



## DISCIPLINARY PROCEDURE

<b>Policy:</b>	<b>Effective Date: 11 October 2007</b>
<b>Approved: 11 October 2007</b>	<b>Review Date: 11 October 2010</b>

### 1 SCOPE OF AGREEMENT

- 1.1 The terms of this Agreement shall be observed in the Local Government Undertaking in the Republic of South Africa by all employers and by all employees who falls within the registered scope of the Council.
- 1.2 Clause 3.1 and clause 17.4 shall not apply to non-parties.

### 2 DEFINITIONS

- 2.1 All expressions used in this agreement, which are defined in the Labour Relations Act, 1995, shall bear the same meaning as in the Act and unless the contrary intention appears, words importing the masculine gender shall include the feminine.
- 2.2 All references to days shall be a reference to working days.

### 3 PERIOD OF OPERATION

- 3.1 This Agreement shall come into operation in respect of the parties to the Agreement on 1 February 2004 and shall terminate on 31 January 2007. Any action that commenced prior to the effective date shall be regulated by the terms of the then existing code.
- 3.2 This Agreement shall come into operation in respect of non-parties, on the date of the determined by the Minister of Labour and shall terminate on 31 January 2007.

### 4 INTENT

- 4.1 The purpose of this code is to establish a common and uniform procedure for the management of employee discipline and to replace all existing procedures and regulations.
- 4.2 The code is a product of collective bargaining and the application thereof is peremptory and is deemed to be a condition of service.

## 5 **DISCIPLINARY POLICY**

- 5.1 Disciplinary is to be effected fairly, consistently, progressively and promptly.
- 5.2 The maintenance of discipline is the responsibility of management and falls within the control function of any supervisory position.
- 5.3 The principles of natural justice and fair procedure must be adhered to notwithstanding any criminal and/or civil action having been instituted.
- 5.4 Subject to the requirements of substantive and procedural fairness, the Tribunal has the right to determine the sanction to be applied, having regard to the seriousness of the offence and provided that the sanction is consistent with the provisions set out herein.
- 5.5 This procedure must be published and issued to all employees so that they are made aware, explicitly, of the standard of conduct at the workplace.
- 5.6 This procedure, as amended from time to time, will define the disciplinary process and the rights and obligations of management and employees.

## 6 **DISCIPLINARY PROCEDURE**

- 6.1 An accusation of misconduct against an employee shall be brought in writing before the Municipal Manager or his authorised representative for investigation. If the Municipal Manager or his representative is satisfied that there is *prima facie* cause to believe an act of misconduct has been committed, he may institute disciplinary proceedings. The employer shall proceed forthwith or as soon as reasonably possible with a disciplinary enquiry.
- 6.2 Depending on the seriousness of the misconduct, the Municipal Manager or his representative may refer the matter before either a Departmental Enquiry or Disciplinary Tribunal. A Departmental Enquiry proceeding shall be reserved only for matters where the competent sanction is a verbal or final written warning. In proceedings before a Departmental Enquiry the employee shall enjoy the same rights as he would have had before a Disciplinary Tribunal.
- 6.3 If in the opinion of the Municipal Manager or his representative the misconduct is serious and may result in a sanction of suspension. Demotion or dismissal, a Disciplinary Tribunal shall be established to conduct the enquiry.

6.4 In which event:

6.4.1 The Municipal Manager or his authorised representative shall constitute a Disciplinary Tribunal by appointing a suitably qualified person to serve as the Presiding Officer. In general a person appointed to serve as the Presiding Officer should be a senior employee in the employ of the Employer. However, if this is not possible or desirable, any other suitably qualified person may be appointed.

6.4.2 The Municipal Manager or his authorised representative shall also appoint a person to be referred to as the Prosecutor to represent the employer and to serve the function of prosecution. In general a person appointed to serve as Prosecutor should be a person in the employ of the Employer. However if this is not possible or desirable any suitably qualified person may be appointed.

6.5 The Prosecutor shall, within five (5) days of his appointment, formulate and present the charges to be brought against the employee. The charge(s) is (are) to be set out in a Notice of Misconduct detailing:

6.5.1 The alleged misconduct as is contemplated in annexure "A" hereto.

6.5.2 The time, date and venue at which the enquiry will be conducted.

6.5.3 The name of the Presiding officer and the Prosecutor and the address at which notices and correspondence may be served on the Disciplinary Tribunal.

6.5.4 The fact that the employee may appoint a representative of choice who may be a fellow employee shop steward, union official and if this is not possible or desirable, any suitably qualified person; and

6.5.5 The fact that if the employee or his representative fails to attend the enquiry it may be conducted *in absentia*.

6.5.6 The employee should, whenever possible, acknowledge receipt of the notice.

6.5.7 The disciplinary enquiry should commence on a date not less than five (5) days or more than fifteen (15) days calculated from the date of service of the Notice of Misconduct on the employee.

6.5.8 The period referred to in 6.5.7 above may be varied by agreement and failing agreement, either party may apply to the Disciplinary Tribunal for an extension of the period.

6.5.9 The Disciplinary Tribunal, on good cause shown, may extend any period of time fixed by or under this clause provided a return date is fixed and made certain.

## 7 CONDUCT OF THE ENQUIRY

- 7.1 The hearing shall be conducted by the Presiding Officer who may determine the procedure to be followed subject to the following:
  - 7.1.1 The rules of natural justice must be observed in the conduct of the proceedings;
  - 7.1.2 Unless otherwise agreed to by the parties, the hearing must be adversarial in nature and character, and
  - 7.1.3 The Presiding Officer is discharging this obligation is to exercise care, proceed diligently and act impartially.
- 7.2 The Prosecutor shall bear the duty to commence and the burden to prove each and every allegation(s) on a balance of probability set out in the Notice of Misconduct.
- 7.3 In discharging these duties, the Prosecutor shall be entitled to call before the Disciplinary Tribunal any witnesses and produce any books, documents or things; and
  - 7.3.1 subject to legal objection cross-examine any witness called to testify on behalf of the employee and inspect any books, documents or things produced; and
  - 7.3.2 present argument based on the evidence in support of any submission.
- 7.4 The Employee summoned before the Disciplinary Tribunal shall have the right to be heard in person or through a representative and to call before the Disciplinary Tribunal any witness and produce any books, documents or things; and
  - 7.4.1 cross-examine any witness subject to legal objection called to testify on behalf of the employer and to inspect any books, documents or things produced; and
  - 7.4.2 present argument based on the evidence in support of any submission.
- 7.5 The Presiding Officer shall have the power to:
  - 7.5.1 determine the procedure to be followed for the conduct of the enquiry that he deems appropriate with the minimum of legal formalities provided that the rules of natural justice shall be observed;
  - 7.5.2 put questions, without cross-examining, to the parties or their witnesses on any matter relevant to the issues;
  - 7.5.3 proceed with the enquiry in the absence of a party who is in wilful default or fails to attend any meeting despite the expiry of a notice to attend;
  - 7.5.4 make such interim determinations or rulings as he deems necessary;

- 7.5.5 propose to the parties compromise settlements in disposal of the whole or portion of the issues;
- 7.5.6 make a finding of fact after having considered the evidence;
- 7.5.7 invite and hear any plea in mitigation, aggravation or extenuation prior to deciding on the sanction to impose; and
- 7.5.8 impose, inter alia, any of the following sanctions:
  - 7.5.8.1 written warning;
  - 7.5.8.2 final written warning;
  - 7.5.8.3 transfer to another position either with or without financial loss;
  - 7.5.8.4 suspension without pay for a maximum of ten (10) days as is furthermore referred to in clause 2.5.3 of annexure "A" hereto;
  - 7.5.8.5 the withholding of any salary increment for a period not exceeding twelve months;
  - 7.5.8.6 demotion to another post with or without financial loss; or
  - 7.5.8.7 dismissal.
- 7.6 The Presiding Officer shall within ten (10) days of the last day of the hearing confirm in writing the findings of fact, sanction imposed and the reasons in support thereof and provide a copy of the determination to the Municipal Manager or his representative and to the employee or his representative.

## 7.7 **SUMMARY PROCEDURE**

If the employer and the employee so agree in writing, the Summary Procedure as set out hereinafter may apply to the proceedings. The Presiding Officer shall, at such meeting(s) with the parties, as he deems necessary:

- 7.7.1 confirm that the matter is ready for adjudication;
- 7.7.2 ascertain and record in writing, signed by himself and the parties, the facts on which the parties agree and those on which they disagree herein called the "issues";
- 7.7.3 receive from the parties such documents or copies thereof as they consider relevant to the determination of the issues;
- 7.7.4 received evidence or submissions, orally or in writing sworn or un-sworn at joint meetings with the parties or, if the parties so agree, by the interchange of written statements or submissions, between the parties with copies to the Presiding Officer provided that each party shall be given reasonable opportunities of presenting evidence or submission and of responding to those of the other;

- 7.7.5 deliver a determination, in writing, within ten (10) days of the last day of the hearing or submission of the last document to the Presiding Officer, if there was no hearing.

## **8 RIGHT OF RESIGNATION**

- 8.1 An employee who receives a notice of Misconduct shall be entitled to resign from employment or to retire, if eligible, in terms of the retirement fund rules, provided that:
- 8.1.1 the employee does so prior to the handling down of a determination;
- 8.1.2 the employee consents in writing to the deductions of all and any amounts owing by him to the employer from any monies payable to him by the employer (including but not limited to retirement fund monies) arising out of or in connection with his resignation or retirement.

In such an event the disciplinary enquiry shall not proceed.

## **9 DISCIPLINARY TRIBUNAL**

- 9.1 In general a person appointed to serve as the Presiding Officer should be a senior employee in the employ of the employer. However if this is not possible or desirable, any other suitably qualified person may be appointed.
- 9.2 During the conduct of the enquiry the employee may make application on good cause shown for the refusal of the Presiding Officer.
- 9.3 The Presiding Officer shall not consult, confer or have casual contact with any of the parties or their representatives while handling a matter without the presence or consent of the other party.
- 9.4 The determination of the Disciplinary Tribunal shall be final and binding on the employer save that the employee may lodge an appeal thereto.
- 9.5 In general a person appointed to serve as Prosecutor should be a person in the employ of the employer. However, if this is not possible or desirable, any suitably qualified person may be appointed.

## **10 RECORDING**

- 10.1 The proceedings of the Disciplinary Tribunal shall be recorded by means of a mechanical device.
- 10.2 The record of the proceedings shall be kept in safe custody by the employer and upon request a copy thereof provided to the employee or his representative.

## **11 NON-ATTENDANCE**

In the event of the failure by the employee, or a duly appointed representative, to attend an enquiry or appeal without good cause and after proper service of the Notice of Misconduct was effected, the enquiry may be conducted *in absentia* and discipline effected.

## 12 RIGHT TO REPRESENTATION

An employee shall be entitled to representation at any enquiry by an employee, a shop steward or union official who is willing and able to represent the employee and, if this is not possible or desirable, any suitably qualified person.

## 13 SUSPENSION

- 13.1 The employer may at any time before or after an employee has been charged with misconduct, suspend the employee or utilise him temporarily in another capacity should the Municipal Manager be of the opinion that it would be detrimental to the interests of the employer if the employee remains in active service.
- 13.2 If the Municipal Manager intends to suspend an employee he shall give notice of such intention and afford the employee with an opportunity to make representation as to why he should not be suspended. The enquiry shall be done by means of the Summary Procedure as provided for herein.
- 13.3 The suspension or utilization in another capacity shall be for a fixed and pre-determined period and at any rate shall not exceed a period of three (3) months. Any suspension effected shall be on full remuneration.

## 14 APPEAL

- 14.1 The employee has the right to appeal against any disciplinary sanction, which has been given at a Disciplinary Enquiry.
- 14.2 An appeal must be lodged on the prescribed form within five (5) days of receipt of written notification of the disciplinary decision and the grounds of appeal must be clearly set out provided that the failure by a party to raise a ground of appeal shall not preclude that party from subsequently raising it before the Disciplinary Appeal Tribunal.
- 14.3 Appeals will be heard by a management level above that of the Presiding Officer of the enquiry in the case of final written warnings and by a higher level of management who does not exercise direct management control over the affected employee in the case of dismissals and suspensions without pay.
- 14.4 By agreement, an appeal may be heard by an impartial arbitrator appointed by the parties to the appeal from a panel or list.
- 14.5 The appeal will only be heard on the grounds of an appeal submitted by the employee and any amendment thereto and by having regard to the record of the proceedings and submissions and arguments based thereon. The appeal should not entail the rehearing of the matter *de novo*.



- 14.6 The Presiding Officer of the Disciplinary Appeal Tribunal shall have the power to confirm or set aside any decision, determination or finding and to confirm, set aside or reduce any sanction imposed.
- 14.7 The Presiding Officer of the Disciplinary Appeal Tribunal shall fix the time and date of the hearing which will take place within ten (10) days of the date of appointment. In consultation with the parties, the Presiding Officer may vary the time and date and order a mutually convenient time, date and place.
- 14.8 The parties shall deliver to the other and to the Presiding Officer a brief statement of case at least two (2) days prior to the hearing and no further pleadings shall be exchanged unless otherwise agreed.
- 14.9 The statement of case shall concisely set out the facts upon which the party relies, the conclusions of law upon which the party relies and the relief which the party seeks.
- 14.10 The hearing will be conducted by the Presiding Officer in whatever manner and procedure, including the Summary Procedure as set out in clause 7.7 above that will produce the most expeditious hearing of the matter.
- 14.11 The Disciplinary Appeal Tribunal is to consider whether the disciplinary enquiry and sanction was fair. The Presiding Officer in his sole discretion shall be entitled to make whatever order he deems reasonable in the circumstance.
- 14.12 The Disciplinary Appeal Tribunal shall make its determination, in writing, within ten (10) days from the last day of the hearing and provide a copy of the determination to the Municipal Manager or his representative and to the employee or his representative.

## 15 **PRE-DISMISSAL ARBITRATION**

An employer may, with the consent of the employee, request the Bargaining Council, an accredited agency or the Commission of Conciliation Mediation and Arbitration to conduct an arbitration into allegations about the conduct or capacity of an employee as provided for under section 188 A of the Labour Relations Act 66 of 1995.

The provisions of Section 138 of the Labour Relations Act, read with the changes required by the context, applies to any pre-dismissal arbitration.

## 16 **DISPUTE ABOUT IMPLEMENTATION AND APPLICATION OF THIS AGREEMENT**

- 16.1 Any person or Party may refer a dispute about the interpretation or application of this collective agreement to the Central Council of the SALGBC.

- 16.2 In the event of uncertainty on the part of the referring Party as to whether a dispute should be referred to a Division or the Central Council, or after a dispute has been referred to a Division, a Party to such Division disputes the jurisdiction of such Division, the dispute shall be referred to the Executive Committee which shall determine the appropriate jurisdiction.
- 16.3 The General Secretary or Regional Secretary as the case may be, shall investigate the dispute or cause the dispute to be investigated and attempt to resolve the dispute by issuing a directive, and in the event of a dispute not being resolved:
- 16.3.1 appoint a conciliator from the appropriate panel of conciliators, (doing so as far as possible on a rotational basis) or if the dispute remains unresolved;
- 16.3.2 refer the dispute to arbitration.
- 16.4 If a conciliator is appointed, the relevant General Secretary or Regional Secretary shall decide the date, time and venue of the conciliation meeting and shall serve notices of these particulars on the Parties to the dispute.
- 16.5 If the dispute is referred to arbitration, the relevant General Secretary or Regional Secretary shall appoint an arbitrator from the appropriate panel of arbitrators, doing so as far as possible on a rotational basis.
- 16.6 The relevant General Secretary or Regional Secretary, in consultation with the arbitrator, shall decide the date, time and venue of the arbitration hearing.
- 16.7 The arbitrator shall:
- 16.7.1 endeavour to conciliate the dispute unless the parties to the dispute advise the arbitrator that the dispute has been properly conciliated; and
- 16.7.2 if the dispute remains unresolved, resolve the dispute through arbitration.
- 16.8 The arbitrator may make any appropriate arbitration award in terms of the Act that gives effect to the collective agreement.

## 17 **EXEMPTIONS**

- 17.1 Any person or Party bound by this Agreement shall be entitled to apply for exemption from this Agreement.
- 17.2 All applications for exemption from any provisions of this agreement shall be in writing and lodged with the General Secretary. Such applications shall contain:
- 17.2.1 all material details of the Applicant;
- 17.2.2 the exact collective agreement or provisions of a collective agreement from which the Applicant seeks exemption;

- 17.2.3 detailed grounds on which such exemption is sought taking into consideration the criteria specified in clause 17.7 hereunder.
- 17.3 The Executive Committee shall consider all applications from a party/non-party to this Agreement (which shall include the members of such party), and may, subject to clause 17.7, and on giving its reasons therefore, grant exemption on any conditions and for any period it considers appropriate.
- 17.4 A party aggrieved by a decision of the Executive Committee may appeal to the Council who shall consider the Application subject to clause 17.7 and on giving its reasons therefore, may grant an exemption on any conditions and for any period it considers appropriate. The decision of the council shall be final.
- 17.5 All applications of Appeal from non-parties shall be referred to the Independent Exemptions Body established by the Council in terms of clause 17.11 hereunder.
- 17.6 The Independent Exemptions Body shall consider all such applications in a manner it considers appropriate to determine the applications fairly and quickly, which may include the hearing of evidence and arguments.
- 17.7 When considering an application for exemption, an appeal against an Executive Committee decision or an application for the withdrawal of a certificate of exemption, the Council or the independent Exemptions Body, as the case may be, shall take into account the following (the order not indicating any form of priority):
- (a) any written and/or verbal substantiation provided by the applicant;
  - (b) fairness to the employer, its employees and other employers and the employees in the industry;
  - (c) whether an exemption, if granted would undermine this agreement or the collective bargaining process;
  - (d) unexpected economic hardship occurring during the currency of this agreement and job creation and/or loss thereof;
  - (e) the infringement of basic conditions of employment rights;
  - (f) the fact that a competitive advantage might be created by the exemption;
  - (g) comparable benefits or provisions where applicable;
  - (h) the applicant's compliance with other statutory requirements such as the Compensation for Occupational Injuries and Diseases Act 130 of 1993, Basic Conditions of Employment Act 75 of 1997, Employment Equity Act 55 of 1998, Skills Development Act 97 of 1998, Skills Development Levies Act 9 of 1999, or Unemployment Insurance Act 63 of 2001; or
  - (i) any other factor which is considered appropriate.
- 17.8 Having made a decision to grant or refuse an exemption application, the Independent Exemptions Body shall advise the applicants and the Council within ten (10) days of its decision, giving full reasons. The decision of the Independent Exemptions body shall be final.

17.9 The Council shall issue to every person granted an exemption in terms of this clause a certificate of exemption setting out:

- (a) the applicant's name;
- (b) the provisions of the agreement from which exemption has been granted;
- (c) the conditions relating to the exemption; and
- (d) the period for which the exemption shall operate.

17.10 The Council may withdraw a certificate of exemption granted to a party to this agreement by giving one month's notice to the party concerned, or may, in the case of a non-party, apply to the Independent Exemptions Body for the withdrawal of a certificate granted.

17.11 The Independent Exemptions Body shall be constituted on an ad hoc basis and shall be appointed by the SALGBC from its panel of arbitrators set up in terms of its constitutions.

## 18. **AUTHORITY**

Formulation Policy	:	Director Corporate Services
Authorisation Policy	:	Council
Ownership & Maintenance Manager	:	Deputy Director : Corporate Services

## **CONDUCT AND SANCTIONS**

### **1 STANDARD OF CONDUCT**

- 1.1 Employees are expected to comply in every respect with the conditions of employment and collective agreements and any related regulation, order, policy and practice and to refrain from any conduct which would give just cause for discipline.
- 1.2 In particular, employees should:
  - 1.2.1 Attend work regularly and punctually;
  - 1.2.2 Conform to the reasonable dress and uniform requirements of the employer;
  - 1.2.3 Perform their tasks and job responsibilities diligently, carefully and to the best of their ability;
  - 1.2.4 Obey all lawful and reasonable instructions given by a person having the authority to do so;
  - 1.2.5 Conduct themselves with honesty and integrity;
  - 1.2.6 Request permission in advance for any leave of absence whenever possible;
  - 1.2.7 Refrain from being absent from duty without leave or permission, except on good cause;
  - 1.2.8 Refrain from accepting any other employment outside of normal working hours without the prior permission of the Department Head or Municipal Manager, which permission shall not be unreasonably withheld;
  - 1.2.9 Refrain from any rude, abusive, insolent, provocative, intimidatory or aggressive behaviour to a fellow employee or member of the public;
  - 1.2.10 Refrain from willful or negligent behaviour, which may result in the damage of property;
  - 1.2.11 Refrain from participating, either individually or with others, in any form of action, which will have the effect of disrupting the operations of the employer, other than actions contemplated by the Labour Relations Act;
  - 1.2.12 Refrain from wrongfully disclosing privileged information; and
  - 1.2.13 Refrain from consuming alcohol or using intoxicating drugs whilst on duty.

## 2 SANCTIONS FOR MISCONDUCT

- 2.1 In accordance with the Disciplinary Policy, any sanction that is imposed for misconduct will be intended to deter future repetition of that behaviour. The sanction imposed must be based on the seriousness of the offence and considering the employee's disciplinary record.
- 2.2 The imposition of discipline is progressive in that sanctions are to be applied with increasing severity with the repetition of the offence. Sanctions will generally be applied by first issuing a written warning and then a final written warning, except in cases of misconduct which would constitute grounds for immediate dismissal or suspension without pay or the immediate imposition of a final written warning.
- 2.3 All written warnings and suspensions are to be recorded in the employee's personal file.
- 2.4 A written warning will remain valid and on the record of the employee for a period of six (6) months from the date of imposition.
- 2.5 The employer may impose as a sanction a suspension without pay having regard either to the serious nature of the misconduct or the fact that there has been a previous warning or warnings for the same behaviour in which event:
- 2.5.1 the maximum period will be ten (10) days;
  - 2.5.2 the period of suspension will run consecutively;
  - 2.5.3 in the event of a suspension in excess of five (5) days, the suspension without pay shall be spread over three (3) monthly pay periods.
- 2.6 A suspension without pay shall be regarded as a sanction more serious than a final written warning.
- 2.7 As a guideline, an employee may be dismissed on the first occasion for, inter alia:-
- 2.7.1 intimidation, fighting and/or assault;
  - 2.7.2 theft, unauthorised possession of or malicious damage to the employer's property;
  - 2.7.3 being under the influence of alcohol or intoxicating drugs whilst on duty such that performance is seriously impaired or diminished;
  - 2.7.4 the consumption of alcohol or intoxicating drugs whilst on duty if the nature of work to be performed is such that intoxication endangers the safety of the employee or that of others;
  - 2.7.5 any act of gross dishonesty;
  - 2.7.6 any act of gross negligence;
  - 2.7.7 gross insubordination;
  - 2.7.8 wrongful disclosure of privileged information;
  - 2.7.9 any act of bribery or corruption; and
  - 2.7.10 any other act of misconduct which would constitute just cause for dismissal.