



SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL

KWAZULU-NATAL OFFICE

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13 April 2012

TO: ALL MUNICIPAL MANAGERS - KWAZULU NATAL
GERARD GREVELING - KWANALOGA
THEMBA SHEZI - IMATU
JAYCEE NCANANA - SAMWU PROVINCIAL

Sir / Madam

KZN DIVISION CIRCULAR NO.: 01/2012

AMENDED KZN CONDITIONS OF SERVICE COLLECTIVE AGREEMENT

Please find attached the amended Conditions of Service pertaining to the KZN Division of the SALGBC.

Your attention is drawn to the following items where amendments have been effected:

Item 10. Standby Allowance

Item 30. Exemptions

30.1.1
30.1.2
30.5
30.6
30.12
30.15

Also note, due to the above changes the numbering of items have also been amended.

Due to the changes effected above, extension has been granted that the parties will be allowed to submit applications for exemption to this collective agreement until 31 May 2012.

Yours faithfully


VUSI NZUZA
REGIONAL SECRETARY

Address correspondence to the Regional Secretary

**SOUTH AFRICAN LOCAL GOVERNMENT
BARGAINING COUNCIL
KZN DIVISION**

(Hereinafter referred to as the "KZN Division")

CONDITIONS OF SERVICE COLLECTIVE AGREEMENT

Entered into, in accordance with the provisions of the Main Collective Agreement, by and between the:-

KWAZULU-NATAL LOCAL GOVERNMENT ASSOCIATION

Hereinafter referred to as "KWANALOGA", (the Employers' Organisation)

and

INDEPENDENT MUNICIPAL AND ALLIED TRADE UNION

Hereinafter referred to as "IMATU"

and

SOUTH AFRICAN MUNICIPAL WORKERS' UNION

Herein referred to "SAMWU"

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

Handwritten signatures of two individuals, one on the left and one on the right, appearing to be initials or names.

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1. THE SCOPE OF AGREEMENT

- 1.1 This agreement shall apply to all employees and employers who fall within the registered scope of the KZN Divisional Bargaining Council, excluding section 57 employees appointed in terms of the Municipal Systems Act, 32 of 2000 as amended.
- 1.2 This agreement shall come into operation in respect of non parties (which includes, but is 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 until 31 December 2014; and after 31 December 2014 or such further period as determined by the Minister of Labour as requested by the parties.

2. DEFINITIONS

- 2.1 All expressions used in this Agreement and not defined will have the same meaning as defined in the Labour Relations Act, 66 of 1995.
- 2.2 Words importing the masculine shall include the feminine and vice versa.
- 2.3 Unless the contrary intention is stated or it is obvious from the context, words or expressions defined in the "Act" that are used in this Agreement will have the same meaning as in the Act.

"Act" *means the Labour Relations Act, No. 66 of 1995, as amended;*

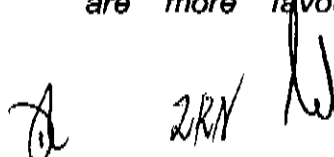
"Acting" *this refers to where an employee by written approval of the Municipal Manager or Manager reporting to the Municipal Manager act in a higher post;*

"Agreement" *includes a Collective Agreement;*

"Bargaining Council" *means the South African Local Government Bargaining Council and any of its Provincial Divisions;*

"Basic Conditions of Service: Earning Threshold" *refers to the earning threshold determined by Minister of Labour in terms of Sec 6(3) of the Basic Conditions of Employment Act No 75 of 1997, as amended – Government Gazette Notice No R300, 14 March 2008;*

"Better Conditions" *refers to Conditions of Service that are more favourable than those*



contained in this Collective Agreement.

"Calendar Days"

refers to a period from Monday to Sunday;

"Collective Agreement"

means a written Agreement concluded at the Divisional Bargaining Council regulating terms and Conditions of Employment or any other matter of mutual interest concluded between SALGA on the one hand and IMATU and SAMWU on the other hand;

"Days"

refers to working days;

"Demotion"

means the placement of an employee in another post in the municipality's service where the salary is lower than the post occupied by him and the status and personal circumstances of the employee is also changed;

"Emergency Personnel"

means Fire, Police, Traffic Officers and Ambulance staff only;

"Emergency Work"

means work to be performed without delay and which cannot be planned for;

"Employee"

means -

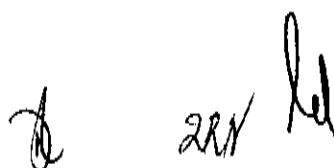
[a] any person, excluding an independent contractor who works for a municipality and who receives, or is entitled to receive any remuneration; and

[b] any other person who in any manner assist in carrying on or conducting the business of the municipality

"Employer"

means a Municipality or District Municipality;

"Existing Conditions of



Service	<i>means all Conditions of Service applicable to the employee at the municipality, excluding Conditions of Service regulated in the National Conditions of Service Collective Agreement of the SALGBC;</i>
"Indefinite Contract"	<i>means a contract with no specified termination date;</i>
"Long Service Leave"	<i>means leave granted by a municipality in recognition of long service to an employee with the municipality and which is not classified as annual leave.</i>
"Month"	<i>means a calendar month;</i>
"Municipality"	<i>means a Municipality as defined in section 10 of the Municipal Structures Act, 117 of 1998 as amended;</i>
"Night Shift Allowance"	<i>means an allowance paid for working between the hours of 18h00 and 06h00</i>
"Non Parties"	<i>means employees and employers not falling under the scope of the SALGBC;</i>
"Non Pensionable allowance"	<i>means a temporary allowance and is not taken into account in calculating the pensionable emoluments of the employee;</i>
"Overtime"	<i>means the time that an employee works during a day or a week in excess of ordinary hours of work;</i>
"Provincial Division"	<i>means KZN Divisional Bargaining Council excluding the Ethekwini Bargaining Council;</i>
"Salary"	<i>means an employee's usual monetary compensation for services rendered to the municipality and excluding any allowance, bonus, housing benefit, payment for overtime or monetary fringe benefit;</i>

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"Sec 57 Employees"

means a Municipal Manager or Manager reporting to Municipal Manager appointed in terms of Sec 57 of the Municipal Systems Act, 32 of 2000, as amended or any other post classified as Sec 57 by the SALGBC or its divisions;

"Standby Duty"

means the period determined by the municipality during which an employee shall be available for emergency work outside his normal working hours;

"Trade Union"

means the South African Municipal Workers Union and the Independent Municipal and Allied Trade Union or any other union recognized by the SALGBC;

"Vacancy"

means a vacant post on the staff structure of the municipality.

3. OBJECTIVES

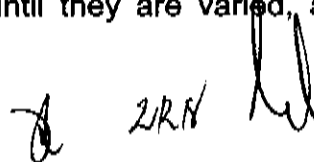
- 3.1 To establish common and uniform Conditions of Service for all employees within the registered scope of the KwaZulu-Natal Division of the South African Local Government Bargaining Council and to replace Conditions of Service as stipulated in this agreement.

4. PERIOD OF OPERATION

- 4.1 This agreement shall come into operation in respect of the parties to this agreement on 1 July 2011 and shall terminate on 31 December 2014.
- 4.2 This agreement shall come into operation in respect of non parties on the date to be determined by the Minister of Labour.

5. EXISTING CONDITIONS OF SERVICE

- 5.1 All existing Conditions of Service applicable at municipal level within the KwaZulu-Natal Division which are contained herein, and which are more favourable to employees shall terminate on 31 December 2012, and shall be replaced by the new Conditions of Service as from 01 January 2013.
- 5.2 All other existing Conditions of Service applicable at municipal level within the KwaZulu-Natal Division which are not herein contained remain in full force and effect until they are varied, amended and/or



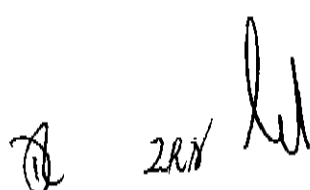
terminated in the manner provided for in the Act, and the relevant Collective Bargaining processes within the SALGBC in terms of its Constitution and the SALGBC Main Collective Agreement.

6. SPECIAL LEAVE

- 6.1 This leave refers to leave not covered in the Conditions of Service collective agreement in the SALGBC or at Divisional level.
- 6.2 Application for such leave shall be made to the Municipal Manager or his nominee for consideration and approval.
- 6.3 This leave may only be granted for the following:
 - 6.3.1 Court appearances by employee as a witness
 - 6.3.2 Study purposes
 - 6.3.3 National and provincial sport representation
- 6.4 The application for this leave must be accompanied by documentation that supports the application.
- 6.5 The leave is limited to a maximum of 10 days per annum and cannot accumulate

7. LONG SERVICE LEAVE

- 7.1 An employee shall qualify once for the following long service leave at the completion of the following periods from date of this agreement.
 - 7.1.1. 10 years' service - 10 days
 - 7.1.2 15 years' service - 20 days
 - 7.1.3. 20 years' service - 30 days
 - 7.1.4. 25 years' service - 30 days
 - 7.1.5. 30 years' service - 30 days
 - 7.1.6 35 years' service - 30 days
 - 7.1.7 40 years' service - 30 days
 - 7.1.8 45 years' service - 30 days
- 7.2 The encashment or the taking of the leave must take place in the same year that employee qualifies for the long service leave subject to operational requirements where the employee elects to take leave.
- 7.3 An employee with 10 [ten] or more year's service with the municipality and who reaches pensionable age, who is medically boarded or retrenched will be paid a pro rata long service bonus for any uncompleted period stipulated in [7.1] above



8. ACTING ALLOWANCE

- 8.1 Acting refers to where an employee, by written approval of the Municipal Manager or his nominee, acts in a higher post.
- 8.2 An acting allowance shall be paid to an employee acting in higher post subject to:
- 8.2.1 Written confirmation of acting appointment by Municipal Manager or his nominee prior to acting.
- 8.2.2 The employee acting in a post for a continuous period of 10 working days.
- 8.3 The acting allowance will be a non pensionable amount payable to be difference between the current salary of the employee acting and the minimum notch of the salary scale pertaining to the post in which the employee is acting or 8% of basic salary of post in which employee is acting whichever is the greater.
- 8.4 An employer shall not require an employee to act for longer than 6 months in the post unless an application for exemption is made by the municipality to the KZN Division of SALGBC. During the period of the application for exemption the employee will continue to receive an acting allowance.
- 8.5 Any employee permanently employed on an indefinite contract that acts in post of a Sec 57 employee shall be paid an acting allowance of 8% of total cost of employer remuneration of Sec 57 employee.
- 8.6 Any acting appointment does not guarantee a permanent appointment to that particular position.

9. NIGHT WORK ALLOWANCE

- 9.1 This applies to an employee who is required to work some or all of his normal hours of duty between the hours of 18h00 and 06h00 and such employee shall be paid a night work allowance.
- 9.2 The allowance not to be paid to employees earning above the Basic Conditions of Employment Act 75 of 1997 threshold as determined from time to time and currently being R172,000.00 per annum.
- 9.3 The employee be paid a maximum of 9% of hourly rate, pro rata to the actual completed normal hours worked [excluding any part of an hour] between the hours of 18h00 and 06h00 in a particular month.

NOTE : Annual Salary ÷ 250 number of working days+8 hours per day X 9% = hourly night work allowance.



- 9.4 Any employee who is entitled to this night work allowance shall not be entitled to a shift allowance in addition thereto.
- 9.5 In terms of section 6(2) of the Basic Conditions of Employment Act Sections 9, 10(1), 14(1), 15(1), 17(2) and 18(1) shall not apply to work that must be done without delay due to circumstances which the employer could not reasonably be expected to provide for and which could not be performed by employees during their normal working hours." Section 17(2) deals with the payment of a night work allowance.
- 9.6 A municipality may only require or permit an employee to perform night work, if so agreed and if transportation is available between the employee's place of residence and the workplace at the commencement and conclusion of the employee's shift.

10. STANDBY ALLOWANCE

- 10.1 If a municipality requires an employee to be available for the performance of duty outside his normal working hours the employee shall be entitled to a standby allowance.
- 10.2 The standby allowance shall not affect or be affected by any remuneration for overtime worked by the employee.
- 10.3 Standby allowance will be calculated in accordance with the following formula:

$$\frac{\textit{Annual Salary}}{250} = \textit{daily salary}$$

$$\frac{\textit{Daily Salary}}{8} = \textit{this is the daily standby allowance}$$

- 10.4 If the employee is required to be on standby on Saturdays, the employer shall pay that employee at least one and one-half times the normal standby allowance.
- 10.5 If the employee is required to be on standby on Sundays and Public Holidays, the employer shall pay that employee at least double the amount of the normal standby allowance.

11. 13TH CHEQUE

- 11.1 An employee qualifies for the payment of a non-pensionable annual bonus equal to one month's salary.
- 11.2 The bonus is paid once during a financial year on dates determined by the municipality.

- 11.3 A pro rata payment of an annual bonus in respect of an uncompleted year's service shall be made on termination of service by either party.

12. OVERTIME

- 12.1 Overtime not to be applicable to

12.1.1 senior managerial employees as defined in the BCEA

12.1.2 employees working less than 24 hours per month

12.1.3 employees earning in excess of R172,000.00 remuneration per annum as determined from time to time in terms of the Basic Conditions of Employment Act 75 of 1997

- 12.2 Overtime to be regulated and applicable as per Section 10 of the BCEA.

- 12.3 Overtime to be paid or if agreed to by the employee, time off to be granted to employees in terms of the BCEA.

- 12.4 Overtime to be approved in writing by the Municipal Manager or Managers reporting to the Municipal Manager prior to such overtime being worked.

- 12.5 Any municipality that wishes to pay overtime to employees earning in excess of threshold of R172,000.00 per annum may apply to the KZN Division of SALGBC for exemption.

13. EMERGENCY WORK

- 13.1 An employee may be required to perform emergency work that cannot be performed during normal working hours.

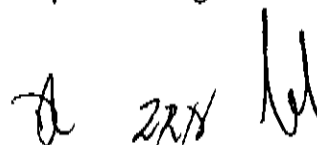
- 13.2 The employees involved in the emergency work are not limited by the overtime restrictions as well as ordinary hours limitations in terms of the BCEA.

- 13.3 Emergency personnel shall work a 45 hour working week.

14. LEGAL INDEMNIFICATION

- 14.1 The employees of Council are personally indemnified against any action, liability, claim or demand in consequence of any matter or thing done or omitted to be done by them in execution of duty.

- 14.2 The municipality will engage the services of an attorney to represent the employee in any criminal or civil proceedings.



14.3 Should it be established at an internal disciplinary hearing that such official was willful or negligent in the course of action then the employee shall be requested to refund the monies paid to attorneys by the municipality in installments of not more than 10 % of his remuneration in money.

15. SPECIAL SICK LEAVE

15.1 INJURED ON DUTY [IOD] OR OCCUPATIONAL DISEASES LEAVE

15.1.1 If an employee suffers an injury on duty or contracts an occupational disease arising out of or in course of his/her duty, the municipality shall grant such employee injury on duty or occupational diseases leave, at the salary value of 100% of normal pay during a period of temporary total disablement as provided for in the Compensation for Occupational Injuries and Diseases Act.

15.2 ADDITIONAL SICK LEAVE

15.2.1 If an employee has exhausted all sick leave, but has applied for a medical boarding, 20 additional days sick leave shall be granted.

16. PROBATIONARY EMPLOYEES


16.1 All employees shall be appointed on probation for a period of 3 months which can be extended by a further 3 months subject to the following conditions:

16.1.1 If the municipality is of the opinion that such employee has successfully completed his probationary period, the municipality shall confirm such employee's appointment in writing;

16.1.2 If the municipality on or before the date of completion of the probationary period of such employee, is of the opinion that he is not fit for the post occupied by him the municipality may;

16.1.2.1 In writing and stating the reasons therefore, extend the probationary period of such employee once only for the fixed period not exceeding 3 months;

16.1.2.2 Or give such employee at least 1 working month's written notice that his services will be terminated on a specific day subject to a fair procedure by the municipality.



16.1.2.3 After 3 months if the municipality fails to inform employee of confirmation of probationary period then the municipality should accept the post as automatically permanent.

17. VACANCY

17.1 A vacant post which in the opinion of the municipality should be filled shall be brought to the attention of the employees by the municipality by means of a notice on the relevant notice boards and in any other way determined by the municipality, and if the municipality deems it necessary applications shall be invited from outside the municipality's service in terms of the municipalities recruitment policy.

18. EMPLOYEE RECORDS

18.1 A municipality shall keep a record of each employee with, as a minimum, the following particulars:

18.1.1 Full names

18.1.2 Date of birth

18.1.3 Identity number

18.1.4 Citizenship

18.1.5 The employees race, gender and disability, as self defined, for purposes of monitoring representativeness, with race defined as African, Coloured, Indian, white or other [specify]

18.1.6 The employees Home address and telephone number

18.1.7 Date of joining the municipality

18.1.8 Nature of contract

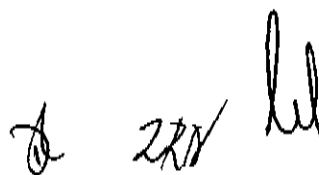
18.1.9 Post designation

18.1.10 Accreditation for training and skills

18.1.11 Details of leave authorized for any purpose

18.1.12 All other particulars required for determining benefits and remuneration, including particulars as to marital status and dependants

18.1.13 Certified copies of certificates, diplomas, degrees and drivers' license.

Three handwritten signatures in black ink, appearing to be initials or names, located at the bottom center of the page.

19. PROOF OF AGE

Every person appointed to service of the municipality shall produce proof of the date of his birth.

20. BANKING

Every employee shall have amounts payable to him in respect of salary and all other payments deposited to a personal account at any branch of a banking institution as he may nominate.

21. LUNCH BREAK

No employee may work longer than 5 hours without a lunch break of at least one hour that can be reduced to half an hour by agreement.

22. SALARY DEDUCTIONS

22.1 An employer may not make any deduction from an employee's remuneration unless:

22.1.1 The employee agrees in writing to the deduction in respect of a debt specified in the agreement or

22.1.2 The deduction is required or permitted in terms of a law, collective agreement, court order or arbitration award.

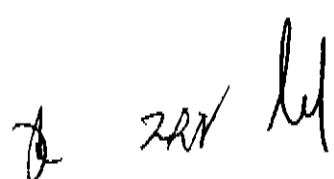
22.2 Where the employee has caused loss or damage to the employer, then the employer may only make the deduction if it can prove in a disciplinary hearing that the loss or damage occurred in the course of employment and was due to the fault of the employee.

22.2.1 The total amount of debt must not exceed the actual loss or damage to the employer and the total deductions from the employee's remuneration must not exceed 10 % of his remuneration in money.

22.2.2 The employee will only be liable for the excess amount in terms of any insurance claim.

23. OUTSIDE BUSINESS PROFESSION OR TRADE INTEREST

Employees may not engage in any business trade or profession other than the work of the Municipality except with the prior written consent of the Municipal Manager or his nominee.



24. **TRADE UNION MEMBERSHIP**

All employees are required to join a Trade Union recognized by the SALGBC or contribute fees in terms of an Agency Shop Agreement or Exercise their rights in terms of the Labour Relations Act.

25. **DEMOTION**

An employee may only be demoted to another post and at a reduced salary by agreement and as an alternative to dismissal after a disciplinary or incapacity hearing.

26. **MEDICAL AID SCHEMES**

Any employee joining the services of the municipality shall only be eligible for a subsidized membership of a SALGBC accredited Medical Aid Scheme

27. **PAYING OUT OF ACCUMULATED VACATION LEAVE AND SALARY CALCULATION**

Calculation of leave payment

27.1 Payment for leave shall be calculated in accordance with the following formula:

$$\frac{A \times B}{250 \text{ days}}$$

Which represents the following:

- A = the annual salary on the last working day
- B = is the employee's vacation leave credit on that day and
- 250 = the number of working days per annum

The salary calculation

The salary of an employee shall be calculated as follows:

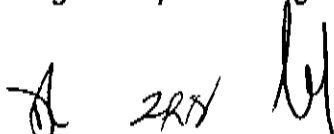
$$\text{Monthly salary} = \frac{\text{annual salary}}{12}$$

$$\text{Weekly salary} = \frac{\text{annual salary}}{52}$$

$$\text{Daily salary} = \frac{\text{annual salary}}{250}$$

$$\text{Hourly rate} =$$

$$\frac{\text{Annual salary}}{250} \times \frac{1}{\text{Number of working hours per working day}}$$



28. TERMINATION OF SERVICE

28.1 The municipality may terminate the services of an employee subject to the provisions of Labour Relations Act No 66, of 1995 as amended (where applicable), on a date determined by municipality for any of the following reasons:

28.1.1 The attainment of the pensionable age of 63 years; [The employees whose current retirement age is 60 or 65 years will retain such]

28.1.2 Continued ill health or continued physical disability which in the opinion of municipality renders such employee unfit for the effective execution of his duties attached to the post occupied by him;

28.1.3 The forfeiture of any certificate of competence, license or authorization without which the employee is unable to perform the duties attached to the post occupied by him.

28.1.4 The expiry of any fixed term contract with the municipality.

28.1.5 When an employee serves a term of imprisonment in terms of a sentence imposed by a competent court which makes it impossible for the employee to perform his/her normal duties.

28.1.6 Where a re-organisation of the municipality's service results in the post occupied by an employee being declared redundant and abolished by the municipality.

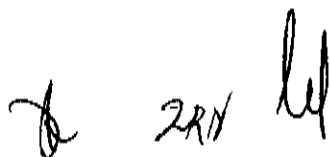
28.1.7 Notice of termination of service by either the municipality or the employee shall be given in writing and the period from the date of such notice to the date of such termination of such service shall be at least as set out hereunder : Provided that a municipality or the employee, as the case may be, may accept a shorter period as follows:

28.1.7.1 One week's notice if the employee has been employed for six months or less

28.1.7.2 Two week's notice if the employee has been employed for more than six months but not more than one year

28.1.7.3 Four weeks if the employee has been employed for one year or more.

28.1.8 A municipality may terminate the services of an employee due to ill health or injury or poor performance after following a fair procedure.



28.1.9 The municipality may terminate the services of an employee for any form of misconduct as determined in the Disciplinary Collective Agreement.

29. DISPUTE ABOUT INTERPRETATION AND APPLICATION OF THIS AGREEMENT

29.1 Any person or party may refer a dispute about the interpretation or application of this collective agreement to the Divisional Bargaining Council.

29.2 In the event of the SALGBC failing to resolve the dispute the person or party referring the dispute may invoke the dispute resolution mechanism as contained in the Constitution of the SALGBC.

30. EXEMPTIONS

30.1 Any application for exemption will be regulated as per exemption policy in terms of the main collective agreement subject to;

30.1.1 Any party or person bound by this Agreement shall be entitled to apply for exemption from this Agreement or any conditions of service contained in this agreement within three months from 01 July 2011.

30.1.2 All applications for exemption from any provisions of this agreement shall be in writing and lodged with the Regional Secretary of the KZN Provincial Division of the SALGBC.

30.2 An application for exemption shall be lodged in writing on a prescribed form with the Regional Secretary of the Division and an applicant shall serve the copy of the application as follows:

30.2.1 In the case of a Trade Union or employee applying for exemption from a collective agreement, submit a copy of the exemption application to SALGA and the relevant municipality affected by the application.

30.2.2 In the case of SALGA and/or a Municipality applying for exemption from a collective agreement, forward the exemption application to the local offices of *IMATU* and *SAMWU*.

30.3 The application for exemption shall contain -

30.3.1 all material details of the Applicant;

30.3.2 the exact provision of this collective agreement from which the applicant seeks exemption;

30.3.3 detailed grounds on which such exemption is sought, which ground should inter alia include the criteria specified in clause 30.6 below.



- 30.4 The Parties referred to in clauses 30.2.1 and 30.2.2 as the case may be, shall be afforded fifteen (15) days to submit a response to the application for exemption to the Regional Secretary of the Division. The party shall also be obliged to submit the response to the applicant for exemption.
- 30.5 The applicant may elect to reply to the response referred to in clause 30.4 above. Should the applicant elect to reply to the response, then the applicant must submit its reply within ten (10) days to the Regional Secretary and the other parties to the exemption application as set out in clauses 30.2.1 or 30.2.2 as the case may be.
- 30.6 When considering an application for exemption or an application for the withdrawal of a certificate of exemption by the KZN division, the KZN division shall take into account the following (the order not indicating any form of priority)–
- 30.6.1 any written and/or verbal substantiation provided by the applicant;
 - 30.6.2 fairness to the employer, its employees and other employers and the employees in the industry;
 - 30.6.3 whether an exemption, if granted would undermine this agreement or the collective bargaining process;
 - 30.6.4 unexpected economic hardship occurring during the currency of this agreement and job creation and/or loss thereof;
 - 30.6.5 whether a budgetary provision was made for implementation of the obligation arising out of the collective agreement;
 - 30.6.6 the infringement of basic conditions of employment rights;
 - 30.6.7 the fact that a competitive advantage might be created by exemption;
 - 30.6.8 comparable benefits or provisions where applicable;
 - 30.6.9 the applicant's compliance with other statutory requirements such as the Compensation for Occupational Injuries and Diseases Act 130 of 1993, Basic Conditions of Employment Act 75 of 1997, Employment Equity Act 55 of 1998, Skills Development Act 97 of 1998, Skills Development levies Act 9 of 1999, or Unemployment Insurance Act 63 of 2001; or
 - 30.6.10 any other factor which is considered appropriate.



Divisional Exemption Committee

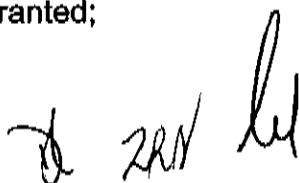
- 30.7 The Divisional Exemption Committee, consisting of three (3) KWANALOGA representatives, two (2) SAMWU representatives, and one (1) IMATU representative, shall consider all applications for exemption and may, subject to clause 30.9 below, and on giving reasons therefore, grant exemption from any conditions and for any period it considered appropriate. The ruling of the Divisional Exemption Committee shall be reduced to writing and shall be signed by its Chairperson or his or her nominee.
- 30.8 In the event that the Divisional Exemption Committee cannot reach consensus on the application for exemption or in the event that a person or party feels aggrieved by its decision, that person or party may appeal, in writing, against the decision of the Divisional Exemption Committee. Such an appeal must be lodged by not later than fifteen (15) days after the aggrieved party has received the written ruling of the Divisional Exemption Committee referred to in clause 30.7 above. The appeal shall consist of a notice of appeal and the grounds of appeal. The notice and grounds of appeal must also be submitted to the other Parties to the exemption application as well as the Regional Secretary of the Council. The respondent(s) in the appeal shall have a further fifteen (15) days to respond to the notice and grounds of appeal. The respondent must submit the response to the appellant and other Regional Secretary of the Council. The appellant in turn shall have a further ten (10) days to reply to the response of the respondent and the reply must be submitted to the other Parties to the appeal as well as the Regional Secretary of the Council.
- 30.9 Having made a decision to grant or refuse an exemption application, the Divisional Exemption Committee shall advise the applicant, respondent and the Division within fifteen (15) days of its decision, giving full reasons for the decision.
- 30.10 The Divisional Exemption Committee shall consider exemption applications in a manner that is fair and transparent and applications shall be determined as expeditiously as possible, which may include the hearing of evidence and arguments.
- 30.11 The Divisional Exemption Committee shall be constituted on an ad hoc basis and shall be appointed by the Council from time to time. Parties to the Council shall appoint their own representatives to the Divisional Exemptions Committee.

Independent Exemptions Board

- 30.12 The appeal referred to in clause 30.8 above as well as those matters that could not be determined due to a lack of consensus, shall be heard by an independent Exemptions Board consisting of an arbitrator appointed from the divisional panel of arbitrators of the council.



- 30.13 The decision of the arbitrator, referred to in clause 30.12 above, shall be final and binding.
- 30.14 The Council may apply to the Independent Exemption Body to withdraw a certificate of exemption granted to a party or non-party to this agreement.
- 30.15 When considering an application for exemption or an application for the withdrawal of a certificate of exemption by the Council, the Divisional Exemption Committee shall take into account the following (the order not indicating any form of priority)-
- 30.15.1 any written and/or verbal substantiation provided by the applicant;
 - 30.15.2 fairness to the employer, its employees and other employers and the employees in the industry;
 - 30.15.3 whether an exemption, if granted would undermine this agreement or the collective bargaining process;
 - 30.15.4 unexpected economic hardship occurring during the currency of this agreement and job creation and/or loss thereof;
 - 30.15.5 whether a budgetary provision was made for implementation of the obligation arising out of the collective agreement;
 - 30.15.6 the infringement of basic conditions of employment rights;
 - 30.15.7 the fact that a competitive advantage might be created by exemption;
 - 30.15.8 comparable benefits or provisions where applicable;
 - 30.15.9 the applicant's compliance with other statutory requirements such as the Compensation for Occupational Injuries and Diseases Act, 130 of 1993, Basic Conditions of Employment Act 75 of 1997, Employment Equity Act 55 of 1998, Skills Development Act 97 of 1998, Skills Development Levies Act 9 of 1999, or Unemployment Insurance Act 63 of 2001; or
 - 30.15.10 any other factor which is considered appropriate.
- 30.16 The KZN Division of the SALGBC shall issue to every applicant granted an exemption in terms of this clause a certificate of exemption setting out:
- 30.16.1 the applicant's name;
 - 30.16.2 the provisions of the agreement from which exemption has been granted;



30.16.3 the conditions relating to the exemption; and

30.16.4 the period for which the exemption shall operate

SIGNED BY THE PARTIES AT DURBAN ON THIS 12th DAY OF APRIL 2012

GERARD GREVELING



**KWAZULU-NATAL LOCAL GOVERNMENT
ASSOCIATION [KWANALOGA]**

DUNCAN COTTON



**INDEPENDENT MUNICIPAL AND ALLIED
TRADE UNION [IMATU]**

JAYCEE NCANANA



**SOUTH AFRICAN MUNICIPAL WORKERS'
UNION [SAMWU]**