



***A Better Place for All***

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## **DR NKOSAZANA DLAMINI-ZUMA LOCAL MUNICIPALITY**

### **DISCIPLINARY POLICY**

<b>Date Approved:</b>	<b>21 MAY 2024</b>
<b>Effective Date:</b>	<b>2024-2025</b>

#### **1. PURPOSE**

This policy provides guidelines in Disciplinary rules that are necessary for employees to know what is expected of them in terms of the standards required and conduct expected in carrying out their duties and the likely consequences of failing to meet those standards.

The Council's procedures and the Code of Conduct (link) set the expected standards of conduct at work:

- The disciplinary procedure helps ensure that these standards are adhered to and;
- Provides a fair method of dealing with alleged failures to observe them.

The disciplinary policy is intended to help and encourage all employees of the Municipality to achieve and maintain acceptable standards of conduct. The aim is also to ensure consistent and fair treatment for everyone, rather than a means of imposing penalties.

#### **2. SCOPE OF APPLICABILITY**

- The policy is applicable to all officials of the DNDZ Municipality regardless of salary and occupational levels, race and gender who are appointed in terms of the Municipal Systems Act.
- Employees who still serve their probationary period; contract workers and casual workers.

#### **3. DEFINITIONS**

**3.1 "Employer"** means the DNDZ Municipality/Council.

3.2. **"Employee"** means a person employed by the employer to carry out certain duties and responsibilities in return for remuneration.

3.3 **"Council"** means the council of DNDZ Municipality.

#### 4. MISCONDUCT

An employee shall be guilty of misconduct if he/she:

- a) Willfully contravenes or fails to comply with any provisions of any of the Council regulations and policies.
- b) willfully does, allows or cause to do anything detrimental to the municipality, its discipline or efficiency; or
- c) disobeys or disregards or willfully defaults in carrying out a lawful order given to him/her by person having the authority to do so, or by word of conduct displays in co-ordination;
- d) is negligent or indolent, in the discharge of his duties; or
- e) conducts himself in a disgraceful, improper, unbecoming or dishonest manner; or
- f) partakes in intoxicating liquor or drugs at the work place and during working hours; or
- g) discloses or uses otherwise than in the discharge of his duties information acquired in the course thereof without the prior consent of the Council; or
- h) commits corruption or accepts a bribe; or
- i) misappropriates, willfully or negligently endangers or damages the municipality's property, uses it or causes it to be used in an improper or unauthorized manner; or
- j) absent himself/herself from his office or duty without leave or valid cause; or
- k) willfully and deliberately makes an inaccurate or false statement in order to benefit himself/herself in his/her office or to cause injury or prejudice to the municipality's service or any person in the municipality's service; or
- l) engages in remunerative work outside the municipality's service, or commits himself thereto without first requesting and receiving the Municipal Manager's or his nominee's permission or contravenes any conditions upon which such permission is granted by the Municipal Manager or his nominee; or
- m) assaults an employee of the municipality, or tries to assault him/her; or
- n) is or becomes inefficient or incompetent in the discharge of his/her duties; or
- o) undertakes any private agency work or work in any matter connected with the exercise or performance of his official duties; or
- p) fails, during working hours, to discharge his/her duties, or engages his/her attention on private affairs while on duty; or
- q) develops habits of unpunctuality or irregularity in connection with his/her duties; or

- r) being a person carrying out on behalf of the municipality any statutory power or duty, whether for himself/herself or for any other person corruptly solicits or receives or agrees to receive from any person any fee, advantage or reward (whether pecuniary or otherwise) as an inducement to or in consideration of or otherwise on account of his doing or forbearing to do anything in respect of any matter or transaction whatsoever (actual or proposed) in which the municipality is connected; or
- s) willfully or negligently damages any municipal property which includes tools, fixtures, any device, protective clothing; or
- t) willfully or negligently damages any property not belonging to the municipality whilst on duty; or
- u) fights whilst on duty; or
- v) use abusive language towards any member of management, councilor, employee and member of the public; or willfully use the social media network to tarnish the image of the Municipality or that of its Councillors or that of Management and Municipal employees, or
- w) is in possession of dangerous weapon during working hours; or
- x) is in possession of somebody else's equipment/theft or belongings without their consent; or steals from the municipality, councilor, co-employee or member of the public.
- y) supply false personal information related to the performance of his/her duties during any time when requested by the municipality either in writing or verbally; or any unauthorized disclosure of information.
- z) uses threats or violence against a person or persons to restrain or force a certain action; or when an employee displays unacceptable and unbecoming behavior towards another employee, member of the community and councilor.

The above misconducts are not exhausted, they must also read in conjunction with 2.7 of the Collective Agreement on the Disciplinary Procedure reviewed from time to time.

## **5. THE ESSENCE OF DISCIPLINE**

5.1 Discipline is a personal matter and the smallest possible number of people should be involved in disciplinary actions, therefore protecting the employee's privacy as far as possible.

5.2 Discipline comprises the following actions:

5.2.1 An investigation during which facts and evidence is collected relative to the alleged offences; and

5.2.2 A hearing during which the facts and evidence is presented, evaluated and the sanction is taken.

5.3 Disciplinary action should only be taken if sufficient substantive evidence exist that a transgression of the disciplinary code has indeed been committed.

5.4 The main objective of disciplinary action is to correct the employee's behavior or conduct. Disciplinary action must be substantively and procedurally fair to ensure consistency and compliance with the Labour Relations Act and the any other relevant legislation.

5.5 The maintenance of discipline is the responsibility of management and falls within the control function of all supervisory position.

5.6 The principles of natural justice and fair procedure must be adhered to. In spite of any criminal and/or civil action having been instituted.

5.7 Records should be kept for each employee, specifying the nature of any disciplinary transgressions, the actions taken by management, and the reasons for such actions.

## **6. INCAPACITY / NON-PERFORMANCE COUNSELLING PROCEDURE**

### **6.1 INTRODUCTION**

6.1.1 The counseling procedure is designed to assist management in handling cases where employees are not performing to the standards of work required of them in terms of their contracts of employment.

6.1.2 The purpose of the procedure is to identify the reasons for the non-performance and to provide a structured system of assisting the employee to improve his/her performance to the required standards within a reasonable period of time.

### **6.2 REASONS FOR INCAPACITY / NON-PERFORMANCE**

6.2.1 There are two main reasons why an employee may be incapable of doing his job or of performing to the required standards. They are:

6.2.1.1. Physical incapability due to ill health or injury; and

6.2.1.2. Incompetence due to lack of skills, training, natural ability or the ability to work with fellow employees.

6.2.1.3. Deliberate action of refusing to perform is excluded.

6.2.2. In both cases the counseling procedure should be used to address the reasons for the employee's inability to perform.

6.2.3 When it is considered that an employee's performance is not measured up to the standard required, the supervisor concerned shall engage in a process of counseling his physical inability or **perceived incompetence**.

6.2.4 **Review of standards:** The employee's job content and standards must be reviewed. The reasonableness of those standards must be confirmed and, if possible agreed with the employee.

6.2.5 **Identify sub-standard performance:** The supervisors must identify shortfalls in the performance using the most objective measurement criteria available. These shall be discussed with the employees.

6.2.6 **Identify reasons for sub-standard performance:** Reasons why the employee has fallen below the standards must be discussed and identified.

6.2.7 **Action plan:** If the reason for the non-performance lies with the employee, the supervisor must counsel the employee on how to achieve the standards and agree on an action plan. Agreement must also be sought from the employee that the action plan is acceptable and that he/she is capable of achieving the required standards, if the action plan is complied with. If the action plan is reasonable but the employee does not agree with it, for no good reason, it may nonetheless be implemented.

6.2.8 **Assistance:** Thereafter, the supervisor shall provide all reasonable assistance which may include suitable training of the employee to enable the employee to achieve the required standards. In case of physical incapability, the assistance may include reasonable time off (within the confines of leave) for medical treatment or temporary or permanent transfer to a less onerous job if this is possible.

6.2.9 **Review dates:** The employer or supervisor must give reasonable time to the employee to adjust to performance.

6.2.10 **Record of counseling:** The contents of the counseling and the agreed action plan must be recorded in a written memorandum to the employee in the form of the **Counseling Record Form**. It must be signed by the Head of Department concerned, as a record to which the parties may refer to at a later stage, if necessary. The memorandum could also provide proof of counseling.

6.2.11 **Further counseling and warnings:** If the employee does not reach the required Standards within the time periods set, the head of department shall engage in further counseling if it is believed that the employee may still be capable of improving given further assistance and time. The Head of Department must also warn the employee on the implications if he/she fails to perform to the required standards by the end of the said period.

6.2.12 **Termination:** If even after further counseling or a warning and a reasonable time period the employee still does not perform to the required standards, or proves to the satisfaction of the Head of Department that he/she is incapable of achieving the standards, the Head of Department in consultation with all relevant parties must recommend to the Municipal Manager that the disciplinary action will be instituted against employee.

## **7. DISCIPLINARY PROCEDURE:**

**7.1.** Once the stage referred to in 6.2.11 has been reached with an employee or in other cases where an employee has allegedly contravened any part of the Council Policies or regulations, Code of Conduct, any Collective Agreement the disciplinary steps described below must be followed.

7.1.1. Any accusation against an employee shall be brought before the Municipal Manager or his/her authorized representative by the person making the accusation in writing.

7.1.2. Any accusation brought before the Municipal Manager against an employee in terms of clause 7.1.1 shall be investigated by the Municipal Manager or his/her authorized representative to establish whether it warrants a disciplinary proceeding.

7.1.3. Should the Municipal Manager or his/her authorized representative decide, in terms of clause 7.1.2 that an accusation does not warrant a disciplinary hearing, the matter or allegation against the accused employee shall be deemed closed and the employee must be informed.

**7.2.** Where the Municipal Manager or his authorized representative is of the opinion that the allegation warrants further action, he may institute a charge of misconduct against such employee by establishing either the Departmental Enquiry (for minor cases) or a Disciplinary Tribunal (for serious misconduct) by following this procedure:

- 7.2.1. The Municipal Manager or his/her authorized representative shall, appoint the Presiding Officer to preside over the matter, and shall appoint the Prosecutor to lead the prosecution. .
- 7.2.2. The Prosecutor shall formulate and present the charges to be brought against the employee. The Prosecutor must issue the notice of misconduct, which must indicate the following:
- the alleged misconduct;
  - Date, time and venue of the hearing;
  - Name of Presiding Officer and Prosecutor, official address for correspondence;
  - Indication of the employee's right to be represented;
  - Indication that failure by employee or his representative to attend the sitting without good cause after proper service of the of the Disciplinary hearing the hearing may be conducted in absentia;
  - The employee to acknowledge receipt of notice.
- 7.2.3. 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 on the employee. The period referred to may be varied by agreement, or either party may apply for an extension to the Presiding Officer, and on good cause such a request may be granted.

## **8. AT THE DISCIPLINARY HEARING**

- 8.1. The hearing shall be conducted by the Presiding Officer who may determine the procedure to be followed subject to the following:
- Rules of natural justice to be observed.
  - Hearing to be adversarial in nature unless otherwise agreed.
  - Presiding Officer to act impartially.
- 8.2. Evidence of the alleged misconduct may be adduced and arguments in support thereof may be advanced by the prosecutor and he/she shall have the right to call for witnesses, produce any evidence; he/she shall have the right to cross-examine the employee charged, should the charged employee give evidence, or any person called as witness by or on behalf of the employee charged and to peruse all documents submitted as evidence by or on behalf of the employee charged;
- 8.3. The employee shall have the following rights:
- The employee charged shall be informed about an investigation if he/she is the subject thereof and that the results may be issued in the disciplinary enquiry.
  - The employee shall have the right to a fair hearing.
  - The employee shall have the right to be present and to be heard, either in person and / or through an official of his trade union or representative.
  - The employee shall have the right to cross-examine any person called as a witness in support of the charge, to peruse all documents provided or submitted as evidence and to call persons as witnesses.
  - The accused employee shall have the right to give evidence himself/herself
  - Interpreter if necessary
  - Plead in mitigation
  - Appeal in terms of the internal remedies

- 8.4. The Presiding Officer shall have the right to put questions without cross-examining any witness called in support of the charge or for the defense and to peruse all documents provided or submitted as, evidence.
- 8.5. The Presiding Officer shall keep a record of the proceedings at the hearing and of all the evidence given.
- 8.6. Failure by the employee charged to attend the hearing, either in person or through a representative, shall in no way invalidate the proceedings. The Presiding Officer has the power to proceed with the enquiry in absence of the charged employee or his/her representative if the Presiding officer is of the opinion that the charged employee or his/her representative is in willful default.
- 8.7. The Presiding Officer has the power to make any interim determinations or rulings, as he deems necessary; may propose compromise settlement in disposal of the whole or part of the matter; may make finding of fact given evidence; may invite any plea in mitigation and aggravation before deciding of the appropriate sanction.
- 8.8. The Presiding Officer may propose the summary procedure to the parties if so agreed will apply to the proceedings.
- 8.9. Should the Presiding Officer, after hearing the witnesses, pleas, and arguments in support of the charge and in defense of the employee, consider the employee guilty of the misconduct with which he/she is charged, the Presiding Officer may impose one or the combination of the sanctions:
- Written warning (valid for **six months**);
  - Final written warning (valid for **twelve months**);
  - Transfer to another position either with or without financial loss;
  - Suspension without pay for a maximum of **ten (10) days** which must be spread over **three (3) monthly** periods;
  - The withholding of any salary increment for a period not exceeding **twelve months (12)**;
  - Demotion to another post with or without financial loss; or
  - Dismissal
- 8.10. The Presiding Officer shall within **ten (10) days** of the last day of the hearing make known in writing his findings of fact, sanction imposed and the reasons in support thereof and provide a copy of the determination to the Municipal Manager or his/her representative and to the employee or his/her representative.
- 8.11. The acquittal or conviction of an employee on a criminal charge by a court of law shall not prevent steps being instituted against him/her on a charge of misconduct in terms of this policy, notwithstanding the facts set out in the charge of misconduct, should they be proven, would constitute the offence set out in the criminal charge on which he/she is acquitted or convicted or any other offence of which he/she might be found guilty at his trial for the said criminal charge.
- 8.12. The Municipal Manager or his/her authorized representative shall, as soon as possible after the date on which the period of appeal of the employee concerned has expired without the

- employee having lodged an appeal, accordingly place such findings on the employee's personal file.
- 8.13. Should an employee voluntarily resign from the municipality's service before being found guilty or punished for the alleged misconduct with which he/she is charged, further disciplinary measures against him/her shall be suspended. However, such employees' details may be submitted to COGTA and any pay up to the date of the termination of his service shall be paid to him, subject to any right or recovery which the municipality may have.
- 8.14. If an employee against whom action has been taken in terms of this policy was found guilty and the sanction meted out may, within **five (5) working days** of receipt of the Presiding Officer's findings and sanction, appeal against the finding or sanction and/or both by notifying the Municipal Manager or his/her authorized representative to that effect in writing.
- 8.15. When an employee lodges an appeal in terms of clause 8.14 the following procedure shall be followed:
- 8.15.1. The appeal of an employee shall be heard by the Municipal Manager.
  - 8.15.2. By agreement an appeal may be heard by an impartial arbitrator appointed by the parties to the appeal from a panel or list.
  - 8.15.3. The appeal will only be heard on the grounds of appeal submitted by the employee and any amendment thereto. The appeal should not entail the rehearing of the *matter de novo*.
  - 8.15.4. The Presiding Officer of the Disciplinary, Appeal Tribunal shall have power to confirm or set aside any decision, determination or finding and to confirm or set aside or reduce any sanction.
  - 8.15.5. The appeal hearing shall take place at the date and time decided by the Presiding Officer within **ten (10) days** of the date of appointment of the Presiding Officer.
  - 8.15.6. Parties are to deliver to the other and the Presiding Officer their brief statements of case at least **two (2) days** prior to the hearing and no further pleadings shall be exchanged.
  - 8.15.7. The Appeal Tribunal is to consider whether the disciplinary enquiry and sanction was fair.
  - 8.15.8. The Presiding Officer shall within **ten (10) days** from the date of the hearing make his determination in writing known to the Municipal Manager or his/her representative and to the employee or his representative.
9. When a notice, statement or other document is required to be given or furnished to or served upon any person, or any matter is to be communicated to any such person in writing, in terms of the abovementioned procedure, such notice, statement, document or communication shall be forwarded to him/her by registered post / facsimile or delivered to him/her or left at the last address furnished by him/her.



**10.** The Municipal Manager may at any time before or after an employee has been charged with misconduct, suspend such employee or utilize him/her temporarily in another capacity should the Municipal Manager be of the opinion that it would be detrimental to the interests of the municipality if the employee should continue with his duties at that stage. The employee before suspension shall be afforded an opportunity to make representation as to why he/she should not be suspended. Such suspension shall not exceed a period of **three (3) months** unless otherwise and shall be on full pay.

**11. COUNCIL APPROVAL AND EFFECTIVE DATE**

  
.....  
**MUNICIPAL MANAGER**

21/05/2024  
.....  
**DATE**

## ANNEXURE A

### CATEGORIES OF MISCONDUCT AND TIME PERIODS THAT MUST EXPIRE BEFORE A PERSON MAY BE RE-EMPLOYED IN A MUNICIPALITY

Column A ITEM	Column B CATEGORY OF MISCONDUCT	Column C PERIOD (YEARS)
1.	Financial misconduct contemplated in section 171 of the Municipality Finance Management Act, corruption or fraud	10
2.	Misconduct involving elements of dishonesty or negligence.	5
3.	(a) Assault with intent to do grievous bodily harm where a staff member has been criminally charged and convicted.	5
	(b) Sexual harassment	5
4.	Colluding or acceding to an influence of any councillor not to enforce an obligation in terms of this Act, any other legislation or by-law or a decision of the municipal council of the municipality, and who has been found guilty of an offence and convicted to a fine or to imprisonment for a period not exceeding one year.	5
5.	Facilitating or aiding an occupier of premises in a municipality to deny an authorised representative of the municipality or a service provider access at all reasonable times to the premises in order to read, inspect, install, or repair any meter or service connection for reticulation, or to disconnect, stop or restrict the provision of any service.	5
6.	Convicted of an offence and sentenced to more than 12 months imprisonment without the option of a fine.	5
7.	(a) Used the position as a staff member or confidential information for private gain or to improperly benefit another person.	5
	(b) Disclosed of any privileged or confidential information obtained as a staff member of a municipality to an unauthorised person or persons.	5
	(c) Took a decision on behalf of the municipality concerning a matter that the senior manager's spouse, partner or business associate, has a direct benefit or private business interest.	5
8.	Being party to or beneficiary under a contract for the provision of goods and services to any municipality or any municipal entity established by a municipality.	5
9.	Soliciting or accepting directly or indirectly any gift or favour that may influence the exercise of his or her functions, the performance of his or her duties, or judgment.	5
10.	Discrimination against others on the basis of race, gender, disability, sexual orientation or others grounds prohibited by the Constitution.	5
11.	Breach of the Code of Conduct for Municipal Staff as contained in Schedule 2 of the Municipal Finance Management Act, other than misconduct referred to in item 1 to 10 in this table.	2