

SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL

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8 February 2018

To All Municipal Managers

The Parties:

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SAMWU	Mr. S Mathe	086 542 7473
IMATU	Mr. J Koen	(012) 460-8444

And To: Regional Secretaries:

Gauteng/Johannesburg/Tshwane Division	Ms. M Nduli	(011) 394 6571
Eastern Cape Division	Mr. C Gqeke	(041) 581-3648
KwaZulu-Natal/eThekweni Division	Mr. V. Nzuzi	(031) 201 9752
Western Cape/ Cape Metro Division	Mrs. W Brink	(021) 917 1145
Northern Cape/Free State Division	Mr. T Mqobongo	(053) 831-3608
North West/Mpumalanga/Limpopo Division	Ms. N Hlangwani	(012) 342-7015

Dear Sir/Madam

CIRCULAR NO. 01/2018 DISCIPLINARY PROCEDURE COLLECTIVE AGREEMENT

Kindly find attached the new Disciplinary Procedure Collective Agreement, which was adopted by the Bargaining Committee of the Central Council in terms of Clause 17.3 of the Constitution, on 1 February 2018.

The Disciplinary Procedure Collective Agreement is also available on the SALGBC website.

Yours faithfully



Mr. S S Govender
GENERAL SECRETARY

Address correspondence to the General Secretary

**SOUTH AFRICAN LOCAL GOVERNMENT
BARGAINING COUNCIL**

(Hereinafter referred to as the Council)

**DISCIPLINARY PROCEDURE
COLLECTIVE AGREEMENT**

In accordance with the provisions of the Labour Relations Act, 66 of 1995 as amended ("the LRA") made and entered into by and between the: -

SOUTH AFRICAN LOCAL GOVERNMENT ASSOCIATION

(Hereinafter referred to as SALGA, the Employers Organisation)

and

INDEPENDENT MUNICIPAL AND ALLIED TRADE UNION

(Hereinafter referred to as IMATU)

and

SOUTH AFRICAN MUNICIPAL WORKERS UNION

(Hereinafter referred to as SAMWU)

(IMATU and SAMWU will together be referred to as the Trade Unions)

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/SK X.G.*

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1. SCOPE OF AGREEMENT

The terms of this Agreement shall be observed by all Employers and Employees who fall within the registered scope of the SALGBC.

2. EXCLUSIONS FROM COLLECTIVE AGREEMENT

Municipal Managers and Employees appointed as senior managers who are directly accountable to Municipal Managers, in terms of sections 54A and 56 of the Municipal Systems Act 32 of 2000, as amended, shall be excluded from all the terms of this Agreement.

3. DEFINITIONS

In this Agreement, unless the context clearly indicates otherwise, words and expressions which are defined in the Labour Relations Act, 66 of 1995 as amended ("the LRA") shall bear the same meaning as in the LRA. Words importing the masculine gender shall include the feminine and vice versa, and the singular shall include the plural and vice versa.

"days" shall be a reference to working days.

"fellow employee" means an Employee employed by the same Municipality as the Employee being charged and excludes an Employee who is also a representative or office bearer of a non-recognised trade union.

"legal practitioner" means a person who is admitted to practice, and practices as an advocate or an attorney in South Africa.

"recognised trade union" means the trade union parties to this Agreement, IMATU and SAMWU.

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4. PERIOD OF OPERATION

- 4.1 This Agreement shall come into operation in respect of the Parties to the Agreement on **1 February 2018** (the effective date) and shall remain in force and effect until **31 January 2023**. Thereafter, the Agreement shall continue indefinitely in respect of the Parties to the Agreement.
- 4.2 This Agreement shall come into operation in respect of non-parties (which includes, but not limited to, municipal entities as defined in the Municipal Systems Act, 32 of 2000), on a date to be determined by the Minister of Labour and shall remain in force and effect until **31 January 2023** or such further period as determined by the Minister of Labour at the request of the Parties.

5. INTENT

- 5.1 The purpose of this Disciplinary Procedure is to establish a fair, common and uniform procedure for the management of Employee discipline.
- 5.2 This Disciplinary Procedure is a product of collective bargaining and the application thereof is peremptory.

6. DISCIPLINARY POLICY

- 6.1 Disciplinary action is not a punitive measure, but a corrective one.
- 6.2 Disciplinary action shall be implemented fairly, consistently, progressively and promptly.
- 6.3 The maintenance of discipline is the responsibility of management and falls within the control function of a supervisory position.

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- 6.4 The principles of natural justice and fair procedure shall be adhered to notwithstanding any criminal and/or civil action having been instituted.
- 6.5 Subject to the requirements of substantive and procedural fairness, the Presiding Officer of the Disciplinary Hearing has the right to determine the sanction to be applied having regard to the seriousness of the offence, provided that it is consistent with the provisions set out herein.
- 6.6 This Disciplinary Procedure shall be published and issued to all Employees so that they are made aware, explicitly, of the standard of conduct expected in the workplace.
- 6.7 This Disciplinary Procedure, as may be amended, from time to time will define the disciplinary process and the rights and obligations of management and Employees.

7. DISCIPLINARY PROCEDURE

- 7.1 An allegation of misconduct against an Employee shall be brought before the Municipal Manager or his authorised representative for consideration and decision.
- 7.2 The Municipal Manager or his authorised representative shall proceed forthwith, without undue delay, and with due regard to the necessity for disciplinary proceedings to commence promptly. This clause shall be read with clause 7.3 and clause 7.4 below.
- 7.3 If the Municipal Manager or his authorised representative is satisfied that there is *prima facie* cause to believe that an act of misconduct has been committed, he may institute disciplinary proceedings against the Employee concerned.

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- 7.4 The Disciplinary Hearing shall commence as soon as reasonably possible, but no later than three (3) months from the date of the Municipal Manager's or his authorised representative's decision to institute disciplinary proceedings.
- 7.5 In the event of an act of misconduct by an Employee that appears less serious, warranting a sanction less than a final written warning, a formal Disciplinary Hearing will not be required. The Employee shall be given an opportunity to make either verbal or written representations, either personally or through his representative, prior to a determination being made. Proper records shall be kept of the afore-mentioned proceedings.
- 7.6 In the event of misconduct that appears sufficiently serious to warrant a sanction more serious than a written warning, the Municipal Manager or his authorised representative shall institute disciplinary proceedings against the Employee and appoint a Presiding Officer as follows:
- 7.6.1 The Municipal Manager or his authorised representative shall appoint, in the first instance, a suitably qualified person employed by the municipality, preferably one level or two above the Employee's position, to serve as the Presiding Officer.
- 7.6.2 For the purposes of this clause 7.6, a suitably qualified person means a person sufficiently competent to preside over a Disciplinary Hearing.
- 7.6.3 Should it not be possible to appoint a suitably qualified person, employed by the municipality, to serve as the Presiding Officer, due to a lack of suitably qualified persons, or where Presiding Officers are threatened or intimidated, the Municipal Manager or his authorised representative may appoint a suitably qualified external person, not employed by the municipality, to serve as the Presiding Officer.

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7.7 The Municipal Manager or his authorised representative shall also appoint an Employer representative to represent the Employer and serve the function of prosecution, as follows:

7.7.1 The Municipal Manager or his authorised representative shall appoint, in the first instance, a suitably qualified person employed by the municipality, preferably one level or two above the Employee's position, to serve as Employer representative.

7.7.2 For the purposes of this clause 7.7, a suitably qualified person means a person sufficiently competent to serve as Employer representative and perform the function of prosecution.

7.7.3 Should it not be possible to appoint a suitably qualified person, employed by the municipality, to serve as Employer representative, due to a lack of suitably qualified persons, or where Employer representatives are threatened or intimidated, the Municipal Manager or his authorised representative may appoint a suitably qualified external person, from outside its employ, excluding a legal practitioner, to serve as Employer representative.

7.7.4 Neither the Employer nor the Employee shall be entitled to be represented by a legal practitioner in disciplinary proceedings, unless both parties agree, in writing, to allow legal representation, or if the Presiding Officer, upon receiving an application by any party, determines that it is reasonable to allow legal representation, having regard to the following factors:

7.7.4.1 The nature of the questions of law raised by the Disciplinary Hearing;

7.7.4.2 The complexity of the case;

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- 7.7.4.3 The public interest; and
 - 7.7.4.4 The comparative ability of the opposing parties or their representatives to deal with the Disciplinary Hearing.
- 7.8 The Employer Representative shall, within five (5) days of his appointment, formulate and serve the charges to be brought against the Employee.
- 7.9 The charges shall be set out in a Notice of Disciplinary Hearing detailing:
- 7.9.1 The date, time and venue at which the Disciplinary Hearing will be conducted;
 - 7.9.2 A description of the alleged misconduct, as contemplated in Annexure A, which shall set out sufficient details or particulars of the alleged offence(s) to allow the Employee a reasonable and fair opportunity to prepare a response to the charges;
 - 7.9.3 The names of the Presiding Officer and Employer Representative and the address at which notices, and relevant correspondence may be submitted;
 - 7.9.4 That the Employee may be represented by a suitably qualified representative of choice who shall be a fellow Employee, or a representative from a recognised trade union who may be a shop steward or a trade union official;
 - 7.9.5 That if the Employee, or his representative, fails to attend the enquiry without good cause, provided that the Notice of the Disciplinary Hearing has been properly served, the hearing may be conducted in his absence.

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- 7.10 The Employer shall have the duty to prove that the Notice of a Disciplinary Hearing was properly served on the Employee. The notice shall be deemed to have been served if delivered either by registered mail, facsimile, e-mail, personal service or witnessed delivery. Where a Notice of a Disciplinary Hearing was served by e-mail, a copy of the sent e-mail indicating the successful dispatch to the other party and any attachments concerned shall serve as proof of service.
- 7.11 The Disciplinary Hearing shall commence within a reasonable time from the date of service of the Notice of Disciplinary Hearing, but not earlier than seven (7) days and not later than fifteen (15) days from the date of service.
- 7.12 The time-period referred to in clause 7.11 above may be amended by mutual-agreement between the Employer and the Employee or his representative. If there is no agreement, either party may apply to the Presiding Officer for an amendment of the time-period, in which case, the Presiding Officer shall consider the submissions by the parties and determine a new date for the Disciplinary Hearing.

8. CONDUCT OF THE DISCIPLINARY HEARING

- 8.1 The Employer has the following rights and obligations at the hearing:
- 8.1.1 The duty to begin as well as the burden to prove each and every allegation of misconduct as set out in the Notice of Disciplinary Hearing, on a balance of probabilities;
- 8.1.2 The right to call any witnesses and lead any evidence, which may include books, documents or any other relevant materials;
- 8.1.3 The right to cross-examine any witness called to testify on behalf of the Employee and to have access to any books, documents or relevant materials produced;

8.1.4 The right to re-examine any of its own witnesses;

8.1.5 The right to present argument based on the evidence in support of any submission.

8.2 The Employee has the following rights at the hearing:

8.2.1 The right to be heard, in person or through a representative, and to call any witnesses and lead any evidence which may include books, documents or any other relevant materials;

8.2.2 The right to cross-examine any witness called to testify on behalf of the Employer and to have access to any books, documents or relevant materials produced;

8.2.3 The right to re-examine any of his own witnesses;

8.2.4 The right to present argument based on the evidence in support of any submission;

8.2.5 The right to make application, on good cause shown, for the recusal of the Presiding Officer.

8.3 The Presiding Officer shall:

8.3.1 Determine the appropriate procedure to be followed, but shall conduct the enquiry fairly, expeditiously and with the minimum of legal formalities, provided that it shall not be to the prejudice of any party;

8.3.2 Observe the rules of natural justice in the conduct of the proceedings;

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- 8.3.3 Unless otherwise agreed to by the parties, conduct the hearing in an adversarial manner;
- 8.3.4 Discharge his duties impartially, with care and diligence;
- 8.3.5 Refrain from consulting, conferring or having casual contact with any of the parties or their representatives regarding the case, while handling the matter, without the presence or consent of the other party concerned;
- 8.3.6 Be entitled to put questions of clarity to the parties or their witnesses on any relevant issue, provided that it shall not amount to cross-examination;
- 8.3.7 Make such interim determinations or rulings of law as he deems necessary;
- 8.3.8 Be entitled to ratify and approve any settlement reached by the Parties in the disposal of the whole or a portion of the issues;
- 8.3.9 Make a finding of fact after having considered and analysed the evidence;
- 8.3.10 Invite and hear any evidence or plea in mitigation, aggravation or extenuation prior to deciding on the sanction to impose, with due regard to the rule of law.
- 8.3.11 Impose, amongst others, any one of the following sanctions:
- 8.3.11.1 A written warning;
 - 8.3.11.2 A final written warning;
 - 8.3.11.3 Suspension without pay for a maximum of ten (10) days, as referred to in clause 2.5 of Annexure A;

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- 8.3.11.4 Withholding of any salary increment for a period not exceeding twelve months;
- 8.3.11.5 Demotion, with or without financial loss, to a post that is one level below the post which the Employee occupied before the finding of guilt; or
- 8.3.11.6 Dismissal.

- 8.4 The Presiding Officer shall, within ten (10) days of the last day of the Disciplinary Hearing, confirm, in writing, the findings of fact and sanction imposed, in the event that the Employee was found guilty, and the reasons in support thereof. The Presiding Officer shall provide a copy of the determination to the Municipal Manager or his authorised representative and to the Employee or his representative.
- 8.5 The determination of the Presiding Officer cannot be altered by the Municipal Manager or any other governing structure of a municipality and shall be final and binding on the Employer and Employee, subject to remedies permitted in law and this procedure.
- 8.6 An Employee may not be re-charged at a subsequent Disciplinary Hearing for the same alleged misconduct, unless for circumstances permitted in law.

9. AN OPTIONAL SUMMARY PROCEDURE

- 9.1 The Employer and the Employee may agree, in writing, to adopt the Summary Procedure as set out hereinafter, in which case, the Presiding Officer shall, to the extent that he deems necessary:
 - 9.1.1 Confirm whether or not the matter is ready for adjudication;
 - 9.1.2 Ascertain and record in writing, signed by himself and the parties, the facts to which the parties agree and the facts which are in dispute (hereinafter referred to as the issues);

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- 9.1.3 Receive from the Parties such documents, or copies thereof, as they consider relevant to the determination of the issues;
- 9.1.4 Receive evidence or submissions, orally or in writing, sworn or un-sworn at joint meetings with the parties or, if the parties 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 a reasonable opportunity to present evidence or make submissions and to respond to those of the other; and
- 9.1.5 Issue 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.

10. PLEA AGREEMENTS

- 10.1 If the Employee wishes to plead guilty to the charge or charges, the Employee or his representative and the Employer representative may enter into a plea agreement on a sanction to be imposed.
- 10.2 The plea agreement shall be in writing, signed by the Employer representative and the Employee or his representative, and is subject to approval by the Presiding Officer.
- 10.3 The Presiding Officer shall consider and approve a plea agreement having considered all the relevant circumstances. If the plea agreement is approved by the Presiding Officer, a sanction shall be imposed on the Employee in accordance with the plea agreement. In the absence of such approval, the Disciplinary Hearing shall proceed as if the Employee has pleaded not guilty.

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11. RIGHT TO TERMINATE SERVICE

11.1 An Employee who receives a Notice of a Disciplinary Hearing, shall be entitled to resign, retire or terminate his employment on any other ground permitted in his contract of employment, with immediate effect, provided that:

11.1.1 The Employee does so prior to the handing down of a finding by the Presiding Officer;

11.1.2 The Employee consents, in writing, to deductions of 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 termination of service.

11.2 If the Employee's resignation, retirement or termination of employment meets the requirements and conditions set out in clause 11.1 above, the Disciplinary Hearing shall not proceed.

12. DEALING WITH ABSCONDMENT

12.1 An Employee who has absented himself for a period longer than ten (10) days without notification to the Employer, shall be deemed to have absconded from duty.

12.2 The Employer shall attempt to establish the whereabouts of the Employee and shall inform the Employee, in writing by letter, of his alleged abscondment and the consequences thereof. If the Employee cannot be located or has not responded to communication, the Employer shall proceed with the Disciplinary Hearing in his absence.

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- 12.3 If the Employee reports for duty, after the steps referred to in clauses 12.1 and 12.2 above have already been taken, the Employee shall be afforded the opportunity to make verbal or written representations, either personally or through a representative, to the Municipal Manager or his authorised representative as to why he should be reinstated.
- 12.4 The Municipal Manager or his authorised representative may, after considering the Employee's representations, either reinstate him or confirm his dismissal. The decision to reinstate or confirm the dismissal shall be in writing and communicated to the Employee within five (5) days after it has been made.
- 12.5. Should the dismissal be confirmed, the Employee may appeal the decision utilising the appeal process set out in clause 17 below.

13. RECORDING OF PROCEEDINGS

- 13.1 The proceedings of the Disciplinary Hearing shall be recorded by means of an electronic device.
- 13.2 The electronic recording of the proceedings shall be kept in safe custody by the Employer.
- 13.3 Upon request, the Employer shall provide a copy of the electronic recording, free of charge, to the Employee or his representative.

14. NON-ATTENDANCE

- 14.1 Should an Employee fail to appear, either in person or through his representative, at the place and time set for the Disciplinary Hearing or Appeal Hearing, without good cause, and forty five (45) minutes has elapsed from the time set for the start of the hearing, and it has been established that the Notice of Disciplinary Hearing or Appeal Hearing was properly served on the Employee, the Disciplinary Hearing or

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Appeal Hearing may be conducted in the absence of the Employee and discipline effected or the appeal determined, as the case may be.

- 14.2 Should the Employer Representative not be able to attend a Disciplinary Hearing or an Appeal Hearing, the Employer Representative shall notify the Employee or his representative and the Presiding Officer, prior to the hearing, of the change in circumstances.

15. RIGHT OF REPRESENTATION

- 15.1 An Employee shall be entitled to be represented at any enquiry, by a fellow Employee or a representative from a recognised trade union, who may be a shop steward or a trade union official.

16. PRE-CAUTIONARY SUSPENSION PENDING A DISCIPLINARY HEARING

- 16.1 An employer may suspend the Employee or utilise him temporarily in another capacity pending an investigation into alleged misconduct if the Municipal Manager or his authorised representative has reasonable cause to believe that the Employee at the workplace may-

- 16.1.1 jeopardise any investigation into the alleged misconduct;
- 16.1.2 interfere with potential witnesses; or
- 16.1.3 commit further acts of misconduct.

- 16.2 If the Municipal Manager, or his authorised representative, intends to suspend an Employee, he shall give written notice of such intention and afford the Employee 48 hours to make representations as to why he should not be suspended. The Municipal Manager or his authorised representative shall make a determination, within (five) 5 days as to whether the Employee concerned shall be suspended or not, after having considered the representations.

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- 16.3 Notwithstanding clauses 16.1 and 16.2 above, should the Municipal Manager, or his authorised representative, have reasonable cause to believe that the Employee's continued presence at the workplace poses a danger to the well-being or safety of any person or municipal property; or be detrimental to stability in the municipality; or demonstrates the potential to damage or tamper with the evidence; the Municipal Manager, or his authorised representative, may, in the notice of intention to suspend the Employee, also require the Employee to vacate the premises with immediate effect and invite the Employee to make representations within 48 hours as to why he should not be suspended. The Municipal Manager or his authorised representative shall make a determination, within five (5) days as to whether the Employee concerned shall be suspended or not, after having considered the representations.
- 16.4 The suspension or utilisation of the Employee in another capacity shall be for a fixed and pre-determined period and shall not exceed a period of three (3) months from the date that the Municipal Manager or his authorised representative is satisfied that there is a prima facie case that an act of misconduct has been committed. However, where circumstances prohibit the conclusion of the Disciplinary proceedings within the afore-stated timeframes, such suspension or utilisation in another capacity can be extended for a further three (3) months.
- 16.5 Any suspension shall be on full remuneration.
- 16.6 Prior to such suspension the Municipal Manager or his authorised representative shall consider the written submission by the Employee or his representative and make a final determination regarding the suspension of the Employee.

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17. APPEAL

- 17.1 The Employee has the right to appeal against any disciplinary finding and/or sanction, which has been given at a Disciplinary Hearing. The Employee may waive his right to an appeal and the Employee may proceed directly to refer a dispute as provided for in the LRA.
- 17.2 Subject to clause 17.1 above, an appeal shall be lodged on the prescribed form within seven (7) days of receipt of written notification of the findings and sanction of the Disciplinary Hearing.
- 17.3 The grounds of appeal shall be clearly set out in the Employee's Notice of Appeal, provided that the failure by an Employee to raise a ground of appeal shall not preclude him from subsequently raising it before the Disciplinary Appeal Hearing.
- 17.4 The Presiding Officer of the Disciplinary Appeal Hearing shall fix the time and date of the hearing. The Disciplinary Appeal Hearing shall commence within reasonable time from the date of service of Notice of Appeal but shall take place not earlier than five (5) days and not later than ten (10) days from the date that the Notice of Appeal was lodged.
- 17.5 The time period referred to in clause 17.4 above may be amended by mutual agreement between the parties in consultation with the Presiding Officer of the Disciplinary Appeal Hearing. Failing agreement between the parties, either party may apply to the Presiding Officer of the Disciplinary Appeal Hearing for an extension of the time period. A new date for the Disciplinary Appeal Hearing shall in this instance be determined by the Presiding Officer of the Disciplinary Appeal Hearing to a mutually convenient time, date and place for the Disciplinary Appeal Hearing to take place.
- 17.6 In the case where the sanction imposed was to a maximum of final written warning, an appeal shall be heard by a management level

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above that of the Presiding Officer of the Disciplinary Hearing. In the case where the sanction imposed as a dismissal or a suspension without pay, an appeal shall be heard by a higher level of management who does not exercise direct management control over the affected Employee.

- 17.7 By agreement between the parties, an appeal may be heard by an arbitrator appointed by the parties to the appeal from the panel of arbitrators existing in the relevant division of the SALGBC.
- 17.8 The appeal shall be heard on the grounds of an appeal submitted by the Employee and any amendment thereto, by having regard to the record of the Disciplinary Hearing proceedings and the submissions and arguments of the parties based thereon.
- 17.9 The appeal shall not entail the rehearing of the matter afresh.
- 17.10 The Presiding Officer of the Disciplinary Appeal Hearing shall have the power to confirm or set aside any decision, determination or finding and to confirm, set aside or reduce any sanction imposed by the Presiding Officer of the Disciplinary Hearing.
- 17.11 A party shall deliver to the opposing party and to the Presiding Officer a brief statement of case at least two (2) days prior to the date of the Disciplinary Appeal Hearing. No further pleading shall be exchanged unless otherwise agreed.
- 17.12 The statement of case shall concisely set out the facts upon which a party relies, the conclusions of law upon which a party relies and the relief that a party seeks.
- 17.13 The Disciplinary Appeal Hearing shall be conducted in whatsoever manner and procedure that is deemed necessary, including the Summary Procedure as set out in clause 9 above, which produces the

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most expeditious conclusion of the matter and provided that the rules of natural justice are adhered to.

17.14 The Disciplinary Appeal Hearing shall consider whether the finding and/or sanction imposed by the Disciplinary Hearing or procedure was fair and correct. The Presiding Officer of the Disciplinary Appeal Hearing shall be entitled to make an order in line with sub-clause 17.10 above.

17.15 The determination of the Presiding Officer of the Disciplinary Appeal Hearing cannot be altered by the Municipal Manager or any governing structure and shall be final and binding on the Employer subject to any remedies permitted by law.

18. COLLECTIVE MISCONDUCT

18.1 Where Employees embarked on an unprotected strike the Employer shall inform the trade union and allow them a period of 48 hours to try and get their members back to work.

18.2 Ultimatum

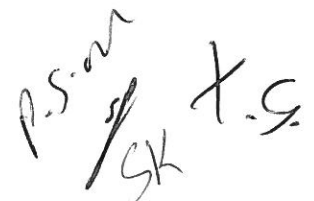
18.2.1 If the trade union cannot succeed with getting their members back to work, the trade union shall be requested to indicate within a period of 48 hours why an ultimatum should not be issued to Employees to return to work or be dismissed.

18.2.2 The Employer shall consider the written submissions from the trade union and if not persuaded the Employer shall again indicate its intention to issue the ultimatum.

18.2.3 The Municipal Manager or his authorised representative shall issue the ultimatum. The ultimatum must be clear and allow the Employees a reasonable time to comply.

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- 18.2.4 Those Employees who fail to return to work after the time stipulated in the ultimatum shall, together with their trade union/s be informed in writing of the charges against them and shall be given the opportunity to make any written submission (either personally or through their representatives) to the Municipal Manager or his authorised representative within ten (10) days from receiving the charges.
- 18.2.5 The Municipal Manager or his authorised representative shall appoint an independent Presiding Officer to consider the submissions by Employees and come to a finding on the charges by taking into consideration the length and duration of the unprotected strike, the reasons thereof, aggravating or mitigating circumstances and compliance (where applicable) with any ultimatum, and may further decide whether, having regard to all of the afore-going, different sanctions should be applied to any of the Employees involved.
- 18.2.6 The finding of the Presiding Officer shall be issued to the Employees within ten (10) days of receipt of the submissions by Employees.
- 18.2.7 The Employees or their representatives shall be invited to submit any written mitigating circumstances within ten (10) days of receiving the finding from the Presiding Officer.
- 18.2.8 The Presiding Officer shall consider the written mitigating circumstances submitted by the Employees or their representatives and shall issue his sanction determination within (ten) 10 days from receiving the submissions on mitigating circumstances from Employees.

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19. INQUIRY BY ARBITRATOR

19.1 An employer may, with the consent of the Employee, request the Council to conduct an arbitration into allegations about the conduct or capacity of an Employee as provided for under section 188A of the LRA.

19.2 Despite clause 19.1 above, if the Employee alleges in good faith that the holding of a Disciplinary Hearing contravenes the Protected Disclosures Act No. 26 of 2000, that Employee or the Employer may require that an inquiry by arbitrator be conducted into allegations by the Employer into the conduct or capacity of the Employee.

19.3 The request for an inquiry by arbitrator shall be filed in terms of the Rules for the Conduct of Proceeding before the Council as set out in Annexure 8 of the Main Collective Agreement.

19.4 The provisions of sections 138 and 142 of the LRA, read with the changes required by the context, will apply to any inquiry by arbitrator.

20. DISPUTE RESOLUTION

Disputes about the interpretation and application of this collective agreement shall be dealt with in terms of the dispute resolution mechanisms provided for in the Main Collective Agreement.

21. EXEMPTIONS

Applications for exemption from this Agreement shall be dealt with in terms of the Exemption provisions of the Main Collective Agreement.

22. TRANSITIONAL PROVISIONS

22.1 Any disciplinary process instituted prior to the commencement of this

Disciplinary Procedure, and not yet completed, shall:

22.1.1 Be finalised in terms of the Disciplinary Procedures which were applicable at the time when the proceedings were instituted; or

22.1.2 By mutual written agreement between the Employee and the Municipality, be finalised in terms of this Disciplinary Procedure.

THIS COLLECTIVE AGREEMENT WAS CONSIDERED, APPROVED AND ADOPTED BY THE BARGAINING COMMITTEE OF THE CENTRAL COUNCIL, IN TERMS OF CLAUSE 17.3 OF THE CONSTITUTION OF THE SALGBC, ON 1 FEBRUARY 2018.

SIGNED BY THE PARTIES AT CAPE TOWN ON THIS 6th DAY OF FEBRUARY 2018.

**MEMBER OF THE SALGBC
(REPRESENTING SALGA – MR. X GEORGE)**

**MEMBER OF THE SALGBC
(REPRESENTING IMATU – MR. S KHOZA)**

**MEMBER OF THE SALGBC
(REPRESENTING SAMWU – MR. P MOLALENYANE)**

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**GENERAL SECRETARY OF THE SALGBC
MR. S GOVENDER**

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, 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

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Department Head or Municipal Manager or his authorised representative, 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 wilful 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 LRA;
- 1.2.12 Refrain from wrongfully disclosing privileged information, subject to the provisions of the Protected Disclosures Act 26 of 2000; 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 is intended to deter future repetition of that behaviour. The sanction imposed must be based on the seriousness of the offence and a consideration of the Employee's disciplinary record.
- 2.2 The imposition of discipline is progressive in that sanctions must 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

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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 shall be recorded in the Employee's personal file.
- 2.4 A written warning, shall remain valid and on record of the Employee for a period of six (6) months from the date of imposition. A final written warning shall remain valid for a period of twelve (12) 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 the maximum period shall be ten (10) days. 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, among others:
 - 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 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, in law, constitute just cause for dismissal.

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