

# DR JS MOROKA LOCAL MUNICIPALITY



## PRIVATE WORK AND DECLARATION OF INTEREST/S POLICY

Notwithstanding the review date herein, this policy shall remain effective until such time approved otherwise by Council and may be reviewed on an earlier date if necessary.

### **Why Have a Policy?**

The purpose of this policy is to manage and regulate the performance of work done by officials in the service of the municipality outside their employment contract.

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## 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 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.

This 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.”

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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 Department of Corporate services for recommendation before being presented to the Municipal Manager for a decision.

#### 4. SCOPE AND APPLICATION

The policy shall apply to all employees of DR JS Moroka Local Municipality.

#### 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:

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

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

- 6.2.1 the capacity of the employee;

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**6.2.2** the nature of the official duties of the employee to the municipality;

**6.2.3** 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.

**6.3** 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:

**6.3.1** 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.

**6.3.2** The proposed remunerated work must take place entirely outside the employee's prescribed hours of work.

**6.3.3** 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.

**6.3.4** Municipal resources may under no circumstances be used in the performance of the envisaged remunerated work.

**6.3.5** 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.

**6.4** Disciplinary action will be taken against an employee:

**6.4.1** Who performs remunerated work outside his/her official duties to the municipality without written permission; or

**6.4.2** 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.

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- 6.5 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.
- 6.6 *Ex post facto* permission may not be granted to an employee to perform remunerated work outside his/her official duties to the municipality.
- 6.7 The Department of manager Corporate services must keep a register of employees who perform remunerated work outside their official duty to the municipality. The register must contain the following information:
- a) name;
  - b) staff number;
  - c) rank;
  - d) directorate;
  - e) division;
  - f) application for remunerated work approved/denied;
  - g) period and hours for which permission was granted;
  - h) name of the (outside) employer, type of work, nature of work and contact details; and
  - i) starting date.

### 7. Declaration of Interest/s

7.1 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.

7.2 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;

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- (i) interest in property;
- (j) pension; and
- (k) subsidies, grants and sponsorships by any organisation.

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

**8.1** An application to do private work or have a business interest by the Municipal Manager must be approved or refused by the Executive Committee of Council.

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

**8.3** Applications for private work or declaring a business interest must be submitted in writing on the prescribed form (see annexure A and B) for consideration. A copy of the application with the decision of the competent authority must be filed on the employee's personal record. Personnel Services will be the custodian of the administrative infrastructure and processes to safeguard the relevant documentation and files.

**9. IMPLEMENTATION AND MONITORING**

**9.1** All employees are to apply afresh (annually), even if current approvals are in place. Such applications to be submitted to the relevant Director.

**9.2** 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.

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

**9.4** All applications to do private work or have a business interest will only be considered if the prescribed application form has been duly completed and is only valid when authorised.

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

**10. COMMUNICATION**

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

**11. POLICY REVIEW**

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This policy will be reviewed annually and revised as necessary.

### 12. BUDGET AND RESOURCES

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

### 13. ROLES AND RESPONSIBILITIES

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

### 14. 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.

### 15. 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.

**Council Resolution:** R216.03.2023 ND

**Date of Approval:** 30<sup>th</sup> March 2023

**Accounting Officer Signature:** \_\_\_\_\_



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**ANNEXURE A**

<b>APPLICATION TO UNDERTAKE PRIVATE WORK</b>	<b>(HR576)</b>
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**TO:** Head of Department: .....

<b>Name</b>		<b>Employee number</b>	
<b>Position</b>		<b>Contact number</b>	
<b>Directorate</b>		<b>Department</b>	

1. I hereby wish to apply for permission to do private work, as set out below.

Nature and extent of work/activity

.....  
 .....  
 .....

2. I declare that I am acquainted with The Systems Act (Act 32 of 2000) as well as the Policy of the Council in respect of private work or declaring business interests and undertake to comply with requirements as set out in the Systems Act and Council's policy on Private Work and Declaration of Interests.

3. I indemnify the Council against any claim of whatever nature that may arise from doing private work or having other business interests.

Your favourable consideration of my application will be appreciated.

.....

<b>Signature (Applicant)</b>	<b>Name in full</b>
<b>Date</b>	

I *recommend / do not recommend* the application

.....  
 .....

<b>Head of Department</b>	<b>Name in full</b>	<b>Date</b>
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**ANNEXURE B**

**EMPLOYEE DETAILS**

**TO:** Head of Department: .....

<b>Name</b>		<b>Employee number</b>	
<b>Position</b>		<b>Contact number</b>	
<b>Directorate</b>		<b>Department</b>	

**SPOUSE'S / PARTNER'S DETAILS**

Surname .....

First name.....

Date of birth .....

ID number .....

**BACKGROUND OF INFORMATION**

- In terms of Section 4, of the Code of Conduct for Municipal Staff Members, as set out in Schedule 2 of the Local Government: Municipal Systems Act 32 of 2000, a staff member may not use his/her position, privileges or confidential information gained as a staff member for personal gain. Staff members can also not take decisions in which that staff member's spouse, partner or business associate has a direct or indirect personal or private gain.

Only with the prior consent of Council may a staff member be a party to a contract (provision of goods or services, performance of any work otherwise than a staff member), obtain financial interest in any business of the municipality or be engaged in business, trade or profession, unless the task is in the performance of work for the municipality (within the job description / function).

- In terms of Section 5, of the Code of Conduct for Municipal Staff Members, as set out in Schedule 2 of the Local Government: Municipal Systems Act 32 of 2000, a staff member 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 full particulars of the benefit of which the staff member is aware at the first meeting of the municipal council at which it is possible for the staff member to make the disclosure i.e. report the matter to Human Resources, soonest to ensure appropriate disclosure to Council.
- In terms of Section 6, of the Code of Conduct for Municipal Staff Members, as set out in Schedule 2 of the Local Government: Municipal Systems Act 32 of 2000, a staff member may not without permission disclose any information obtained as a staff member to unauthorised persons.

Privileged or confidential information includes any information determined by the municipal council or any structure or functionary of municipality to be privileged or confidential discussed in closed session with council or committee of council, disclosure of which would violate a person's right to privacy; or declared to be privileged, confidential or secret in terms of law.

This Item does not derogate from a persons' right of access to information in terms of national legislation.

- In terms of section 7, of the Code of Conduct for Municipal Staff Members, as set out in –

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- Schedule 2 of the Local Government: Municipal Systems Act 32 of 2000, a staff member may not influence or attempt to influence the council of the municipality, or functionary of council with a view to obtaining any appointment, promotion, privilege, advantage or benefit, for themselves or for a family member, friend or associate;
- Mislead or attempt to mislead the council or functionary of the council; and/or
- Be involved in a business venture with Councillors

- In terms of Section 8, of the Code of Conduct for Municipal Staff Members, as set out in Schedule 2 of the Local Government: Municipal Systems Act 32 of 2000, a staff member may not request solicit or accept any reward gift or favour for:
  - Persuading the council with regard to the exercising of any power or performance of duty;
  - Making representation to the council, or any structure or functionary of the council;
  - Disclosing privileged or confidential information; and/or
  - Doing or not doing anything within that staff member's powers or duties.
- In terms of Section 9, of the Code of Conduct for Municipal Staff Members, as set out in Schedule 2 of the Local Government: Municipal Systems Act 32 of 2000, a staff member may not use, take acquire, or benefit from any property or asset, controlled or managed by the municipality to which that staff member has no right.
- In terms of Section 10, of the Code of Conduct for Municipal Staff Members, as set out in Schedule 2 of the Local Government: Municipal Systems Act 32 of 2000, 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 members salary after this period.
- In terms of Section 11, of the Code of Conduct for Municipal Staff Members, as set out in Schedule 2 of the Local Government: Municipal Systems Act 32 of 2000, a staff member of a municipality may not participate in an election of the municipality, other than in an official capacity or pursuant to any constitutional right.

Any change in the nature of detail of financial interest of a staff member must be declared in writing to the Municipal Manager (or his nominee) annually and copied to the Chief Audit Executive.

**COMPLETION OF FORM:**

- Please ensure that **EVERY QUESTION IS ANSWERED** by placing a tick on the "yes" or "no" box, even if the details have remained unchanged from previous financial interest form submissions.
- Please attach **ADDITIONAL DETAILS** if there is insufficient space to fill in an answer, with the appropriate referencing.

**DECLARATION FORM**

**1. FINANCIAL INTEREST**

1.1. Do you or your partner own shares or securities in any company?  
(this includes listed shares obtained on the Stock Exchange and debentures)  
If yes, please provide details by completing "Schedule A"

YES	NO
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1.2. Are you a member of any close corporation?  
If yes, please provide details by completing "Schedule B"

YES	NO
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1.3. Do you have an interest in any trust?

YES	NO
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If yes, please provide details by completing "Schedule C"

- |  |                              |                             |
|--|------------------------------|-----------------------------|
| 1.4. Are you a director/ member of any company or its Committee?<br>(This includes executive and non-executive directorship of companies, parastatals, NGO'S, Section 21 companies, etc.)<br>If yes, please provide details by completing "Schedule D" | <input type="checkbox"/> YES | <input type="checkbox"/> No |
| 1.5. Do you have financial interest in any partnerships?<br>If yes, please provide details by completing "Schedule E"  | <input type="checkbox"/> YES | <input type="checkbox"/> No |
| 1.6. Do you have financial interest in any business undertaking?<br>(e.g. trader, consultancy)<br>If yes, please provide name by completing "Schedule F"   | <input type="checkbox"/> YES | <input type="checkbox"/> No |
| 1.7. Are you currently in paid employment over and above that of being a City Official?<br>If yes, please provide details by completing "Schedule G"   | <input type="checkbox"/> YES | <input type="checkbox"/> No |
| 1.8. Are you receiving any financial interests from businesses, other than what was defined in questions 1.2 – 1.7 above?<br>If yes, please provide details by completing "Schedule H"   | <input type="checkbox"/> YES | <input type="checkbox"/> No |
| 1.9. Do you have a financial interest in any property?<br>If yes, please provide details by completing "Schedule I"  | <input type="checkbox"/> YES | <input type="checkbox"/> No |
| 1.10. Are you receiving a pension of any kind?<br>If yes, please provide details by completing "Schedule J"  | <input type="checkbox"/> YES | <input type="checkbox"/> No |
| 1.11. Are you the beneficiary of any subsidies, grants or sponsorships by any organisation?<br>If yes, please provide details by completing "Schedule K"   | <input type="checkbox"/> YES | <input type="checkbox"/> No |
| 1.12. Are you or your partner a vendor of the City or deliver any service goods, etc. to the City?<br>If yes, please provide details by completing "Schedule L"  | <input type="checkbox"/> YES | <input type="checkbox"/> No |

### 2. REWARDS, GIFTS & FAVOURS

- |   |                              |                             |
|---|------------------------------|-----------------------------|
| 2.1. Did you receive any gifts / benefits exceeding R350 or hospitality as a gift for the past financial year?<br>If yes, please provide details by completing "Schedule M" | <input type="checkbox"/> YES | <input type="checkbox"/> No |
| 2.2. Did you declare gifts exceeding R350?  | <input type="checkbox"/> YES | <input type="checkbox"/> No |
| If yes, was authority obtained to enjoy the gift?   | <input type="checkbox"/> YES | <input type="checkbox"/> No |

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2.3 Did you or your partner receive any rewards (financial and or other) from:

2.3.1	City	<input type="checkbox"/> YES	<input type="checkbox"/> No
2.3.2	Vendors	<input type="checkbox"/> YES	<input type="checkbox"/> No
2.3.3	Contractors	<input type="checkbox"/> YES	<input type="checkbox"/> No
2.3.4	Fellow Staff	<input type="checkbox"/> YES	<input type="checkbox"/> No

2.4 Did you or your partner receive any favours (financial and other) from:

2.4.1	City	<input type="checkbox"/> YES	<input type="checkbox"/> No
2.4.2	Vendors	<input type="checkbox"/> YES	<input type="checkbox"/> No
2.4.3	Contractors	<input type="checkbox"/> YES	<input type="checkbox"/> No
2.4.4	Fellow Staff	<input type="checkbox"/> YES	<input type="checkbox"/> No

2.5 Did you travel abroad during the last financial year?  
(Foreign travel for which the councillor/municipality did not pay)

<input type="checkbox"/> YES	<input type="checkbox"/> No
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If yes, please provide details by completing "Schedule N"

**3. OTHER**

3.1 Have you or your partner made use of Council assets -  
• without authority; and/or

<input type="checkbox"/> YES	<input type="checkbox"/> No
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• while not performing municipal Duties?

<input type="checkbox"/> YES	<input type="checkbox"/> No
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3.2 Have you or you partner participated in a election of Council or municipality, -

• other than in a official capacity; or

<input type="checkbox"/> YES	<input type="checkbox"/> No
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**Schedule A**

<b>Company(s) where shares/securities are kept</b>	<b>Nature of shares (e.g. ordinary, preference, etc)</b>	<b>Number of shares</b>	<b>Nominal value of shares</b>	<b>Total value of shares</b>

*Schedule B*

<b>Name of Close Corporation</b>	<b>Type of business</b>	<b>Reg. number</b>	<b>Details of ownership (i.e. sole member of 50% share etc.)</b>	<b>Remuneration received from membership (per annum)</b>	<b>Does the CC do business with the City?</b>	
					<b>YES</b>	<b>NO</b>

**Schedule C**

<b>Name of Trust</b>	<b>Nature of Interest</b>



## Schedule G

Name of business	Type of business activity	Designation	Remuneration received for such employment	Does the organisation do business with the City?	
				YES	NO

## Schedule H

Name of organisation	Type of business	Nature of benefit	Reason for benefit	Does the organisation do business with the City?		Expected life span of benefit?
				YES	NO	

## Schedule I

Type/description of property (i.e. residential, flat, vacant land, industrial, commercial, etc.)	Area	Physical address or Erf #	Nature of interest (owner, landlord, lessor, etc.)	Is City making use of property?	
				YES	NO
Other properties outside of South Africa (description)			Where is the property situated – Country		

## Schedule J

Source of the pension (Pension Fund)	Value of the pension



**Schedule K**

Source of subsidy(s), grant(s) or sponsorship(s)	Description of subsidy(s), grant(s) or sponsorship(s)	Is assistance from a non-party source?		Value of subsidy(s), grant(s) or sponsorship(s) (per annum)
		YES	NO	

*Schedule L*

SERVICE PROVIDER (Name of Organisation)	Description of service	Value of Service	Directorate in which Service was rendered

*Schedule M*

Description of gift	Source of gift	Value of gift(s) per source per annum.

*Schedule N*

Where	Reason	Sponsor (incl. Self name)	Authority obtained (if paid by another person other than self)	
			YES	NO

*Schedule O*

<b>NAME OF EMPLOYEE</b>	<b>Employee number</b>	<b>Designation (level)</b>	<b>Directorate</b>	<b>Years of Service</b>