR WORK PERFORMANCE

1. INTRODUCTION

Council commits itself to deliver efficient and effective municipal services to its residents. The achievement of this strategic objective is embedded in its staff members, who are expected to perform their duties in a satisfactory and acceptable manner. It is thus imperative for Council to provide tools, means of production and guidelines to manage the performance of its staff members through identification of performance gaps and provide alternative options to improve and correct them through TPMP or any other performance management system introduced from time to time.

2. PURPOSE

The purpose of this Rules is to provide guidelines and procedures for the management of incapacity arising from poor work performance of a staff member.

3. SCOPE

This Rules is to be regarded as an integral part of the terms and conditions of employment of all staff members as contained in its Personnel Rules and is applicable to all staff members including those that are on probation.

4. APPLICABLE LEGISLATIONS

- (a) Labour Act, 2007 (Act No. 11 of 2007);
- (b) Local Authorities Act, 1992 (Act No. 23 of 1992) as amended from time to time;
- (c) Municipal Council of Windhoek: Personnel Rules: Promulgated under section 27(1) (c) of the Local Authorities Act, 1992;
- (d) Staffing Policy of the Windhoek Municipal Council;
- (e) Tulongeni Performance Management Policy (TPMP) of CoW or any other performance management system introduced from time to time; and
- (f) Any other applicable legislation and or policy.

5. OBJECTIVES

The objectives of this Rules are:

- (a) To place a premium on both employment justice and the efficient operation of the business operations of the Council. Staff members should be protected from arbitrary action, but the Council is entitled to satisfactory conduct and work performance from its staff members.
- (b) To provide a structured and consistent system throughout the organization, of assisting a staff member to improve his/ her performance within a reasonable period to the required standards expected by the Council,
- (c) To ensure that such a staff member who is incapacitated is treated in a fair and reasonable manner by being offered the support and guidance required to improve performance before termination of service as a last resort is considered and effected.
- (d) To ensure that any staff member performs to the best of his/her ability and in accordance with his/her position and key performance areas.

- (e) To minimize the impact of poor performance on the efficiency and quality of service delivery to the customers and morale of the staff members.

6. POLICY CONTENT

6.1 Set standards

Clear and objective standards shall be set and discussed with the staff member. These job-related standards shall be fair and reasonable in that the staff member has sufficient training and knowledge to perform at a particular level. Performance standards shall be set in consultation with the staff member within the performance management system framework.

6.2. Probation Period

For new staff members, provision must be made for dealing with poor performance during an staff member's probation period, during which management should give relevant evaluation feedback, instruction, training and guidance to the staff member in an attempt to meet the required standards. In the event of the staff member still not reaching the required standard of performance, the staff member's contract of employment may be terminated or the probation period may be extended where appropriate.

In case of staff members on probation performance reviews and assessment shall be conducted on a regular basis from the date of appointment and during the course of the probation period. For staff members whose probationary period has been successfully completed, that staff member shall be addressed in terms of how he / she has not met standards from after the probationary period and shall be given an opportunity to challenge the performance appraisal.

6.3. Conduct Performance Review and Assessment

The staff member and the line manager shall discuss ways in which performance can be improved. Management shall assist and support the staff member as far as possible through, for instance, regular report-backs, refresher courses, training and counselling, within a reasonable period for improvement.

7. GENERAL PRINCIPLES

- (a) Council is committed to treating any staff member who is incapacitated due to poor work performance in a fair and appropriate manner.
- (b) This policy does not apply to acts of misconduct, which in that instance the Supervisor must utilize the disciplinary procedure.
- (c) All staff members shall have the responsibility to perform to the best of their ability and in accordance with their positions and key performance areas.
- (d) Council shall ensure provision and promotion of efficient, effective and adequate performance support mechanism for staff members, but there is a responsibility on the staff member for self-training to keep up to date with recent developments in his/her field of expertise and to follow proposals for improvement to achieve performance standards and meet time limits.

- (e) A staff member shall have reasonable access to appropriate on the job or workplace training and development and a common understanding of performance management required for the position.
- (f) Supervisors shall have the general duty to evaluate, instruct and reasonably train, provide refresher courses, guide, instruct and coach staff members with the aim of overall improved work performance.
- (g) Supervisor shall work together with a staff member in order to correct the poor work performance of the staff member and a staff member must follow and implement proposals to improve performance and meet time limits.
- (h) The degree of intervention required by Council shall be reasonable and in proportion to the requirements and responsibilities of the position.
- (i) Rehabilitation, counseling, alternative placement, demotion and termination where applicable shall be applied as a way of managing incapacity arising from poor work performance.
- (j) Alternative placement, with or without reduction in salary or rank or both, may be considered as an alternative to termination of services.
- (k) Council shall ensure that termination due to incapacity is done for a fair reason (substantive fairness) and in accordance with a fair procedure (procedural fairness) and as a last resort.

8. POLICY PROVISION

- 8.1 In instances where a Supervisor has a valid concern regarding the work performance of a staff member, the Supervisor shall deal with the poor work performance as a matter of urgency.
- 8.2 When managing a staff member whose performance does not meet the necessary standards, the **Supervisor** shall:
 - (i) Provide regular feedback, counseling, and where appropriate training to the staff member to enable him/her to perform to standard (s) and within time limits expected to complete a key performance output.
 - (ii) Factors which have hindered the staff member from reaching the set standards are taken into consideration and managed. In so doing, management shall assist and support the staff member as far as possible and reasonable to meet such performance standards.
 - (iii) When providing feedback, explain when and how he/she has not met standards or which standards or time limits agreed for completion of a task were not met, as well as be given an opportunity to provide input to achieve the work standard/s.
 - (iv) Provide a reasonable time period to improve performance, subject to the requirements and related responsibilities of the job.
 - (v) **Annexure B** may be used as guideline to keep track of remedial actions, activities to improve performance.

9. INCAPACITY INQUIRY

- 9.1 In instances where a staff member's performance does not show any improvement despite counselling, training interventions and other support measures within the given time as provided for in the TPMP, an Incapacity Inquiry process due to poor performance shall be initiated as soon as possible.
- 9.2 The Supervisor shall compile a comprehensive report, including a statement and background on remedial training, counselling or proposals that were offered to the staff member to improve performance and initiate an Incapacity Inquiry by reporting the matter to HC after completion of such report within **fourteen (14) days**.
- 9.3 The Incapacity Inquiry may be arranged by the department responsible for Human Capital within **twenty (20) days** after receipt of the report.
- 9.4 The staff member shall be notified in writing of an Incapacity Inquiry, which notice should set out the grounds on which he/she is alleged to be incapable or unfit for his/her duties and state the rights of the staff member at the inquiry (See **Annexure A**). The staff member shall be given **five (5) days' notice** to attend the Incapacity Inquiry.
- 9.5 The staff member shall have the following **rights**:
- (a) To a written statement or report as prepared above setting out the grounds on which he or she is alleged to be incapable or unfit of carrying out such duties efficiently;
 - (b) To be present at the inquiry,
 - (c) to be assisted or represented by any other person, fellow staff member or Workplace Union Representative or Full-time Workplace Union Representative;
 - (d) To be heard;
 - (e) To call witnesses;
 - (f) To cross-examine any person called as a witness in support of his or her alleged incapability or unfitness;
 - (g) To have access to documents produced in evidence

9.6 Composition of an Incapacity Inquiry Committee⁶

- 9.6.1 For purpose of this Clause 9.6, the composition of members of the Incapacity Inquiry Committee will be addressed separately for the top management and other staff members.
- (a) Members of an **Incapacity Inquiry Committee for a staff member** (including a staff member who is not a SE but directly reporting to the CEO) shall, as approved by the Management Committee under section 29(5)(a) of the Act, consist of a minimum of three (3) members:

⁶ Delegation of power in terms of Section 29(2)(a) read with 29(2)(b) read with section 29(5) of the Local Authorities Act, 1992 (23 of 1992) to the CEO reconfirmed through Council resolution 356/11/02 and 05/01/2005

- (j) The concerned SE or his or her appointee (preferably from a different Department) who shall be the Chairperson;
 - (ii) A person or persons having knowledge and experience in Labour Law or HC representative;
 - (iii) Where necessary and depending on the complexity of the case a Legal Practitioner enrolled under the Legal Practitioners Act, 1995 (Act No. 15 of 1995) as amended; or
 - (iv) Any other staff member as appointed by the Strategic Executive concerned preferably from a different Department and who should not have or be perceived to have any interest in the matter or a conflict of interest.
- (b) The members of an **Incapacity Inquiry Committee for the SE and the CEO** shall, as approved by the Council under section 29(5)(e) of the Act, consist of a minimum of three (3) persons:
- (vi) A person or persons having knowledge and experience in Labour law,
 - (vii) A Legal Practitioner enrolled under Legal Practitioners Act, 1995 (Act No. 15 of 1995) as amended, as a Chairperson; or
 - (viii) Two (2) other persons who are not in the employment of Council as appointed by Council who are considered in the circumstances to have skill or knowledge in the field in which the SE or CEO is charged with misconduct.

9.6.2 A staff member of HC or in respect of a SE or CEO a person procured for that purpose must be availed to the Incapacity Inquiry Committee to act and take or record the Minutes of the proceedings, but such a staff member or person will not be part of the Incapacity Inquiry Committee or be allowed to participate in the discussions or proceedings itself and may not have or be perceived to have any interest in the matter or a conflict of interest.

9.7 An Incapacity Inquiry Committee shall consider and ensure that the following issues are dealt with and addressed:

- (a) Whether or not the staff member failed to meet the performance standard in relation to the Key Performance Areas (KPAs) of the job description or Performance Agreement under the TPMP,
- (b) If the staff member did not meet the required performance standard whether or not:
 - (i) the staff member was aware or could reasonably have been aware of the standard or time limits required for completion;
 - (ii) the staff member was given a fair opportunity to meet the required standard;
 - (iii) provision of adequate training, other support systems e.g. resources and intervention like a staff member assistance program or

development/training program required by the staff member in order to meet the performance standard.

- (c) Determine the amount of counseling meetings in order to monitor improvement and or no improvement or inadequate improvement of performance;
 - (d) In cases of no or inadequate improvement, that the staff member was forewarned of the consequences of continued poor of non-performance.
- (a) If the Staff member elects not to attend an Incapacity Inquiry, he/she should indicate as such in writing or upon failure to attend without a reason or failure to inform the reason for such absence, then the case will be heard in absentia and the outcome will be communicated to the staff member in writing.
- (b) Once a Incapacity Inquiry has commenced, it shall be concluded within a reasonable period and if it is clear that either the Council or Staff Member or their respective representatives, delays the proceedings without reasonable cause or continued absence, then the Chairperson of the Incapacity Inquiry Committee may issue a written warning to the party in default, that the Inquiry may be concluded at the next scheduled meeting, in his or her absence.

9.9 Procedure to be adopted at the Incapacity Inquiry

- (g) In conducting the proceedings, the Chairperson may be guided as a guideline by the checklist attached to this Policy as “**Annexure C**”.
 - (h) Upon conclusion of the evidence as produced by both the Initiator or Staff Member or their respective representative, both parties will be given the opportunity to present oral or written arguments to the Incapacity Inquiry Committee on the findings to be considered.
 - (i) In event of a complicated matter or multiple witnesses, the Incapacity Inquiry Committee may request that the Minutes, first be availed to it for perusal, before the findings are to be considered.
 - (j) Upon such conclusion of the arguments, or if Minutes were availed, the Incapacity Inquiry Committee, must make its findings known to both parties, which findings may be made known orally upon conclusion of the arguments or if minutes has been requested be availed in writing within a reasonable time.
- 9.10 If the Incapacity Inquiry Committee found the staff member incapable of carrying out his or her duties efficiently and after affording the staff member concerned an opportunity to make representations in relation to any intended action to be taken against him or her, **may recommend the following to the CEO or Council (whoever is applicable):**
- (a) That the staff member be exonerated from the blame and that no further action be taken in the matter based on the same facts and, where applicable, recommend that the staff member be given an opportunity for training and skill development to improve his or her capacity in carrying out such duties efficiently;

- (b) That the staff member be transferred to any other post;
 - (c) That remuneration or grade or both remuneration and grade of the staff member be reduced to a lower remuneration or grade; or
 - (d) That the staff member be discharged from the service of the Council.
- 9.11 The appeal of a SE or CEO against the finding or recommended action of the Incapacity Inquiry Committee shall be made to the Council. The notice of appeal mentioned in (c) herein above shall be delivered to the department responsible for HC, whilst other staff members may appeal the against the findings or action of the Incapacity Committee to the CEO.
- 9.12 Should the CEO/Council decide for a staff member to be transferred to any other post with or without demotion, the recommended action will be put on hold pending the attempt of the department to identify such alternative post within the Department within **two (2) months**. The responsibility to accommodate the staff member in an alternative position shall first be with the concerned staff member's own department.
- 9.13 Should the concerned department not be able to accommodate the staff member, the SE concerned shall compile a report on the attempts made before referring the matter to the department responsible for HC to assist in identifying alternative positions available within the organization. This will include assessing the competencies required in the identified position and identifying additional training where required.
- 9.14 Should the concerned department be able to accommodate the staff member within the department and the staff member is found fit for the alternative position after the competency's assessment, the department responsible for HC shall forward such to the CEO/Council for a final consideration.
- 9.15 Before placement, the concerned staff member shall be given the job offer of the alternative position. Should the staff member decline the job offer, then he/she should provide good reasons for declining the offer before being granted an opportunity to motivate or appeal to the CEO/Council.
- 9.16 If the staff member accepts the offer, the new Supervisor shall within a **minimum of three (3) months and maximum of six (6) months** provide the concerned SE with a report, confirming the performance of the staff member in a new position. During the employment in the alternative position the same principles shall apply to ensure that the staff member receive the necessary training, coaching and guidance to meet performance standards of such alternative position.
- 9.17 Should the new Supervisor not be able to confirm the suitability of the staff member in an alternative position, the matter will be reported again to the Incapacity Inquiry Committee to reconsider the intended action and based on the relevant evidence from both Supervisor and the staff member; the Committee makes further evaluation and recommendation to the CEO/Council.
- 9.18 In case where the department responsible for HC is unable to identify a suitable alternative position in the organization for the staff member within a maximum of **six (6) months** (calculated from the date after the concerned SE informed HC department), the matter will be referred to the CEO for a final decision.
- 9.19 The staff member after being notified of the Incapacity Inquiry Committee's final recommendations shall have the right to appeal against such finding or action or

both the finding and action to the CEO/Council **within seven (7) days** as from the date on which he or she is notified of the Incapacity Inquiry Committee's final recommendations.

9.20 The CEO after having regard to the documents relating to the finding, take such action as he/she may deem to be fair and equitable on the Incapacity Inquiry Committee's recommendations.

9.21 The staff member shall be informed of the CEO's decision via the department responsible for HC **within seven (7) days** after the CEO's decision.

10. APPEALS

10.1 A staff member who is not satisfied with the CEO's decision shall have the right to appeal against the finding or action or both the finding and action to **Council** within **seven (7) days** after being informed in writing of the CEO's decision.

10.2 The appeal of the concerned SE or CEO against the finding or recommended action of the IIC shall be made to the Council.

10.3 Any appeal in terms of Incapacity due to poor performance, will be dealt with on the record and written representations only, and verbal representations, the calling of witnesses or cross examination thereof will not form part of such appeal.

10.4 The staff member shall be informed via the department responsible for HC of Council's decision within **seven (7) working** days after the matter has been considered by Council. Council's decision shall be final in terms of the internal procedures.

STAFF MEMBER WHO CANNOT READ AND WRITE AND OR NOT FLUENT IN OFFICIAL LANGUAGE

Where a staff member is illiterate the performance standards required from him under his/her job description the staff member may, if he/she is not able to comprehend the performance standards or timeline for exercising his/her functions, request his or her Workplace union representatives, or a Human Capital Officer to explain the standards of performance expected in the language he/she understands.

If an Incapacity Inquiry is instituted against such illiterate staff member, he/she may request his or her Workplace Union Representative, or a Human Capital Officer to explain the procedures in the language he/she understands and assist him or her in complying with the procedure laid down in this Policy.

COMMUNICATION OF THE POLICY

The policy will be communicated to all the staff members and will also be made available on the intranet. It is every staff member's own responsibility to make sure that he/she is well conversant with the content of this Policy and/or any amendments thereto from time to time.

REVISION AND AMENDMENT

This policy will be reviewed and updated as and when the need arises or when developments relating to the above necessitate policy review.

ANNEXURE A

M

(Staff No:)

[Division]

[Department]

WINDHOEK CITY COUNCIL

Date:

Dear Sir/Madam

NOTICE TO ATTEND AN INCAPACITY INQUIRY INTO INCAPABILITY TO PERFORM DUTIES

The Strategic Executive of (**department**) has reason to believe that for some or other reason you are incapable to efficiently carry out the duties for which you were appointed. In terms of Incapacity due to Poor Work Performance Policy read with Section 29(5)(a) of the Local Authorities Act, 1992, you are hereby notified to attend an inquiry to be held on (**date, time & venue**)

The **Incapacity Inquiry** will inquire into the reasons and the grounds on which are believed to be incapable or unfit in performing your duties.

Particulars of grounds:

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

At the above-mentioned meeting you have the right without fear of victimization to:

- To be present at the inquiry,
- The assistance of a fellow staff member or any representative of your choice to help you to present your case,
- Call witnesses and produce evidence in support of your case,
- An interpreter, should you feel you may not fully understand what is said at the inquiry,
- To have access to documents produced in evidence,
- To cross-examine personally (or through your representative if you have one) any witness who gives evidence against you.

Please note that the material proceedings of the inquiry will be recorded in writing.

Kindly take note that:

- Although you have the right to be present at the inquiry the Windhoek City Council has the right to proceed in your absence unless you make prior arrangements with the writer of this letter to postpone the date of the inquiry. Such arrangements should be made **at least three (3) days** before the inquiry unless an emergency cropped up, in which case shorter notice may be accepted.
- If you need an interpreter, you must arrange for your own interpreter. Such interpreter will be accepted upon condition that he/she interprets correctly and to the point. If you wish the Windhoek City Council to provide an interpreter, you must inform the writer hereof at least three (3) days before the inquiry.

- If you desire to use a representative, you must arrange for him/her at your own cost. If the date of the inquiry does not suit your representative, he/she must contact the writer hereof at least three (3) days before the inquiry in order to make other arrangements.
- If you intend calling witnesses, you must arrange their presence at the inquiry. If they are colleagues, you must arrange for them to have permission to be absent from his/her/their workplace(s).

Please note that the proceedings of the meeting will be recorded either manually or electronically.

If you have any queries of any nature whatsoever, please contact the writer.

Yours faithfully,

(Supervisor's Name)

DESIGNATION

Cc: SE:

I ACKNOWLEDGE THAT I REQUESTED/DID NOT REQUEST * THAT THE CONTENTS OF THIS LETTER BE EXPLAINED TO ME AND, IF REQUESTED, WAS EXPLAINED TO ME TO MY SATISFACTION AND THAT I NOW UNDERSTAND THE MEANING OF THE LETTER.

***Delete which is not applicable.**

.....
SIGNATURE

.....
DATE

No	ACTIVITY	YES/NO
1	Identify sub-standard performance using TPMP.	
2	Review standards to ensure they are reasonable.	
3	Arrange interview with staff member.	
4	Inform staff member of your dissatisfaction with his / her performance.	
	Lists non-performance or work redone, incompleteness, time limits not reached etc as per TPMP.	
5	Establish if staff member is aware of performance standard. If staff member is unaware, spell out standards and indicate to staff member that performance will in future be monitored.	
6	If staff member is aware of standard, enquire into reason for poor performance.	
	Reasons:	
7	Consider your staff member's reasons. If satisfactory, end the session.	
8	If not or if indications are that further action is required, stress the need for standards to be maintained as per agreed TPMP.	
9	Discuss with staff member possible ways of addressing the problem, e.g. training, assistance, transfer, etc.	
10	If agreement is reached on an action plan, secure staff member's commitment to it and complete Development Plan.	
	Solutions/remedial actions:	
11	If no agreement is reached, spell out your own action plan. Be clear on standards required as well as time allowed for performance to improve. Make sure that it is reasonable.	
12	In both cases inform staff member that he / she will be monitored and that failure to comply with performance standards may lead to inquiry.	
13	Assure staff member of support and give it continuously.	

14	Thereafter monitor progress and continue assessment.	
15	If problem persists, arrange for a formal incapacity inquiry.	
16	Always keep accurate record of interview, action plans, etc.	

ANNEXURE B

ANNEXURE C

INCAPACITY INQUIRY CHECKLIST

15. Record all parties present:

Date of Inquiry:		Starting Time:	
Venue:			
Chairperson:		HC Official:	
Legal Official:			
Initiator:		Witness 1:	
		Witness 2:	
		Witness 3:	
		Witness 4:	
Staff Member:		Witness 1:	
Staff Member's Representative:		Witness 2:	
Interpreter:		Witness 3:	
		Witness 4:	

16. Introductions: (tick to confirm action took place)

• Chairperson introduce himself/herself	<input type="checkbox"/>
• Introduce parties in attendance (seeking the names of those unknown to him/her for the record)	<input type="checkbox"/>
• Chairperson clarify the role/function of the participants as follows:	<input type="checkbox"/>
<ul style="list-style-type: none"> • Chairperson: <ul style="list-style-type: none"> · form part of the Incapacity Inquiry Committee · to chair the inquiry, acting impartially and control the proceeding · to ask questions for clarification • Human Capital Representative: <ul style="list-style-type: none"> · form part of the Incapacity Inquiry Committee · to ensure procedural and substantive fairness by advising both parties · to take minutes of the proceedings • Legal Official (if necessary) <ul style="list-style-type: none"> · form part of the Incapacity Inquiry Committee · advise the inquiry on legal matters 	
OR	
<ul style="list-style-type: none"> • Concerned SE's Appointee/Nominee: <ul style="list-style-type: none"> · form part of the Incapacity Inquiry Committee · to ask questions for clarification • Initiator: <ul style="list-style-type: none"> · to present the Council's case at the inquiry · to lead evidence of the alleged incapacity or unfitness due to poor performance · to call witnesses/produce evidence (documents) in support of the Council's case · to cross-examine witnesses called by the staff member party · to present arguments on behalf of Council 	

<ul style="list-style-type: none"> • Staff Member’s Representative: <ul style="list-style-type: none"> · to present the case of the staff member and assist him/her to tell his/her side of the story at the inquiry. · to call witnesses or produce evidence (documents) in support of the staff member’s case · to cross-examine witnesses called by the Initiator. · to present arguments on behalf of the staff member. • The Staff member: <ul style="list-style-type: none"> · to present his/her case · to answer questions put to him/her · to be cross- examined by the Initiator • Witnesses: <ul style="list-style-type: none"> · to give evidence at the inquiry either in support of the CoW’s case or the case of the staff member • Incapacity Inquiry Committee: <ul style="list-style-type: none"> · to listen to the evidence presented by both parties · to ask questions for clarifications · exercise power vested in terms of Clause 9.8, 9.9, 9.17 and 9.18 of this Incapacity Policy · to agree and make recommendations to the CEO or Council (whichever is applicable) with regards to the findings and appropriate sanction/actions
--

17. If no representative is present:

· Explain to the staff member that he/she has a right to use a representative of choice to assist him/her in understanding the inquiry, the procedures and represent him/her in general during the proceedings	<input type="checkbox"/>
· Ask the staff member whether he/she understands	<input type="checkbox"/>
· Ask the staff member whether he/she would like to continue without a representative and whether the right of representation is waived. If not, determine when the staff member will obtain a representative and when will he/she able to continue.	<input type="checkbox"/>

18. Confirmation of the Staff member’s Rights

<p>Check and confirm the Staff member’s rights by asking the following:</p> <ul style="list-style-type: none"> · Was notified of the intended inquiry and reasons for the inquiry against him/her in time (at least 5 working days in advance) · Was given sufficient time to prepare for an Incapacity inquiry · Does he/she need to have an interpreter · His/her right for appeal. 	<input type="checkbox"/>
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19. Procedure for the Incapacity inquiry.

<p>Chairperson briefly explain the following procedure for the inquiry:</p> <ul style="list-style-type: none"> · each party will be given an opportunity to make an opening statement; · the Initiator will be given an opportunity to state his/her case by giving evidence through the witnesses; · at the end of each witness’s evidence the Staff member or his/her representative may cross-examine that particular Council’s witness; · the Initiator may re-examine each witness after they have been cross-examined If he/she wishes to clarify any uncertain legal issues; · after all Council’s witnesses have been called and cross-examined, the staff member or his/her representative will have the opportunity to lead all his/her evidence by calling his/her witnesses one at a time including the staff member; · at the end of each witness’s evidence the Initiator may cross-examine that particular witness; · Staff member or his/her representative may re-examine each witness after they have been cross-examined by the Initiator if he/she wishes to clear up any uncertain legal issues. 	<input type="checkbox"/>
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Initiator will summarise the council's case followed by the staff member or his/her representative who will summarise the staff member's case.	
Chairperson requests witnesses to leave the room, thereafter the procedures outlined above gets under way.	<input type="checkbox"/>
20. Allegations of Incapacity or Unfitness to Perform	
Chairperson requests the Initiator to read out the alleged reasons as reflected in the Notice of the Incapacity Inquiry for the record.	<input type="checkbox"/>
After the Initiator read out the purpose of the Inquiry, the Chairperson should give the staff member/representative an opportunity to state if he/she admits poor performance standards.	<input type="checkbox"/>
If the staff member acknowledges the incapacity or poor work performance or unfitness, the Chairperson will clarify if the explanation warrants a finding of that the staff member concerned is unfit for his or her duties or is incapable of carrying out such duties efficiently and, after affording the staff member concerned an opportunity to make representations in relation to any intended action to be taken, consider the intended finding.	<input type="checkbox"/>
If the staff member does not acknowledge his/her incapacity or poor work performance or unfitness to perform, the Chairperson must ask the Initiator to present his/her opening statement followed by staff member or representative's opening statement.	<input type="checkbox"/>
Initiator is given an opportunity to prove his/her case by leading the evidence as follows: <ul style="list-style-type: none"> · Call in, the Council's witness one by one and lead each witness to provide evidence through questioning; · Allow the Initiator and his/her witness to provide exhibits where applicable; · Procedure as explained in Point 5 herein above should be followed 	<input type="checkbox"/>
If at any time during the proceedings the Chairperson is unclear on a point or seeks clarification of an answer given, he/she is free to ask questions to test his/her understanding and establish clarity.	<input type="checkbox"/>
21. Staff Member's case	
<ul style="list-style-type: none"> · Chairperson invites the staff member or his/her representative to lead the staff member and tell his/her version of events · Call witnesses, one by one for examination by the staff member/representative · Once the staff member or representative is done with cross-examination of the witnesses the Chairperson invites the Initiator to cross-examine the witnesses · After the Initiator is done to cross-examine the staff member's witnesses · Chairperson invites the staff member/ representative to re-examine the witnesses 	<input type="checkbox"/>
If at any time in the proceedings the Committee is unclear on a point or seeks clarification of an answer given, he/she is free to ask questions to test his/her understanding and establish clarity.	<input type="checkbox"/>
22. Closing Arguments	
Once the leading of evidence by both parties has been concluded the Chairperson invites the Initiator to present his/her closing arguments followed by the staff member/representative's closing argument (or in the absence of the Chairperson they could do so)	<input type="checkbox"/>
After receiving final closing arguments, the Chairperson adjourns the inquiry for the Committee to consider the evidence and to come to a finding. In complex cases stretching over several days with multiple exhibits, the DIC may request the typed or electronic minutes be presented.	<input type="checkbox"/>
23. Deciding of Finding of incapacity or poor work performance or unfitness	
Having adjourned the inquiry to consider the evidence, the Committee examines the evidence to determine: <ul style="list-style-type: none"> (i) whether or not the staff member failed to meet the performance standard in relation to the Key Performance Areas (KPAs) of the job description or Performance Agreement under the TPMP, (ii) if the staff member did not meet the required performance standard whether or not: (iii) if the staff member was aware or could reasonably have been aware of the standard or time limits required for completion; 	<input type="checkbox"/>

<p>(iv) the staff member was given a fair opportunity to meet the required standard; provision of adequate training, other support systems e.g. resources and intervention like an staff member assistance program or development/training program required by the staff member in order to meet the performance standard.</p> <p>(v) determine the amount of counseling meetings in order to monitor improvement and or no improvement or inadequate improvement of performance;</p> <p>(vi) in case of no or inadequate improvement, that the staff member was forewarned of the consequences of continued poor of non-performance.</p> <p>The Committee on its own weigh up evidence and balance of probabilities.</p>	
<p>Findings will be determined on the balance of probabilities and not be proven beyond a reasonable doubt.</p>	<input type="checkbox"/>
<p>24. Informing parties of the Finding</p>	
<p>The Chairperson gives the Committee's finding to the parties and motivate reasons for findings.</p>	<input type="checkbox"/>
<p>25. Deciding on the appropriate action</p>	
<p>In deciding the appropriate action, the Committee must comply with this Policy and section 29(5) of the Local Authorities Act. At this stage Committee should not consult with the Initiator or the Staff member. The Committee may be guided by the Human Capital Representative with regard to the principles, which should be applied. If the Incapacity Committee found that:</p> <p>(a) the staff member concerned is fit for his or her duties or is capable of carrying out such duties, such finding must be conveyed to the CEO or in respect of a SE or CEO to the Council for a final decision.</p> <p>(b) the staff member concerned is unfit for his or her duties or is incapable of carrying out such duties efficiently and, after affording the staff member concerned an opportunity to make representations in relation to any intended action to be taken</p>	<input type="checkbox"/>
<p>12. Representation by the Staff member Staff Member on the recommended actions</p>	
<p>At this stage the Chairperson invite the staff member/representative to make representation on the intended action and not the finding in accordance with Section 29(5)(c)(i) of the Local Authority Act, 1992 (Act No. 23 of 1992) as amended.</p>	<input type="checkbox"/>
<p>13. Recommended actions</p>	
<p>At this stage Incapacity Inquiry Committee will consider the actions contained in Section 29(5)(c)(i) of the Local Authority Act, 23 of 1992 and may recommend to the CEO or Council that –</p> <p>(aa) the staff member be exonerated from the blame and that no further action be taken in the matter based on the same facts and, where applicable, recommend that the staff member be given an opportunity for training and skill development to improve his or her capacity in carrying out such duties efficiently;</p> <p>(bb) the staff member be transferred to any other post; or</p> <p>(cc) the remuneration or grade or both remuneration and grade of the staff member be reduced to a lower remuneration or grade; or</p> <p>(dd) the staff member be discharged from the service of the local authority council.</p> <p>At the conclusion of such inquiry, the staff member concerned shall be notified of the recommended action proposed by the Incapacity Inquiry Committee.</p> <p>If the intended action is that the staff member be transferred to any other post the procedures as contained in clause 9.12 to 9.29 should first be followed.</p>	<input type="checkbox"/>

14. Right to appeal

<p>Right to appeal against finding and recommended actions made by Incapacity Inquiry Committee</p> <p>The Chairperson explains the procedures to be followed, that the Incapacity Inquiry Committee will make its recommendations on the intended action to the CEO, or in case of SE or CEO to Council. Should the staff member not be satisfied with the decision of the Incapacity Inquiry Committee, the staff member has the right to appeal to the CEO or Council against the recommendations or finding or both of the Incapacity Inquiry Committee within seven (7) working days from being informed of the findings and recommended action. The appeal should be submitted to the HC department in writing.</p>	<input type="checkbox"/>
<p>Right to appeal against finding and confirmed actions made by CEO or in case of SE of CEO to Council</p> <p>The Chairperson explains the procedures that the CEO or Council will be considering the minutes of the Incapacity inquiry and any appeal documents submitted.</p> <p>The CEO or Council will either confirm or decide otherwise on the recommendations of the Incapacity Inquiry Committee.</p> <p>Should the staff member not be satisfied with the decision of the CEO, the staff member has the right to appeal to Council within seven (7) working days of being informed of the findings and actions as confirmed or not confirmed or amended. The appeal should be submitted to the HC department in writing.</p>	<input type="checkbox"/>

Signed off by:

.....
Chairperson of the Incapacity Inquiry Committee

.....
Date

ANNEXURE 3**DEFINITIONS**

In this Policy, the definitions of the Local Authorities Act, 1992 (Act No 23 of 1992) read with the definitions of the Personnel Rules (Conditions of Service) published under General Notice No. 277 of 21 August 2012 apply and unless the context otherwise indicates, the following terms and definitions have the following meaning –

Term	Definition
Appointees or delegates	<p>A staff member-</p> <p>(a) appointed to act in the stead of the Chief Executive Officer under section 27(4) of the Local Authorities Act, or</p> <p>(b) to whom the Chief Executive Officer has delegated a function or power under section 27(5) of the Local Authorities Act or</p> <p>(c) a staff member to whom the Council or Management Committee has delegated a function under sections 31 of the of the Local Authorities Act and who is authorised by the Local Authorities Act or by the Personnel Rules (Conditions of Services), or this Policy to take Incapacity action under this Policy and designated or authorised staff member has a similar meaning,</p>
Chief Executive Officer	<p>The Chief Executive Officer of Council, appointed in terms of section 27(1) of the Local Authority Act, 1992 (Act No. 23 of 1992), or his or her appointee or delegatee.</p>

Term	Definition
Concerned Strategic Executive	Any Head of the Department designated under section 28(32) of Local Authority Act, 1992 (Act No. 23 of 1992) to administer a Department to which the staff member is attached as per the Council's fixed establishment and includes the CEO to be deemed to be a SE in respect of a staff member (not being at SE), but reporting directly to the CEO.
Council	The Municipal Council of Windhoek or its Management Committee or any staff member authorized or delegated to act on its behalf under section 31 of the Local Authorities Act.
Excessive sick leave days	Absence from work due to sick leave as defined by the insurer from time to time: (i) Absence from work for 10 consecutive days; or (ii) Absence from work for five (5) days (consecutive or non-consecutive) in any 30-day period, without medical evidence or notifying the supervisor; or (iii) Consistently absent on Fridays and/or Mondays, or both; or (iv) Consistently absent for one or more days per month and or (v) Total absence of twenty (20) days or more in any one (1) year.
Day	"day" means an ordinary working day as applicable to the staff member in terms of his/her contract of employment and means - (a) five consecutive working days, if the staff member works a five day week; (b) six consecutive working days, if the staff member works a six day week; or the number of agreed consecutive working days, if the staff member works less than five days a week.
Designated Staff Member/ Appropriate Person	Any staff member in a department to whom the power or authority to institute and investigate an incapacity process has been delegated or who is authorised by the Incapacity Policy or by the Personnel Rules (Conditions of Services), to indicate or take appropriate action.
Disabled Staff Member	A staff member having a disability and who was procured under the Council's Staffing Policy as part of the designated group defined in section 18 of the Affirmative Action (Employment) Act, 1998 (Act No. 29 of 1998)
Incapacity due to Ill-Health/Injury	Refers to an individual's medical inability to perform according to the stipulated work standard a particular job due to medical grounds including a clinical psychological - or mental health disability.
Incapacity Inquiry	An investigation being conducted by staff member(s) and or person(s) designated to inquire in terms of section 29(5) of the Local Authorities Act into reasons why a staff member is incapable of carrying out his/her duties efficiently due to continued ill-health or medical unfitness.
Incapacity due to continued Ill health/ Injury Policy	The Incapacity due to continued Ill health/Injury Policy is promulgated as part and deemed to be included in the Council's Conditions of Service as Personnel Rules under section 27(1)(c) (ii) of the Local Authorities Act.

Term	Definition
Initiator	Either the Line Manager or Supervisor or any appointee or delegatee or person designated who will be responsible to present Council's case during an incapacity inquiry and in respect of the CEO or SE may be a legal practitioner appointed by the Council or its delegatee.
Insurer	A registered insurance company as appointed by the Pension Fund for Retirement Fund for Local Authorities in Namibia.
Labour Act	The Labour Act, 2007 (Act No 11 of 2007) or as amended from time to time.
Line Manager	Includes staff member from the first level of supervision upward for the purpose of instituting incapacity process.
Local Authorities Act	The Local Authorities Act, 1992 (Act No 23 of 1992) as amended from time to time.
Management Committee	The Management Committee of a Municipal Council of City of Windhoek
Occupational Health Doctor	A medical practitioner registered or authorised to practise as such under the Medical and Dental Act, 2004 (Act No. 10 of 2004) and holds a qualification in Occupational Health
Pension Fund	The Retirement Fund for Local Authorities and Utility Services in Namibia or any other pension fund established under Section 27(1)(c)(ii)(bb) of the Act and includes a united pension fund to which Council contributes on behalf of its staff members.
Staff Member	A staff member as defined in section 1 of the Local Authorities Act, 1992 (Act No. 23 of 1992) as amended and Personnel Rules (Conditions of Service).
Strategic Executive	A staff member designated in terms of section 28(2) of the Local Authorities Act, 1992 (Act No. 23 of 1992) as amended, as head of a department established in terms of section 28(1) of the Act, or a person duly authorized to be the Strategic Executive's delegatee or acting in that capacity;
Supervisor	Includes: (a) in respect of the Chief Executive Officer, the Chairperson of Council acting in consultation with the Chairperson of MC, (b) in respect of a Strategic Executive shall be the Chief Executive Officer including staff directly reporting to the Chief Executive Officer, and (c) In respect of other staff members, the first level of supervision and the supervisor.
Trade Union	Means an association or organization of employees that is registered as a trade union in terms of the applicable Labour Act in the Republic of Namibia, whose principal purpose is to regulate relations between staff members and their employer; and to whom an staff member belongs to or may belong to as a member.
Workplace Union Representative	A staff member elected to represent a registered Trade Union in the workplace as a Workplace Union Representative under section 67 of the Labour Act and trade union representative has the same meaning.

Abbreviations

Abbreviation	Full Name
CEO	Chief Executive Officer
II	Incapacity Inquiry
IIC	Incapacity Inquiry Committee
HC	Human Capital

SE	Strategic Executive
SSC	Social Security Commission

PERSONNEL RULES IN RESPECT OF INCAPACITY DUE TO CONTINUED ILL-HEALTH/INJURY

INTRODUCTION

Incapacity arising from continued ill health or injury is recognized as a legitimate reason for terminating the staff member's services provided that it is done fairly and in accordance with the principles of natural justice. Incapacity on grounds of continued ill health or injury may be temporary or permanent. It is also recognised that continued ill health may be defined as incapacity due to total medical disability or a clinical psychological - or mental health disability.

PURPOSE

To provide guidelines on how the Incapacity due to continued ill health or injury should be handled.

SCOPE

This Rule/Policy is applicable to all Staff members.

This Rule/Policy does not replace any actions or compliances required under:

- (a) Regulations or Rules or procedures prescribed under the Employees Compensation Act, 1941 (Act No. 30 of 1941) as amended, for any work-related injuries to be reported or claims to be handled there under, or
- (b) The Pension Fund- or Pension Fund's Insurer's Rules or procedures for the claim of any medical disability benefits thereunder.

APPLICABLE LEGISLATION

- (a) Labour Act, 2007 (Act No. 11 of 2007);
- (b) Local Authorities Act, 1992 (Act No. 23 of 1992) as amended;
- (c) Municipal Council of Windhoek: Personnel Rules: Local Authorities, 1992;
- (d) Staffing Policy of the Windhoek Municipal Council;
- (e) Pension Fund Rules (Retirement Fund for Local Authorities and Utility Services in Namibia);
- (f) Employees Compensation Act, 1941 (Act No. 30 of 1941) as amended;
- (g) Medical and Dental Act 10 of 2004;
- (h) Professional Conduct Rules: Allied Health Professions Act, 2004; and
- (i) Any other applicable legislations and or policy

GENERAL PRINCIPLES

- (a) Council shall treat every staff member who is incapacitated due to continued illness or injury in a consistent, fair and appropriate manner with regard to the staff member's

particular circumstances.

- (b) The degree of the incapacity, as well as the permanency of the incapacity, shall be the main factor when assessing a staff member's capability or fitness for continued employment.
- (c) Council shall ensure that termination of service arising from incapacity due to continued ill health or injury shall be in accordance with the approved procedures and termination of service only as a last resort.
- (d) Supervisor and staff member(s) are equally responsible for managing staff member's absences to ensure effective planning for service delivery and protection of staff member(s) in relation to their timeous reporting and procedurally correct claims relating to disability benefits with the Insurer of the Pension Fund or where applicable for injury on duty under the Employees Compensation Act, 1941.
- (e) No staff member shall be subject to any form of victimization or unfair discrimination as a result of their incapacity due to continued ill health and Council shall maintain high levels of confidentiality when managing incapacity due to continued ill health.
- (f) The Policy acknowledges that a disabled staff member specifically employed as part of the designated group for purposes and as defined in section 18 of the Affirmative Action (Employment) Act 29 of 1998, after successfully completing of his/her probation period, may not merely be referred to an Incapacity Inquiry without first investigating which measures the Council has introduced to ensure compliance with performance standards or an adaption of standards to accommodate the disability impairments of such staff member.

DEFINITION OF INCAPACITY DUE TO CONTINUED ILL-HEALTH OR INJURY

Incapacity due to continued ill-health or injury refers to an individual's medical or inability to perform due to medical grounds including clinical psychological - or mental health disabilities, according to the stipulated work standard in a particular job for which he/she has been employed.

This could be attributed to:

- (a) Incapacity resulting from continued ill health (mental or physical) or injury.
- (b) Injury which may be work related and non-work related injury.
- (c) Incapacity which may be temporary, permanent or intermittent in nature.

INITIATION OF AN INCAPACITY DUE TO CONTINUED ILL-HEALTH OR INJURY

7.1 The initiation of an incapacity inquiry due to continued ill-health or injury could arise out of the following scenarios or be detected from:

- (a) A staff member taking excessive and continued sick leave days than prescribed in the Conditions of Service.
- (b) A staff member taking ad hoc sick leave during every month for consecutive periods for the same or related medical conditions as advised by the medical practitioner on the sick leave certificate issued in favour of the staff member.

- (c) A staff member suffering from a major illness or accident including clinical psychological - or mental health disability resulting in a prolonged hospitalization, institutionalization or medical rehabilitation.
 - (d) Any other scenario as stated in the Conditions of Services or under the Pension Fund or Pension Fund Insurer's Rules.
- 7.2 Incapacity investigation shall be initiated by the Supervisor through regular monitoring of a staff members' leave records; however, the department responsible for Human Capital may also initiate same through corporate auditing of leave records.
- 7.3 In all instances, where a possible detection of continued ill-health condition of a staff member is alleged, the Supervisor shall be required to follow the procedures outlined below. **Failure to apply the procedures may result in disciplinary action being taken against the Supervisor and possible liability due to repudiation of the disability claim of the unfit staff member at the Pension Fund's Insurer for non-compliance.**
- 7.4 The repudiation of the disability claim of the unfit staff member at the Pension Fund's Insurer for non-compliance, may arise in situations where late application for disability benefit is made to the Insurer and Council or the staff member is required to incur additional costs in lieu of such disability or other benefits.
- 7.5 As a general rule, the Supervisor:
- 7.5.1 In consultation with the affected staff member and HC where continued ill health or injury or a possible long term medical or clinical psychological - or mental health disability is detected, report the incurrence to the Pension Fund Insurer and upon confirmation that same may be of a total medical disability proceed to finalise the procedures under the Pension Fund and its Insurer's Medical Disability Rules for the waiting period for finalise of such claims under such Rules to commence,
 - 7.5.2 Who contemplates initiating an incapacity inquiry process due to continued Ill-Health or Injury should first investigate with the view to determine if such absence constitutes a continued medical - or clinical psychological - or mental health disability or incapacity.
- 7.6 The Supervisor needs to distinguish between:
- (a) **Sporadic absenteeism** arising in many cases out of either abuse of sick leave (i.e. patterns of excessive sick leave with no real underlying chronic illness) or possible underlying substance abuse;
 - (b) **Temporary incapacity** arising from illness or injury which is not chronic in nature;
 - (c) **Long term chronic illness or injury** leading to periods of temporary incapacity;
 - (d) **Long term illness or injury** or a clinical psychological - or mental health disability leading to possible permanent incapacity;
- 7.7 The Supervisor shall be required to hold an initial consultation with the staff member. The purpose of this consultation shall be to determine the underlying cause of the absence and its likely impact on future operational requirements. If the staff member is absent from the workplace due to long term illness or injury, such consultation may be held virtually or with prior arrangement during a face-to-face visit to the house or hospital or clinic where the staff member may find him or herself.

7.8 In cases of incapacity arising out of suspected substance abuse or psychological or mental distress, the staff member should first be referred to the department responsible for Human Capital for wellness interventions.

7.9 **Sporadic Absenteeism**

- (a) In case of Sporadic Absenteeism, the Supervisor must bring to the staff member's attention, the need to improve their attendance; failure to do so will result in further steps in terms of this process, leading to formal Incapacity Inquiry or Disciplinary action in event of a misuse of sick leave, as appropriate for remedial action and possible termination of services.

7.10 **Temporary non-Chronic Absenteeism**

- (a) In the case of periods of temporary absenteeism, which is supported by medical prognosis, the Supervisor shall allow the staff member reasonable time to recover and return to work.
- (b) Where a staff member requires days in excess of the total amount of sick leave available in that specific cycle, a staff member may use his/her annual leave days and if no sufficient leave days are available, reasonable unpaid leave should be granted. Such approval should only be granted based on the medical certificate that booked the staff member off sick.
- (c) In the case of injury on duty, staff member requiring additional time off shall be treated in terms of Clause 34 of the Conditions of Services (Personnel Rules) provided the case is reported to the Employees Compensation Commissioner - Social Security Commission (SSC) through the department of Human Capital. Where sick leave or annual leave has been previously granted, it shall be converted into special leave on full remuneration provided there is proof that the case is reported to the Employees' Compensation Commissioner at SSC.
- (d) In instances where such incapacity is unreasonably long, the Supervisor may consider termination. Such consideration shall be dealt with in compliance with Clause 8 of this Policy herein below.

7.11 **Permanent Incapacity**

- (a) At the initial or subsequent consultation in terms of Clause 7.5 and 7.7 herein above, the Supervisor should explore whether the incapacity is likely to be permanent in nature.
- (b) When a staff member becomes incapacitated and can no longer perform his/her job due to continued and total disability illness or an injury sustained, the Supervisor should before contemplate a termination of services, conduct an investigation through the department responsible for Human Capital to establish the extent of that incapacity and the prognosis.
- (c) This determination of permanent incapacity shall be based on the submission of a Specialist medical reports and shall require the concurrence of Council's appointed Occupational Health Doctor.
- (d) On receipt of such determination, consideration shall be given to whether the staff member can perform his/her function with adaption or whether an alternative function within Council can be performed. Such alternative accommodation or adaption shall be reasonable and affordable.

- (e) In considering such determination, Council's Occupational Health Doctor may advise on appropriate treatment plan to manage the illness or injury in order to avoid permanent incapacity.
- (f) Where a staff member is found either partially or permanently incapacitated, the department responsible for Human Capital shall apply for disability benefits after receipt of the medical doctors' reports to the relevant insurer of Council's Pension Fund within the timeframe as prescribed by the Pension Fund and Insurer's Rules.
- (g) The Supervisor is responsible for notifying the department responsible for Human Capital within **thirty (30) days** of a period of continuous absence in all cases of possible partial or permanent incapacity. This is to ensure that the staff member complies with the relevant Insurer's Rules in order to receive the qualifying benefits timeously.
- (h) Termination of services may follow communication from the relevant Insurer of the Pension Fund, provided that such communication is not unreasonably delayed. Notwithstanding feedback from the Insurer, any termination of services as a result of incapacity due to continued ill-health should follow the Incapacity Inquiry in line with Clause 8 below of this Policy read with section 29(5) of the Local Authorities Act, 1992 (Act No. 23 of 1992) as amended.

INCAPACITY INQUIRY

- (a) In order to consider the option of alternative placement or termination of services, an Incapacity Inquiry shall be convened on advise by the concerned SE upon receipt of the investigation report from department responsible for Human Capital. The Incapacity Inquiry will be arranged by the Human Capital department within **thirty (30) days** after the directive from the concerned SE has been received.
- (b) The Human Capital department may proceed to arrange an Incapacity Inquiry, notwithstanding the fact that a disability claim has been submitted to the Pension Fund Insurer, after receipt of the medical doctors' reports that a staff member is found either partially or permanently incapacitated.
- (c) The staff member shall be notified in writing of an Incapacity Inquiry, which notice should set out the grounds on which he/she is alleged to be unfit or medically incapacitated for his/her duties and state the rights of the staff member at the hearing "**Annexure A**". The staff member shall be given **seven (7) days' notice** to attend the Incapacity Inquiry.

8.1 The staff member shall have the following **rights**:

- (a) To a written statement setting out the grounds on which he or she is alleged to be incapable of carrying out such duties efficiently;
- (b) To be present at the Inquiry, to be assisted or represented by any other person, fellow staff member or Workplace Union Representative and to give evidence and, either personally or through representative;
- (c) To be heard;
- (d) To call witnesses;

- (e) To cross-examine any person called as a witness in support of his or her alleged unfitness;
- (f) To have access to documents produced in evidence.

8.2 The Composition of the Incapacity Inquiry Committee⁷

8.2.1 For purpose of this Clause 8.2, the composition of members of the Incapacity Inquiry Committee will be addressed separately for the top management and other staff members.

(a) Members of an **Incapacity Inquiry Committee for a staff member** (including a staff member who is not a SE but directly reporting to the CEO) shall, as approved by the Management Committee under section 29(5)(a) of the Act, consist of a minimum of three (3) members:

- (i) The concerned SE or his or her appointee (preferably from a different Department) who shall be the Chairperson;
- (ii) A person or persons having knowledge and experience in Labour Law or HC representative;
- (iii) Where necessary and depending on the complexity of the case a Legal Practitioner enrolled under the Legal Practitioners Act, 1995 (Act No. 15 of 1995) as amended, or
- (iv) Any other staff member as appointed by the Strategic Executive concerned preferably from a different Department and who should not have or be perceived to have any interest in the matter or a conflict of interest.

(b) The members of an **Incapacity Inquiry Committee for the SE and the CEO** shall, as approved by the Council under section 29(5)(e) of the Act, consist of a minimum of three (3) persons:

- (i) A person or persons having knowledge and experience in Labour law, or
- (ii) A Legal Practitioner enrolled under Legal Practitioners Act, 1995 (Act No. 15 of 1995) as amended, as a Chairperson; and
- (iii) Two (2) other persons who are not in the employment of Council as appointed by Council who are considered in the circumstances to have skill or knowledge in the field in which the SE or CEO is charged with misconduct.

8.2.2 A staff member of HC or in respect of a SE or CEO a person procured for that purpose must be availed to the Incapacity Inquiry Committee to act and take or record the minutes of the proceedings, but such a staff member or person will not be part of the Incapacity Inquiry Committee or be allowed to participate in the discussions or proceedings itself and may not have or be perceived to have any interest in the matter or a conflict of interest.

8.3 The Supervisor shall make submission(s) to the Inquiry regarding:

⁷ Delegation of power in terms of Section 29(2)(a) read with 29(2)(b) read with section 29(5) of the Local Authorities Act, 1992 (23 of 1992) to the CEO reconfirmed through Council resolution 356/11/02 and 05/01/2005

- 8.3.1 The outcome of a disability claim to Council’s Pension Fund and its Insurer and the outcome of such claim and if the staff member claim was accepted the outcome thereof or if not accepted, the reasons for such non-acceptance.
- 8.3.2 Options of accommodation or alternative placement or permanent disability, which must be supported by medical evidence, failing which the Supervisor shall provide evidence to support the termination of services.
- 8.4 A staff member or his/her representative shall be given opportunity to make representations on accommodation or alternative placement or permanent disability.
- 8.5 Before arriving at the findings, the Incapacity Inquiry Committee should consider the following in the correct order whether:
- (a) The nature of the staff member’s ill health and the prognosis thereof;
 - (b) The staff member is no longer capable of performing the duties he or she was employed to do;
 - (c) The extent to which the staff member is able to perform the work;
 - (d) The extent to which the staff member’s work circumstances might be adapted to accommodate the incapacity or disability, or, where this is not possible, the extent to which the staff member’s duties might be adapted;
 - (e) The availability of any suitable alternative work, if the staff member cannot perform his or her existing duties;
 - (f) The nature of the ill health is of a temporary nature or if the absence would be “unreasonably long”, impacting on service delivery and necessitating stand in or temporary appointment of another person to fulfill the duties of the staff member and financial implications of the same; and
 - (g) Termination of services, as a last resort, if the disability claim of the staff member to the Insurer is rejected.
- 8.6 If the Staff member elects not to attend an Incapacity Inquiry, he/she should indicate as such in writing or upon failure to attend without a reason or failure to inform the reason for such absence, then the case will be heard in absentia and the outcome will be communicated to the staff member in writing.
- 8.7 Once a Incapacity Inquiry has commenced, it shall be concluded within a reasonable period and if it is clear that either the Council or Staff Member or their respective representatives, delays the proceedings without reasonable cause or continued absence, then the Chairperson of the Incapacity Inquiry Committee may issue a written warning to the party in default, that the Inquiry may be concluded at the next scheduled meeting, in his or her absence.
- 8.8 Procedure to be adopted at the Incapacity Inquiry**
- (a) In conducting the proceedings, the Chairperson may be guided as a guideline by the checklist attached to this Policy as “**Annexure B**”.
 - (b) Upon conclusion of the evidence as produced by both the Initiator or Staff Member or their respective representatives, both parties will be given the opportunity to present oral or written arguments to the Incapacity Inquiry Committee on the findings to be considered.

- (c) In event of a complicated matter or multiple witnesses, the Incapacity Inquiry Committee may request that the minutes, first be availed to it for perusal, before the findings are to be considered.
 - (d) Upon such conclusion of the arguments, or if minutes were availed, the Incapacity Inquiry Committee, must make its findings known to both parties, which findings may be made known orally upon conclusion of the arguments or if Minutes has been requested be availed in writing within a reasonable time.
- 8.9 If the Incapacity Inquiry Committee found the staff member incapable of carrying out his or her duties efficiently and after affording the staff member concerned an opportunity to make representations in relation to any intended action to be taken against him or her, may recommend the following to the CEO/Council (whoever is applicable):
- (a) That the staff member be exonerated from the blame and that no further action be taken in the matter based on the same facts
 - (b) That the staff member be transferred to any other post; or
 - (c) That remuneration or grade or both remuneration and grade of the staff member be reduced to a lower remuneration or grade; or
 - (d) That the staff member be discharged from the service of the Council.
- 8.10 The appeal of a SE or CEO against the finding or recommended action of the Incapacity Inquiry Committee shall be made to the Council. The notice of appeal herein shall be delivered to the department responsible for HC, whilst other staff members may appeal the findings or action of the Incapacity Committee to the CEO.
- 8.11 In instance where **Alternative Placement** is considered and recommended by the IIC:
- (a) The recommendations will be forwarded to the concerned SE who should make every effort to identify alternative work within his/her Department before the recommendation of the IIC is forwarded to the CEO;
 - (b) Should there be no suitable position within that Department, then the concerned SE prove his inability to find the position within **two (2) months** and submit same to the department responsible for Human Capital to forward same with the IEC's recommendations to the CEO to consider identification of a suitable alternative position available in the organization within a maximum period of **six (6) months** (calculated from the date after the concerned SE informed HC department).
 - (c) Should any suitable alternative position be available as identified by the department responsible for Human Capital, then the recommendation to transfer that staff member into the identified position together with the IIC's recommendation should be forwarded to the CEO to decide on the intended action which includes transferring such staff members into any of the suitable position(s) as identified.
 - (d) Failure by the department responsible for Human Capital to find a suitable alternative position where the concerned staff member can be placed within a **maximum period of six (6) months**, then the staff member's case with the report after being re-assessed by Council's Occupational Medical Doctor, should be referred to the CEO for a final decision.

- (e) Should the placement be found, the staff member shall be at the same or lower level with reasonable amount of reskilling. In the latter instance, the staff member will be given an offer of the new position after the medical assessment and if he/she declines then he/she should provide good reasons for declining the offer before being granted an opportunity to motivate to the CEO. If the offer is accepted, during the employment in the alternative position the same principles shall apply to ensure that the staff member receive the necessary training, coaching and guidance or an adaption of standards to meet performance standards of such alternative position.
- 8.12 In an instance, where the staff member is “**Permanent unfit**”, and a recommendation for termination of services is made, the IIC through the department responsible for HC shall forward its findings and intended action by recommending such to the CEO.
- 8.13 In both occasions where alternative placement or permanent unfitness is found, the IIC after having found the staff member unfit for his or her duties should afford the staff member concerned an opportunity to make his/her representation in relations to any intended action to be taken against him/her before recommending to the CEO.
- 8.14 The appeal of a SE or CEO against the finding or recommended action of the Incapacity Inquiry Committee shall be made to the Council, whilst other staff members may appeal the findings or action of the Incapacity Committee to the CEO. The notice of appeal mentioned in herein above shall be delivered to the department responsible for HC, **within seven (7) days** as from the date on which he or she is notified of the IIC’s recommendations.
- 8.15 The CEO, or alternatively the Council in respect of an SE or the CEO after having regard to the documents relating to the finding, can take such action as may deemed to be fair and equitable on the IIC’s recommendations.
- 8.16 The CEO can terminate service as a last resort; which shall arise out of permanency of illness; failure to find a reasonable alternative within a maximum period of six (6) months; or failure of the staff member to accept a reasonable alternative.
- 8.17 The staff member shall be informed of the CEO’s decision via department responsible for HC **within seven (7) days** after the CEO’s decision.

APPEALS

- 9.1 A staff member who is not satisfied with the CEO’s decision shall have the right to appeal against the finding or action or both the finding and the action to **Council** within **seven (7) days** after being informed in writing of the CEO’s decision.
- 9.2 The appeal of the concerned SE and CEO against the finding or recommended action of the IIC shall be made to the Council.
- 9.3 Any appeal in terms of Incapacity due to continued Ill-Health/Injury will be dealt with on the record and written representations only, and verbal representations, the calling of witnesses or cross examination thereof will not form part of such appeal.
- 9.4 The staff member shall be informed of Council’s decision within **seven (7) working** days by the department responsible for HC after such decision has been made. Council’s decision shall be final in terms of the internal procedures.

STAFF MEMBER WHO CANNOT READ AND WRITE AND OR NOT FLUENT IN OFFICIAL LANGUAGE

If an Incapacity Inquiry is instituted against such illiterate staff member, he/she may request his or her Workplace union representatives, or a Human Capital Officer to explain the procedures in the language he/she understands and assist him or her in complying with the procedure laid down in this Policy.

COMMUNICATION OF THE POLICY

The policy will be communicated to all the staff members and will also be made available on the intranet. It is every staff member’s own responsibility to make sure that he/she is well conversant with the content of this Policy and/or any amendments thereto from time to time.

REVISION AND AMENDMENT

This policy will be reviewed and updated as and when the need arises or when developments relating to the above necessitate policy review.

ANNEXURE A

Mr/Ms (Staff No:)
[Division]
[Department]
WINDHOEK CITY COUNCIL

Date:

Dear Sir/Madam

NOTICE TO ATTEND AN INCAPACITY INQUIRY INTO UNFITNESS TO PERFORM DUTIES

The Strategic Executive of (department) has reason to believe that for some or other reason you are medically unfit of carrying out the duties, for which you were appointed efficiently. In terms of Incapacity due to Ill-Health & Injury Policy read with Section 29(5)(a) of the Local Authorities Act, 1992, you are hereby notified to attend a hearing to be held on (**date, time & venue**) The **Incapacity Inquiry** will inquire into the reasons and the grounds on which you are believed to be unfit to perform your duties.

Particulars of grounds:

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

At the above-mentioned meeting you have the right without fear of victimization to:

- To be present at the Inquiry,
- The assistance of a fellow staff member or any representative of your choice to help you to present your case,
- Call witnesses and produce evidence in support of your case,
- An interpreter, should you feel you may not fully understand what is said at the inquiry,
- To have access to documents produced in evidence,
- To cross-examine personally (or through your representative if you have one) any witness who gives evidence against you.

Please note that the material proceedings of the Inquiry will be recorded in writing. Kindly take note that:

- Although you have the right to be present at the Inquiry the Windhoek City Council has the right to proceed in your absence unless you make prior arrangements with the writer of this letter to postpone the date of the Inquiry. Such arrangements should be made at least three (3) days before the Inquiry unless an emergency cropped up, in which case shorter notice may be accepted.
- If you need an interpreter, you must arrange for your own interpreter. Such interpreter will be accepted upon condition that he/she interprets correctly and to the point. If you wish the Windhoek City Council to provide with an interpreter, you must inform the writer hereof at least three (3) days before the Inquiry.
- If you desire to use a representative, you must arrange for him/her at your own cost. If the date of the Inquiry does not suit your representative, he/she must contact the writer hereof at least three (3) days before the Inquiry in order to make other arrangements.
- If you intend calling witnesses, you must arrange their presence at the Inquiry. If they are colleagues, you must arrange for them to have permission to be absent from his/her/their workplace(s).

Please note that the proceedings of the meeting will be recorded either manually or electronically. If you have any queries of any nature whatsoever, please contact the writer.
Yours faithfully,

(Supervisor’s Name)
DESIGNATION
Cc: SE:

I ACKNOWLEDGE THAT I REQUESTED/DID NOT REQUEST * THAT THE CONTENTS OF THIS LETTER BE EXPLAINED TO ME AND, IF REQUESTED, WAS EXPLAINED TO ME TO MY SATISFACTION AND THAT I NOW UNDERSTAND THE MEANING OF THE LETTER.	
*Delete which is not applicable.	
.....
SIGNATURE	DATE

INCAPACITY INQUIRY CHECKLIST

1. Record all parties present:

Date of Inquiry:		Starting Time:	
Venue:			
Chairperson:		HC Official:	
Legal Official:			
Initiator:		Witness 1:	
		Witness 2:	
		Witness 3:	
		Witness 4:	
Staff Member:		Witness 1:	
Staff Member’s Representative:		Witness 2:	
Interpreter:		Witness 3:	
		Witness 4:	

2. Introductions: (tick to confirm action took place)

• Chairperson introduce himself/herself	<input type="checkbox"/>
• Introduce parties in attendance (seeking the names of those unknown to him/her for the record)	<input type="checkbox"/>

<ul style="list-style-type: none"> • Chairperson clarify the role/function of the participants as follows: 	<input type="checkbox"/>
<ul style="list-style-type: none"> • Chairperson: <ul style="list-style-type: none"> · form part of the Incapacity Inquiry Committee · to chair the inquiry, acting impartially and control the proceeding · to ask questions for clarification • Human Capital Representative: <ul style="list-style-type: none"> · form part of the Incapacity Inquiry Committee · to ensure procedural and substantive fairness by advising both parties · to take minutes of the proceedings • Legal Official (if necessary) <ul style="list-style-type: none"> · form part of the Incapacity Inquiry Committee · advise the inquiry on legal matters. <p>OR</p> <ul style="list-style-type: none"> • Concerned SE's Appointee/Nominee: <ul style="list-style-type: none"> · form part of the Incapacity Inquiry Committee · to ask questions for clarification • Initiator: <ul style="list-style-type: none"> · to present the Council's case at the inquiry · to lead evidence of the alleged incapacity or unfitness due to continued ill health or injury · to call witnesses/produce evidence (documents and medical records) in support of the Council's case · to cross-examine witnesses called by the staff member party · to present arguments on behalf of Council • Staff Member's Representative: <ul style="list-style-type: none"> · to present the case of the staff member and assist him/her to tell his/her side of the story at the inquiry · to call witnesses or produce evidence (documents) in support of the employee's case · to cross-examine witnesses called by the Initiator · to present arguments on behalf of the staff member. • The Staff member: <ul style="list-style-type: none"> · to present his/her case · to answer questions put to him/her · to be cross- examined by the Initiator 	<input type="checkbox"/>
<ul style="list-style-type: none"> • Witnesses: <ul style="list-style-type: none"> · to give evidence at the inquiry either in support of Council's case or the case of the staff member • Incapacity Inquiry Committee: <ul style="list-style-type: none"> · to listen to the evidence presented by both parties · to ask questions for clarifications · exercise powers vested in terms of Clause 8.2 to 8.13 of this Incapacity Policy 	

Before arriving at the findings, the Incapacity Inquiry Committee should consider the following in the correct order on the evidence presented or from clarified questions posed whether:

- The nature of the staff member's ill health and the prognosis thereof;
 - The staff member is no longer capable of performing the duties he or she was employed to do;
 - The extent to which the staff member is able to perform the work;
 - The extent to which the staff member's work circumstances might be adapted to accommodate the incapacity or disability, or, where this is not possible, the extent to which the staff member's duties might be adapted;
- The availability of any suitable alternative work, if the staff member cannot perform his or her existing duties;
 - The nature of the ill health is of a temporary nature or if the absence would be "unreasonably long", impacting on service delivery and necessitating stand in or temporary appointment of another person to fulfil the duties of the staff member and financial implications of the same,
 - to agree and make recommendations to the CEO or Council (whichever is applicable) with regards to the findings and appropriate sanction/actions

3. If no representative is present:

· Explain to the staff member that he/she has a right to use a representative of choice to assist him/her in understanding the inquiry, the procedures and represent him in general during the proceedings	<input type="checkbox"/>
· Ask the staff member whether he/she understands	<input type="checkbox"/>
· Ask the staff member whether he/she would like to continue without a representative and whether the right of representation is waived. If not, determine when the staff member will obtain a representative and when will he/she able to continue.	<input type="checkbox"/>

4. Confirmation of the Staff member's Rights

Check and confirm the Staff member's rights by asking the following: <ul style="list-style-type: none"> · Was notified of the intended inquiry and reasons for the inquiry against him/her in time (at least 5 working days in advance) · Was given sufficient time to prepare for an Incapacity inquiry · Does he/she need to have an interpreter · His/her right for appeal. 	<input type="checkbox"/>
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5. Procedure for the Incapacity Inquiry.

Chairperson briefly explain the following procedure for the inquiry: <ul style="list-style-type: none"> · each party will be given an opportunity to make an opening statement · the Initiator will be given an opportunity to state his/her case by giving evidence and medical reports or documents through the witnesses · at the end of each witness's evidence the Staff member or his/her representative may cross-examine that particular Council's witness · the Initiator may re-examine each witness after they have been cross-examined If he/she wishes to clarify any uncertain legal issues · after all Council's witnesses have been called and cross-examined, the Staff member or his/her representative will have the opportunity to lead all his/her evidence by calling his/her witnesses one at a time including the staff member 	<input type="checkbox"/>
<ul style="list-style-type: none"> · at the end of each witness's evidence the Initiator may cross-examine that particular witness · Staff member or his/her representative may re-examine each witness after they have been cross-examined by the Initiator if he/she wishes to clear up any uncertain legal issues. · Initiator will summarise the Council's case followed by the staff member or his/her representative who will summarise the staff member's case. 	

Chairperson requests witnesses to leave the room, thereafter the procedures outlined above gets under way	<input type="checkbox"/>
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6. Allegations of Incapacity due to Continued Ill Health or Injury

Chairperson requests the Initiator to read out the alleged reasons as reflected in the Notice of the Incapacity Inquiry for the record.	<input type="checkbox"/>
After the Initiator read out the purpose of the Inquiry, the Chairperson should give the Staff member/Representative an opportunity to state if he/she admits or deny the incapacity allegations of continued ill health or injury	<input type="checkbox"/>
If the Staff member acknowledges the incapacity due to continued ill health, the Chairperson will clarify if the explanation warrants a finding of that the staff member concerned is unfit for his or her duties or is incapable of carrying out such duties efficiently due to medical or continued ill health or injury and, after affording the staff member concerned an opportunity to make representations in relation to any intended action to be taken, consider the intended finding.	<input type="checkbox"/>
If the Staff member does not acknowledge his/her incapacity to perform due to medical or continued ill health or injury, the Chairperson must ask the Initiator to present his/her opening statement followed by Staff member or representative to present the opening statement.	<input type="checkbox"/>
Initiator is given an opportunity to prove his/her case by leading the evidence as follows: <ul style="list-style-type: none"> · Call in, the Council witness one by one and lead each witness to provide evidence through questioning · Allow the Initiator and his/her witness to provide exhibits where applicable · Procedure as explained in Point 5 herein above should be followed 	<input type="checkbox"/>
If at any time during the proceedings the Chairperson is unclear on a point or seeks clarification of an answer given, he/she is free to ask questions to test his/her understanding and establish clarity.	<input type="checkbox"/>

7. Staff Member's case

<ul style="list-style-type: none"> · Chairperson invites the Staff member or his/her representative to lead the staff member and tell his/her version of events · Call witnesses, one by one for examination by the staff member/representative · Once the staff member or representative is done with cross-examination of the witnesses the Chairperson invites the Initiator to cross-examine the witnesses · After the Initiator is done to cross-examine the staff member's witnesses · Chairperson invites the staff member/ representative to re-examine the witnesses 	<input type="checkbox"/>
If at any time in the proceedings the Committee is unclear on a point or seeks clarification of an answer given, he/she is free to ask questions to test his/her understanding and establish clarity.	<input type="checkbox"/>

8. Closing Arguments

Once the leading of evidence by both parties has been concluded the Chairperson invites the Initiator to present his/her closing arguments followed by the employee/representative's closing argument (or in the absence of the Chairperson they could do so)	<input type="checkbox"/>
After receiving final closing arguments, the Chairperson adjourns the inquiry for the Committee to consider the evidence and to come to a finding. In complex cases stretching over several days with multiple exhibits, the DIC may request the typed or electronic minutes be presented.	<input type="checkbox"/>

9. Deciding of Finding of incapacity or poor work performance or unfitness

Having adjourned the inquiry to consider the evidence, the Committee examines the evidence to determine: <ol style="list-style-type: none"> (a) The nature of the staff member's ill health and the prognosis thereof; (b) The staff member is no longer capable of performing the duties he or she was employed to do; (c) The extent to which the staff member is able to perform the work; 	<input type="checkbox"/>
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<p>(d) The extent to which the staff member’s work circumstances might be adapted to accommodate the incapacity or disability, or, where this is not possible, the extent to which the staff member’s duties might be adapted;</p> <p>(e) The availability of any suitable alternative work, if the staff member cannot perform his or her existing duties;</p> <p>(f) The nature of the ill health is of a temporary nature or if the absence would be “unreasonably long”, impacting on service delivery and necessitating stand in or temporary appointment of another person to fulfil the duties of the staff member and financial implications of the same,</p> <p>The Committee on its own weigh up evidence and balance of probabilities.</p>	
<p>Findings will be determined on the balance of probabilities and not be proven beyond a reasonable doubt.</p>	<input type="checkbox"/>

10. Informing the Parties about the Findings

<p>The Chairperson gives the Committee’s finding to the parties and motivate reasons for findings</p>	<input type="checkbox"/>
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11. Deciding on the appropriate action

<p>In deciding the appropriate action, the Committee must comply with this Policy and section 29(5) of the Local Authorities Act. At this stage Committee should not consult with the Initiator or the Staff member. The Committee may be guided by the Human Capital Representative with regard to the principles, which should be applied. If the Incapacity Committee found that:</p> <p>(a) the staff member concerned is fit for his or her duties or is capable of carrying out such duties, such finding must be conveyed to the CEO or in respect of a SE or CEO to the Council for a final decision.</p> <p>(b) the staff member concerned is unfit for his or her duties or is incapable of carrying out such duties efficiently and, after affording the staff member concerned an opportunity to make representations in relation to any intended action to be taken.</p>	<input type="checkbox"/>
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12. Representation by the Staff member Staff Member on the recommended actions

<p>At this stage the Chairperson invite the staff member/representative to make representation on the intended action and not the finding in accordance with Section 29(5)(c)(i) of the Local Authority Act, 23 of 1992 as amended.</p>	<input type="checkbox"/>
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13. Recommended actions

<p>At this stage Incapacity Inquiry Committee will consider the actions contained in Section 29(5) (c)(i) of the Local Authority Act, 23 of 1992 and may recommend to the CEO or village council that -</p> <p>(aa) the staff member be exonerated from the blame and that no further action be taken in the matter based on the same facts;</p> <p>(bb) the staff member be transferred to any other post; or</p> <p>(cc) the remuneration or grade or both remuneration and grade of the staff member be reduced to a lower remuneration or grade; or</p> <p>(dd) the staff member be discharged from the service of the local authority council.</p> <p>At the conclusion of such inquiry, the staff member concerned shall be notified of the recommended action proposed by the Incapacity Inquiry Committee.</p> <p>If the intended action is that the staff member be transferred to any other post the procedures as contained in clause 8.11 to 8.13 should first be followed.</p>	<input type="checkbox"/>
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14. Right to appeal

<p>Right to appeal against finding and recommended actions made by Incapacity Inquiry Committee The Chairperson explains the procedures to be followed, that the Incapacity Inquiry Committee will make its recommendations on the intended action to the CEO, or in case of SE or CEO to Council.</p> <p>Should the staff member not be satisfied with the decision of the Incapacity Inquiry Committee, the staff member has the right to appeal to CEO or SE against the recommendations or finding or both of the Incapacity Inquiry Committee within seven (7) working days from being informed of the findings and recommended action. The appeal should be submitted to the HC department in writing.</p>	<input type="checkbox"/>
<p>Right to appeal against finding and confirmed actions made by CEO or in case of SE or CEO to Council The Chairperson explains the procedures that the CEO or Council will be considering the minutes of the Incapacity inquiry and any appeal documents submitted. The CEO will either confirm or decide otherwise on the recommendations of the Incapacity Inquiry Committee.</p> <p>Should the staff member not be satisfied with the decision of the CEO, the staff member has the right to appeal to Council within seven (7) working days of being informed of the findings and actions as confirmed or not confirmed or amended. The appeal should be submitted to the HC department in writing.</p>	<input type="checkbox"/>

Signed off by:

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Chairperson of the Incapacity Inquiry Committee

Date
