

## **DISCIPLINARY POLICY AND PROCEDURE 2021/22**

## Summary

In any organisation it is imperative that labour is managed in a fair and equitable manner. The basis of this relationship as defined within the Labour Relations Act (LRA). Act 66 of 1995, is to ensure that fairness prevails both for employer and for the employee.

It is the intention that the provisions of this agreement will guide the manner of the relationship between all employees of Ngqushwa Local Municipality and its Council (employer) – in accordance with the agreement and principles of fairness.

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<b>Related Legislation/Applicable Section of Legislation</b>	<ul style="list-style-type: none"> <li>• The Constitution of the Republic of South Africa no 108 of 1996</li> <li>• The Labour Relations Act no 66 of 1995</li> <li>• Employment Equity Act no 55 of 1998</li> <li>• Local Government: Municipal Finance Management Act</li> <li>• Basic Conditions of Employment Act 75 of 1997</li> <li>• SALGA Collective Agreement</li> </ul>
<b>Related Policies, Procedures, Guidelines, Standards, Frameworks</b>	<ul style="list-style-type: none"> <li>• Disciplinary Code and Procedure-Collective Agreement</li> <li>• All Applicable Legislative framework</li> </ul>
<b>Replaces/ Repeals (whichever is relevant, if any)</b>	
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<b>Department Responsible</b>	<b>Corporate Services</b>
<b>Unit responsible</b>	<b>Human Resources</b>

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## **1. TITLE**

Disciplinary Policy and Procedure

## **2. PURPOSE**

The purpose of this policy is to ensure that issues relating to discipline are managed in an effective and consistent manner. By so doing all parties will have clear understanding of appropriate disciplinary action that is required, and will be guided by the prescripts provided and the conditions attached. The application of this code and manner in which discipline is required to be handled is regarded as a condition of service.

## **3. SCOPE**

This policy is applicable to all staff within Ngqushwa Local Municipality (temporary contract or permanent)

## **4. PROCEDURE DETAIL**

### **4.1 POLICY OBJECTIVES**

- To ensure that discipline is handled promptly, progressively, consistently and fairly.
- To ensure that all line managers retain responsibility for the management of discipline.
- To ensure that discipline is applied consistently and fairly.
- To ensure that discipline is managed in a progressive manner (educative, corrective and punitive discipline).
- To ensure that all staff have access to this policy and gain a practical awareness of all aspects of the policy relating to both employer and employee.

### **4.2 RESPONSIBILITIES**

The following principles will guide the application of this policy:

- Disciplinary is the responsibility of line management at all levels and as such they are responsible to treat all their subordinates in a fair and unbiased manner.
- The Disciplinary Policy and Procedure will be made available to all staff and managers within the organisation.
- The disciplinary Policy will be strictly applied under all relevant circumstances.
- As per the LRA "Discipline" is not a mechanistic, punitive process. It involves a progressive approach to dealing with the disciplinary issue at hand, and this involves three (3) distinct approaches. Depending on the nature of the transgression and where possible and appropriate, educative action will be taken in the first instance. Failure to comply will lead by progression to corrective action, and thereafter punitive disciplinary action will be taken when previous action has not resulted in the correct and rectified behaviour. Defined further:

### 4.3. DISCIPLINARY PROCEDURE

The following procedure is applicable in case of matters pertaining to disciplined and in respect of issues surrounding punitive discipline (that may result in a disciplinary enquiry).

#### 4.3.1 Alleged Misconduct and Investigation

Note: Before any punitive discipline action can be taken, it is critically important that a full investigation be undertaken to establish "what happened" and "what to do" in respect of this.

- a. In order to establish "what happened" the immediate supervisor and/or a duly appointed representative must investigate the transgression very thoroughly, depending on the seriousness of the offence. In order to do this, the following activities may be required :
  - Collect all evidence
  - Interview witnesses
  - Interview the accused and/ or representatives
  - Liaise with the Human Resources Office in order to establish how similar cases were handled in the past.
  - Suspend the "accused" or temporarily transfer the accused if there is any reason to assume that the investigation could be compromised by the accused remaining at work (i.e. being able to tamper with evidence, especially in cases relating to fraud, or where there is a threat of violence, e.g. in the case of assault). Maximum three (3) month period as per the SALGBC disciplinary Code and procedure.

Suspensions must occur on full pay until such time as the disciplinary investigation is completed and the appropriate disciplinary action has been taken.

The administrative responsibility relating to any suspension resides with Corporate Services who will manage this process after liaison with the immediate supervisor.

- b. The line manager investigating the case is required to present a motivation for pursuing a disciplinary enquiry to the Corporate Services Department (authorised to handle this by the Municipal Manager so that the necessary arrangements can be made).
- c. In cases where the Corporate Services Executive Manager believes that the appropriate sanction may be a verbal or final written warning, the enquiry will be held as departmental enquiry (following the same procedure for enquiries as detailed further in this report).
- d. Where the Corporate Service Executive Manager believes that an appropriate sanction may result in suspension, dismissal or demotion, a Disciplinary Tribunal will be established to handle the enquiry.
- e. Appointing the tribunal will involve:
  - Appointing a Presiding Officer (A senior official/employee of Council or where necessary any other suitable qualified person from another Municipality and/or provincial government department).

- Appointing a Prosecutor (to represent the Employee and to lead the case on behalf of the employer). Depending on the position of the accused employee, an official/employee of Council or where necessary any other suitable qualified person, from another Municipality and/or provincial government department).
  - Once appointed, the Prosecutor is required to engage in the following activities:
  - Within 5 days of appointment, formulate and present the charges against the employee on the Notification of Misconduct Form (Annexure A).
  - The following Information must be detailed on the notification form:
    - The alleged misconduct
    - The time, date and venue at which the enquiry will take place
    - The names of the Presiding Officer and the Prosecutor
    - The address at which notices and correspondence may be served on the Tribunal
    - The right of the employee to representation by a fellow employee, shop steward, union official (or any other suitable qualified person after pre-authorisation from the Presiding Officer)
    - That the hearing will be conducted "In absentia" should the employee or representative fail to attend without prior arrangement with the Presiding Officer(based on an Acceptable reason)
- f. The disciplinary enquiry must take place **on a date not less than five (5) days or more than fifteen (15) days the date on which the Notification of Misconduct was served on the employee.**

#### **NOTE**

These periods may be varied by either party following agreement and valid reasoning. The Disciplinary Tribunal will approve the extension of these periods, and is required to ensure that a replacement date and time is set.

#### **4.3.2 Conducting the Enquiry**

Whether a Departmental Enquiry or a Tribunal Enquiry is constituted, the following procedure for conducting the enquiry is required.

- a. The Presiding Officer will conduct the hearing in a manner ensuring that:
  - They remain Impartial
  - The rules of procedural and substantive fairness apply
  - The hearing is conducted in an adversarial manner (unless otherwise required)
- b. The burden of proof lies with the Prosecutor who must prove the allegations based on the balance of probabilities
- c. The Presiding Officer will ensure that both parties:
  - Have the right to present their case (call witnesses, examine own witness, cross-examine other parties evidence and witnesses and to lead all evidence deemed necessary).

The following procedure is suggested to be followed when conducting the disciplinary enquiry:

#### 4.3.3 The Presiding Officer (Chairperson)

- Welcomes all those present and introduces everyone
- Briefly states the procedures to be followed and ensures that everyone understand this
- Checks to see if an Interpreter is required and confirms the language of the proceedings
- Checks to see if a representative is present. If not, advises the accused of his/her right to a representative. This issue must be resolved.
- Reads the charges aloud and check to see if they are **UNDERSTOOD** by the accused, who confirms/does not confirms this.
- Asks the accused to plead " Guilty" or "Not Guilty"
- Asks the Prosecutor to elaborate on the complaint and to **state their case**
- Gives the accused/representative opportunity to cross-questions the Prosecutor.
- Asks any question in clarification.
- Asks the prosecutor to call any witnesses (separately)
- For each witness
  - They are Identified (name, pay number, job title and department).
  - The Presiding Officer asks them to explain in their own words what happened.
  - The Prosecutor examines them.
  - The accused/representative cross-examined them.
  - The Presiding Officer asks clarifying questions.
    - Repeat the above for every witness

Satisfied that the Initiator has had sufficient time to lead the case and call witness, **the Presiding Officer;**

- Asks the accused and/or representative to lead their case.
- Asks the representative to examine the accused (if applicable)
- Asks the prosecutor to cross-examine the accused.
- Asks questions in clarification.
- Asks the accused / representative to call witness/s
- Proceed as above but :
  - Accused/representative examines witness/s
  - Prosecutor cross-examines.
- Asks accused/representative if they have had sufficient time to lead their evidence, call witness, examines and cross-examine. If **all parties agree**, that they have had sufficient time to state their case, lead evidence, examine, cross examine and call witness, the Presiding Office may ask for **closing statement/summaries** from both the Prosecutor and the Accused/Representative.
- Presiding Officer adjourns the hearing to formulate the **FINDINGS** (based on balance of probabilities)
- When all are again present (excluding witnesses) the Presiding Officer present **FINDING of GUILTY or NOT GUILTY** and justifies the decision in terms of the

evidence presented and justifies the decision in terms of the evidence presented and the charges.

- The Presiding Officer asks the HR Representative, then the accused/representative, then the prosecutor for evidence in mitigation/aggravation.
- **NOTE:** The HR Representative only refers to sanction which are currently valid and otherwise gives a summary of service.
  - The Presiding Officer then adjourns to decide on an appropriate sanction. He/She may consult with HR Representative to obtain information regarding precedent/previous cases.

#### **NOTE: THE FINAL DECISION IS THE PRESIDING OFFICER'S ALONE**

The enquiry reconvenes and the Presiding Officer justifies the sanction awarded.

All parties are asked to complete the relevant detail and to sign the Discipline Enquiry Checklist to acknowledge outcome.

The accused/ representatives are advised of their right to appeal to the Bargaining Council within 30 days.

### **4.4 Summary Procedure**

Where mutually agreed to, the Summary Procedure may be applied to these proceedings (with or without a hearing). The process is as follows:

The Presiding Officer, Prosecutor, Accused and Representative confirm in writing that the matter is ready for adjudication.

The Presiding Officer and other parties sign acknowledgement and agreement regarding facts on which the parties agree and on those where there is disagreement (called Issues).

The Presiding Officer receives all documentation and information that they consider necessary in determining the issue.

The Presiding Officer receives evidence orally or in writing, sworn or unsworn at joint meeting with parties or where they agree that written statements and submissions will be acceptable - providing both parties have equal opportunity to present evidence or submissions or respond in writing to these.

A final determination must be delivered in writing within 10 days of the last days of the hearing or when the last documentary submission was made in the absence of a hearing.

### **4.5 Right of Resignation**

An employee who receives a Notice of Misconduct shall be entitled to resign from employment or to retire (if applicable in terms of the rules of the said fund) providing that this decision is made prior to the handing down of a determination/sanction and as long as the employee consents in writing to the deduction of all monies owed by him may be affected by the retirement or resignation.

Administration and Code of Conduct (Disciplinary Enquiry), when conducting the following issues must be taken into account:

- a. The proceedings are to be recorded and following issues must be taken into account.

- b. The enquiry will be held in absentia should the relevant parties fail to attend without prior arrangement or just cause;
- c. The employee/ accused has the right to representative
- d. The Presiding Officer is required to be impartial
- e. Application may be made to have the Presiding Officer recused providing there is just cause (good reason e.g. lack of impartiality/reason to be biased)
- f. The Presiding Officer may not have contact with either party (for the duration of the hearing) in the absence of the other, unless this has been agreed to.
- g. The sanction / determination of the Tribunal will be final and binding.
- h. An employee may be suspended or utilise another temporary capacity (for a period not more than 3 months) should this be deemed necessary.

#### **4.6 Appeals**

- An appeal against a sanction must be lodged on the prescribed form within 5 working days of receipt of written notification of the sanction. The grounds for the appeal must be clearly stated, although an appeal remains a fundamental right and will be heard by the Appeal Committee /Appeal Tribunal
- The appeal is heard by a manager who is at a level above the Presiding Officer who handled the previous case (where sanction is final written warning and less)
- It is also permissible that an impartial arbitrator hear the appeal, by agreement.
- When an appeal is heard consideration is given to the grounds of the appeal. The process is not complete re-hearing of the case, but the Presiding Officer will hear additional evidence and arguments after examining the previous records
- The Presiding Officer will have the right to award a sanction they believe is appropriate and to set aside the previous award.
- The date, time, venue and all administrative arrangement in respect of this will be handled by the Presiding Officer who must make this available within 10 days of appointment and after mutual discussion with all parties.
- Each party (accused and prosecutor) submits their statements to the Presiding Officer at least 2 days prior to the appeal hearing and no further pleas may be introduced unless agreed.
- The Presiding Officer will determine the manner in which the case will be heard.
- Every effort will be made to evaluate the degree of fairness in determining whether the sanction awarded was fair or not, and the Presiding Officer will make the final sanction for the appeal, based on what they believe to be reasonable and fair
- The appeal sanction will be required to be delivered in writing within 10 days of the last day of the hearing and Municipal Manager/ representative is provided with a copy and so too the employee/representative.

#### **4.7 Pre-dismissal Arbitration**

In the event that the sanction will lead to dismissal the Employer may, in terms of Section 188 a) of the LRA and S138, request that the matter be referred to arbitration by the Bargaining Council or accredited agency

#### **4.8 Handling of Disputes**

- a) Any dispute regarding the interpretation and application of this collective agreement may be referred to the Central Council of the SALGBC
- b) If a dispute arises as to whether the referral should be made to the Division or Central Council or the referral itself is disputed then the Executive Committee will decide on the appropriate area of jurisdiction. As a result the matter will be investigated either by the General or Regional Secretary.
- c) If these parties are to resolve the dispute, a conciliator is appointed and should a resolution not be reached an arbitrator is appointed. The arbitrator makes an award as per the Act and Conciliation Agreement.
- d) All administration arrangements for conciliations or arbitrations are made by the Regional General Secretary.

#### **4.9 Exemptions to the Agreement**

- a) Parties may apply for exemptions to this agreement and motivations may be made in writing to the General Secretary-providing full reason and details about which exemptions are required.
- b) The Executive Committee makes a decision and if this is appealed it is taken to Council as the final authority.

#### **4.10 Disciplinary Action**

- a) The following sanction may be applied, bearing in mind that discipline is a progressive process i.e. educative, corrective and final punitive action (formal disciplinary measures from warnings to dismissal). However, the "punishment" must fit and be appropriate, and certain behaviour (such as fraud, theft) can lead to immediate dismissal. In other circumstances and where there is repeated misconduct or poor performance, the action taken will become progressively more severe, from a written warning to a final written warning, to suspension, and ultimately to dismissal.
- b) Each is examined further as follows:

#### **4.11 Verbal Warning**

This is given as part of educative and corrective discipline and is used to reprimand an employee. It is written down and is placed on the employee's file, specifying why it was received. It is valid for 3 months from the date of award. No disciplinary enquiry is required and this forms part of day-to-day management.

#### **4.12 Written Warning**

This warning is placed on the employee's personal file and is valid for a period of 6 months from the date of award. This is regarded at the beginning of punitive discipline and is more serious than a verbal warning.

#### **4.13 Final Written Warning**

This warning is placed on the employee's personal file and is valid for a period of 6 months from the date awarded.

A move from written to final written warning will be automatic for repeated same or similar offences for which a written warning was already received, and which is still applicable for the time period stated. Similarly, the move from a suspension (without pay) to dismissal will occur where repeated offence for the same or similar offences has occurred.

#### **4.14 Suspension without Pay**

In this instance the sanction is awarded for a maximum period of ten (10) days. This suspension will run concurrently with any other current award (e.g. final written warning) and is awarded due to the serious nature of the offence or due to the repetitive nature of the offence.

#### **4.15 Suspension with Pay and Transfer**

This is awarded usually at times where allegations of fraud or assault have occurred. The employee is suspended on full pay in order to ensure that there is no threat to another party or to ensure that evidence is not tampered with prior to the case being heard. A transfer to another temporary position may also be made if this is considered suitable. A maximum period of 3 months is allowed.

#### **4.16 Dismissal**

A dismissal is appropriate as a first time offence for the following (but not limited to) aspects of misconduct:

- Theft, unauthorised possession of/or malicious damage to council property
- Intimidation, fighting and/ or assault, being under the influence of alcohol or intoxicating drugs while on duty:
- The consumption of alcohol or intoxicating drugs whilst on duty, if the nature of work is such that this presents a danger to the safety of the employee or that of others;
- Any act of gross dishonesty;
- Any act of gross negligence;
- Gross insubordination
- Wrongful disclosure of privileged information
- Any act of "bribery, or corruption,
- Any act of misconduct which would be regarded as cause for dismissal.

The schedule which follows details the possible penalties (guidelines) that may arise from certain offence. In the interests of fairness all situations must be evaluated according to the facts and circumstances surrounding the case as this may influence final outcomes:

#### 4.17 SCHEDULE OF OFFENCES AND POSSIBLE PENALTIES-DISCIPLINARY CODE

	<b>Nature of Offence</b>	<b>1<sup>st</sup> Offence</b>	<b>2<sup>nd</sup> Offence</b>	<b>3<sup>rd</sup> Offence</b>	<b>4<sup>th</sup> Offence</b>
<b>1.</b>	<b>Very Serious</b> Unauthorised use of dangerous weapons in the work place.	Dismissal			
	Assault	Dismissal			
	Unauthorised and /or un-communicated absence from work for a period of more than 10 days-desertion	Dismissal			
	Theft	Dismissal			
	Unauthorised possession of municipal property	Dismissal			
	Bribery	Dismissal			
	Forgery	Dismissal			
	Giving false personal Information	Dismissal			
	<b>Nature of Offence</b>	<b>1<sup>st</sup> Offence</b>	<b>2<sup>nd</sup> Offence</b>	<b>3<sup>rd</sup> Offence</b>	<b>4<sup>th</sup> Offence</b>
	Unauthorised use of Council property, equipment, vehicle, etc.	Dismissal			
	Absence due to incarceration	Dismissal			
	Discloses or uses confidential Council information other than in execution of the course thereof without prior consent of the Council.	Dismissal			
	Insubordination	Final written Warning	Dismissal		
	Sleeping on duty	Final written Warning	Dismissal		

	Being under the influence of alcohol during working hours.	Final written Warning	Dismissal		
	<b>Comments</b> The type of work done will determine if one should give a warning or dismissal on a first offence. For example, if a driver is under the influence, dismissal might be the correct sanction as a first offence because of the work done.				
	Dishonest use of clocking procedure	Final Warning	Dismissal		
	Grossly offensive behaviour	Warning	Final Warning		
	Dereliction of duty	Warning	Final Warning		
	Intimidation or inciting person to carry out any act calculated to be detrimental to the Council within or outside the work situation, for example inciting co-employees to strike	Final warning	Dismissal		
	<b>Nature of Offence</b>	<b>1<sup>st</sup> Offence</b>	<b>2<sup>nd</sup> Offence</b>	<b>3<sup>rd</sup> Offence</b>	<b>4<sup>th</sup> Offence</b>
<b>2.</b>	Refusal to carry out an authorized instruction in respect of normal work practice not involving abnormal physical risk and also not in conflict with any other instruction received.	Warning	Final warning	Dismissal	

Unauthorised absence for more than 1 day without a reasonable excuse or doctor's certificate.	Warning	Final Warning	Dismissal	
Leaving the work place without authorization	Warning	Final Warning	Dismissal	
Dangerous horseplay	Warning	Final Warning	Dismissal	
Being in possession of liquor in the workplace without permission.	Warning	Final Warning	Dismissal	
Being in possession of dangerous weapons in the workplace without permission	Warning	Final warning	Dismissal	

	<b>Nature of Offence</b>	<b>1<sup>st</sup> Offence</b>	<b>2<sup>nd</sup> Offence</b>	<b>3<sup>rd</sup> Offence</b>	<b>4<sup>th</sup> Offence</b>
3.	Swearing or using abusive language	Final Warning	Dismissal		
	Loss of protective clothing	Warning	Final Warning	Dismissal	
	Loafing	Warning	Final Warning	Dismissal	
	Lack of punctuality (habitual late coming)	Warning	Final Warning	Dismissal	
	Habitual absence of 1 to 2 days without a reasonable excuse or without producing a doctors certificate for occasions (exceeding twice in any 8 week period)	Warning	Final Warning	Dismissal	
	Wastage of material	Warning	Final Warning	Dismissal	
	Poor maintenance standard	Warning	Final Warning	Dismissal	
	Incompetence (fallure to maintain set/work standards)	Warning	Final Warning	Dismissal	

<p>Comments</p> <p>Make sure that together with the warnings the employee received some sort of counselling in regard to his shortcomings and that he had sufficient opportunity to improve before imposing the decision to dismiss.</p>				
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**NOTE:**

In certain instances a suspension (without pay) may be desirable rather than dismissal but each situation would have to be carefully evaluated.

**4.18. COMMUNICATION**

Circulars, messages and notices on notice boards will be utilised in order to inform all employees of the availability of the policy. Copies of the policy will also be distributed to the parties that took part in the consultation process.

**4.19. REVIEWAL OF THE POLICY**

It will be the responsibility of the Corporate Services Department to consider the provisions of this policy on annual basis. The Corporate Services Department shall request all Departments to submit their proposed changes for submission to Council for approval.

**5. ROLES AND RESPONSIBILITIES**

Role	Authority
<ul style="list-style-type: none"> <li>Create, evaluate, review and adopt the Disciplinary Policy and Procedure</li> </ul>	Council
<ul style="list-style-type: none"> <li>Implement and enforce this policy</li> <li>Establish and control the administration necessary to fulfil this policy, and report efficiently and regularly to the Committee in this regard.</li> </ul>	Municipal Manager

- |  |                             |
|--|-----------------------------|
| <ul style="list-style-type: none"> <li>• Ensure that there is compliance with the Disciplinary Policy and Procedure</li> </ul> | Director Corporate Services |
|--|-----------------------------|

## 6. MONITORING, EVALUATION AND REVIEW

A report detailing the progress with the Implementation of Disciplinary and Grievance Policy, with specific reference to achievement of this policy has to be compiled every year by the person with the responsibility for implementation and monitoring. The policy must be made available to all consulting parties for perusal and comment and must be circulated to all staff members by means of circulars, and notices on notice boards.

## 7. DEFINITIONS AND ABBREVIATIONS

Term	Meaning
<b>Educative Action</b>	The provision of Information and advice and effectively educating the employee regarding the performance or behavioural issue at hand.
<b>Corrective Action</b>	Where Improvements are not noted following educative action, then counselling, on-the-job training, warnings and interventions of this nature may be undertaken
<b>Punitive Action</b>	<p>This involves more formal disciplinary processes which may include written warnings or perhaps the convening of a disciplinary enquiry.</p> <p>Notwithstanding these areas, it must be noted that the circumstances must suit the action required and for very serious misconduct. Punitive discipline may be appropriate from the first offense.</p> <p>The concept of FAIRNESS will be applied to every aspect of the discipline process, and in terms of this the following rights are applicable to the employee/ accused:</p> <ul style="list-style-type: none"> <li>▪ The right to present one's case</li> <li>▪ The right to representation</li> <li>▪ The right to be informed of prejudicial information</li> <li>▪ The right to an unbiased decision</li> </ul> <p>In order to give effect to the principle of fairness. It must be acknowledged that "fairness" consists of two aspects namely: "Procedural Fairness and Substantive Fairness".</p>

<p><b>Procedural Fairness</b></p>	<p>Procedural fairness refers to the manner in which the evidence and facts about the case and or situation are obtained. Every effort must be made to ensure that the facts are obtained and the information is therefore gathered in a fair and acknowledged manner or procedure.</p> <p><b>This in turn allows for certain right, which inter alia include:-</b></p> <ul style="list-style-type: none"> <li>• Both parties have the right to state their case, to examine evidence led, and to cross examine the other parties evidence;</li> <li>• The accused has the right to representation;</li> <li>• The accused is entitled to be informed of the allegations against him/her and given adequate notice to prepare for his/her case;</li> <li>• Both parties have the right to call witness;</li> <li>• The accused has the right to appeal, as per the appeal procedure;</li> <li>• All procedures are documented and made available to all parties/ employees</li> <li>• Disciplinary action that might be taken is specified.</li> </ul>
<p><b>Substantive Fairness</b></p>	<p>Substantive Fairness relates to the fairness with the matter is evaluated and adjudicated (informally and formally). Fairness requires that consistency prevails in the manner in which similar situations are handled and adjudicated. (appropriate and fair action is imperative)</p> <p><b>This implies that:</b></p> <ul style="list-style-type: none"> <li>▪ Action taken is fair and appropriate after considering the facts. Transgression; mitigating and aggravating circumstances are considered ;</li> <li>▪ Disciplinary action applied is consistent with the manner in which similar cases have been handled previously.</li> </ul> <p>a) Notwithstanding any criminal and/or civil action having been instituted against the employee, this does not preclude the employee being disciplined in terms of internal procedures.</p> <p>b) If an employee is found 'not guilty' in a court of law, he has the right to appeal against an internal decision in respect of the same case and to use the court ruling as a basis for appeal. This appeal is made to the Municipal Manager whose decision will be bringing.</p>

	<p>c) All correspondence and minutes relating to the formally instituted disciplinary enquires will be kept in safe custody by the employer. A copy of this is available for the employee and/ or representative should this be requested.</p> <p>d) The proceedings of all disciplinary enquires will be recorded by a mechanical device.</p> <p>e) In the event that an employee/ representative fails to attend a hearing/appeal for no good reason and after appropriate notice of this event was provided, the hearing/ enquiry may be conducted in absentia.</p> <p>f) The employee is entitled to representation at an enquiry by a fellow employee, a shop steward or a union official, or where it is not possible or desirable, by any suitable qualified person (although it is noted that the Chairman will condone this only under exceptional circumstances)</p> <p>g) Employees may be suspended or utilised temporarily in another capacity at any time prior or after an employee has been charged with misconduct, should the Municipal Manager or their authorized representative feel that for the employee to remain in their current position would be detrimental to the interests of the employer. The suspension or re-deploy will be for a fixed period of no longer than three (3) months and will occur on full pay.</p>
<b>Employee means</b>	All municipal employees despite the nature of their contract

## 8. SUPPORTING DOCUMENTS

None

## 9. REFERENCES

None

## 10. APPENDIX

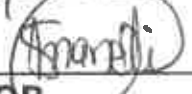
Annexure A

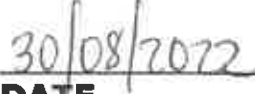
**11. ADOPTION AND APPROVAL OF THE POLICY BY COUNCIL**

This policy is adopted and approved by the full Ngqushwa Local Municipality Council for implementation

  
\_\_\_\_\_  
**MUNICIPAL MANAGER**

  
\_\_\_\_\_  
**DATE**

  
\_\_\_\_\_  
**MAYOR**

  
\_\_\_\_\_  
**DATE**

ANNEXURE A

ANNEXURE A1

**COMPLAINT FORM**

1. COMPLAINANT.....

DESIGNATION.....

DEPARTMENT.....

COMPLAINT AGAINST:

NAME.....

EMPLOYEE NUMBER.....

DESIGNATION.....

DEPARTMENT.....

SECTION.....

TIME.....

DATE.....

DETAILS OF  
OFFENCE.....  
.....  
.....  
.....

2. DETAILS OF PRELIMINARY INVESTIGATION (IF  
CONDUCTED).....  
.....  
.....  
.....

3. AFTER THE INQUIRY, THE FOLLOWING ACTION WAS TAKEN/RECOMMENDED  
\*(PREVIOUS DISCIPLINARY HISTORY MUST BE CONSULTED BEFORE ACTION IS TAKEN)  
.....  
.....  
.....

DATE.....  
SIGNATURE OF CHAIRMAN/PRESIDING OFFICER

4. ACTION BY HEAD OF DEPARTMENT.....

DATE.....SIGNATURE OF SUPER.....

5. PROSECUTOR NOTES ACTION TAKEN:

SIGNATURE.....

6. ACCUSED ACKNOWLEDGES ACTION TAKEN: SIGNATURE.....

7. REPRESENTATIVE ACKNOWLEDGES ACTION TAKEN:  
SIGNATURE.....

8. COMMENTS BY HUMAN RESOURCES  
REPRESENTATIVE.....  
.....  
.....

.....

SIGNATURE OF HUMAN RESOURCES REPRESENTATIVE

DATE.....

- Delete where not applicable