

PRIVATE WORK AND DECLARATION OF INTEREST/S POLICY

(Dated June 2013)

1. PREAMBLE

The Code of Conduct for Municipal Staff Members, Schedule 2 of the Local Government: Municipal Systems Act, Act 32 of 2000, provides as follows:

"Except with the prior consent of the Municipality of a municipality a staff member of the municipality may not –

(a) be a party to a contract for –

- (i) the provision of goods or services to the municipality; or
- (ii) the performance of any work for the municipality otherwise than as a staff member;

(b) obtain a financial interest in any business of the municipality; or

(c) be engaged in any business, trade or profession other than the work of the municipality.

The provision implies that the employee has a fundamental right to do private work and be remunerated therefore but this is countered by the Municipality's sole prerogative to determine conditions on which special permission will be granted. This in turn implies that it is not a matter of course approval but that it must be specially granted.

Furthermore employees shall be responsible for the proper and efficient discharge of the work assigned to them by the Municipality. This implies that the Municipality as employer may legitimately expect the employee to be in a mental and physical condition to properly perform the duties he/she should be doing.

2. DEFINITIONS

"Private Work" For purposes of this policy framework, an employee performs remunerated work when he/she, apart from his/her official duties to the municipality, works for payment.

All terminology not defined under clause 2 of this policy shall bear the same meaning as in the applicable legislation.

3. LEGAL FRAMEWORK

Item 4 of the Code of Conduct for Municipal Employees, **Municipal Systems Act, 32 of 2000** provides as follows:

"(2) Except with the prior consent of the council of a municipality a staff member of the municipality may not –

- (c) be engaged in any business, trade or profession other than the work of the municipality."

Section 22 of the **Constitution of the Republic of South Africa, 1996** ("the Constitution") provides that any person has the right to choose an occupation or profession freely and that the practice thereof may be regulated by law. In terms of his/her employment contract with the municipality (linked to relevant collective agreements) an employee is required to devote a fixed number of hours of service to the municipality.

It is therefore necessary to read the provisions of the aforementioned Section 22 of the **Constitution** together with the provisions of legislation that regulate hours of service, since the latter places a limitation on the right of the individual as mentioned in Section 22 of the **Constitution**.

Since labour law allows an employer to take action against an employee if the employee fails to deliver his/her hours of service properly or allows another occupation to affect his/her employment relationship with the employer detrimentally, this policy is established to regulate outside work properly.

No employee is allowed to perform any outside work unless previously officially approved on an individual basis by the Municipal Manager. All applications must be submitted to the Human Resources section for recommendation before being presented to the Municipal Manager for a decision.

4. SCOPE AND APPLICATION

The policy shall apply to all employees of the employer.

5. OBJECTIVES OF POLICY

The Private Work Policy refers to the terms and conditions for dealing with private work applications.

6. POLICY CONTENT

6.1 Private Work

No employee will be granted permission to perform private work after hours that is in direct conflict with his profession and /or authority. Example:

- ❖ Electrician performing electrical work in his private capacity and issues a certificate of competence in his official capacity
- ❖ Building Control Officer is allowed to draw building plans after hours and approves the same building plans in his official capacity etc.

Any request to perform private work must be stated in writing and accompanied by sound motivations, according to the following criteria:

- ❖ the capacity of the employee;
- ❖ the nature of the official duties of the employee to the municipality;
- ❖ the nature and extent of the proposed remunerated work outside the municipality, as well as the time (hours) estimated to be spent on it and the possible conflict thereof with normal duties within the employment contract.

The following conditions (where applicable) must be taken into account when an application is considered and will, if such application is approved, apply as conditions for approval:

- ❖ The proposed remunerated work may not interfere with the employee's normal official duties and / or cause a conflict of interests of whatever nature to arise.
- ❖ The proposed remunerated work must take place entirely outside the employee's prescribed hours of work.
- ❖ The proposed remunerated work may not be of such a nature that it is detrimental to the relationship between the employer and employee or causes the employee to violate the Code of Conduct.
- ❖ Municipal resources may under no circumstances be used in the performance of the envisaged remunerated work.
- ❖ Permission to perform the envisaged remunerated work is valid for a period of one year only, provided that if the employee wishes to continue performing the outside work after said one year

has passed, he/she must renew the application to do so for the following one year at least thirty days prior to the expiry of the first year, in which case the stipulations of Paragraph 4.1 will apply *mutatis mutandis*. The abovementioned procedure is repeated each and every following year for as long as the employee concerned wishes to continue with his/her outside work.

Disciplinary action will be taken against an employee:

- ❖ who performs remunerated work outside his/her official duties to the municipality without written permission; or
- ❖ who, after permission has been given to perform private work, in the opinion of the employer breaks or does not comply with any stipulation or condition as stated in this policy.

The employer retains the right at any time to withdraw permission given in terms of the stipulations of this policy to an employee, on condition that the reasons given are justified and reasonable.

Ex post facto permission may not be granted to an employee to perform remunerated work outside his/her official duties to the municipality.

The Human Resources section must keep a register of employees who perform remunerated work outside their official duty to the municipality. The register must contain the following information:

- ❖ name;
- ❖ staff number;
- ❖ directorate;
- ❖ section;
- ❖ application for remunerated work approved / denied;
- ❖ period and hours for which permission was granted;
- ❖ name of the (outside) employer, type of work, nature of work and contact details; and
- ❖ starting date.

6.2 **Declaration of interest/s**

Should an employee have a business interest in any number of companies or close corporations he/she shall declare such business interest/s as required in terms of the Municipal Systems Act (Act 32 of 2000) under Section 4 of Schedule 2: Code of Conduct for municipal staff members.

It is to be noted that where a staff member who or whose spouse, partner or business associate or close family member acquired or stands to acquire any direct benefit from a contract concluded with the municipality, he/she must disclose in writing, full particulars of the benefit to Council as required by the Municipal Systems Act. Interests to be declared, which may give rise to a conflict of interest with the employee's relationship with Council, include:

- (a) shares and securities in any company;
- (b) membership of any close corporation;
- (c) interest in any trust;
- (d) directorships;
- (e) partnerships;
- (f) consultancies and retainerships;
- (g) other financial interests in any business undertaking;
- (h) other employment and remuneration;
- (i) interest in property;
- (j) pension; and
- (k) subsidies, grants and sponsorships by any organisation.

6.3 **Application for and approval of private work or declaring a business interest**

An application to do private work or have a business interest by the Municipal Manager must be approved by the Executive Mayor.

Applications to do private work or have a business interest by any other member of staff must be approved by the Municipal Manager or his delegated authority.

Applications for private work or declaring a business interest must be submitted in writing for consideration. A copy of the application with the decision of the competent authority must be filed on the employee's personal record. Human Resources will be custodian of the administrative infrastructure and processes to safeguard the relevant documentation and files.

7. **IMPLEMENTATION AND MONITORING**

All employees are to apply annually), even if current approvals are in place. Such applications to be submitted to the Human Resources section.

Individual approvals will be granted for 12 months which cycle will run from date of approval by the relevant competent authority where after the approval will automatically lapse.

Employees will on their own record after the expiry of the original approval have to reapply for further approval.

In the event of an application not being approved, the competent authority to provide reasons for the decision.

8. **COMMUNICATION**

This policy will be communicated to all Municipal employees using the full range of communication methods available to the municipality.

9. **POLICY REVIEW**

This policy will be reviewed and revised when feel necessary.

10. **BUDGET AND RESOURCES**

The Financial and resource implication/s related to the implementation of this policy should be qualified and quantified.

11. **ROLES AND RESPONSIBILITIES**

The Municipal Manager or his/her delegate assignee accepts overall responsibility for the implementation and monitoring of the policy.

12. **PENALTIES**

Non-compliance to any of the stipulations contained in this policy will be regarded as misconduct, which will be dealt with in terms of the Disciplinary Code.

13. **DISPUTE RESOLUTION**

Any dispute arising from this policy due to ambiguous wording or phrasing must be referred to the Local Labour Forum for adjudication. Resolutions from the Local Labour Forum must be incorporated into the policy.

Signed at on this day of

.....
MUNICIPAL MANAGER

.....
IMATU CHAIRPERSON

.....
SAMWU CHAIRPERSON