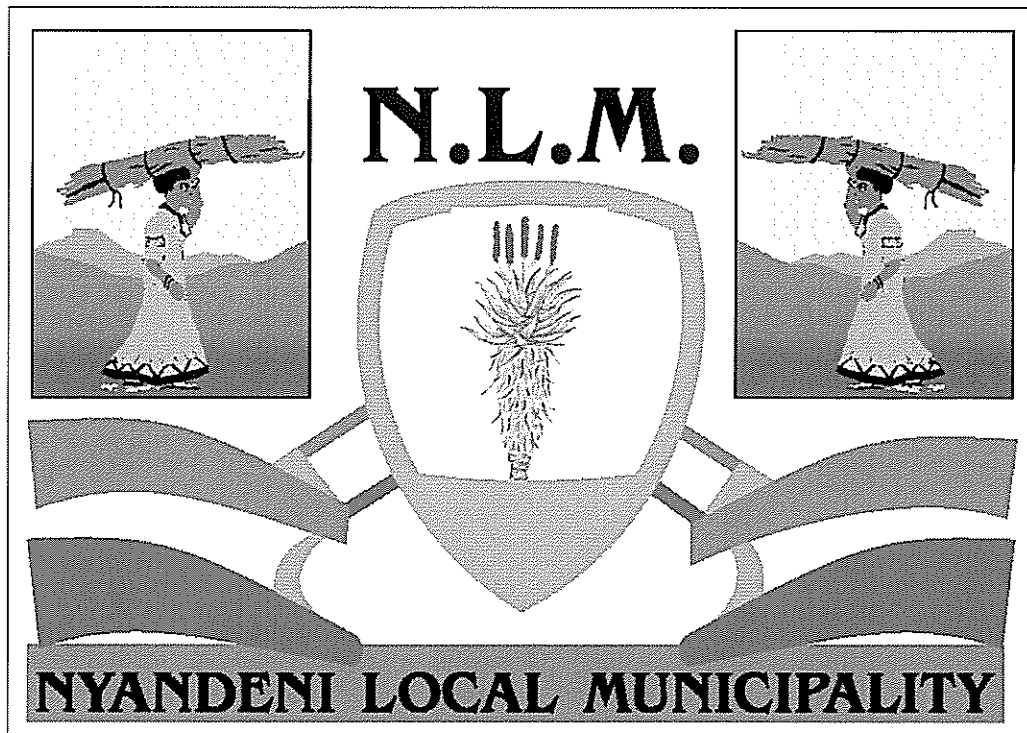
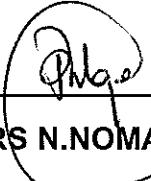


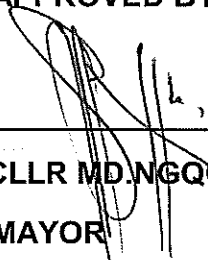
DISCIPLINARY & GRIEVANCE PROCEDURE POLICY



APPROVED BY:


MRS N. NOMANDELA
MUNICIPAL MANAGER

APPROVED BY:


CLLR MD. NGQONDWANA
MAYOR

DATE:

DATE:

1. PURPOSE

- 1.1 The Municipality realises that sound labour relations can only result from mutual respect between an employer and its employees and that such respect is formed where the employer and its employees treat each other fairly and consistently. This policy is designed to achieve the aim of sound labour relations in an open and fair environment.
- 1.2 This policy is to give effect to the Disciplinary and Grievance Procedure Collective Agreements. The copies of these Collective Agreements are annexures to this policy.

2. OBJECTIVES

The main objectives of this policy are:

- 2.1 To serve as a guide line to management and ensures fair and equal treatment of all employees.
- 2.2 To encourage timely corrective action in the event of an employees behaviour providing to be unsatisfactory or unacceptable.
- 2.3 To ensure that the principles of natural justice are applied before an employee is penalised for misconduct.
- 2.4 To provide for a process whereby the grievance of individual employees or groups of employees arising out of their employment can be resolved.

3. LEGISLATIVE AND POLICY FRAMEWORK

The policy should be read in conjunction with the Constitution of South Africa Act, No 108 of 1996 and all relevant legislation, which include the following

- 3.1.2 Employment Equity Act, No 55 of 1988
- 3.1.3 Labour Relation Act, No 66 of 1995
- 3.1.4 Occupational Health Injuries and Disease Act, No 130 of 1993
- 3.1.5 Basic Conditions of Employment Act, No 75 of 1997
- 3.1.7 Promotion of Equality and Prevention of unfair Discrimination Act, No 4 of 2000.

4. DISCIPLINARY PROCEDURE

4.1 PURPOSE

The purpose of disciplinary procedure is to resolve problems at the lowest possible level, in a way calculated to correct non-performance or unacceptable behaviour in terms of the established norms of the Municipality. Only where corrective action has not succeeded and / or conduct of the employee renders the continuation of the relationship intolerable, will the sanction of dismissal be imposed.

4.2 Misconduct

An employee is guilty of misconduct in the opinion of presiding officer the employee:

- 4.2.1 Contravenes or fails to comply the current Regulations of the Municipality.
- 4.2.2 Fails to account for any corporate funds under the employees control ;
- 4.2.3 Misappropriates or improperly uses any property of the Municipality or is guilty of any form of dishonesty;
- 4.2.4 Disobeys, disregards or makes wilful default in carrying out lawful order given by a person having authority to give it, or by word or conduct displays insubordination;
- 4.2.5 Is negligent in the performance of the employees duties
- 4.2.6 Is convicted of criminal offence
- 4.2.7 Is absent from duty without authority or valid cause
- 4.2.8 Display conduct which is intended to / or has the effect of bringing the Municipality into disrepute.
- 4.2.9 Misrepresent the nature or extent of the employees debt;
- 4.2.10 Furnishes false information in the employees application for employment with the Municipality or conceals relevant information pertaining to any other Municipal document.
- 4.2.11 Commits an offence against good moral, or act in a disgraceful, or improper or unbecoming manner;
- 4.2.12 Knowingly makes an Ultra vires (beyond one's legal power or authority) the decision that causes embarrassment to the corporation or its employees ;
- 4.2.13 Intimidating or inciting any other employee.
- 4.2.14 The following can be regarded as misconduct if it adversely effect the official work performance:
 - ❖ Exceptional or Extravagantly uses alcoholic beverages, drugs or other addictive substances.
 - ❖ Falls into debt in such an extent that, in the opinion of the Municipal Manager the employee is deemed to be un rehabilitated insolvent.
 - ❖ If the employees fails to declare the total extent of the employees debit if requested to do so by the Chairperson or employee.

4.3 Dismissible Misconduct

Certain offences are regarded as sufficiently serious and may warrant immediate dismissal following a disciplinary enquiry. The examples of these offences are given below ; however , the following the list of dismissible offences is not exhaustive.

- 4.3.1 Being under the influence of alcohol, or drugs at work or being in the possession Drugs.
- 4.3.2 Assault on or fighting with any other employee, Supervisor or Manager
- 4.3.3 Theft
- 4.3.4 Bribery
- 4.3.5 Falsifying or changing other document with fraudulent intent or giving fraudulent statement or information
- 4.3.6 Changing medical certificate or producing false one
- 4.3.7 Being in a possession of firearm or a dangerous weapons on employers premises unless authorised by Employer in writing.
- 4.3.8 Intentional loss or damage to Employer, customer or employee property

4.3.9 Participation in unlawful, unprocedural, industrial action eg riots, sabotage, and striking while the matter under dispute is being processed in accordance with agreed procedures.

4.3.10 Any deliberate action which does or has the potential to disrupt the industrial relations between management and employees, individuals and groups. (for example abusive language)

4.3.11 Non-compliance with any employer regulations which causes and has the potential to put the safety of employees or customers or employer operation at risk

4.3.12 Driving employer vehicle without being in a possession of drivers licences and without the necessary training or authorisation

4.3.13 Professional and technical negligence or misconduct which does or may result in the risk to the health or life of any person

4.3.12 Breach of Confidentiality, trust or disclosure of Employer operating procedure to person other than authorised employees.

4.3.13 Gross negligence which affect the sustainability and / or financial viability of the employer and/ or the trust relationship between the employer and individual

4.3.14 Convicted in a court of law for criminal offence

4.3.15 Refusal to carry out lawful and reasonable instructions (i.e insubordination)

4.4 SUSPENSION WITH FULL PAY

4.4.1 The employer may at anytime before or after the employee has been charged with misconduct, suspend the employee or utilise him temporarily in other capacity should the Municipal Manager be of the opinion that it could be detrimental to the interest of the employee if the employee remains inactive service

4.4.2 If the Municipal Manager intend to suspend an employee, he shall give notice of such intention and afford the employee with an opportunity to make representation as to why she should not be suspended. The enquiry shall be done by means of Summary procedure as provided herein.

4.4.3. The Suspension or Utilisation in another capacity shall be for a fixed or predetermined period and at any rate shall not exceed to 3 months. Any suspension effected shall be on full remuneration.

4.4.4 Suspension with pay pertaining to serious misconduct is applied to the following reasons:

- To protect an accused employee from implicating himself further e.g Intoxication, assault, etc.
- To avoid further conflict or an escalation of conflict e.g assault, intimidation, abusive language, etc
- To avoid corroboration or interference with evidence e.g theft and fraud
- To protect fellow employees, the public and the organisation e.g gross negligence, intoxication, assault etc

4.4.5 Suspension with pay is on a without "prejudice" basis and it must be made clear to the employee that no assumption has been made on his guilt or innocence, in view of the suspension.

4.5 General Rules

- 4.5.1 The severity of the disciplinary action will depend upon the circumstances of each case. Mitigating factors will be taken into consideration when deciding on appropriate penalty. Accordingly the penalties set out herein are intended to serve as a guidelines.
- 4.5.2 As the offences stated herein are not intended to be exhaustive, the Municipality may exercise the disciplinary action against an employee who has committed an offence although the offence has not been stated herein
- 4.5.3 The Managers are responsible for exercising disciplinary action must use their discretion in deciding which corrective or punitive action is more appropriate.
- 4.5.4 If the Manager is referred to herein is unavailable, the Municipality may designate another Manager to deal with the matter.
- 4.5.5 Circumstances may justify the imposing of a greater or lesser penalty appropriate to that recommendations in the guidelines
- 4.5.6 Managers referred to include their authorised nominees

4.6 Procedure

- 4.6.1 An accusation of misconduct an employee shall be brought 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 reasonable possible with a disciplinary enquiry.
- 4.6.2 Depending on the seriousness of the misconduct, the Municipal Manager or his representative may refer the matter or before either Departmental enquiry or Disciplinary Tribunal.
- 4.6.3 A Departmental Enquiry proceeding shall be reserved only for matters where the competed sanction is verbal or a final written warning.
- 4.6.4 In proceedings before a Departmental enquiry the employee shall enjoy the same rights as he would have had before a Disciplinary Tribunal.
- 4.6.5 If in the opinion of the Municipal Manager or his representative the misconduct is serious and may result to a sanction of suspension, demotion or dismissal a disciplinary Tribunal shall be establish to conduct the enquiry.
- 4.6.6 In which event the Municipal Manager or Authorised representative shall constitute a Disciplinary Tribunal by appointing a suitable qualified person to serve as 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.
- 4.6.7 The Municipal Manager or Authorised representative shall also appoint a person to referred to as the Prosecutor to represent the employer and to serve the function of prosecution.
- 4.6.8 In general a person appointed to serve as prosecutor should be a person in the employ of employer. However if this is not possible or desirable, any suitable qualified person may be appointed.

4.7 Notice of Misconduct

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

- The alleged misconduct;
- The time, date and venue at which the enquiry will be conducted;
- The name of Presiding officer and the Prosecutor and the address at which notices and correspondence may be served on the Disciplinary Tribunal;
- 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 suitable qualified person; and
- The fact that if the employee or his representative fails to attend the enquiry it may be conducted in absentia

4.7.2 The employee should, whenever possible, acknowledge receipt of the notice,

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

4.7.4 The period referred to above may be varied by agreement and falling agreement either party may apply to the disciplinary Tribunal for an extension of the period

4.7.5 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.

4.8 Conducting of the enquiry

4.8.1 The hearing shall be conducted by Presiding officer who may determine the procedure to be followed subject to the following.

- ❖ The rules of natural of justice must be observed in the product of proceedings; unless otherwise agreed to by the parties, the hearing must be adversarial in the nature or character, and
- ❖ The Presiding officer in discharging this obligation is to exercise care, proceed diligently and act impartially.

4.8.2 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.

4.8.3 In discharging these duties, the Prosecutor shall be entitled :

- ❖ To call before the Disciplinary Tribunal any witness and produce any books, documents or things; and
- ❖ 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
- ❖ Present argument based on the evidence in support of any submission.

4.8.5 The Presiding Officer shall have the power to:

- ❖ 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;
- ❖ Put questions, without cross examining, to the parties or their witness on any matter relevant to the issues;
- ❖ Proceed with the enquiries in the absence of a party who is wilful default or fails to attend any meeting despite the expiry of a notice to attend
- ❖ Make such interim determination or ruling necessary;
- ❖ Propose to the parties compromise settlements in disposal of the whole or portion of the issues;
- ❖ Make finding of fact after having considered the evidence;
- ❖ Invite and hear any plea in mitigation, aggravation or extenuation prior to deciding on the sanction to impose; and
- ❖ Impose inter alia, any of the following sanctions:
 - written warning ;
 - final written warning
 - transfer to another position either with or without financial loss;
 - suspension without pay for maximum of ten (10) days
 - the withholding any salary increment for a period not exceed 12 months;
 - demotion to another post or without financial loss; or
 - dismissal

4.8.6 The Presiding officer within ten days of the last day of the hearing confirm in writing the finding of fact, sanctions imposed and the reasons in support thereof and provide a copy of the determination to the Municipal Manager or his representative.

4.9 Summary procedure

4.9.1 If the employer and employee so agree in writing, the Summary Procedure as set out hereinafter may apply to the proceedings.

4.9.2 The Presiding officer shall, at such meeting(s) with the parties, as he deems necessary:

- ❖ Confirm that the matter is ready for adjudication
- ❖ Ascertain and record in writing, signed by himself and the parties, the fact on which the parties agree and those on which they disagree herein called the "issues"
- ❖ Receive from the parties such documents or copies thereof as they consider relevant to determination of the issues;
- ❖ Receive evidence or submission, orally or in writing sworn or un-sworn at joint meetings with the parties or; if the parties so agree, by the interchange of the 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 responding to those of the other,

- ❖ Deliver a determination, in writing, within ten days of the last day of the hearing or submission of the last document to the Presiding officer, If there was no hearing.

4.10 Right of resignation

4.10.1 An employee who receive a Notice of Misconduct shall be entitled to resign from the employment or to retire, if eligible, in terms of retirement fund rules, provided that:

- ❖ The employee does so prior to the handing down of a determination;
- ❖ The employee consents in writing to the deduction 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.

4.10.2 In such an event the disciplinary enquiry shall not proceed.

4.11 Disciplinary Tribunal

4.11.1 In general a person appointed to serve as the Presiding officer should be a senior employee in the employ of employer. However if this is not possible or desirable, any other suitable qualified person may be appointed.

4.11.2 During the conduct of enquiry the employee may make the application on good cause shown for the refusal of the Presiding officer.

4.11.3 The Presiding officer shall not consult, confer or have casual contact with any of the parties or their representative while handling a matter without the presence or consent of the other party.

4.11.4 The determination of the Disciplinary Tribunal shall be final and binding on the employer save that the employee may lodge an appeal thereto.

4.11.5 In general a person appointed to serve as prosecutor should be a person in the employ of employer. However, if this is not possible or desirable, any suitable qualified person may be appointed.

4.12 Recording

4.12.1 The proceedings of the Disciplinary Tribunal shall be recorded by means of mechanical device.

4.12.2 The record of proceedings shall be kept in safe custody by the employer and upon request a copy thereof provided to the employee or his representative.

4.13 Non-attendance

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

4.14 Right of representation

4.14.1 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 suitable qualified person.

4.15 Appeal

4.15.1 The employee has the right to appeal against any disciplinary sanction, which has been given at a disciplinary Enquiry.

4.15.2 An appeal must be lodged of the prescribed form within 5 days of the receipt of the written notification of the disciplinary decision and the ground 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

4.15.3 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 the employee in the case of dismissals and suspensions without pay.

4.15.4 By agreement, an appeal may be heard by an impartial arbitrator appointed by the parties to the appeal from a panel or list.

4.15.5 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.

4.16 Disciplinary Appeal Tribunal.

4.16.1 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.

4.16.2 The Presiding Officer of the Disciplinary Appeal Tribunal shall fix the time and the 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 the date and order a mutual convenient time, date and place.

4.16.3 The parties shall deliver to the other and to the Presiding Officer a brief statement of the case at least 2 days prior to the hearing and no further pleadings shall be exchanged unless otherwise agreed.

4.16.4 The statement of case shall concisely set out the facts upon which the party relies, the conclusion of law upon which the party relies and the relief which the party seeks.

4.16.5 The hearing will be conducted by the Presiding Officer in whatever manner and procedure, including the summary procedure as set out in clause 5.9 above that will procedure the most expeditious hearing of the matter.

4.16.6 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.

4.16.7 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 representatives and to the employees or his representative.

5. GRIEVANCES

5.1 Introduction

5.1.1 It is in the interest of the Employment Relationship, the well being of both the Municipality and its employees, to establish an open-door policy which is capable of facilitating upward communication at all levels of the organization.

5.1.2 The objectives of this grievance procedure are to ensure fair play, to resolve problems as quickly as possible and to deal with conflict through procedural means.

5.1.3 No employee shall suffer victimization or occupational prejudice as a result of lodging a grievance.

5.1.4 The effectiveness of this grievance policy and procedure will depend on the extent to which both management and employees have accepted and understood the process and principle that support it.

5.1.5 The pivotal principle is that employees should be able to talk to their managers and supervisors about any issue that they are concerned about.

5.1.6 A grievance is any dissatisfaction or sense of justice that an employee may have in connection with:

- (I) His/her job
- (ii) His/her working environment
- (iii) His/her employment practices; or 0 management practices

5.2 PROCEDURE

5.2.1 Immediate Supervisor

5.2.1.1 The lodging of a grievance shall, except in exceptional circumstances, take place within ten(10)days from the time the employee first becomes aware of the matter that gave rise to such grievance.

5.2.1.2 An aggrieved employee or group of employees must lodge in writing with his immediate superior a grievance on the

prescribed form of setting out of complaint and the desired result. Such an employee may if he so wishes be assisted by the shop steward, fellow employee or union official.

5.2.1.3 Should the grievance concern the conduct of the employee's immediate superior, the employee may proceed directly to the Head of the Department provided that he submits the grievance on the prescribed form.

5.2.1.4 The immediate superior shall Endeavour, in consultation with the affected employee(s) to resolve the grievance within five(5) days of the grievance having been referred to him and shall inform the employees of the outcome in writing.

5.2.2 Head of Department

5.2.2.1 if a grievance has not been resolved to the satisfaction of the aggrieved employee or group of employees the immediate superior shall refer the matter in writing within 5 days to the Head of the Department or his nominee.

5.2.2.2 The Head of Department or his nominee shall arrange a meeting to consult and hold discussions with the affected parties in an attempt to achieve a resolution.

5.2.2.3 The employee may be assisted by a fellow employee, shop steward or union official at such meeting and the immediate superior may also be required to attend.

5.2.2.4 The Head of Department or his nominee shall Endeavour to resolve the grievance within 5 days of the grievance being referred and shall inform the employee of the outcome in writing.

5.2.2.5 When an employee alleges that a grievance has arise out of the actions or omissions of a supervisor or manager in charge of the aggrieved employee, the grievance may, without prejudice, be referred immediately to the next level of supervision or management.

5.2.3 Municipal Manager

5.2.3.1 If the grievance has not been resolved to the satisfaction of the aggrieved employee or group of employees, the Head of the Department or his nominee shall refer it to the Municipal Manager or his nominee within 5 days in writing who shall hold an enquiry into the grievance, attended by the employee, his representative, if required and any other persons who, in the opinion of the Municipal Manager or his nominee, should attend.

5.2.3.2 The Municipal Manager or his nominee shall hear details of the grievance including proposals to resolve the issue and shall Endeavour to reach a decision within Five (5) Days

5.2.3.3 The Municipal Manager or his nominee shall inform the employee in writing of the outcomes of the hearing as envisaged above, and such decision shall be final in terms of this procedure.

5.2.4 Referral to SALGBC

5.2.4.1 If the grievance has not been resolved to the satisfaction of the aggrieved party, that party may refer the grievance to the South African Local Government Bargaining Council for adjudication.