

WEST COAST DISTRICT MUNICIPALITY



Private Work and Declaration of Interest Policy

POLICY CONTROL SHEET

POLICY TITLE	: Private Work and Declaration of Interest Policy
POLICY CUSTODIAN	: West Coast District Municipality
POLICY AUTHOR	: H Brand
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1. **PURPOSE**

To stipulate the principles applicable to private work by **West Coast District Municipality** employees, to regulate and clarify apparent or actual conflicts of interest and to set appropriate standards and guidelines for the management of any such conflict situations.

2. **SCOPE**

This policy applies to all **West Coast District Municipality** employees.

3. **APPLICABLE LEGISLATION**

This policy must be read in conjunction with the Code of Conduct for Municipal Staff Members, Schedule 2, Municipal Systems Act 32 of 2000 (a copy of which is attached to this policy) and the Municipal Supply Chain Management Regulations, where applicable.

4. **PRINCIPLES**

4.1 Employees do not have a general right to engage in any activity, business, trade or profession (whether remunerative or not) outside of work which they are required to perform for the **West Coast District Municipality**.

4.2 Any consent given to an employee under this policy shall be the exception, rather than the rule, and in the **West Coast District Municipality's** sole discretion.

4.3 Employees have an obligation to identify possible conflicts of interest as they may arise from time to time.

4.4 Employees have an obligation to adhere to the Code of conduct and the Municipal Supply Chain Management regulations, where applicable.

- 4.5 Managers have an obligation to apply this policy within the full spirit of the Code of Conduct and the Municipal Supply Chain Management Regulations, where applicable.

5. POLICY PROVISION

5.1 Private Work or engagement in business activity:

5.1.1 An employee may not without prior written consent from the **West Coast District Municipality**, directly or

Indirectly, be engaged in any business, trade or profession (whether remunerative) or not outside of any work which they are required to perform for the **West Coast District Municipality**.

5.1.2 Unless the employee is able to show just reason why permission should be granted, permission shall not be granted if the following circumstances are prevalent:

5.1.2.1 Where, in the **West Coast District Municipality's** opinion, there is any reasonable possibility of a conflict of interest

5.1.2.2 Where the application relates to remunerated work from any municipality or any municipal entity established by a municipality;

5.1.2.3 Where there is any reasonable possibility of interference with the employee's daily tasks;

5.1.2.4 Where the employee has direct access to (i.e. is responsible for issuing), materials in their daily job and the nature of the private work requested requires similar materials for the performance thereof;

5.1.2.5 Where private work or business activity relates to a service rendered by the **West Coast District Municipality** or where the

West Coast District Municipality provides similar work and charges a tariff;

5.1.2.6 Where an employee has previously been found guilty of transgressing any of the provisions of this policy.

5.1.3 Consent to do private work or being engaged in another business activity will be granted and may be withdrawn at **West Coast District Municipality's** sole discretion.

5.2. Conditions applicable when an application for private work has been approved and in respect of external financial and business activities.

5.2.1 Approved private work and declared external financial or business activities shall be subject to the following conditions, in addition to other specific conditions that may be imposed in respect of a specific application and approval.

5.2.1.1 Private work or being engaged in another business may not directly or indirectly interfere in any way whatsoever with the daily tasks/duties of the employee.

5.2.1.2 Private work or being engaged in a business may not directly or indirectly cause a conflict of interest with that of the **West Coast District Municipality** in relation to the position the employee holds with the **West Coast District Municipality**. Whether or not a conflict of interest arises is solely determined by the **West Coast District Municipality**.

5.2.1.3 No **West Coast District Municipality** property, equipment, apparatus, machinery, resources and/or vehicles may be utilised for private work or engagement in other business.

5.2.1.4 Private work or engagement in other business shall not take place during the employee's working hours nor cause the employee to be absent from official duties or cause such an employee to have regard for it during official working hours.

5.2.1.5 The **West Coast District Municipality** postal address, telephone, faxes and e-mail may not be used for purposes of private work or engagement in other business.

5.2.1.6 The employee shall indemnify and keep the **West Coast District Municipality** indemnified against any action, dispute or other matter which might arise from the employee doing private work or engagement in other business. This shall be done in writing on the prescribed application form.

5.3. General

5.3.1. Transgression of any provision of this policy could result in disciplinary action against an employee.

5.3.2. An employee who applies for consent to do private work or engage in a business activity must undertake in the application not to contravene any provision of the **West Coast District Municipality's** policy on private work or private business activity.

5.3.3. Consent to do private work or engage in a business activity is applicable to the post occupied by the employee at the time of application. If the individual is transferred or promoted a new application must be submitted by the employee.

5.3.4. Approval for private work or to engage in a business activity must be renewed annually.

5.4. Application for and approval of Private Work or engagement in a business activity:

- 5.4.1. Applications for private work or engagement in business activities must be submitted in writing on the prescribed form to the Municipal Manger, as defined in the System of Delegations, for consideration. A copy of the application with the decision of the Municipal Manager must be filed on the employee's personal record. Human Resources will be the custodian of the administrative infrastructure and processes to safeguard the relevant documentation and files.
- 5.4.2. Approval of applications for private work or engagement in business activities may not be granted without obtaining and considering comments from Supply Chain Management and Human Resource Services. Supply Chain Management shall verify each application against its main database to ensure that there is no undue influence or conflict of interest in terms of the applicable legislation. Human Resources shall scrutinise each application to ensure corporate consistency in the application of the policy.

5.5 Declaration of Conflict of Interest:

- 5.5.1. All Managers, Directors and the Municipal Manager shall complete a Declaration of Interest form annually.
- 5.5.2. The Municipal Manager and the Directors shall be required to update this information on a quarterly basis.
- 5.5.3. Copies of the Declaration of Interest form are to be sent to Human Resoutces for the capturing on a central electronic database and placed on the employee's personal file.
- 5.5.4. Employee's shall be responsible for declaring any possible conflict of interest which may arise in the course of fulfilling their responsibilities, in the course of

conducting approved private work, or in relation to the activities of family, friends or business associates¹.

- 5.5.5. Such conflict shall be declared at the point at which it may occur and the individual becomes aware of such possible conflict.
- 5.5.6. All formal **West Coast District Municipality** processes which could potentially give rise to a conflict of interests shall provide for the declaration of interests at the start of individual processes. This shall be done in the form of a formal written declaration (on a prescribed form) to be signed by employees or applicants
- 5.5.7. The processes which may give rise to such conflict include, but is not limited to:
 - 5.5.7.1. All Supply Chain processes;
 - 5.5.7.2. All Human Resources processes and activities;
 - 5.5.7.3. All plans approval processes;
 - 5.5.7.4. All land usage processes;
 - 5.5.7.5. The allocation, sale or non-operational usage of any **West Coast District Municipality** assets;
 - 5.5.7.6. All relevant financial processes, including billing, fines, rebates, valuations, and any other related processes; and
 - 5.5.7.7. Any other process which may give rise to direct or indirect benefits as envisaged in clause 5 of Schedule 2 to the Municipal Systems Act.
- 5.5.8. For clarity, a conflict shall arise whether an employee stands to benefit directly or indirectly, and shall include any benefit to the employee, the employee's spouse, immediate family and extended family and to close friends and business associates.
- 5.5.9. Failure to declare such conflict of interests shall lead to disciplinary action against the employee.

¹ See clause 5 of Schedule 2 of the Municipal Systems Act.

- 5.5.10. In the event that an employee identifies a possible conflict of interest, the employee may be required to recuse him or herself from the process. The nature of the interest and the nature of the specific process shall determine whether a recusal is required or not. In such instances, the relevant business owner, recommender or delegated authority shall determine the matter. Each process shall clarify who carries this responsibility,
- 5.5.11. An employee may not be involved in the execution of a contract where there is a conflict of interest.

5.6. Guidelines for administrating applications:

- 5.6.1. This policy replaces any previous policy dealing with private work and/or external business and financial interest, as well as any approvals granted in terms of such policies. As a result, all employees are to submit fresh applications to perform private work. The same requirement applies in respect of the declaration of external business or financial activities.
- 5.6.2. Subject to the **West Coast District Municipality's** right to terminate an approval granted at its sole discretion at any time, 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. Upon approval of such an application, the approval may be subject to whatever additional conditions the **West Coast District Municipality's** deems necessary and the employee will be required to enter into an agreement with the **West Coast District Municipality** in this regard.
- 5.6.3. Employees will of their own accord after the expiry of the original approval have to re-apply for further approval.
- 5.6.4. All applications to do private work or engage in business activity will only be considered if the prescribed application form has been duly completed and is only valid once authorised.

- 5.6.5. Copies of all approvals are to be sent to Human Resources for capturing on a central electronic database and placed on the employee's personal file.
- 5.6.6. The approval of applications for private work shall be done in accordance with the relevant delegated authority.

Act No.32, 2000 **LOCAL GOVERNMENT MUNICIPAL SYSTEMS ACT**, 2000
[As amended by s. 29 of Act No. 44 of 2003 and by ss. 22 and 23 of Act No. 19 of 2008.]

SCHEDULE 2

CODE OF CONDUCT FOR MUNICIPAL STAFF MEMBERS

1. Definitions

In this Schedule “**partner**” means a person who permanently lives with another person in a manner as if married.

2. General conduct. – A staff member of a municipality must at all times –

- (a) Loyally execute the lawful policies of the municipal council;
- (b) Perform the functions of office in good faith, diligently, honestly and in a transparent manner;
- (c) Act in such a way that the spirit, purport and objects of section 50 are promoted;
- (d) Act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised; and
- (e) Act impartially and treat all people, including other staff members, equally without favour or prejudice.

3. Commitment to serving the public interest

A staff member of a municipality is a public servant in a development local system, and must accordingly –

- (a) Implement the provisions of section 50 (2);
- (b) Foster a culture of commitment to serving the public and a collective sense of responsibility for performance in terms of standards and targets;

- (c) Promote and seek to implement the basic values and principles of public administration described in section 195 (1) of the Constitution;
- (d) Obtain copies of or information about the municipality's integrated development plan, and as far as possible within the ambit of the staff member's job description, seek to implement the objectives set out in the integrated development plan, and achieve the performance targets set for each performance indicator;
- (e) Participate in the overall performance management system for the municipality, as well as the staff member's individual performance appraisal and reward system, if such exists, in order to maximise the ability of the municipality as a whole to achieve its objectives and improve the quality of life of its residents.

4. Personal gain. –

- (1) A staff member of a municipality may not –
 - (a) Use the position or privileges of a staff member, or confidential information obtained as a staff member, for private gain or to improperly benefit another person; or
 - (b) Take a decision on behalf of the municipality concerning a matter in which that staff member, or that staff member's spouse, partner or business associate, has a direct or indirect personal or private business interest.
- (2) Except with the prior consent of the council of a municipality a staff member of the municipality may not –
 - (a) Be engaged in any business, trade or profession other than the work of the municipality.

(3) No staff member of a municipality may be a party to or beneficiary under a contract for the provision of goods or services to any municipality or any municipal entity established by a municipality.

5. Disclosure of benefits.-(1.) A staff member of a municipality who, or whose spouse, partner, business associate or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the municipality, must disclose in writing full particulars of the benefit to the council.

(2) This item does apply to a benefit which a staff member, or a spouse, partner, business associate or close family member, has or acquires in common with all other residents of the municipality.

5A. Declaration of interests. -(1) A person appointed in terms of section 56 or a municipal manager must within 60 days after his or her appointment declare in writing to the chairperson of the municipal council the following interests held by that person or municipal manager:

- (a) Shares and securities in any company;
- (b) Membership of any close corporation;
- (c) Interest in any trust;
- (d) Directorships;
- (e) Partnerships;
- (f) Other financial interests in any business undertaking;
- (g) Interest in property; and
- (h) Subsidies, grants and sponsorships by any organisation.

- (2) Any change in the nature or detail of the financial interests of a staff member must be declared in writing quarterly to the chairperson of the municipal council.
- (3) The municipal council must determine which of the financial interests referred to in sub item (1) must be made public having regard to the need for confidentiality and the public interest for disclosure.

6. Unauthorised disclosure of information. – (1) a staff member of a municipality may not without permission disclose any privileged or confidential information obtained as a staff member of the municipality to an unauthorised person.

(2) For the purpose of this item “privileged or confidential information” includes any information –

(a) Determined by the municipal council or any structure or functionary of the municipality to be privileged or confidential;

(b) Discussed in closed session by the council or a committee of the council;

(c) Disclosure of which would violate a person’s right to privacy; or

(d) Declared to be privileged, confidential or secret in terms of any law.

(3) This item does not derogate from a person’s right of access to information in terms of national legislation.

7. Undue influence. – A staff member of a municipality may not-

(a) Unduly influence or attempt to influence the council of the municipality, or a structure or functionary of the council, or a councillor, with a view to obtaining any appointment, promotion, privileged, advantage or benefit, or for a family member, friend or associate;

(b) Mislead or attempt to mislead the council, or a structure or functionary of the council, in its consideration of any matter; or

(c) Be involved in a business venture with a councillor without the prior written consent of the council of the municipality.

8. Rewards, gifts and favours. – (1) A staff member of a municipality may not request, solicit or accept any reward, gift or favour for –

(a) Persuading the council of the municipality, or any structure or functionary of the council, with regard to the exercise of any power or the performance of any duty;

(b) Making a representation to the council, or any structure or functionary of the council;

(c) Disclosing any privileged or confidential information; or

(d) Doing or not doing anything within that staff member's powers or duties.

(2) A staff member must without delay report to a superior official or to the speaker of the council any offer which, if accepted by the staff member, would constitute a breach of sub item (1.)

9. Council property. – A staff member of a municipality may not use, take, acquire, or benefit from any property or asset owned, controlled or managed by the municipality to which that staff member has no right.

10. Payment of arrears. - A staff member of a municipality may not be in arrears to the municipality for rates and service charges for a period longer than 3 months, and a municipality may deduct any outstanding amounts from a staff member's salary after this period.

11. Participation in elections. – A staff member of a municipality may not participate in an election of the council of the municipality, other than in an official capacity or pursuant to any constitutional right.

- 12. Sexual harassment.** – A staff member of a municipality may not embark on any action amounting to sexual harassment.
- 13. Reporting duty of staff members.** – Whenever a staff member of a municipality has reasonable grounds for believing that there has been a breach of this Code, the staff member must without delay report the matter to a superior officer or to the speaker of the council.
- 14. Breaches of Code.** – Breaches of this Code must be dealt with in terms of the disciplinary procedures of the municipality envisaged in section 67 (1) (h) of this Act.
- 14A. Disciplinary steps.** – (1) A breach of this Code is a ground for dismissal or other disciplinary steps against a staff member who has been found guilty of such breach.

(2) Such other disciplinary steps may include-

- (a) Suspension without pay for no longer than three months;
- (b) Demotion;
- (c) Transfer to another post;
- (d) Reduction in salary, allowances or other benefits; or
- (e) An appropriate fine.