



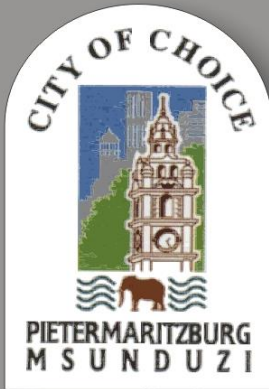
# BY-LAWS



**Corporate Services**  
Legal Services

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# The Msunduzi Municipality

## ADVERTISING SIGNS BY-LAWS

### ADVERTISING SIGNS BY-LAWS

[MUNICIPAL NOTICE NO. 18 OF 2006.]

[DATE OF COMMENCEMENT: 14 SEPTEMBER, 2006.]

These By-laws were published in *Provincial Gazette* No. 2508 dated 14 September, 2006

### ADVERTISING SIGNS BY-LAWS

The Msunduzi Municipality, acting in terms of section 98 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) read with section 13 of the said Act, hereby publishes the By-laws set forth hereunder, as made by the Municipality, which By-laws shall come into operation on the date of publication hereof.

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3. Exempt advertisements and signs
4. Application, assessment and appeal procedure
5. Withdrawal or amendment of approval
6. Structural requirements
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### 1. DEFINITIONS.

In these By-laws, unless the context indicates otherwise—

**“advertisement”** means any representation of a word, name, letter, figure or object or an abbreviation of a word or name, or any sign or symbol, or any light which is not intended solely for illumination or as a warning against any danger, which has as its object the furthering of any industry, trade, business undertaking, event, or activity of whatever nature and which is visible from any street, road or public place;

**“advertising policy”** means the Policy on Outdoor Advertising as adopted by the Municipality of the Msunduzi Municipality, as amended from time to time;

**“advertising signage structure”** means any physical structure built to display advertising;

**“aerial advertisement”** means any advertisement displayed in the air by the use of a balloon, kite, inflatable, aircraft or any other means;

**“animated advertisement”** means an electric advertisement that contains variable messages in which representation is made by the appearance of movement through an electric light source or beam;

**“applicant”** means the person by whom an application for permission to erect a sign or display an advertisement is made, which application shall be endorsed by the owner of the premises upon which such advertisement or sign is to be located;

**“application”** in relation to an advertising sign may include all proposed advertising signs per business, per site;

**“approval”** means approval by the Municipality or its duly delegated officials;

**“area of control”** reflects the degree of control to be applied to a certain landscape or part thereof which is a refinement of basic landscape sensitivity and includes those areas as defined and set out as maximum, partial or minimum control in the Municipality’s Policy on Outdoor Advertising, in accordance with the visual sensitivity of the area and traffic safety conditions;

**“billboard”** means any screen, board, or other structure larger than 4.5 m<sup>2</sup> and in a fixed position used or intended to be used for the purpose of posting, displaying or exhibiting any advertisements mainly of non-locality bound products, activities or services;



**“bill-sticker”** means a poster pasted by means of an adhesive directly onto an existing surface not intended specifically for the display of a poster;

**“bit”** means the basic unit for measuring the length of advertising messages and may consist of letters, digits, symbols, logos, graphics or abbreviations;

**“canopy”** means a rigid roof-like projection from the wall of a building;

**“cantilever”** means a projecting feature that is dependent for its support on the main structure of a building without independent vertical or other supports;

**“change of face”** means an alteration to the content of the advertisement displayed on an approved signage structure;

**“clear height”** in relation to a sign means the vertical distance between the lowest edge of the sign and the level of the ground, footway or roadway immediately below the sign;

**“Council”** means the Msunduzi Municipality and its successors in law and includes the Council of that municipality or its Executive Committee or any other body acting by virtue of any power delegated to it in terms of legislation, as well as any officer to whom the Executive Committee has delegated any powers and duties with regard to these By-laws;

**“curtilage”** is the whole of the area of land within the boundaries of the subdivision forming the site of any building;

**“depth of a sign”** means the vertical distance between the uppermost and lowest edges of the sign;

**“deemed to comply”** means that if an advertising signage structure meets certain specified criteria it may be deemed to satisfy the requirements of the Municipality for consent purposes;

**“designated areas”** are areas of maximum, partial or minimum control that have been specifically designated in the policy for the display of various types of advertising signs;

**“display”** means to erect or expose an advertising sign or structure to the public view by any method whatsoever;

**“electronic sign”** means a sign that has an electronically controlled, illuminated display surface which allows the advertisement to be changed, animated or illuminated in different ways;

**“election advertisement”** means an advertisement used in connection with any national, provincial, or municipal election, by-election or referendum;

**“encroaching sign”** means a sign which extends beyond the street line or boundary of a public street;

**“environmental impact assessment”** in relation to outdoor advertising means an assessment of the impact that an advertising sign or structure may have on the visual, social and traffic safety aspects of the specific environment;

**“estate agents’ board or show sign”** means an advertisement that is temporarily displayed to advertise the fact that land, premises, development or other fixed properties are for sale or to let;

**“flashing advertisement”** means an electric advertisement which intermittently appears and disappears;

**“flat sign”** means any wall sign, (other than a projecting sign), which is directly attached to the face of an external wall of a building or on a wall external to and not part of a building and which at no point projects more than 250 mm from such wall;

**“gore”** means the area immediately beyond the divergence of two roadways bounded by the edges of those roadways;

**“ground sign”** means any sign other than an aerial sign or a billboard, detached from a building and displayed on—

(a) poles, standards or pylons, the bases of which are firmly embedded and fixed in the ground and are entirely self-supporting, rigid and inflexible; or

(b) any fence or wall not being the wall of a building;

**“illuminated advertisement”** means an advertising signage structure which has been installed with electrical or other power for the purpose of illuminating the message of such sign;

**“headline poster”** means a temporary poster advertising the contents of a daily or weekly newspaper;

**“locality-bound sign”** means a sign displayed on a specific site, premises or building and which refers to an activity, product, service or attraction located or provided on or in such premises or building;

**“municipal property”** includes all property, whether movable or immovable, which is owned by, vests in or is under the control of the Municipality;

**“non-locality-bound sign”** means a sign displayed on a specific site, premises or building and which does not refer to an activity, product, service or attraction located or provided on or in such premises or building;

**“non-profit body”** is a body established to promote a social goal without the personal financial gain of any individual or profit-making commercial organisation involved;

**“occupier”**, in relation to any premises, means any person who is in actual occupation of such premises and if no person is in actual occupation thereof, any person who whether as owner, lessee, licensee or otherwise has, for the time being, control of such premises and shall include a street trader who occupies a site for the purposes of such street traders business;

**“on site or directional”** in relation to any advertisement means that such advertisement conveys only the name and the nature of the industry, trade, business, undertaking or activity which is carried on within the building or premises on which the advertisement is displayed;

**“outdoor advertising”** means any form of advertising as defined, visible from any street or public place and which takes place out of doors;

**“overall height”** in relation to a sign, means the vertical distance between the uppermost edge of the sign and the level of the ground, pathway or roadway immediately below it;

**“owner”** in respect of a sign means the owner of the sign or of the premises on which it is displayed or the person in possession of or having control over the sign or the premises;

**“portable board”** means any self-supporting sign or any other collapsible structure which is not affixed to the ground and which is capable of being readily moved;

**“poster”** means a sign intended to be temporarily displayed in a street or public place as an announcement of a meeting, function or event relating to an election, activity or undertaking;

**“premises”** means any building together with the land on which such building is situated;

**“projected sign”** means any sign projected by a laser projector, video projector or other apparatus but does not include a sign projected onto a drive-in cinema screen during a performance;

**“projecting sign”** means any sign which is affixed to a wall of a building and protrudes more than 300 mm from the wall of such building;

**“public place”** means any road, street, thoroughfare, bridge, subway, foot pavement, footpath, sidewalk, lane, square, open space, garden, park or enclosed space vested in the Municipality and to which the public has access;

**“remote or third party advertising”** means that the content of such advertisement is unrelated to anything being undertaken on the premises on which such advertisement is displayed;

**“return wall”** means any external wall of a building or any other wall, which faces any boundary other than a street facade;

**“road reserve”** means the area contained within the statutory width of a road;

**“Road Traffic Act”** means the National Road Traffic Act, 1996 (Act No. 93 of 1996) and the Regulations promulgated in terms of this Act, as amended from time to time;

**“road traffic sign”** means any road traffic sign as defined in the Road Traffic Act;

**“roof sign”** means a sign painted or affixed directly onto the roof covering of a building;

**“SAMOAC”** means the South African Manual for Outdoor Advertising Control, a national guideline document compiled and published in 1998 by the Department of Environmental Affairs and Tourism, and as amended from time to time;

**“sign”** means any physical structure or device used, intended or adapted for the display of an advertisement;

**“signalised traffic intersection”** means an intersection controlled by traffic lights;

**“sky sign”** means a sign that is placed or erected on or above a roof, parapet wall of a roof or eaves of a building but does not include a sign painted on the roof of a building;

**“specific consent”** means the written approval of the Municipality which is required on submission of a formal application;

**“street furniture”** means public facilities and structures which are not intended primarily for advertising and includes but is not limited to seating benches, planters, sidewalk litter bins, pole-mounted bins, bus shelters, sidewalk clocks, Telkom boxes, traffic signal controllers, electricity boxes, post boxes, telephone booths and drinking fountains, but excludes road signs, traffic lights, street lights, or any other road-related structures;

**“street name signs”** means pole-mounted, double-sided, internally illuminated advertisements displayed in combination with street naming;

**“street pole sign”** means a permanent sign attached to street poles within the municipal road reserve which is used to accommodate and display a commercial third party advertisement;

[Definition of “street pole sign” inserted by section 1 (a) of MN 54 of 2014.]

**“temporary sign”** means a sign, not permanently fixed and not intended to remain fixed in one position, which is used to display an advertisement for a temporary period;

**“transit advertising”** means advertising by means of a movable sign which is capable of being transported by road either on, or in conjunction with, a motorised vehicle, including trailers primarily used for advertising;

**“tri-vision”** means a display which, through the use of a triangular louvre construction, permits the advertising of three different copy messages in a predetermined sequence;

**“under-awning sign”** means a sign suspended or attached to the soffit of a canopy or veranda;

**“verandah”** is a roofed structure attached to or projecting from the façade of a building and supported along its free edge by columns or posts;

**“visual zone”** means the road reserve of a road and any area that is visible from any spot on such road reserve, but does not include an area situated at a distance of more than 250 m from the road reserve boundary of a freeway in an urban area;

**“zone”** means the land use zone as defined in the Msunduzi Town Planning Scheme in the course of preparation.

## **2. APPROVAL FOR ADVERTISEMENTS AND SIGNS.**

Subject to the provisions of these By-laws, no person shall erect or cause or allow to be erected, altered, displayed or maintained any advertisement or sign which is visible from any street, road or public place or on any Municipality Property without first having obtained the written approval of the Municipality or its duly delegated officials.

## **3. EXEMPT ADVERTISEMENTS AND SIGNS.**

Subject to the provisions of these By-laws, advertisements or signs for which no approval is required are as follows—



- (a) Any non-illuminated advertisement displayed inside a building or on the internal side of a display-or shop front window;
- (b) Project boards project and displayed within the curtilage of the premises whilst building work is in progress and limited to one per street frontage and to be removed within 30 days of completion of the project;
- (c) National flag of any country except when more than one National flag is used to promote, advertise or identify an economic activity, in which case the provisions of these By-laws shall apply;
- (d) Any change of face to any remote advertisement displayed or erected if approval has already been granted by the Municipality for the advertising signage structure; and
- (e) Aerial advertising by means of an aircraft provided that the necessary approval has been obtained from the Civil Aviation authority including any conditions and requirements as prescribed.

**4. Application, assessment and appeal procedure.—**

- (1) Every person intending to display, erect, alter or maintain any advertisement or sign, for which the prior written permission of the Municipality is required, shall submit a written application to the Municipality on the prescribed form together with the prescribed fee in accordance with the Municipality's Tariff of Charges together with any other documentation that may be required by Municipality. The application shall be signed by the owner of the proposed advertising sign and by the registered owner of the land or building on which the advertising sign is to be erected or displayed or, on behalf of the owner of the land or building, by his agent, authorised in writing by such owner and shall be accompanied by the following plans drawn in accordance with the following requirements—
  - (a) A locality plan drawn to scale showing the sign in relation to surrounding roads and structures within a 500 m radius, where applicable.
  - (b) A site plan showing the position of the sign or advertisement on the premises, drawn to a minimum scale of 1:500 and giving all dimensions, showing the position of the sign in relation to the boundaries, other buildings, structures, services, features and all existing signage on the site and showing the streets and buildings on properties abutting the site.
  - (c) Detailed dimensioned drawings sufficient to enable the Municipality to consider the appearance of the sign or advertisement including materials, construction and illumination details.
  - (d) Detailed dimensioned drawings showing the full text and graphic details of the advertisement to a scale of minimum 1:20 where applicable.
  - (e) Detailed dimensioned elevations and sections to a scale of minimum 1:100 showing the position of the advertisement or sign in relation to the buildings, structures, features and other existing advertising signs on the site and in the surrounds.
  - (f) Coloured photographs to illustrate the position of the sign in relation to the buildings, structures, features and other existing advertising signs on the site and in the surrounds.

- (g) Such other additional drawings, Environmental Impact Assessments or photographs as are necessary, in the opinion of the Municipality, to clarify the true nature and scope of the application.
- (2) In certain circumstances, the Municipality may accept drawings that show only a portion of the plan or elevation of a building, or drawings to a smaller scale, or computer generated graphics drawn to scale to illustrate the proposal where certain drawings may be difficult to provide, or even photographs where this is considered sufficient.
- (3) The applicant shall submit additional structural and other drawings and certification as required giving full details of the calculations, size and materials used in the supporting framework, its fixings, securing and anchorage as well as for the structure and its advertisement to ensure the sign's structural stability, fire and safety compliance with the provisions of the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977) as well as the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), as amended from time to time.
- (4) The applicant shall indemnify the Municipality against any consequences arising from the erection, display or presence of such advertising sign.
- (5) All signs erected or displayed shall comply with any relevant legislation.
- (6) In considering any application, the Municipality shall, in addition to any other relevant factors, ensure that the design and display of any advertising sign conforms to Municipality's Policy on Advertising and to SAMOAC's guidelines for the control of advertising in terms of the general conditions and principles as set out in these documents, as amended from time to time.
- (7) The Municipality may refuse an application or grant its approval, subject to such conditions as it may deem expedient but not inconsistent with the provisions of these By-laws or Municipality's Policy on Outdoor Advertising, as amended from time to time.
- (8) An approval or refusal of an application by the Municipality shall be made in writing with reasons provided within 14 days of a complete application having been submitted in terms of these By-laws.
- (9) On approval, a complete copy of the application as submitted shall be retained by the Municipality for record purposes.
- (10)
  - (a) Any advertisement or sign erected or displayed shall be erected or displayed in accordance with the approval granted and any condition or amended condition imposed by such approval.
  - (b) The person who erects an approved sign shall notify the Municipality within 7 days of such sign or advertisement being erected.
- (11)
  - (a) The person to whom permission has been granted for the display of any advertisement or sign which extends beyond any boundaries of any street or public place shall enter into a written encroachment agreement with the Municipality.

- (b) Such person shall indemnify the Municipality in respect of the sign and be liable to Municipality for the prescribed annual encroachment rental.
- (12) Approval of any advertising sign shall be at the pleasure of the Municipality and shall endure for such period as may be determined by the Municipality either in relation to the advertising structure or to the advertising content or both, whereafter a new application for consideration shall be submitted to the Municipality for approval in terms of these By-laws.
- (13) The applicant may appeal in writing to the Municipality against the refusal of an application or any condition imposed by the Municipality.
- (14) The appeal referred to in subsection (13) shall be lodged within 30 days of the date of the notice and will be submitted in writing, setting out the nature and grounds of the appeal, which shall be forwarded together with a covering report thereon for recommendation to the relevant Committee of Municipality for a final decision.

## **5. WITHDRAWAL OR AMENDMENT OF APPROVAL.**

- (1) The Municipality may, at any time, withdraw any approval or amend any condition or impose a further condition in respect of such approval if in the opinion of the Municipality an advertising sign does not conform to the guidelines for the control of signage in terms of Municipality's Policy on Advertising or SAMOAC, or if the advertisement or sign does not comply with any of the conditions of approval, or for any other reason the Municipality may deem fit.
- (2) (a) The Municipality may at any time revoke its approval for the display of an encroaching sign and cancel the encroachment agreement referred to in subsection (11) (a) of section 4, and shall give notice in writing to the owner or applicant of such decision.
- (b) The owner or applicant shall advise the Municipality in writing of the details of any transfer of ownership of any encroaching sign.
- (3) An approved sign shall be erected within 6 months from the date of approval whereafter such approval shall lapse unless written application for extension is made, which shall be granted for one additional period of 6 months.
- (4) Any application which has been referred back to the applicant for amendment shall be resubmitted within two months of the date of the referral notice, failing which the application shall lapse.
- (5) Permission for an advertising sign is granted to the applicant only and shall lapse if he ceases to occupy the premises, provided that written approval may be granted by the Municipality to transfer this right to the new occupier of the premises which approval shall be applied for within thirty days from the date of the new occupation.
- (6) An electronic or illuminated advertisement which, in the opinion of the Municipality, causes a disturbance to the occupants of any affected premises shall be altered in such a manner as prescribed by the Municipality in writing or be removed by the applicant or occupier within such period as may be specified by the Municipality.
- (7) The permission granted in respect of any advertisement or sign shall lapse when any alteration or addition is made to such advertisement or sign without the further approval of the Municipality provided that Municipality may approve minor alterations at its discretion by means of an endorsement on the original approval.

**6. STRUCTURAL REQUIREMENTS.**

- (1) All signs shall be properly constructed and erected and shall be properly secured, fixed and/or anchored, to the satisfaction of the Municipality.
- (2) All signs, including supports and framework, shall be constructed of non- combustible, durable and safe materials suitable for the particular design of the sign.
- (3) The Municipality may call for certification by a Professional Engineer or approved competent person in respect of the structural stability and safety of any sign.
- (4) Adequate provision shall be made for proper drainage of all advertising signs.
- (5) The supporting framework and attachment points of any sign shall be neatly constructed as an integral part of the design of the sign or otherwise concealed from view, to the satisfaction of the Municipality.

**7. ELECTRICAL REQUIREMENTS.**

Every electronic and illuminated advertising sign including its supports and framework, shall be constructed entirely of non-combustible materials and shall be installed in accordance with, and subject to, the provisions of the Municipality's Electricity Supply By-laws and the Code of Practice for the wiring of premises in accordance with the SABS or applicable legislation or regulations.

**8. MAINTENANCE.**

- (1) The owner and/or applicant shall jointly execute, finish and maintain such advertisement or sign and its supporting framework in a state of good repair, both structurally and aesthetically.
- (2) Should any advertisement or sign become dangerous, unsightly or a nuisance, the person/s referred to in section 8 (1) shall remove the source of danger, unsightliness or nuisance within the time frame specified by Municipality and failure to do so will constitute an offence and render such person liable for prosecution.
- (3) The delegated officials of Municipality shall be entitled to enter upon any premises for the purpose of carrying out inspections in terms of these By-laws and the owner and/or applicant shall act in a co-operative manner with the said officials of Municipality in this regard.
- (4) Every sign and its supporting structure shall be painted, treated against corrosion and cleaned regularly to prevent it from becoming unsightly.
- (5) Where any sign or advertising structure is in a state of disrepair or becomes torn, damaged or otherwise unsightly, the Municipality may order its removal.

**9. OFFENCES AND REMOVAL OF SIGNS.**

- (1) Any person who displays or erects any advertisement or sign for which no approval has been granted by the Municipality in terms of section 2, or for which approval has expired, lapsed or has been withdrawn, or which advertisement or sign does not conform with the approved application or any of its conditions, or does not comply with,

- or is contrary to, any provision of these By-laws or to any other applicable Act or Regulation, shall be guilty of an offence.
- (2) Any person who erects or continues to display any advertisement or sign which ceases to be relevant to the premises on which it is displayed by virtue of a change in use, ownership or occupancy of the premises to which it relates or for any other reason, shall be guilty of an offence.
  - (3) Any person who displays or erects any advertisement or sign which contravenes or fails to comply with any provision, requirements or conditions as set out in any notice issued and served in terms of these By-laws or other applicable legislation, or who knowingly makes any false statement in respect of any application in terms of these By-laws, shall be guilty of an offence.
  - (4) The Municipality may serve notice on the person who is displaying the advertisement or who has erected the sign or caused the advertisement or sign to be displayed or erected, or on the owner or occupier of the premises upon which it is being displayed or erected, or on both such persons, directing those persons to remove such advertisement or sign or to do such other work as may be set forth in the notice, within a time frame specified therein which shall not be less than 14 days from the date of receipt of the notice, so as to bring the advertisement or sign into conformity, or compliance, with the conditions of approval.
  - (5) If any person on whom any notice has been served in terms of section 9 (3) and 9 (4) fails to comply with a direction contained in such notice within the specified period, the Municipality may remove or arrange for the removal of the advertisement or sign, or effect any of the alterations prescribed in the notice.
  - (6) The Municipality may recover the expenses incurred, as a result of any removal, action taken, repairs necessary for damages caused to Municipality property, or for any other costs incurred, from any person on whom the notice was served in terms of sections 9 (3) and 9 (4). No compensation shall be payable by the Municipality to any persons in consequence of such removal, repairs or action taken.
  - (7) Any person who fails to remove any poster, banner, flag or election advertisement within the prescribed period shall be guilty of an offence. The Municipality shall be entitled to remove any such advertisement and deduct the prescribed amount from any deposit made in respect of the advertisement so removed by the Municipality; provided that if the amount of money to be deducted exceeds the amount of the deposit made, the Municipality shall be entitled to recover such excess amount from such person; provided further that when any such poster, banner or election advertisement is removed in terms of these By-laws, the Municipality shall be entitled to destroy any such advertisement without giving notice to any person.
  - (8) Any person who, having displayed or caused to be displayed any portable board in respect of which approval has been granted in terms of these By-laws, fails to remove such board within a time specified by an authorised official, shall be guilty of an offence and the Municipality shall be entitled to remove any such portable board and to recover from such person the prescribed fee; provided that any portable board so removed by the Municipality may be destroyed without giving notice to any person.



- (9) Any advertisement or sign removed or confiscated by the Municipality in terms of these By-laws, other than those referred to in sections 9 (7) and 9 (8), may be reclaimed within 60 days from the date of removal or confiscation and on payment of the charges due, failing which the Municipality shall have the right to use, dispose of, or sell, such sign, at its discretion.
- (10) If, in the opinion of the Municipality, the advertising sign constitutes a danger to life or property and in the event of the applicant/owner and/or occupier failing to take the necessary action with immediate effect, the Municipality may carry out or arrange for the removal of such sign and recover any expenses so incurred.
- (11) Any person who, in the course of erecting or removing any advertising sign, causes damage to any natural feature, electric structure or service, or any other Municipality installation or property, shall be guilty of an offence and punishable in terms of section 10 of these By-laws and shall be liable for any damages so incurred.
- (12) The Municipality shall be entitled to summarily remove any unauthorised advertising signs on its own property without giving notice to any person.

## **10. PENALTIES.**

Any person who contravenes or fails to comply with any provision of these By-laws shall be guilty of an offence and shall be liable on conviction to a fine or to imprisonment or to both such fine and imprisonment, or to such other penalty as determined by a court of competent jurisdiction.

## **11. Presumptions.**

For the purposes of these By-laws it shall be presumed that—

- (a) any person who erects or displays or who causes to be erected or displayed any advertisement or sign, whether such person/s be the applicant, the owner or the occupier of the premises, the manufacturer of any part of the signage structure or the proprietor of the undertaking or activity to which such an advertisement relates and any of their agents, shall be deemed to have displayed, caused, allowed or consented to such advertisement or sign being displayed until the contrary is proved;
- (b) any person, club, body or political party responsible for organising, sponsoring, promoting or in control of any meeting, function or event to which a sign, poster, election or aerial advertisement relates, shall be deemed to have displayed, caused, allowed or consented to Such advertisement or sign being displayed until the contrary is proved;
- (c) any person whose name appears on an advertisement or sign or whose product or services are advertised on such sign shall be deemed to have displayed, caused, allowed or consented to such advertisement or sign being displayed until the contrary is proved;
- (d) an advertisement displayed upon the exterior wall or fence constituting the apparent boundary of any premises and fronting any street or public place shall be deemed to be displayed in a street or public place;

- (e) where any notice or other document is required by these By-laws to be served on any person, it shall be deemed to have been properly served, within five working days of dispatch, if served personally on such person or any member of his household apparently over the age of sixteen years at such person's place of residence, or on any person employed by such person at such person's place of business, or if sent by registered post to such person's residential or business address as it appears in the records of the Municipality, or if such person is a company, closed corporation or a trust, if served on any person employed by that company, closed corporation or trust at its registered office, or if sent by registered post to such office;
- (f) it shall be presumed that any advertisement or sign approved prior to the date of promulgation of these By-laws had been lawfully displayed or erected in term of these By-laws provided that it is continuously displayed, maintained or kept in position without any alteration other than a minor alteration permissible in writing by the Municipality.

## **12. PROHIBITIONS.**

The following advertisements and signs are prohibited—

- (a) Any advertisement or sign, other than an exempted sign, for which neither a permit nor approval has been obtained or which does not comply with the requirements of, or which is not permitted by, these By-laws or any other law.
- (b) Any advertisement which, in the opinion of the Municipality, is indecent, obscene or objectionable, or of a nature which may produce a pernicious or injurious effect on the public or on any particular class of person or on the amenity of any neighbourhood.
- (c) Any advertisement or sign that is painted onto or attached in any manner to any tree, plant, rock or to any other natural feature.
- (d) Any advertisement or sign which obstructs any street, fire escape, exit way, window, door or other opening used as a means of egress or for ventilation or for fire fighting purposes.
- (e) Any illuminated sign, whether a searchlight or laser beam, animated, flashing or static, which disturbs or is a nuisance to the residents or occupants of any building or to any member of the public affected thereby.
- (f) Any advertisement or sign not erected in accordance with these By-laws or not in accordance with the specifications approved by the City Municipality, or the terms or conditions attached by the Municipality to any such approval.
- (g) Any advertisement or sign which may obscure, obstruct or interfere with any traffic sign or signal for traffic control, or which is likely to interfere with or constitute a danger or potential danger to traffic, aircraft or to the public in general.
- (h) Any advertisement or sign which may inhibit or obstruct a motorist's vision or line of sight thus endangering vehicular and pedestrian safety.
- (i) Any form of bill-sticking by means of posters or placards to any existing structure without the approval of the Municipality.

## **13. TEMPORARY AND PERMANENT ADVERTISEMENTS ON MUNICIPAL PROPERTY.**

A temporary advertisement or sign erected or displayed on Municipal property is subject to the Municipality's specific consent as set out in these By-laws. A permanent advertisement or sign on Municipal property; ie. street furniture, street name signs, dustbins, bus shelters,

suburban and community advertisements and any other remote advertising signs is dealt with in terms of the Local Authorities Ordinance and is subject to Municipality's specific authority.

## DETAILED REQUIREMENTS FOR SIGNS

### 14 BILLBOARDS.

- (1) Any person who wishes to erect or cause to erect a billboard advertisement shall submit to the Municipality a written application on the prescribed form and pay the prescribed fee. Such applications shall, at Municipality's discretion, be accompanied by an Environmental Impact Assessment in the case of billboards in excess of 36 m<sup>2</sup> or for smaller billboards, at the Municipality's discretion.
- (2) A billboard shall be permitted only in an urban area of minimum control or in an urban area of partial control, at the Municipality's discretion, subject to specific consent and an assessment of its environmental impact, which shall include visual, social and traffic safety aspects.
- (3) The name or logo of the owner of a billboard or sign must be clearly displayed on such board together with the identification number issued by the Municipality.
- (4) Any billboard shall—
  - (a) comply with all legal requirements of the South African National Roads Agency Limited and the Road Traffic Act, where applicable;
  - (b) comply with any other applicable National, Provincial or Local Government legislation and policy, including these By-laws and the Municipality's Policy on Outdoor Advertising;
  - (c) not be erected within an area of maximum control unless, after an Environmental Impact Assessment and public participation process, the Municipality identifies that such area, subject to such terms and conditions as it may impose, may be reclassified as an area of lesser control, which may not be relaxed further than the control type in the area adjacent to the site in question;
  - (d) not be detrimental to the nature of the environment in which it is located by reason of abnormal size, intensity of illumination or design;
  - (e) not, in its content, be objectionable, indecent or insensitive to any sector or member of the public;
  - (f) not, partially or wholly, obscure any approved sign previously erected and lawfully displayed;
  - (g) not constitute a danger to any person or property;
  - (h) not encroach over the boundary line of the property on which it is erected; and
  - (i) not be erected if considered by the Municipality to be a distraction to drivers, cyclists or pedestrians which could contribute to unsafe traffic conditions.
- (5) A billboard shall—
  - (a) be spaced at least 120 m, 200 m or 250 m from any other billboard on the side of the road where such billboard faces a road on which the speed limit is restricted to 60 km/h, between 60 km/h and 80 km/h or between 100 km/h and 120 km/h, respectively;
  - (b) not be erected within 50 m from the on and off-ramps of public roads and from overhead traffic directional signs;

- (c) not be permitted within a radius of 100 m from the centre of an intersection on any arterial road and within a radius of 50m from the centre of an intersection on any lower order road;
- (d) not have an overall height in excess of 12 m above the surface of the road level at which it is directed and have a clear height of not less than 2.6 m above the surface of the road;
- (e) not have an overall dimension which exceeds 64 m<sup>2</sup> in the case of ground signs and 54 m<sup>2</sup> in the case of wall signs;
- (f) not have as its main colours, red or amber or green when located at signalised traffic intersections and shall not obscure or interfere with any road traffic light or sign;
- (g) not constitute a road safety hazard or cause undue disturbance and shall not be permitted to be illuminated if such illumination, in the opinion of Municipality, constitutes a road safety hazard or causes undue disturbance;
- (h) shall not be erected or serviced unless prior permission from the Municipality has been obtained and any necessary precautions have been arranged to enable the Municipality to diminish the impact on the flow of traffic during such erecting or servicing;
- (i) in the case of a wall sign, be attached only to the side and back walls of a building which does not fulfil the function of a street or front façade of the building.

## 15. GROUND SIGNS.

- (1) Only one on-site, locality bound, freestanding ground sign per premises shall be permitted either where such a sign is necessary to facilitate the location of the entrance or access to a business premises, or where it is not reasonably possible to affix appropriate signs to the building, or where the business premises is so set back as to make proper visibility of signs on the building not feasible, or where the existence of a free-standing composite sign may prevent the proliferation of signage; provided that one ground sign may be displayed per 15 m section of street frontage.
- (2) An on-site, locality and non-locality bound freestanding ground sign in the form of a business sign and tower structure may not exceed 7,5 m in overall height and 6 m<sup>2</sup> per face in total area. In addition, it may not exceed 4,5 m<sup>2</sup> per face in total area in respect of any individual advertisement thereon and have a clear height of not less than 2,4 m. Where a more solid structure is used, the maximum area per sign may be increased to 9 m<sup>2</sup> and where the sign incorporates a combination sign, the maximum area per signage structure may be increased to 12 m<sup>2</sup>. Only one sign or advertising panel on a combination sign shall be allowed, per enterprise, per street frontage.
- (3) A ground sign other than a sign on a pole, standard or pylon, if displayed on a wall or fence shall not exceed 3.5 m<sup>2</sup> in area and shall not project at any point more than 100 mm from the surface of the wall or fence and shall not extend above the top of the wall or fence or beyond either end of the wall or fence.
- (4) A sign erected on a monopole shall be appropriately designed so that, in the opinion of the Municipality, the height of the support is not disproportionately long in relation to the size of the sign.

- (5) A maximum of 2 signs per tower, bridge or pylon shall be permitted. The maximum sign area per tower may not exceed 36 m<sup>2</sup> per face. The sign shall be wholly contained within the structure and have no projections.
- (6) Any ground sign or sign on a tower, bridge or pylon shall be independently supported and properly secured to an adequate foundation and be without the aid of guys, stays, struts, brackets or other restraining devices and/or be entirely self supporting and not dependent upon any existing structure for its support in any way.

## **WALL SIGNS**

### **16. FLAT SIGNS.**

- (1) Unless otherwise stipulated, a flat sign shall at no point project more than 300 mm from the surface of the wall to which it is attached. The maximum projection of any part of a flat sign shall be 100 mm where the underside of such sign measures less than 2,4 m from a footway or pathway immediately below it and the maximum projection shall be 300 mm where the underside of such sign measures more than 2,4 m above such footway or ground level.
- (2) (a) An on-site, locality bound flat sign shall be permitted to be attached to the front, side and back walls of buildings.  
(b) A remote, non-locality bound flat sign shall only be permitted to be attached to the side and back wall of a building which does not fulfil the function of a building facade.
- (3) A flat sign shall not cover any windows or other external openings of a building or obstruct the view from such openings.
- (4) A flat sign shall not exceed 54 m<sup>2</sup> in total area and shall not exceed 30% of the overall area of the wall surface to which it is attached, affixed or painted, provided that in urban landscapes of maximum control a sign may not exceed 20% of the wall surface area.
- (5) An Environmental Impact Assessment shall be required for all flat signs in excess of 36 m<sup>2</sup>.

### **17. Projecting signs.**

- (1) The minimum clear height of a projecting sign shall be not less than 2,6 m in height.
- (2) A projecting sign shall be a maximum of 300 mm in thickness.
- (3) A V-shaped projecting sign shall be a maximum of 600 mm in thickness at the back of the sign facing the wall.
- (4) A projecting sign shall not be allowed to extend beyond the top of the main wall to which it is affixed.
- (5) A projecting sign shall not be allowed to extend within 600 mm of the edge of a roadway, nor extend within 1,5 m from any overhead electricity wires or cables.
- (6) The maximum projection shall be 1,5 m in the case of a projecting sign which has a clear height of more than 7,5 m and 1 m where the sign has a clear height of less than 7,5 m.
- (7) A projecting sign shall be installed perpendicular to the street facade or to the direction of oncoming traffic.
- (8) A projecting sign shall only be locality-bound.



- (9) A projecting sign shall not be displayed within 2 m of any other projecting sign displayed on the same building.

#### **18. SKY SIGNS.**

- (1) The maximum area of a sky sign shall not exceed 18 m<sup>2</sup>.
- (2) The maximum permitted thickness of any face of a sky sign shall be 300 mm.
- (3) A sky sign shall not project in front of a main wall of a building so as to extend beyond the roof of such building in any direction.
- (4) A sky sign shall not obstruct the view or affect the amenity of any other building.
- (5) A sky sign shall be placed in such a manner so as not to interfere with the run-off of rainwater from the roof of the building.
- (6) A sky sign shall be thoroughly secured and anchored to the building on or over which it is to be erected and all structural loads shall be safely distributed to the structural members of the building without the use of guys, stays or other restraining devices.
- (7) A sky sign, including all its supports and framework, shall be constructed entirely of non-combustible materials approved by the Municipality and, if illuminated, shall not be placed on or over the roof of any buildings unless such sign, as well as the entire roof construction, is of non-combustible material.

#### **19. Verandah, balcony, canopy and under-awning signs.**

- (1) A verandah, balcony, canopy or under-awning sign may be affixed flat onto, or painted on, a parapet wall, balustrade or railing of a verandah or balcony, and beam or fascia of a verandah or balcony. Such a sign may not exceed 1 m in height, project beyond any of the extremities of the surface to which it is affixed, or project more than 300 mm in front of the surface to which it is affixed or extend within 600 mm of the edge of a roadway.
- (2) A verandah, balcony, canopy or under-awning sign may be affixed flat onto or painted on supporting columns, pillars and posts. Such a sign may not project more than 50 mm in front of the surface to which it is affixed and shall not extend beyond any of the extremities of such column, pillar or post. A sign affixed flat onto cylindrical supporting structures shall be curved to fit the form of such structure and only one sign shall be allowed per column, pillar or post.
- (3) Subject to the provisions of subsections (1) and (2), no sign shall be allowed on or over any architectural features of a building nor shall it be allowed to cover any window or obstruct the view from any such opening nor shall it detract from the aesthetics of the building.
- (4) An under-awning sign suspended below the roof of a verandah, canopy or balcony shall have a maximum sign area of 1 m<sup>2</sup> per face with a maximum of 2 m<sup>2</sup> in total sign area and shall not exceed 1,8 m in length or 600 mm in height. No sign shall be less than 100 mm, nor more than 300 mm, in thickness. Every such sign shall be perpendicular to the building line and fixed at a clear height of not less than 2,4 m. Only one sign per enterprise façade shall be allowed with a minimum spacing of 3 m centre

to centre between signs. Such a sign shall not extend beyond the external edges of the canopy or verandah to which it is attached.

- (5) A sun-blind or awning shall be so made and fixed as to be incapable of being lowered to less than 2 m above the footway or pavement directly beneath it. Such a sign shall be parallel to the building line and placed in a manner so as not to interfere with vehicular or pedestrian traffic, traffic lights or traffic signs.
- (6) All verandah, balcony, canopy or under-awning signs on buildings and adjacent buildings, shall be aligned as far as possible, in order to achieve a straight line and parallel configuration with the street.

**20. POSTERS, BANNERS AND FLAGS TEMPORARY POSTERS & ELECTION POSTERS.—**

- (1) Any person intending to display or cause or permit to be displayed any advertisement on a poster, banner or flag relating to an election, or advertising any meeting, function or event of a sporting, civic, cultural, social, educational, religious, charitable or political nature, in any street or public place, or on Municipal property, shall first obtain the written consent of the Municipality.
- (2) Every application for permission shall be made on the prescribed form and be accompanied by the prescribed fee as contained in Municipality's tariff of charges. A portion of such fee shall be refunded when all the advertisements have been removed to the satisfaction of the Municipality. The applicant shall, on application, submit a copy of all the posters to which the application relates and written details of the streets in which the posters are to be displayed.
- (3) Any person who displays or causes a poster, banner or flag advertisement to be displayed shall comply with the following requirements—
  - (a) Any advertisement relating to an election, meeting, function or event shall be of A1 size maximum, shall have a clear height of 2 m and shall be securely fixed to durable hardboard or other approved backing board.
  - (b) In the case of a banner or flag, the maximum size shall be 6 m<sup>2</sup>, suspended between non-corrosive poles or other approved supports, and shall be placed and fastened in such a manner so as not to constitute a danger to any vehicular traffic, pedestrian, person or property in any street, public place or on Municipal property.
  - (c) Any person or, in the case of election advertising, any political party, displaying or causing to display any poster advertisement relating to the same meeting, function or event shall only be permitted to display one poster per electricity lamp-post. No posters are permitted to be displayed on bridges, traffic lights, traffic signs, natural features, freeways and/or national routes.
  - (d) Any advertisement relating to an election, meeting, function or event shall be placed in such a manner that the content of separate advertisements, when read in succession, does not form a continuous relative legend.
  - (e) (i) Any advertisement relating to a meeting, function or event other than an election, shall not be displayed for longer than 14 days before the day on which it begins or for longer than three days after the day on which it ends.  
(ii) An election advertisement may be displayed from the beginning of the day of declaration of an election to the end of the fourteenth day after the election.

- (f)
    - (i) The total number of posters displayed at any one time relating to any meeting, function or event may not exceed 100, except in special circumstances and with the consent of Municipality.
    - (ii) In the case of an election advertisement, no limitation shall be placed on the number of posters displayed.
  - (g) An auction poster approved in terms of this section may not be larger than 2 m<sup>2</sup>.
- (4) Every poster for which permission is granted shall be provided with a Municipal sticker or marking which shall be visibly displayed to indicate the Municipality's approval and the Municipality shall be entitled to retain one such poster for identification purposes.

## 21. **Headline posters.**

Subject to approval in terms of these By-laws, the erection and/or display of a headline poster is permitted in all areas except natural and rural areas of maximum control. In addition—

- (a) A headline poster shall not exceed 0,9 m x 0,6 m in area.
- (b) The commercial content of the poster shall not exceed 20% of the area of the poster nor may any commercial lettering be larger than the main lettering in the remainder of the poster.
- (c) A poster may be attached to a municipal electric light pole only where available, and a pasted poster may only be affixed to designated structures which are approved by the Municipality for the express purposes of pasting such poster. It shall not be affixed to a traffic signal pole, any other pole which displays a road traffic sign, a pole erected for any other purpose, or any other street furniture, wall, fence, tree, rock or other natural feature.
- (d) A headline poster shall not be pasted on a municipal electric light pole but is to be mounted on board and affixed securely with stout string or plastic ties, unless a permanent frame has been approved for this purpose.
- (e) Only one headline poster per pole shall be permitted.
- (f) The number of posters as well as the designated areas for the display of such posters as submitted by each newspaper group shall be strictly adhered to.
- (g) Any "special event" posters shall comply with the following—
  - (i) The name of the newspaper group, the name of the "special event" and the date of the "special event" shall appear on the poster in letters not less than 50 mm in height.
  - (ii) The "special event" poster shall not be displayed for more than seven days before the date of the event and it shall be removed within 24 hours after the date of the event displayed on the poster.
- (h) A headline posters and fastenings are to be removed on a daily basis, failing which such poster shall be removed, at the newspaper group's expense, in accordance with the standard charges for the removal of posters.
- (h) The Municipality may recover the costs of the removal of unauthorised posters, and the reinstatement of the surface from which such posters were removed, from the person responsible for the display of such posters, or from the newspaper group concerned. The costs referred to shall be reviewed annually in terms of the annual Schedule of Tariffs.

(Editorial Note: Numbering as per original *Provincial Gazette*.)

- (i) The Municipality or its agent shall remove any poster displayed in contravention of the abovementioned By-laws.
- (j) Any poster not removed on a daily basis, or by due date in the case of poster relating to a “special event”, shall be removed by the Municipality or its agent.
- (k) The display of unauthorised posters is illegal and such posters shall be removed by the Municipality or its agent at a cost determined by the Municipality in its Tariff of Charges.
- (l) Each newspaper group shall apply annually, in writing, for permission to display such signs subject to an annual fee, per newspaper group, per annum or part thereof.
- (m) Each newspaper group shall pay an annual deposit against which a charge for the removal of any sign or poster which contravenes any provision of these By-laws shall be levied. In the event of the deposit being exhausted, permission to display such signage shall be withdrawn and a further deposit shall be paid to the Municipality.

## **22. ESTATE AGENTS BOARDS AND OTHER PORTABLE BOARDS.**

- (1) Every estate agent or person intending to display, cause or permit to be displayed any board, shall annually submit the prescribed written application to the Municipality accompanied by the fee prescribed in the Municipality’s Tariff of Charges.
- (2) Any person who displays or causes any board to be displayed on any municipal property, shall comply with the following requirements—
  - (a) Such board shall only be used for the purposes of indicating the route to the property or premises to be sold or advertised and shall only be erected on the days on which the property is to be shown.
  - (b) Such board shall not exceed 0,6 m<sup>2</sup> in area.
  - (c) Subject to the provisions of the Road Traffic Act or other applicable legislation, such a board shall not to be placed nearer than 1,8 m from the road verge, nor be placed at such a height that the lower edge of the board exceeds 600 mm above the ground.
  - (d) Such board shall not to be positioned nearer than 5 m from any road intersection, entrance or exit from a dual carriageway or a freeway as defined in the Road Traffic Act or other applicable legislation.
  - (e) Such board shall not be positioned so as to obstruct the view of any road traffic sign or street name sign from any portion of a roadway as defined in the Road Traffic Act or other applicable legislation.
  - (f) Such boards shall not to be positioned so as to hinder or obstruct a pedestrian’s right of way on a sidewalk or to unfairly prejudice traders.
  - (g) Only one such board per street frontage, per enterprise, shall be allowed to advertise services and such board shall be placed directly in front of the advertised premises.
  - (h) Applicants shall be required to indemnify the Municipality against any claims that may arise from the placement of such signs within the road reserve or on municipal property and shall be required to procure third party insurance for this purpose.

## **23. AERIAL ADVERTISEMENTS.**

- (1) Any person who wishes to display or cause to be displayed, an aerial advertisement, except by means of an aircraft, shall submit to the Municipality a written application on

the prescribed form and pay the prescribed fee and such application shall be accompanied by—

- (a) Particulars of the content and dimensions of the aerial advertisement and of the aerial device by means of which the advertisement is to be displayed as well the materials used and method of construction and anchorage;
  - (b) Particulars of the intended location, with a description of the premises to which the aerial device will be anchored or tethered and details of electricity and telephone poles and cables and other structures within 30m of the point of anchorage;
  - (c) The name and address of the person or contractor displaying the aerial advertisement and the name and address of the owner or person in control of the aerial device;
  - (d) The duration and times of intended display;
  - (e) Where the applicant is not the owner of the premises to which the aerial device is to be anchored or tethered, the written consent of the owner for such anchoring;
  - (f) Proof of the provision of an automatic deflation device;
  - (g) Adequate public liability insurance to the Municipality's satisfaction; and
  - (h) Approval and any conditions and requirements prescribed by the national Civil Aviation Authority.
- (2) Aerial advertisements shall not be displayed or caused to be displayed on, from or over Municipality property, including any street or public place, unless approval has been granted by the Municipality which may impose such conditions as it deems fit.

## **24. TRANSIT ADVERTISING.**

- (1) Any person who wishes to display or cause to be displayed any transit advertising sign shall annually submit to the Municipality a written application on the prescribed form, accompanied by the prescribed fee.

An application shall be accompanied by—

- (a) Particulars of the materials of which the advertising sign is made, its dimensions, and the manner of its construction and the method by which it is to be secured to the advertising vehicle;
  - (b) The name, address and telephone number of the owner of the vehicle or, if the owner resides or has his place of business outside the boundaries of the Municipality, of the person having control of the vehicle at all times;
  - (c) A copy of the current vehicle licence issued in respect of such vehicle as well as the registration as required in terms of the Road Traffic Act.
- (2) The parking of a transit advertising sign which is visible from a public road or a public place for the purposes of third-party advertising, is prohibited unless it is parked at a designated site approved by the Municipality in terms of its Policy on Outdoor Advertising;
- (3) Any trailer or vehicle utilised for the display of a transit advertising sign shall be registered as a mobile transit advertising trailer with the Municipality;
- (4) No transit advertising sign which is parked at a designated site in terms of subsection (2) may be parked at such site for longer than two consecutive weeks, after which a new application shall be lodged for each successive period of two weeks;



- (5) Notwithstanding the payment of the application fee mentioned in subsection (1), a rental, as reflected in the Municipality's tariff of charges shall be payable for each transit advertising sign for each week during which such sign is parked at a designated site;
- (6) A transit advertising sign parked on private property for the purpose of storage shall be positioned in such a manner as not to be visible from a street or public place;
- (7) The advertising panel or portion of the vehicle used for-transit advertising shall not exceed a cumulative total of 18 m<sup>2</sup>;
- (8) A transit advertising sign shall be fixed to the ground at the parking location and shall not be attached to any street furniture;
- (9) Notwithstanding the provisions of these By-laws, the Municipality or its authorised officials may, without prior notice, remove an advertising vehicle from municipal property, and in the case of an unauthorised advertising vehicle on private property, the Municipality may serve notice instructing the immediate removal thereof;

(Editorial Note: Wording as per original *Provincial Gazette*. It is suggested that the word "authorised officials" is intended to be "authorised officials".)

- (10) Unless an advertising vehicle impounded by the Municipality in terms of subsection (9) has been reclaimed within a period of three months from the date of notification of impoundment, such vehicle may be disposed of by the Municipality;
- (11) An impounded advertising vehicle shall only be released by the Municipality after all removal costs and fines have been paid in full and a copy of the current licence registration papers have been submitted to the Municipality for verification.

## **25. Street Pole Advertisements.**

- (1) Any person who displays or causes a street pole advertisement to be displayed shall comply with the following requirements—
  - (a) Only commercial products and enterprises shall be advertised.
  - (b) No street pole advertisement shall be displayed by any person unless accommodated in signs specifically for that purpose by the Council.
  - (c) Text on posters shall not be smaller than 70 mm in height.
  - (d) Signs shall not cover any municipal markings or painted stripes on lampposts.
  - (e) Advertisements in the vicinity of signalled intersections shall not display the colours red, amber or green if such colours will, in the opinion of the Council, constitute a road safety hazard.
  - (f) No sign shall be erected on any road with a speed limit of more than 60 km/h.
  - (g) No illumination or animation shall be allowed.
  - (h) No more than one street pole advertisement per street pole shall be permitted.
  - (i) Street pole advertisements shall not be used as directional signs.
  - (j) Advertisements shall have a transparent coverings or otherwise be so manufactured so as to prevent them from becoming untidy due to the effects of the weather.

[Section 25 inserted by section 1 (b) of MN 54 of 2014.]

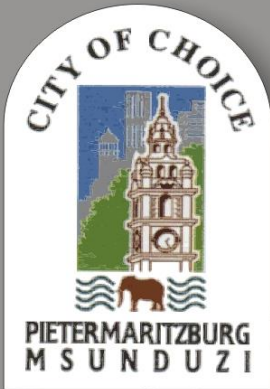
**26. REPEAL OF BY-LAWS.—**

- (1) The Advertising Signs By-laws published in the *Provincial Gazette* under Municipal Notice No. 15 of 2005 on 1 April 2005, are hereby repealed.
- (2) The Advertisement (Bill Posting) By-laws published in the *Provincial Gazette* under Provincial Notice No. 303 of 1959 on 9 July 1959, are hereby repealed.
- (3) Anything done under or in terms of any provision repealed by this By-law shall be deemed to have been done under the corresponding provisions of this By-law and such repeal shall not affect the validity of anything done under the By-law so repealed.

[Section 25 renumbered by section 1 (c) of MN 54 of 2014.]

**SCHEDULE  
AREAS OF CONTROL**

	<b>MAXIMUM</b>		<b>PARTIAL</b>	<b>MINIMUM</b>
Natural landscape	Rural landscape	Urban landscape	Urban landscape	Urban landscape
National parks	Municipal parks	Metropolitan open space systems	Central business districts	Commercial districts linked to railway/industrial zones
Nature reserves	Horticultural areas	Private open spaces	Commercial and office components of residential amenities	Industrial areas
Forestry areas	Public open spaces	Public open spaces	Commercial and office components of residential amenities	Industrial zones
Natural environments	Rural smallholdings	Pedestrian malls	Commercial nodes & ribbon development	Transport nodes
Extensive agriculture	Intensive agriculture	Pedestrian squares	Municipal/Government	Traffic corridors
Scenic corridors	Scenic drives	Community facilities	Entertainment districts or complexes	Transportation terminals
Scenic landscape	Scenic routes	Urban smallholdings	Educational institutions	
River corridors	Peri-urban and traditional Areas	All residential zones	Sports fields and stadia	
Wetlands		Scenic features	Mixed use and interface areas	
Open spaces		Scenic drives	Visual zones along urban roads/freeways	
		Gateways River corridors Wetlands Conservation areas Battlefield sites Historic or graded buildings and areas		



# The Msunduzi Municipality

## MUNICIPAL AERODROME BYLAWS

The Administrator has been pleased, under section 200 of the Local Government Ordinance, 1942 (Ordinance No. 21 of 1942), to approve of the subjoined Bylaws made by the City Council of the City of Pietermaritzburg :

1. In these Bylaws, unless the context otherwise requires -

**"aerodrome"** means the Aerodrome at Oribi established and maintained by the Council or its contractors for the landing, taking off, manoeuvring, parking or housing of aircraft and licensed as an aerodrome in terms of Chapter 22 of the Air Navigation Regulations 1963, and includes any other aerodrome which is or may be established or maintained by the Council as an aerodrome and which is licensed as such in terms of the said Air Navigation Regulations;

**"aircraft"** means any vehicle that can derive support in the atmosphere from the reactions of the air;

**"Council"** means the City Council of Pietermaritzburg;

**"licensee"** means the holder of the licence issued in respect of the aerodrome in terms of the Air Navigation Regulations and includes any person appointed or authorised by the licensee to manage, control and supervise the aerodrome on its behalf;

**"runway"** means a defined rectangular area on the aerodrome constructed or demarcated for the landing or take-off run of aircraft along its length.

### 2. ADMISSION OF PUBLIC

- (1) Where any notice is displayed prohibiting members of the public from entering any part of the aerodrome, no person shall enter any part of the aerodrome from which members of the public are so excluded except with the permission of the licensee.
- (2) No person other than a person entering or leaving the aerodrome by means of an aircraft landing or taking off from the aerodrome shall enter or leave the aerodrome otherwise than through a gate or entrance provided for that purpose.

### **3. REGULATION OR PROHIBITION OF VEHICULAR OR OTHER TRAFFIC**

Every person shall obey and observe any road traffic sign or surface marking erected, placed or demarcated by or on behalf of the Council or the licensee on the aerodrome for the purpose of warning, guiding, regulating, controlling, restricting or prohibiting the parking or driving of vehicles on the aerodrome or any part thereof.

### **4. ANIMALS ON AERODROME**

- (1) No person shall cause or permit any animal to graze, feed or stray on the aerodrome. Any animal found straying on any part of the aerodrome is liable to be impounded.
- (2) Any person bringing any animal or receiving an animal on the aerodrome shall ensure that it is at all times under proper control while it remains on the aerodrome.
- (3) No person shall cause any dog belonging to him or in his charge to enter or remain on the aerodrome unless such dog is, and at all times while on the aerodrome, continues to be, on a leash and is effectively restrained from causing annoyance to any other person on the aerodrome.

### **5. ACTS PROHIBITED ON AERODROME**

No person shall on the aerodrome -

- (a) obstruct or interfere with the proper use of the aerodrome;
- (b) obstruct any person employed by the licensee or the Council acting in the execution of his duty in relation to the aerodrome;
- (c) remove any notice board erected by or on behalf of the licensee or the Council or remove or deface any writing or document displayed on such notice board;
- (d) throw, leave or drop anything capable of causing injury to any person or animal or damage to any property;
- (e) dump or deposit any waste matter or refuse whatsoever elsewhere than in a receptacle or at a place provided or approved for the purpose by the licensee or set aside for that purpose by notice;
- (f) commit any nuisance or disorderly or indecent act or be in a state of intoxication or behave in a violent or offensive manner to the offence or annoyance of other persons on the aerodrome or make use of abusive, indecent or offensive language;
- (g) damage, interfere or tamper, without authority, with any part of the aerodrome or any equipment associated with the operation of the aerodrome; or
- (h) go on to or damage any lawn or flowerbed or remove or pick any soil, grass, tree, shrub or flower without permission of the licensee.

### **6. GENERAL CONTROL OF AIRCRAFT AND PILOTS**

- (1) It shall be a condition of use of the aerodrome by any aircraft that the owners and pilots thereof shall be jointly or severally responsible for any damage resulting to the aerodrome or any building, installation, structure, appliance or other property therein from -
  - (a) the failure of a pilot or of any member of the crew of the aircraft to comply with these bylaws or the Air Navigation Regulations; or
  - (b) the commission by any such person of any act of negligence.
- (2) The licensee shall be entitled to move any aircraft, vehicle or article or to do any other thing necessary to enforce compliance with these bylaws and the Air Navigation Regulations,

and neither the licensee nor the Council shall be held liable for the consequences of any action properly taken by him in pursuance of this section.

- (3) No aircraft shall be parked except in a space set aside for such parking by the licensee.
- (4) The person concerned in or responsible for the parking of an aircraft shall ensure that the aircraft is firmly secured to the ground when left unattended or during weather likely to cause the aircraft to move.
- (5) Neither the Council nor its servants shall be liable for any theft from or damage to an aircraft occurring while it is at the aerodrome and particularly not for any damage occurring to such aircraft while being moved in or out of hangars, parked or moved from one position to another on the aerodrome.
- (6) No aircraft shall be left unattended within the landing area.
- (7) No engine of an aircraft shall be started unless there is a pilot or a competent engineer in the cockpit, or in any hangar unless permitted by the licensee.
- (8) No engine of an aircraft shall be run while the aircraft is in a stationary position and is in such a position that the resulting airstream blows into or against any building, aircraft or person, and no engine of an aircraft shall be run while the aircraft is in a stationary position unless effective and properly constructed chocks are placed in front of its wheels, whether or not they are fitted with brakes.
- (9) No chock, drum, loading step, trestle or other equipment or – object capable of causing an obstruction shall be left on the landing field except when its presence there is actually and immediately necessary.
- (10) Save in an emergency no application for the use of night landing facilities shall be granted unless received by the licensee or his authorised representative during office hours.
- (11) The licensee may stop an aircraft, pilot or passenger from leaving the aerodrome on instructions from -
  - (a) the Department of Transport (Civil Aviation);
  - (b) the Department of Immigration;
  - (c) the Department of Customs and Excise;
  - (d) the Department of Defence; or
  - (e) the South African Police.
- (12) The Council may under and by virtue of its powers under section 8 of Ordinance No. 14 of 1936, and the Local Authorities Ordinance, No. 25 of 1974, lease to approved persons, land and/or buildings within the parking areas of the aerodrome and for the purpose of establishing aircraft maintenance workshops, hangar facilities for the housing of aircraft, fuelling sites, office accommodation, open parking areas and for other purposes relating to aerodromes. The provisions of this sub-bylaw shall not apply to any parking area reserved for the State for its purposes.
- (13) Operators of aircraft shall obey all signs and surface markings erected or placed by or on behalf of the licensee or the Council for the purpose of regulating, controlling or restricting the movement, parking or fueling of aircraft on the aerodrome.



- (14) No aircraft shall be parked or left unattended anywhere on the runway or in such a position as to endanger aircraft landing or taking off from the runway.
- (15) No person shall, save in an emergency, use a portion of the aerodrome other than the runway for the landing or taking off of an aircraft.
- (16) No person shall, without the permission of the licensee, cause or permit any aircraft to be parked or berthed on the aerodrome, except in an area which is demarcated by signs or surface markings as being set aside for that purpose. An aircraft parked in an authorized parking area and unattended shall be properly moored or otherwise secured by the operator of that aircraft.
- (17) The operator or other person in lawful charge of any aircraft or vehicle which is parked in contravention of these bylaws or which is abandoned or left unattended in a position which interferes with the use of the aerodrome by other aircraft or vehicles aircraft or vehicle to another place indicated by the licensee or from the aerodrome, and if such person fails or refuses or is not present to comply forthwith with such direction, the licensee or a police official may have such aircraft or vehicle moved to such other place or from the aerodrome, and any such action by the licensee or a police official shall not exempt such person from a prosecution in respect of such refusal or failure.

## **7. REMOVAL OF DAMAGED OR DISABLED AIRCRAFT**

- (1) The operator of any damaged or disabled aircraft shall, if directed to do so by the licensee, move such aircraft or any part thereof or any cargo or thing carried therein to another place on the aerodrome indicated by the licensee or from the aerodrome.
- (2) If the operator of a damaged or disabled aircraft refuses or fails or is not present to comply forthwith with any direction given by the licensee in terms of sub-section (1), the licensee may take all steps necessary to ensure that such direction is complied with as expeditiously and safely as possible and may recover from the operator of that aircraft the cost incurred in ensuring compliance with such direction and any such action by the licensee shall not exempt such operator from prosecution in respect of such refusal or failure.

## **8. SUPPLY OF FUEL TO AIRCRAFT**

- (1) No person shall on the aerodrome supply fuel to any aircraft except at a place and in a manner approved by the licensee.
- (2) The licensee may make any approval granted by him in terms of subsection (1) subject to compliance with such conditions as he may consider necessary to impose in order to safeguard persons or property on the aerodrome and he may from time to time vary or add to any condition so imposed or withdraw his approval.

## **9. PERSONS OR CARGO CARRIED IN AIRCRAFT ARRIVING FROM OUTSIDE THE REPUBLIC**

No person shall be disembarked or cargo unloaded from aircraft arriving on the aerodrome from any point outside the Republic of South Africa unless permission for such disembarkation or unloading has been granted by the Customs, Civil Aviation, South African Police, Immigration or Health Authorities, or, if necessary, by all these authorities.

**10. BOARDING OR TAMPERING WITH AIRCRAFT**

Except with the permission of the person in lawful charge of an aircraft no person shall on the aerodrome :

- (a) board such aircraft; or
- (b) tamper or interfere in any way whatsoever with such aircraft or anything used in connection therewith.

**10A Safety Measures Against Fire**

- (1) No person shall on the aerodrome –
  - (a) smoke in or bring an open flame into any place where such act is prohibited by a notice displayed on the direction or with the permission of the licensee;
  - (b) by any act or omission cause or render likely an outbreak of fire;
  - (c) tamper or interfere with any fire hose, reel, hydrant or any other item of equipment provided solely for fire-fighting purposes;
  - (d) keep, store, discard or discharge any flammable liquid, gas, signal flares or other like material except in the receptacle in any aircraft appropriate for the purpose or in a place on the aerodrome specifically approved by the licensee for the purpose; or
  - (e) store or stack any material or equipment in a manner which in the opinion of the licensee constitutes or will constitute a fire hazard.
- (2) All persons using or employed at the aerodrome shall make themselves acquainted with and comply with the fire orders issued by the licensee from time to time.

**11. LANDING, HANGARAGE AND PARKING**

- (1) The charges for landing, hangarage and parking on the aerodrome shall be as set out in Schedule A and, with the exception of landing charges, shall be payable in advance.
- (2) Subject to the provisions of the Local Authorities Ordinance 25 of 1974, the Council may enter into leases of its hangars at rentals not exceeding the charges set out in Schedule A.
- (3) The use of any hangar accommodation shall be entirely at the hirer's own risk.
- (4) The Council may terminate the hire of any hangar forthwith and without notice upon failure by the hirer to pay the fees prescribed herein or the rental agreed upon or upon breach by him of any of the terms of these bylaws or any condition of his lease.
- (5) Should the aerodrome be taken over by the Department of Defence in any military emergency, all hangar tenancies shall immediately become subject to 24 hour's notice of termination.

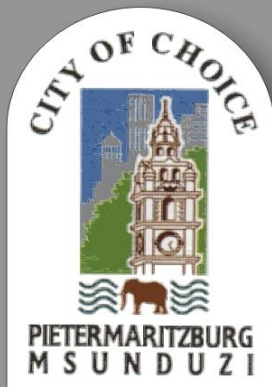
- 11A. A fee as set out in Schedule A shall be payable by all passengers departing from the aerodrome on scheduled commercial flights.

**12. TRADING**

No person shall engage in the sale of refreshments or in the sale or hire of any other commodity or in the rendering for reward or otherwise of any service within the boundary of the aerodrome without having obtained a written permit to do so given by the Council under the hand of the Town Clerk.


**13. OFFENCES AND PENALTIES**

- (1) Any person who contravenes any provision of these bylaws shall be guilty of an offence.
- (2) Any person convicted of any offence under these bylaws shall be liable to a fine not exceeding five hundred rand in the case of a first conviction or, in the case of a second or subsequent conviction for the same offence, to a fine not exceeding one thousand rand, or, in default of payment of any fine imposed in either case, to imprisonment for a period not exceeding three months; provided that in the case of a continuing offence, a fine not exceeding fifty rand for each day upon which the contravention continued may be imposed, but no such fine shall in anyone prosecution or within anyone month exceed one thousand rand.



# The Msunduzi Municipality

## BYLAWS REGULATING THE CONTROL AND DISCHARGE OF FIREWORKS

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<p><b>Vol. 7</b></p>	<p><b>PIETERMARITZBURG,</b> 18 JANUARY 2013 18 JANUARIE 2013 18 kuMASINGANA 2013</p>	<p><b>No. 882</b></p>

18 January 2015

### BYLAWS REGULATING THE CONTROL AND DISCHARGE OF FIREWORKS

The Municipal Manager of the Msunduzi Municipality, acting in terms of section 13(a) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), hereby publishes the Bylaws Regulating the Control and Discharge of Fireworks for the Msunduzi Municipality, as adopted by its Council, as set out hereunder.

## Definitions

1. In these bylaws, unless the text otherwise indicates -

“the Act” means the Explosives Act, 1956 (Act No. 26 of 1956) and shall include the Regulations under the Act;

“area” means the area of jurisdiction of the Msunduzi Municipality;

“Council” means the the Msunduzi Municipality and its successors in law and includes the Council of the Municipality or its Executive Committee or any other body acting by virtue of any power delegated to it in terms of legislation, as well as any official to whom the Executive Committee has delegated any powers and duties relating to these bylaws;

“dealer” means a retail dealer or a wholesale dealer;

“fireworks” means explosives of Class 7, Division 2, shop goods only, as defined in the regulations;

“fireworks inspector” means a person deputised to act as an inspector under the Act;

“fire officer” means the Manager, Fire and Disaster Management who is authorised and delegated to administer these bylaws, subject to any policy directions of the Council;

“inspector” means a chief inspector of explosives appointed by the Minister, or a peace officer of the Municipality appointed by the Chief Inspector of Explosives as an inspector under the Act;

“law enforcement officer” means a duly authorised officer appointed by the Council as a traffic officer/peace officer or a member of the South African Police Services;

“Minister” means the Minister of Safety and Security;

“Municipality” means the Msunduzi Municipality;

“person” means a natural person or a juristic person and or the purposes of these bylaws, shall include a religious or cultural organisation;

“premises” means any building or room in which fireworks are stored, kept or handled for the purposes of sale;

“regulations” means the Explosives Regulations;

“retail dealer” means a person, including a juristic person, who sells or supplies fireworks to any person for use or consumption by that person and not for resale;

“technician” means the person qualified to discharge display fireworks safely.

“wholesale dealer” means a person, including a juristic person, who supplies or sells fireworks to any other person or dealer for the purposes of resale.

## LICENCE TO DEAL IN FIREWORKS

2 (1) No person shall sell or supply fireworks unless he is in possession of a licence granted under Chapter 9 of the regulations, which licence shall be in addition to any other licence or consent which may be required in terms of these bylaws or any other law.

- (2) Any person applying for a licence referred to in (a) above shall pay such fees as are prescribed by the Municipality.

### **Requirements for the handling and storage of fireworks**

- 3 (1) Premises in which fireworks are handled should have at least two exits. Where any premises have only one exit, the fireworks shall be kept at the rear (relative to the exit) of the premises.
- (2) The doors to the exits shall be kept unlocked and unbolted during trading hours and a clear passage shall exist between the counters holding the fireworks and all exits, and no obstacles shall be placed in these passages.
- (3) A dealer shall have a 9kg dry chemical fire extinguisher which shall be serviced annually on the premises, in a readily accessible position or as determined by a designated Fire Officer.
- (4) A retail dealer may keep on his premises no more than 500 kilograms gross mass of fireworks, provided that the fireworks, contained in their inner or outer packages, are kept on shelves or other fittings separated from goods of an inflammable or combustible nature.
- (5) Fireworks in excess of 1000 kilograms gross mass shall be stored in a fireworks magazine built according to the specifications as provided for in Chapters 7 and 8 of the Regulations.
- (6) A dealer shall not interfere with the inner packing of the fireworks, or allow or permit it to be interfered with.
- (7) Fireworks shall not be displayed in any window or any other places where such fireworks can be interfered with by the public.
- (8) Notices with 100mm red lettering on a white background must be provided as follows:
- (a) to the outside of the premises in a prominent position adjacent to every entrance, reading "Dealer in Fireworks",
  - (b) in prominent positions inside the premises, "No smoking" signs in appropriate official languages.
- (9) (a) Every dealer and every person employed in or about the premises shall take all due precautions for the prevention of the accidents by fire and for preventing unauthorised persons having access to the fireworks and shall abstain from any act whatsoever which tends to cause fire.
- (b) Goods of a dangerous nature such as inflammable liquids, acids, alkalis and the like shall not be kept on the same premises together with fireworks and safety matches.
- (10) No person shall smoke in, or take a naked light or fire into, premises where fireworks are kept, stored or being handled, nor shall any person be allowed to do so.
- (11) Every person shall, on premises where fireworks are kept, abstain from any act whatsoever which tends to cause fire.



**Sale of fireworks**

- 4 (1) A retail dealer in fireworks, when purchasing or obtaining fireworks shall demand from the manufacturer or supplier a properly executed, signed and dated invoice which he shall retain for a period of at least two (2) years for production on demand of an inspector or fire officer.
- (2) A manufacturer or wholesale dealer shall supply fireworks only to a retail dealer who is in possession of a valid licence issued in terms of the regulations, and the number of such licence shall be quoted on the invoice.
- (3) The manufacturer or wholesale dealer shall keep a register in which full particulars of each transaction and the aforementioned licence number shall be recorded. Such register shall be kept up to date and be available for inspection at any time, and shall not be destroyed until after the lapse of two years from the date of the last entry therein.
- (4) A dealer shall not sell or allow or permit to be sold any fireworks to a child under the age of 16 years.
- (5) A dealer shall furnish each employee engaged in selling fireworks with a copy of the regulations and bylaws and of the conditions attaching to his licence to deal.
- (6) A dealer's premises may be inspected at anytime by a fireworks inspector or fire officer.
- (7) Any person on a dealer's premises who fails to comply with a request made by the licensee or his employees in the interest of safety, shall be guilty of an offence.
- (8) Sale, distribution or storage of fireworks in or from a vehicle, trailer or temporary structure on a street is prohibited.
- (9) Notwithstanding the provisions of section 4(1) to (8), a dealer shall comply with the provisions of Chapter 9 of the regulations.

**Use or exploding of fireworks**

1. No person shall set off, discharge or explode any fireworks on any street, in any public place or in or on any public thoroughfare.
2. No fireworks shall be set off, detonated or exploded within a distance of 200 metres of any hospital, clinic, petrol service station, old age or nursing home, animal welfare organisation or institution
3. Fireworks may be set off, discharged or exploded on the lot of a private dwelling only with the knowledge and consent of the occupant or owner and subject to the provisions of these bylaws.
4. No person shall direct a firework at any person, animal, building or motor vehicle where such firework is in the process of exploding or detonating and where it is capable of projecting or discharging a charge or pyrotechnical effect from a distance of one meter.
5. No person shall set off, discharge or explode any fireworks within a distance of 500 meters of a nature reserve.
6. No person shall set off, discharge or explode any fireworks in any place where an animal is present.
7. Any firework which fires a projectile shall be so set up that the projectile will go up into the air as nearly as possible in a vertical direction.

**Public fireworks displays**

8. Unless authorized in terms of section 17, no person may set off, discharge or explode any fireworks on any day or at any time except —
  - a. New Years Eve from 23h00 to 01h00;
  - b. Hindu New Year from 19h00 to 22h00;
  - c. Lag b'omer from 19h00 to 22h0;
  - d. Guy Fawkes day from 19h00 to 22h00; and
  - e. Diwali/Deepavali from 19h00 to 22h00.
9. No person shall set off, detonate, or explode any fireworks for religious, cultural or ceremonial purposes without first having obtained the written permission of the fire officer.
10. A person or organization referred to in section 13 shall comply with any conditions of usage and time imposed by the fire officer.
11. The Municipality may approve cultural, religious and other days and times during which fireworks may be set off, detonated or exploded after consultation with the local inspector of explosives and the relevant cultural and religious body or organisation.
12. No public display of fireworks shall be set off, detonated or exploded on any day or time except for those days and times declared by the Municipality as religious, cultural or ceremonial in respect of that particular person or organisation for which prior written approval had been obtained from the fire officer.
13. Application for permission to operate a public display of fireworks shall be made in writing to the fire officer at least seven days prior to such event and shall provide -
  - (1) the name of the person or the organisation sponsoring the display, together with the names and qualifications of the persons in actual charge of the firing of the display who shall be at least 18 years of age and competent for the work;
  - (2) the date and time of the day at which the display is to be held;
  - (3) the exact location planned for the display ;
  - (4) the numbers and kinds of fireworks to be discharged and the value of the display;
  - (5) the manner and the place of storage of the fireworks prior to the display; and
    - (a) a diagram of the grounds on which the display is to be held showing -
      - (i) the point at which the fireworks are to be discharged, which shall be at least 100 metres from the nearest building, road or railway, and at least 20 metres from the nearest telephone, telegraph or power line, tree or other overhead obstruction;
      - (ii) the direction in which aerial fireworks, if any, are to be fired;
      - (iii) the area to be clear of persons which shall extend at least 50 metres from the front and to the sides of the point at which the fireworks are to be discharged;
      - (iv) the area to be kept clear on which falling residue from aerial fireworks is expected to drop, which shall extend for at least 100 metres to the rear of the firing point; and
      - (v) the location of all buildings and the roads within 200 metres of the firing site and the location of all tress, telegraph or telephone lines or other overhead obstructions at or adjacent to the firing site.

- 18 (1) Where any person has received the written authority of the fire officer to hold a public display of fireworks, such person shall complete a form indemnifying the Municipality against any criminal or civil claims arising from such public display.
- (2) Where a person has received written authority in terms of section 17, such person shall notify the local office of the Society for the Prevention of Cruelty to Animals that such authority has been obtained, prior to the commencement of the display.
19. At a public display of fireworks it shall be an offence -
- (a) for any person wilfully to enter into, or remain in, an area reserved for receiving falling residue from aerial fireworks;
  - (b) and for any unauthorised person to wilfully proceed beyond the area demarcated by the organisers of the display, for spectators; and
  - (c) to disobey the instruction of any uniformed law enforcement officer.

### **Compliance with Act and regulations**

- 20 (1) Notwithstanding the provisions of these bylaws, any person who deals in, sells, handles, stores, uses or explodes fireworks shall comply with all the relevant provisions of the Act and regulations.
- (2) The provisions of the Act and regulations relating to fireworks, as defined in the regulations, and any penalties relating to the contravention of any provisions of the Act and regulations relating to fireworks, shall be deemed to form part of these bylaws.

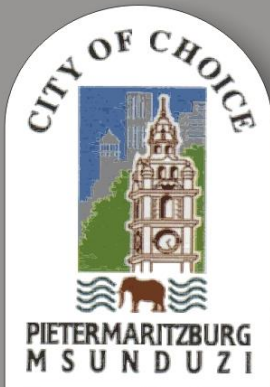
### **Seizure of fireworks**

21. A law enforcement officer, inspector or fire officer may seize any fireworks being held in violation of these bylaws or the Act or which have been set off, discharged or exploded in violation of these bylaws or the Act and such officer, inspector or fire officer may confiscate and dispose of such fireworks without compensation.

### **Offences and penalties**

22. Any person who -
- (1) contravenes or fails to comply with any provision of these bylaws; or
  - (2) fails to comply with any lawful instruction given, or any notice issued or displayed in terms of these bylaws; or
  - (3) obstructs or hinders any authorised official or representative or employee, of the Municipality in the execution of his or her duties under these bylaws,

is guilty of an offence and liable on conviction to a fine in an amount, and or imprisonment for a period, to be determined by a court, provided that in the case of a continuing offence, an additional fine and/or imprisonment for a period for each day on which such offence continued, may be imposed and, provided further, that in addition to any penalty imposed in terms of these bylaws, the person so convicted shall be liable to pay the cost of repair of any damage caused, or costs incurred in remedying any damage, resulting from the offence.



# The Msunduzi Municipality

## BYLAWS RELATING TO THE MANUFACTURE, STORAGE AND SALE OF FOODSTUFFS

NO 229/1973 3 May 1973

The Administrator, acting on the advice and with the consent of the Executive Committee, has been pleased, under the authority of Section 270 of the Local Authorities Ordinance 25 of 1974 (Natal), to approve of the subjoined new Bylaws relating to the Manufacture, Storage and Sale of Foodstuffs for the City of Pietermaritzburg and the repeal of the Bylaws relating to the Manufacture, Storage and Sale of Foodstuffs for the said City, published under Provincial Notice NO 139 of 1958, as subsequently amended, all as adopted by the City Council of the said City at its meeting held on the 13 February 1973:-

### PART 1: GENERAL

- 1 (a) These bylaws shall apply to food or drink manufactured, prepared, conveyed, stored, handled, exposed for sale or sold for human consumption, but not to drugs or water, other than ice, except where these are used as ingredients in the preparation of other articles of food or drink, and any reference herein to food or drink of any kind shall, unless the context otherwise indicates, be deemed to refer to food or drink intended for human consumption.
- (b) In any criminal proceedings under these bylaws, the onus of proving that any article of food or drink, forming the subject of a charge and alleged to have been dealt with in any manner whatsoever in contravention of any provision of these bylaws, was not so dealt with or was not intended for human consumption shall be on the person charged.
2. In these bylaws, unless the context indicates otherwise -
  - (a) the words "food" and "sell" shall have the meanings assigned to them in Section 118 of the Public Health Act, NO 36 of 1919 and any amendment thereof;
  - (b) "approved" shall mean approved by the Medical Officer of Health;
  - (c) "premises" shall mean premises as defined in the Health Act, NO 63 of 1977, and in relation to a hawker's business shall include any vehicle used in connection therewith (PN 685/1977).

3. (a) No person shall use or cause or permit to be used in the manufacture or preparation of any article of food or drink, whether solid or liquid, any matter, substance or ingredient which is diseased, unsound, unwholesome or injurious to health.
- (b) No person shall keep, store, sell or expose for sale or introduce into the City for the purpose of sale any article of food or drink which is not clean, wholesome, sound and free from any disease, infection or contamination.
4. (a) No person shall manufacture, prepare, store, keep, handle, sell or expose for sale any article of food or drink in any room or portion of any premises used as a sleeping apartment or living room or which has any direct communication with any sleeping apartment or living room or with any sanitary convenience, or which is so situated or so constructed that any sanitary convenience, sewer or drain ventilates into it or is so used or kept as to be liable to render any such article contaminated or unwholesome or injurious or dangerous for human consumption.
- (b) No person shall use or cause or permit to be used as a sleeping apartment, living room, cloak room or change room, any room or portion of any premises in which any article of food or drink is manufactured, prepared, stored, kept, handled, sold or exposed for sale.
- (c) No person shall manufacture or prepare any article of food or drink for sale for human consumption in any building, unless there is provided for the purpose in such building a room or rooms not less than 15 square metres in extent, and such manufacture or preparation is carried out exclusively in such room or rooms. Such rooms shall comply with the requirements of sub-bylaw (a) of this bylaw and shall have-
  - (i) dust-proof ceilings;
  - (ii) walls tiled or plastered to a smooth finish and coated with a light-coloured impervious and washable paint or other approved impervious material; and
  - (iii) floors of concrete or other hard impermeable material, with a smooth surface capable of easy cleaning, graded and drained to a gully, and no activity other than the said manufacture or preparation shall be carried on in the said rooms except with the written authority of the Medical Officer of Health, which authority shall not be granted unless the Medical Officer of Health is satisfied that the other activity concerned will not be likely to result in the contamination of or otherwise adversely affect the food or drink being manufactured or prepared.
- (d) For the purpose of sub-bylaw (c) of this bylaw "preparation" shall not include the cutting or slicing of bread and the like for the purpose of sale or the preparation of teas, drinks and the like, usually carried out in connection with the business of a restaurant.
5. No person shall carry on any business or occupation in which any article of food or drink is manufactured, prepared, stored, kept, handled, sold or exposed for sale in any premises which are not provided to the satisfaction of the Medical Officer of Health with -
  - (a) (repealed)
  - (b) a wholesome supply of running water sufficient at all times for the requirements of the business or occupation and the persons employed therein;
  - (c) (repealed)

- (d) wash-hand basins, fitted with a wholesome supply of hot and cold running water and traps and waste pipes in accordance with the Drainage Bylaws;
  - (e) washing facilities, fitted with a wholesome supply of hot and cold running water and traps and waste pipes in accordance with the Drainage Bylaws for the cleansing of all equipment;
  - (f) change-rooms or cloakrooms to a minimum . extent of 0,6 square metres per person for the use of all persons employed on the premises, separately for male and female persons; provided that the provisions of this paragraph shall not apply in any case where less than three persons are employed upon the premises and where suitable steel cupboards for the storage of their clothing has been provided;
  - (g) a storeroom of sufficient size, but with a minimum floor area of 10 square metres for all articles of food and drink requiring to be stored in the course of the business or occupation;
  - (h) a roofed-over area with an impervious and graded floor, kerbed and drained to a gully, of sufficient size and suitably situated for the accommodation of the number and size of refuse receptacles required to be provided on the premises in terms of the Refuse and Night Soil Removal Bylaws; and which are not rendered and maintained rodent-proof in the manner prescribed in the regulations prescribed under the Public Health Act by Government Notice NO R1411 of the 23 September 1966, or any amendment thereof.
6. The occupier or person in charge of any premises in which any article of food or drink is manufactured, prepared, stored, kept, handled, sold or exposed for sale shall comply with the following requirements:
- (a) He shall keep such premises and all appurtenances thereto at all times in a clean and sanitary condition and free from any dust, dirt, filth, or other noxious matter or thing and free of rodents, cockroaches, bugs, flies and other vermin, and shall cause the premises to be swept daily
  - (b) He shall cause all refuse receptacles on the premises to be kept in the area provided for them in terms of Bylaw 5 (h) at all times except where otherwise provided by the Refuse and Night Soil Removal Bylaws.
  - (c) He shall not keep or accumulate or permit or cause to be kept or accumulated upon any portion of the premises any matter or thing not required for the conduct of his business and which is likely to become a source of dust, dirt or contamination.
  - (d) He shall not at any time keep or cause or permit any live animal or bird to be kept on the premises.
  - (e) He shall not cause or permit any articles of personal clothing not being worn in the conduct of the business or occupation to be kept or hung in any part of the premises other than a cloakroom or changeroom provided in terms of Bylaw 5.
  - (f) He shall ensure that every utensil, receptacle, measure, implement, vehicle or other appliance or thing used therein or in connection therewith in the manufacture, preparation, storage, handling, sale, dispatch or delivery of any article of food or drink is constructed of such materials and in such a manner as to be easily cleansed and kept clean and shall at all times cause every such utensil, receptacle, measure, implement, vehicle or other appliance or thing to be kept clean and free from any matter or substances which would or might contaminate or infect such food or drink.



- (g) He shall cause every table or counter-top used in connection with the manufacture, preparation or handling of food to be made of smooth nonabsorbent material or to be covered with stainless steel, marble, galvanised sheet iron or other impervious and washable material.
  - (h) He shall not use or cause or permit to be used any table, counter utensil, receptacle, measure, implement, vehicle or other appliance or thing which is normally used in connection with his business or occupation for any purpose which might contaminate any article of food or drink or render it unwholesome or injurious or dangerous for human consumption.
  - (i) He shall not subject or cause or permit to be subjected to unnecessary handling by or contact with the body or clothing of any person any article of food or drink which may be liable to contamination thereby, and he shall provide, and ensure the use of, suitable implements for the handling thereof.
  - G) He shall cause every article of food or drink and any ingredient used in its manufacture or preparation which is of such a nature as to be liable to contamination by contact with flies, vermin, dust, dirt, filth or other noxious matter or thing to be at all times effectively and sufficiently protected from such contamination.
  - (k) He shall ensure that such premises are adequately ventilated or otherwise treated at all times when in use to ensure that all noisome or offensive smells, gases, smoke, vapours, dust or other atmospheric impurities generated in the course of any activity carried on therein are as far as practicable effectively removed, destroyed or rendered harmless and inoffensive.
  - (l) He shall provide a refrigerator or refrigerating plant for the purpose of preserving any perishable food stored, kept or exposed for sale on such premises.
  - (m) He shall ensure that he himself and every person in his employment, while engaged in the manufacture, preparation, storage, handling, sale, dispatch or delivery of any article of food or drink, shall be scrupulously clean as to his person and clothing and shall be clothed in clean overalls of approved washable material provided for the purpose.
  - (n) He shall ensure that a supply of soap and clean towels is available at every wash-hand basin.
  - (o) He shall ensure that he himself and every person employed by him in the manufacture, preparation, storage, handling, sale, dispatch or delivery of any article of food or drink shall have been immunised against enteric and typhoid fever.
  - (p) He shall ensure that he himself and every person employed by him, whilst engaged in the manufacture, preparation, storage, handling, sale, delivery or dispatch of any article of food or drink shall not indulge in the smoking of tobacco in any form (PN 685/1977).
7. No person shall use for the packing or wrapping of any article of food or drink any bottle, jar, tin or other container or any paper, cardboard or other material which is not clean and free from any matter or substance which might contaminate or infect such article.
8. Every person who shall convey or deliver any article of food for the purposes of sale for human consumption shall cause such article to be at all times during such conveyance or delivery to be effectively and completely protected from contamination by flies, dust, dirt or any other noxious matter.

## **PART II :SPECIAL PROVISIONS IN REGARD TO SPECIFIED TRADES**

### **A. Manufacture and preparation of Aerated or Mineral Waters and Other Drinks**

1. In addition to the requirements of Part I of these bylaws, the occupier or person in charge of any premises in which any form of drink intended for sale for human consumption is manufactured or prepared shall comply with the following requirements: -
  - (a) He shall cause the floor of such premises to be washed and cleaned at least once in every day.
  - (b) He shall cause the inner surface of the ceiling of the room or rooms in which the manufacture or preparation takes place to be coated with a light colour in1pervious and washable paint or other approved impervious material, and shall cause such ceiling and the walls of such room or rooms to be washed or recoated with such paint or other materials as often as may be necessary to keep them in a clean and sanitary condition.
  - (c) He shall cause every bottle, utensil, vessel, implement or appliance and every cork, stopper, cover or loose part thereof used in such manufacture or preparation to be thoroughly cleansed and afterwards sterilised prior to each occasion of use.

### **B. Manufacture, Storage, Sale and Delivery of Bread and Bakery Products, including Confectionery**

1. For the purpose of the Bylaws in this section, the following words or expressions shall have the meanings hereby assigned to them: -

"Baker" shall mean any person who carries on the trade or business of manufacturing, preparing or storing any bread or bakery product.

"Bakery" shall mean any premises on which any such trade or business is carried on.

"Bakehouse" shall mean any room or place on such premises in which bread or bakery products are baked or otherwise cooked.

"Bakery Products" shall mean and include bread, cakes, biscuits, pastry, rolls, tarts, pies, sweetmeats and other confectionery.
2. In addition to the requirements contained in Part I of these Bylaws, the occupier or person in charge of any premises used or intended to be used as a bakery shall comply with the following requirements:-
  - (a) He shall provide on such premises in the bakehouse and the mixing room and, if so required by the Medical Officer of Health, in any other part of such premises, an even floor constructed of concrete or other hard, impermeable material with a smooth surface capable of being easily cleaned.
  - (b) He shall cause the yard on such premises or such portion of the yard as the Medical Officer of Health may deem sufficient, to be paved with concrete, asphalt or other hard impermeable material and to be properly and sufficiently drained, so that it may at all times be kept in a clean and sanitary condition.

- (c) (repealed)
- (d) He shall cause the inner surface of the walls in the bakehouse and, if so required by the Medical Officer of Health, the walls in any other room or place in the bakery, to be plastered with lime or cement plaster brought to a smooth surface.

3. Every person who shall construct a new bakery or a new bakehouse on any existing bakery premises after the date of the promulgation of these Bylaws shall -

- (a) cause the opening of the oven furnace to be situated outside the bakehouse and at least two metres from the nearest point of any door or window in the bakery;
- (b) cause the ceiling of the bakehouse and the mixing room and, if so required by the Medical Officer of Health, any other portion of the premises, to be constructed as to be dust-proof;
- (c) cause the walls of such bakehouse to be at least three metres in height.

4. In addition to the requirements contained in Part I of these Bylaws, the occupier or person in charge of any bakery shall comply with the following requirements:-

- (a) He shall cause every table used in connection with the bakery to be made of non-absorbent material and covered with marble, galvanised sheet iron or other impervious and washable material.
- (b) He shall cause the floor of the bakehouse and mixing room and every table therein to be thoroughly cleaned after each time of use.
- (c) He shall cause the inner surface of the ceiling of the bakehouse and mixing rooms to be coated with a light-coloured impervious and washable paint or other approved impervious material and shall cause such ceiling and the walls of the bakehouse and mixing room to be washed or recoated with such paint or other material as often as may be necessary to keep them in a clean and sanitary condition.
- (d) He shall ensure that he himself and every person in the premises engaged in the manufacture or preparation of any bakery products shall wear a clean washable cap or other covering for the head.

### **C. Sale and Delivery of Meat, Fish or Poultry**

1. For the purpose of the Bylaws in this section the following words shall have the meanings hereby assigned to them:-

"Butcher" means any person who carries on the trade or business of selling the flesh and offal of any animal (hereinafter described as meat) for human consumption.

"Fishmonger" means any person who carries on the trade or business of selling the flesh of any fish for human consumption.

"Poulterer" means any person who carries on the trade or business of selling the flesh of any fowl, duck, goose, turkey or any other domestic or game bird for human consumption.

"Offal" means the head, horns, feet and internal organs of any animal.

2. In addition to the requirements contained in Part I of these Bylaws, the occupier or person in charge of any premises used or intended to be used for the purpose of carrying on the trade or business of a butcher, fishmonger or poulterer shall comply with the following requirements: -

- (a) He shall provide on such premises in any room or place in which any meat, fish or poultry is prepared for sale, stored, kept, handled, sold or exposed for sale a floor constructed of concrete or other hard, impermeable material graded and drained to a gulley and with a smooth surface capable of being easily cleaned.
- (b) He shall cause the yard in such premises or such portion of the yard as the Medical Officer of Health may deem sufficient, to be paved with concrete, asphalt or other hard impermeable material and to be properly and sufficiently drained, so that it may at all times be kept in a clean and sanitary condition.
- (c) (repealed)
- (d) He shall cause the inner surface of the walls of any room or place on such premises on which any meat, fish or poultry is prepared for sale, stored, kept, handled, sold or exposed for sale to be plastered with lime or cement plaster brought to a smooth surface or covered with tiles or other approved impervious material to a height of 2,500 metres from the floor.
- (e) He shall provide on such premises a yard not less than 4,500 metres in length and 4,500 metres in width to which there is direct vehicular access from an adjoining road or right-of-way on which the loading or unloading of meat, offal, poultry or fish on or from any delivery vehicle shall take place; provided that the Council may in any particular case consent to a yard of different dimensions where it is of the opinion that in the particular circumstances the proposed yard is of a size capable of being used for the above purpose.

Where such yard abuts on the road or right-of-way aforesaid, the width of such yard shall be measured along and not in a direction away from the road or right-of-way boundary of the land.

Nothing herein contained shall require structural alterations to be made to my premises lawfully used for such trade or business at the date of promulgation of these Bylaws and continuously thereafter, for the purpose of providing such a yard, provided that if a new building is erected on the land the provisions of this Bylaw shall be complied with.

3. In addition to the requirements contained in Part I of these Bylaws, the occupier or person in charge of any premises in which meat, fish or poultry is prepared for sale, stored, kept, handled, sold or exposed for sale shall comply, with the following requirements: -

- (a) He shall cause every table or counter used in connection with such trade or business to be made of non-absorbent material and covered with marble, galvanised sheet iron or other impervious and washable material.
- (b) He shall cause the floor of every room or place in the premises in which any meat, fish or poultry is prepared for sale, handled, stored, sold or exposed for sale to be thoroughly washed and cleansed every day, and all tables, counters and blocks to be thoroughly cleansed and washed as often as may be necessary to maintain them in a clean and sanitary condition.
- (c) He shall cause the inner surface of the ceiling of every such room or place to be coated with a light coloured impervious and washable paint or other approved impervious material, and

shall cause such ceiling and the walls of such rooms or places to be washed or recoated with such paint or other material as often as may be necessary to keep them in a clean and sanitary condition.

4. No person shall prepare for sale, store, keep, expose for sale or sell for human consumption the flesh of any animal or the carcass of any bird which has died as the result of accident or disease unless, in the case of accident, such flesh or carcass has been examined and passed by the Medical Officer of Health or any health inspector as fit for human consumption.
5. No person shall-
  - (a) in the process of loading, unloading, transporting, handling or cleaning fish, cause or permit any liquid or drippings therefrom to escape on to any road, pavement, or yard adjoining the pavement or other approaches to a fishmonger's, fish frier's shop or store;
  - (b) store on his premises any boxes for the purpose of transporting fish in such a manner as to be a nuisance or offensive or injurious to health or store, keep or accumulate in the shop, any article, thing or matter not required for the proper conduct of the business which is calculated to cause a nuisance if so stored, kept or accumulated.
6. No person shall clean, scale, fillet or debone fish in or upon any premises upon which any other business or occupation is carried on except in an area provided solely for such purpose and having a floor area of not less than nine square metres separated by a partition of impervious material from the remainder of the premises and provided with sealing boxes made of an impervious material and a sink, with impervious draining board, fitted with hot and cold running water and properly drained, all to the satisfaction of the Medical Officer of Health.
7. No butcher or fishmonger shall cause, permit or suffer any live animal or bird to be kept in any room or place in which meat or fish is kept, sold or exposed for sale.
8. No butcher or poulterer shall sell or cause or permit to be sold any unclean intestinal offal. For the purposes of this bylaw unclean intestinal offal shall mean any intestinal offal which has not been scraped and washed (PN 685/1977).

#### **D. Manufacture and Sale of Milk Products**

1. For the purpose of the bylaws in this section "Milk Products" shall mean any product of milk and includes ice-cream and any similar substance containing milk or cream.
2. In addition to the requirements contained in Part I of these Bylaws, the occupier or person in charge of any premises used or intended to be used for the manufacture, preparation, storing, handling or sale of any milk product shall comply with the following requirements: -
  - (a) He shall provide on such premises in any room or place in which such product is manufactured, prepared, handled, stored or sold a floor constructed of concrete or other impermeable material graded and drained to a gulley and with a smooth surface capable of being easily cleaned.
  - (b) (repealed)

- (c) He shall cause the yard on such premises or such portion of the yard as the Medical Officer of Health may deem sufficient, to be paved with concrete, asphalt or other hard impermeable material and to be properly and sufficiently drained, so that it may at all times be kept in a clean and sanitary condition.

3. In addition to the requirements contained in Part I of these Bylaws, the occupier or person in charge of any premises on which any milk product is manufactured, prepared, handled, stored, exposed for sale or sold shall comply with the following requirements:-

- (a) He shall cause all tables and benches used in connection with such trade or business to be made of non-absorbent material and covered with marble, galvanised sheet iron or other impervious and washable material.
- (b) He shall cause the floor of any room and all tables and benches used in connection with such trade or business to be cleansed of all scraps and to be thoroughly washed after each time of use.
- (c) He shall cause the inner surface of the ceiling of every portion of the premises in which milk products are manufactured or prepared to be coated with a light coloured impervious and washable paint or other approved material and shall cause such ceiling and the walls of the said portion of the premises to be washed or recoated with such paint or other material as often as may be necessary to keep them in a clean and sanitary condition.
- (d) He shall provide suitable apparatus to the satisfaction of the Medical Officer of Health for the sterilising by boiling, steaming or the use of an approved chlorine preparation of all utensils, vessels, receptacles, implements, appliances or other things used in the manufacture, preparation, handling, storing or sale of any milk product.
- (e) He shall cause every utensil, vessel, receptacle, implement, appliance or other thing used in the manufacture, preparation, handling, storing or sale of any milk product to be thoroughly cleansed and afterwards sterilized prior to each occasion of use.
- (f) He shall not use for the packing or wrapping of any milk product intended for sale any wrapper or receptacle of paper, cardboard or other material which is not clean or has previously been used.
- (g) He shall ensure that he himself and every other person engaged upon the premises in the manufacture or preparation of any milk product shall wear a clean washable cap or other covering for the head.

## **E. Refreshment Rooms**

1. For the purpose of the Bylaws in this section "Refreshment Room" shall mean any shop or premises in which food or refreshment is supplied for consumption on or off the premises and shall include a public restaurant, tea room, cafe, milk bar or soda fountain, and except where the context indicates otherwise shall include an eating house for Bantu.
2. In addition to the requirements contained in Part I of these Bylaws, the occupier or person in charge of any premises used or intended to be used as a refreshment room shall comply with the following requirements:-



- (a) He shall provide on such premises for the purposes of cooking and the preparation of food or drink an area which shall comply with the following requirements:-
- (i) It shall, except in the case of a milk bar or soda fountain or where otherwise specially authorised by the Council, be separate from the area in which the food or refreshment is supplied for consumption.
  - (ii) It shall have a floor area of not less than 20 square metres or, if food or drink is cooked or prepared for consumption off as well as on the premises, 30 square metres, or an area to be calculated as follows, whichever is the greater:-  
*For the first 50 customers to be accommodated: 0,800 square metres per person;*  
*For the next 50 customers: 0,400 square metres per person;*  
*For any number of customers above 100: 0,200 square metres per person.*
  - (iii) Except where glazed or glass bricks or glazed tiles are used, the inside walls of such room shall be plastered with cement plaster and the surface brought up to a smooth finish and coated with a light-coloured impervious washable paint or other approved material.
  - (iv) Such room shall be provided with efficient and suitably placed double compartment wash-up sinks with draining boards composed of any approved impervious material, or other wash-up facilities approved by the Medical Officer of Health, for the proper washing and cleaning of utensils and apparatus used in the conduct of the business.
- (b) He shall provide in connection therewith a proper, sufficient and wholesome supply of hot and cold running water for culinary and dietetic purposes.
- (c) (repealed)
- (d) He shall ensure that no portion of such premises communicates directly by opening with any dwelling, closet or urinal.
- (e) He shall provide an exclusive area of at least 22,5 square metres, with walls and floors of a finish approved by the Medical Officer of Health and dustproof ceiling for the consumption of food on the premises.
- (f) He shall keep all crockery, cutlery and linen used in connection with such refreshment room business in a thoroughly clean and hygienic condition.
- (g) He shall cause the yard in such premises or such portion of the yard as the Medical Officer of Health may deem sufficient to be paved with concrete, asphalt or other hard, impermeable material and to be properly and sufficiently drained so that it may at all times be kept in a clean and sanitary condition.
- (h) He shall ensure that he himself and every person in his employment, while engaged in the manufacture or preparation of foodstuffs, shall wear a washable cap or other covering for the head.

3. No person carrying on the business of a refreshment room shall use or cause or pennit to be used any crockery which is cracked or chipped.
4. Every person employed in a refreshment room shall, before engaging in his work and after any break therein liable to cause contamination of his hands, wash his hands with soap and water, unless such work does not involve the handling of foodstuffs.
5. (Deleted)
6. No person who carries on business in any premises as a refreshment room keeper shall on the same premises carry on or conduct the trade, business or occupation of a barber and/or hairdresser unless there is no direct means of access between the portions of the premises in which the two businesses are respectively carried on.

#### **F. Hotels, Boarding and Lodging Houses**

1. For the purpose of the Bylaws in this section "Hotel" and "Boarding and Lodging House" shall mean any premises where boarding or lodging are provided for gain to more than three persons.
2. In addition to the requirements of Part I of these Bylaws, the occupier or person in charge of any premises used or intended to be used as an hotel or boarding or lodging house shall comply with the following requirements: -
  - (a) He shall provide on such premises for the purposes of cooking or the preparation of food or drink a room or area which shall comply with the following requirements: -
    - (i) It shall have an area, exclusive of the scullery, not less than 20 square metres or an area to be calculated as follows, whichever is the greater -

*For the flrst 50 persons accommodated- 0,8 square metres per person;*

*For the next 50 persons accommodated- 0,4 square metres per person;*

*For any number of persons above 100 - 0,2 square metres per person.*
    - (ii) It shall be provided with a scullery not less than 5 square metres in extent, including efficient and suitably placed double compartment wash-up sinks with draining boards of an impervious material or other equally efficient wash-up facilities as may be approved by the Medical Officer of Health, and with ceiling, walls and floor complying with the requirements of bylaws 4(c)(i), (ii) and (iii) of Part I of these bylaws.
  - (b) He shall provide, in addition to the number of refuse receptacles required by the Refuse and Night Soil Removal Bylaws, a covered receptacle to contain refuse in the kitchen pending removal to the refuse receptacle in the yard.
  - (c) He shall ensure that there is laid on a proper, sufficient and wholesome supply of hot and cold running water, free from liability to pollution, for the dietetic, culinary and lavatory requirements of residents and staff.
  - (d) (repealed)
  - (e) In the case of non-resident employees he shall provide separate change rooms for the different sexes and for Whites and Non-Whites, furnished with an adequate number of wash-hand basins, fitted with a proper, sufficient and wholesome supply of hot and cold running water, properly trapped and fitted with waste-pipes in accordance with the Drainage Bylaws.

- (f) (repealed)
  - (g) He shall provide, in the case of premises licensed to accommodate ten or more residents, a suitable lounge additional to the dining room.
  - (h) He shall cause the yard in such premises or such portion of the yard as the Medical Officer of Health may deem sufficient to be paved with concrete, asphalt or other hard, impermeable material and to be properly and sufficiently drained, so that it may at all times be kept in a clean and sanitary condition.
  - (i) He shall keep and maintain the whole of the premises at all times in a thoroughly clean and sanitary condition and free from cockroaches, bugs or other vermin.
  - (j) He shall keep the furniture, linen, utensils, cutlery, crockery and all equipment in a clean state and proper condition and shall ensure a sufficient supply to meet the requirements of the business.
  - (k) He shall provide and supply only sound and wholesome food.
  - (l) He shall cause every table used in the kitchen or pantry to be made of non-absorbent material or with a top of stainless steel, marble, galvanized sheet iron or other impervious and washable material.
  - (m) (repealed)
  - (n) He shall ensure that he himself and every person employed by him on the premises while engaged in the manufacture or preparation of any foodstuff shall wear a washable cap or other covering for the head.
3. No kitchen, dining-room, breakfast-room, supper-room, store-room or eating room, shall at any time be used as a bedroom or for sleeping accommodation.
4. No person carrying on the business of an hotel keeper or boarding house and lodging house keeper shall -
- (a) use or cause or permit to be used any crockery which is cracked or chipped;
  - (b) provide or cause or permit to be provided bedding, blankets, bed linen or towels which are not clean;
  - (c) provide or cause or permit to be provided to any person, bed linen or towels which have not been thoroughly washed after use by some other person;
  - (d) have linen, towels, blankets and clothes washed or cause or permit such to be washed elsewhere than in a licensed laundry or upon his premises if facilities are provided thereon for laundry work in compliance with the requirements laid down for licensed laundries.
5. Every person employed in an hotel or boarding and lodging house, in the handling of foodstuffs or clean bedding or towels, shall, before engaging in his work and after any break therein liable to result in contamination of his hands, thoroughly cleanse his hands with soap and water.

## **G. Inspection of Food and Persons handling Food and their Clothing**

1. The Medical Officer of Health or any Health Inspector, or other duly authorized officer of the Council may, at any reasonable time and as often as he may deem necessary, enter any premises on which any article of food or drink is manufactured, prepared, stored, kept, handled, exposed for sale or sold for the purpose of inspecting and examining -
  - (a) any article of food or drink on such premises;
  - (b) any ingredient used on such premises in the manufacture or preparation of any article of food or drink;
  - (c) any machinery, utensil, vessel, receptacle, implement, appliance or other thing by means of or in which any food or drink intended for sale for human consumption is manufactured, prepared, stored or kept or any vehicle or the like in which any such food is conveyed or delivered;
  - (d) the premises themselves.
2. The Medical Officer of Health or any Health Inspector, or other duly authorized officer of the Council may demand, on tender of payment therefor, from the occupier or person in charge of any premises on which any article of food or drink is manufactured, prepared, stored, kept, handled, sold or exposed for sale a sample or samples of any such article of food or drink.
3. The Medical Officer of Health or any Health Inspector, or other duly authorized officer of the Council may, on making an inspection or examination of any article of food or drink on any premises, cut into or open any article, container or package of food or drink.
4. If, after inspection and examination, it appears to any such Health Inspector, or other duly authorised officer of the Council that any such article of food or drink or sample thereof is diseased, unsound, unwholesome or otherwise unfit for human consumption, he may seize and take possession of such article, and may prohibit the occupier or person in possession or in charge of such article from selling or disposing of any article of food or drink then upon his premises and of the same nature as that seized for a reasonable time to allow of the examination of such article by the Medical Officer of Health.
5. If, after examination, the Medical Officer of Health is satisfied that any such article of food or drink is so diseased or unsound or unwholesome that it is unfit for human consumption, he may order such article to be destroyed, and may order all articles of food or drink of the same nature found on such premises to be seized and examined, and if~ after examination, all or any of such articles of food or drink are found to be unfit for human consumption, he may by a certificate under his hand order them to be destroyed; provided that the Medical Officer of Health may, in place of ordering any article of food or drink to be destroyed under this bylaw, permit such treatment, at the owner's risk, as may render such article fit for human consumption.
6. No person suffering from any form of venereal disease or of tuberculosis or from any infectious or contagious disease or who has been in contact with any person so suffering and has not been thoroughly disinfected thereafter, and no person having a discharging or septic ulcer, sore or wound or whose person and clothing is not in a clean condition, shall take any part or assist in any way nor shall any person who is the proprietor or person in charge of the business permit any such

person to take any part or assist in any way in the manufacture, preparation, storing, keeping, handling, sale, dispatch or delivery of any article of food or drink.

7. The occupier or person in charge of any premises on which any article of food or drink is manufactured, prepared, stored, kept, handled, exposed for sale or sold shall immediately report to the Medical Officer of Health or Health Inspector any case or outbreak of disease amongst his employees which he has reason to believe may be infectious or contagious.

8. The Medical Officer of Health or Health Inspector may at any reasonable time enter upon any premises on which any article of food or drink is manufactured, prepared, stored, kept, handled, exposed for sale or sold and may examine any person employed on such premises or he may require any such person to present himself for examination at a specified time and place, with a view to ascertaining whether such person is suffering from any form of disease specified in bylaw 6 of this section, and he may also, at such times and places, examine the clothing of any such person.

9. If, upon examination, the Medical Officer of Health shall find that any person employed as aforesaid is suffering from any disease specified in bylaw 6 of this section, he may prohibit such person, by written notice, from continuing in his employment for such time as may be specified in the notice.

10. If, upon examination, the Medical Officer of Health shall find that the person or clothing of any person employed as aforesaid is so unclean or verminous as to be a source of contamination of any article of food or drink with which he is working, he may order that such person shall refrain from engaging in his duties until his person and clothing have been thoroughly cleaned and disinfected to his satisfaction.

11. No person shall -

- (a) refuse access to any premises, of which he is the occupier or in charge, by the Medical Officer of Health or any Health Inspector, or other authorised officer of the Council acting under the authority of these bylaws; or
- (b) refuse or neglect to comply with any lawful order or requirement of any such officer under these bylaws; or
- (c) refuse or neglect to give any information lawfully required by any such officer, if he is able to give it; or
- (d) willfully give any false information in response to any such enquiry; or
- (e) refuse or neglect to submit himself or his clothing to medical examination when so required; or
- (f) refuse to sell to any authorised officer any sample required by such officer under bylaw 2 of this section.

(11A). The provisions of Sections E and F of this part notwithstanding, if the Medical Officer of Health is of the opinion that the nature of any business or the range or type or volume of food to be prepared or handled or consumed are such that a lesser floor area than the minimum applicable area prescribed in these bylaws will suffice, he may in his sole discretion but subject to the provisions of the Health Act, 1977 (Act 63 of 1977) authorise in writing a reduction of such

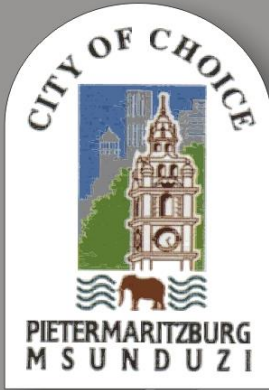
minimum floor area, subject to such conditions as he may see fit to impose for the prevention of conditions which may constitute a health hazard.

### **PART III : PENALTY**

Any person who contravenes any provision of these bylaws shall be guilty of an offence.

- (2) Any person convicted of any offence under these bylaws shall be liable to a fine not exceeding five hundred rand in the case of a first conviction or, in the case of a second or subsequent conviction for the same offence, to a fine not exceeding one thousand rand, or, in default of payment of any fine imposed in either case, to imprisonment for a period not exceeding three months; provided that in the case of a continuing offence, a fine not exceeding fifty rand for each day upon which the contravention continued may be imposed, but no such fine shall in anyone prosecution or within anyone month exceed one thousand rand.





# The Msunduzi Municipality

## CARAVAN CAMPING GROUND BYLAWS

The Administrator has in terms of section 270 of the Local Authorities Ordinance, 1974 (Ordinance 25 of 1974) approved the following bylaws made by the City Council of Pietermaritzburg.

1. In these bylaws, unless the context indicates otherwise :

**"Caravan"** shall include a motorised vehicle manufactured or adapted to provide living accommodation and commonly known as a camper but shall not include a towed vehicle commonly known as a mobile home.

**"Caravan Camping Ground"** means any area of land set aside by resolution of the Council for use as a caravan camping ground;

**"Council"** means the City Council of Pietermaritzburg.

**"Director of Parks"** means the person appointed under that designation by the Council;

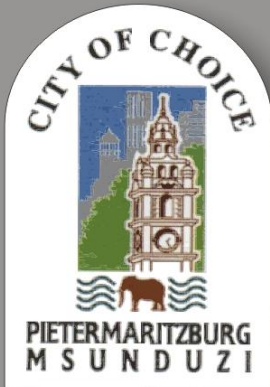
**"Superintendent"** means, in relation to any caravan camping ground, the person employed as superintendent of that caravan camping ground by the Council;

14. No person shall camp upon any lands owned by, vested in, or under the control of the Council, other than upon a caravan camping ground.
15. (1) No person shall take into a caravan camping ground anything commonly known as a mobile home or park home, or any vehicle necessary to tow the same.  
(2) Except in the case of persons without caravans but provided with tents for the purpose of camping, no person shall take any vehicle other than a caravan into a caravan camping ground except as is necessary for the purpose of towing a caravan; provided that the Superintendent shall have a discretion to allow any person entering a caravan camping ground with a caravan to bring into such ground one motor cycle and one other vehicle additional to that used to tow such caravan.

4. (1) No person shall camp upon or use for camping purposes any part of a caravan camping ground without first having obtained a permit from the superintendent, having signed the superintendent's arrivals register and paid the fee prescribed in the City Council's tariffs of charges; provided that in the case of any person who arrives during the hours of darkness, or when the superintendent is not on duty, this bylaw shall be deemed to provide that such person shall only be required to comply with its provisions upon the return of the superintendent to duty or by 07h00 the following day whichever happens soonest.  
  
(2) No person shall camp upon or use for camping purposes any part of a caravan camping ground except upon the conditions of the permit issued to him under bylaw 4(1).
5. The Council reserves the right, through the Director of Parks who is duly authorised thereto, to refuse to issue, extend or renew a camping site permit without assigning any reason for such refusal.
  - (1) Except as provided in these bylaws no permit shall be valid for a longer period than thirteen weeks in any period of one year.
  - (2) The period for which a permit is issued shall, for the purposes of this bylaw, be deemed to commence at the time from which the holder occupies or is allotted a site, whichever is the earlier.
  - (3) Any permit or part thereof may be cancelled by the Director of parks upon the breach by the holder, or any of his party, of any provision of these bylaws or any limitation imposed by him in terms of these bylaws.
  - (4) Any person who remains or permits his caravan to remain within a caravan camping ground for more than two hours after the expiry or cancellation of his permit shall be guilty of an offence; provided that such time may be extended by the Director of Parks upon any good and sufficient cause.
6. (1) Upon the application in writing of any person who has been issued with a permit under bylaw 5(1) the Director of Parks may extend the validity of such permit for a period of up to 12 months, reckoned from the date of such extension, provided such application is made at least 14 days or such lesser time as the Director may in his discretion allow before the expiry of such permit.  
  
(2) Upon the application of any person, the validity of whose permit has been extended under bylaw 6(1), the Council may renew such extended permit for a further period of up to 12 months, reckoned from the date of such renewal, provided such application in writing is made at least 30 days before the expiry of such extended permit. Thereafter, upon like application, the Council may continue to renew such permit, for periods not to exceed 12 months on any occasion, and otherwise upon the terms provided for in this bylaw'.
7. The issue of a permit to a camper shall not entitle him to occupy any particular camping site and such sites shall be allotted or re-allotted as may be necessary in the discretion of the Superintendent who is empowered to arrange the letting of sites to the best advantage, having regard to the provisions of these Bylaws and the accommodation requirements of campers.


8. The provisions of Bylaw 6 notwithstanding, 60 % of every caravan camping ground, shall be reserved for accommodation by persons holding permits valid up to a period of 13 weeks.
9. The provisions of the other bylaws notwithstanding not more than seven persons shall occupy any one site in a caravan camping ground and every permit issued, renewed or extended shall be valid in respect of the occupation of a site by not more than seven persons.
10. No person shall -
  - (1) bring any animal into or keep any animal in a caravan camping ground;
  - (2) hawk or expose for sale any goods whatsoever within the precincts of any caravan camping ground without the written consent of the Director of Parks first being obtained;
  - (3) cut down or damage any tree or bush or unnecessarily disturb any vegetation within any caravan camping ground.
  - (4) willfully damage any water tap, lavatory, notice board, gate, fence or any property belonging to the Council in or upon a caravan camping ground;
  - (5) in any caravan camping ground, wash clothes, clean household utensils, fish, vegetables or the like, or prepare food, except at such places as are set aside for the purpose or where the Superintendent may from time to time point out; provided that this bylaw shall not prevent any person from preparing or cooking food inside his tent or caravan;
  - (6) board or lodge any person or persons in a caravan camping ground for money or any valuable consideration without the written sanction of the Council and then only on such terms and conditions as the Council may deem fit; provided guests of permit holders may be accommodated upon such person's site subject to the provisions of bylaw 9 and the payment of the fee provided in the City Council's Tariffs of charges;
  - (7) drive or ride any motor vehicle in a caravan camping ground recklessly, negligently or without due consideration for the safety of persons and/or property within such ground;
  - (8) cause a breach of the peace by arguing, shouting, fighting or the like, by playing any musical instrument, radio, record player, loudspeaker or the like, or by accelerating the engine of any motor vehicle including any motorcycle, in such a manner as to cause excessive noise;
  - (9) lead electrical cables from any electrical power point provided in any caravan camping ground, to any tent or caravan ; provided that this bylaw shall not apply in respect of any power point, the use of which has been hired in terms of the City Council's Tariffs of charges;
  - (10) notwithstanding the provisions of bylaw 10(11), use any electrical power point provided in any ironing room in any caravan camping ground other than for the purpose of ironing in such room;
  - (11) use any electrically operated washing or drying machine in and caravan. camping ground.
11. No person, not being a member of the camper's party or a guest of the camper, shall loiter in or about any caravan camping ground.

12. Every permit holder shall;
  - a. take all precautions to prevent the creation of any nuisance prejudicial to the public health and shall observe such of the Public Health and Sanitation Bylaws as lie may be required to comply with;
  - b. make his camp on a site pointed out by the Superintendent and shall comply with the reasonable instructions of such Superintendent as to the manner of making the camp;
  - c. ensure that his site is kept in a clean and sanitary condition and shall not deposit or cause to be deposited any litter, rubbish or refuse, whether within or without his site, save in places as may be set apart for the purpose by the Director of Parks;
  - d. be responsible for the maintenance of good order and decency in his camp and shall not allow anything to be done therein which may interfere with the comfort and convenience of other campers;
  - e. upon vacating any caravan camping ground leave his site in a clean and tidy condition and take steps to have all rubbish deposited in the rubbish bins provided for that purpose. He shall also fill in all holes made in the ground by him or his party.
13. No member of a permit holder's party including his guests, shall commit or fail to observe any of the things which a permit holder is required under bylaws 11, 12 and 14 to prevent, comply with, refrain from or maintain respectively.
14. Every camper, and his guests, on being requested thereto, shall promptly observe and comply with the lawful requirements or directions, whether written or verbal, of the Superintendent in or about or in connection with any caravan camping ground, and no person shall remain therein after having been requested to leave by such Superintendent.
15. (1) Any person who contravenes any provision of these bylaws shall be guilty of an offence.  
(2) Any person convicted of any offence under these bylaws shall be liable to a fine not exceeding five hundred rand in the case of a first conviction or, in the case of a second or subsequent conviction for the same offence, to a fine not exceeding one thousand rand, or, in default of payment of any fine imposed in either case, to imprisonment for a period not exceeding three months; provided that in the case of a continuing offence, a fine not exceeding fifty rand for each day upon which the contravention continued may be imposed, but no such fine shall in any one prosecution or within any one month exceed one thousand rand.
15. The Bylaws for Regulating and Controlling caravan camping grounds and prescribing Fees to be paid therefor published on 3 July 1947 under Provincial Notice 250 are hereby repealed.



# The Msunduzi Municipality

## CREDIT CONTROL AND DEBT COLLECTION BYLAWS

	<p>KwAZULU-NATAL PROVINCE KwAZULU-NATAL PROVINSIE ISIFUNDAZWE SAKwAZULU-NATALI</p>	
<p><b>Provincial Gazette • Provinsiale Koerant • Igazethi Yesifundazwe</b> GAZETTE EXTRAORDINARY—BUITENGEWONE KOERANT—IGAZETHI EYISIPESHELI</p> <p><i>(Registered at the post office as a newspaper) • (As 'n nuusblad by die poskantoor geregistreer)</i> <i>(Irejistiwee njengephephandaba eposihhovisi)</i></p>		
<p><b>Vol. 9</b></p>	<p><b>PIETERMARITZBURG,</b> 15 JANUARY 2015 15 JANUARIE 2015 15 kuMASINGANA 2015</p>	<p><b>No. 1297</b></p>

The Msunduzi Municipality acting in terms of section 98 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), read with section 13 of the said Act, hereby publishes the By-laws set forth hereafter, as made by the Municipality, which By-laws shall come into effect on the date of publication thereof.

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### 1. **DEFINITIONS**

In these Bylaws, unless the context indicates otherwise, the word or expression has the following meaning:

- 1.1 "Accounting Officer" means the Municipal Manager appointed in terms of Section 82(1)(a) or (b) of the Municipal Structures Act, 1998 (Act No. 117 of 1998); of the Msunduzi Municipality.
- 1.2. "Account Holder" includes a customer/consumer and refers to any occupier of any premises to which Council has agreed to supply or is actually supplying services, or if there is no occupier, then the owner of the premises and includes any debtor of the municipality.
- 1.3. "Actual consumption" means the measured consumption of a consumer of a municipal service during a specified period.
- 1.4. "Advance Warning" means a warning communicated by the consumer to the Chief Financial Officer in the form of an e-mail, fax or telephone call and advising the Chief Financial Officer of the consumers inability to provide a reading at least ten (10) working days before the seventh (7) day of the month following the most recent month during which services were rendered to the consumer, provided that the



Chief Financial Officer may, on written motivation by the consumer exempt the consumer from failing to give such advance warning where the consumer submits evidence of exceptional circumstances that prevented the consumer from having communicated such advance warning timeously to the Chief Financial Officer.

- 1.5. "Arrangements" means a formal written agreement entered into between the Council and a debtor where specific repayment parameters are agreed to.
- 1.6. "Arrears" means any amount due, owing and payable by a customer in respect of a municipal account not paid on the due date.
- 1.7. "Average consumption" means the deemed consumption of a customer of a municipal service during a specific period, which consumption is calculated by adding the recorded monthly average consumption and the current actual consumption and dividing the total by 2.
- 1.8. "Bank guarantee" refers to an undertaking by a registered financial institution whereby it guarantees a specified maximum amount to be paid if the principal debtor ("the consumer") fails to pay.
- 1.9. "Calculated amounts" refers to the amounts calculated by the Chief Financial Officer, in consultation with the relevant technical departments, to be due to the Council by a consumer in respect of the supply of the applicable municipal services for any period during which the exact quantity of the supply cannot be determined accurately for reasons beyond the control of the Chief Financial Officer. This shall normally be based on the average consumption figures, if available, for the service rendered to the customer or, failing the availability of such data, on the average consumption figures applicable to one or more properties of similar size and nature in the area in which the customer resides or carries on business.
- 1.10. "Chief Financial Officer" refers to the person so designated in terms of Section 80 (2)(a) of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003) or any person duly authorized to act on behalf of such person.
- 1.11. "Consolidated account" refers to one combined account for all municipal services, housing rents and installments, rates and basic charges payable, and "consolidated bill" has a corresponding meaning.
- 1.12. "C D U" shall mean the central distribution unit that distributes electricity from a central point to an account holder.
- 1.13. "Consumption" means the ordinary use of municipal services, including water, sanitation, refuse removal, and electricity services for all categories of consumers.
- 1.14. "Credit Control and Debt Collection Policy" shall mean the policy adopted by the Municipality in accordance with the provisions of S 96 Local Government Municipal Systems Act 32 of 2000.
- 1.15. "Electricity and water meters" means electricity and/or water meters, (including prepaid meters), which are used to determine the supply of electricity and water and which are normally read on a monthly or other basis.
- 1.16. "Electricity Supply Bylaws" shall mean the Electricity Supply Bylaws to be promulgated in 2014, provided that in the event that such bylaws have not been

promulgated at the time of promulgation of these bylaws, the Electricity Supply Bylaws that are in existence at the time of promulgation of these bylaws.

- 1.17. "Council" refers to the Msunduzi Municipality and its successors in law and includes the Council of the municipality or any other body acting by virtue of any power delegated to it in terms of legislation, as well as any official to whom Council has delegated any powers and duties with regard to these bylaws.
- 1.18. "Councilor" refers to any member of a Municipal Council.
- 1.19. "Deposit" refers to a minimum sum of money specified by the Chief Financial Officer and payable by the consumer to the Municipality prior to occupation of the property or prior to the date on which services to the property are required.
- 1.20. "Final date" in the absence of any express agreement in relation thereto between the Council and the customer, refers to the date stipulated on the account and determined from time to time as the last date on which the account must be paid.
- 1.21. "Final Demand" means a notice sent to an account holder calling for settlement of any municipal debt that has not been paid by due date and where legal action may be taken after giving due consideration to the notice period specified in the notice.
- 1.22. "Estimated consumption" arises when no actual reading can be taken and is equivalent to the average consumption providing that this is done in accordance with the relevant provisions of the water and electricity bylaws.
- 1.23. "Financial year" refers to the period starting from 1 July in a year to 30 June the next year.
- 1.24. "Interest" is a charge levied on arrears, and calculated by the Chief Financial Officer in accordance with relevant legislation.
- 1.25. "MCB" means Mini Circuit Breaker.
- 1.26. "Meter audits" refers to a verification by the municipality of the correctness of the consumption and supply of electricity and water.
- 1.27. "Municipality" shall mean the Msunduzi Municipality established in terms of the provisions of S 12 of the Local Government Municipal Structures Act No 117 of 1998.
- 1.28. "Municipal Manager" shall mean the Accounting Officer.
- 1.29. Municipal Offices - shall mean municipal offices located within the area of jurisdiction of the Municipality.
- 1.30. "Municipal services" means a municipal service as defined in section 1 of the Local Government Municipal Systems Act No. 32 of 2000.
- 1.31. "New Service Connection" means an installation of service connections to a property in respect of which municipal services have never been provided before.
- 1.32. "Official", in relation to the Msunduzi municipality, and for the purposes of these bylaws, means,
  - a) An employee of the Msunduzi Municipality;

- b) A person seconded to the Msunduzi municipality to work as a member of the staff of the Msunduzi Municipality or;
- c) A person contracted by the Msunduzi Municipality to work as a member of the staff of The Msunduzi Municipality otherwise than as an employee.

1.33. "Occupier" in relation to a property, means a person in actual occupation of a property, whether or not that person has a right to occupy the property.

1.34. "Owner" means;

- a) In relation to property referred to in paragraph (a) of the definition of "property, means a person in whose name ownership of the property is registered;
- b) In relation to a right referred to in paragraph (b) of the definition of "property", means a person in whose name the right is registered;
- c) In relation to a land tenure right referred to in paragraph (c) of the definition of "property", means a person in whose name the right is registered or to whom it was granted in terms of legislation or;
- d) In relation to public service infrastructure referred to in paragraph (d) of the definition of "property", means the organ of state which owns or controls that public service infrastructure as envisaged in the definition of "publicly controlled", provided that a person mentioned below may for the purposes of this Act be regarded by a municipality as the owner of a property in the following cases:
  - (i) A trustee in the case of a property in a trust excluding state trust land;
  - (ii) An executor or administrator, in the case of a property in a deceased estate;
  - (iii) A trustee or liquidator, in the case of a property in an insolvent estate or in liquidation;
  - (iv) A judicial manager, in the case of a property in the estate of a person under judicial management;
  - (v) A curator, in the case of a property in the estate of a person under curatorship;
  - (vi) A person in whose name a usufruct or other personal servitude is registered, in the case of a property that is subject to a usufruct or other personal servitude;
  - (vii) A lessee, in the case of a property that is registered in the name of a municipality and is leased by it; or
  - (viii) A buyer, in the case of a property that was sold by a municipality and of which possession was given to the buyer pending registration of ownership in the name of the buyer;
  - (ix) Legal occupiers of State Trust Land.

- 1.35. "Property" means
- a) Immovable property registered in the name of a person, including, in the case of a sectional title scheme, a sectional title unit registered in the name of a person;
  - b) A right registered against immovable property in the name of a person, excluding a mortgage bond registered against a property;
  - c) A land tenure right registered in the name of a person or granted to a person in terms of legislation; or
  - d) Public service infrastructure.
- 1.36. "Rate" means a municipal rate on property envisaged in section 229 (1)(a) of the Constitution.
- 1.37. "Service agreement" refers to a written agreement for the consumption of electricity and/or water and other services.
- 1.38. "Technical department" shall mean any department located within the Msunduzi Municipality which renders a municipal service.
- 1.39. "Variable flow-restricting device" refers to a device that restricts or closes water supply to the account holder.
- 1.40. "Visitation fee" refers to the fee charged for attendance and/or disconnection/reconnection of an electricity/water supply when the supply is been disconnected/reconnected due to non-payment and/or tampering, or where access to disconnect/restrict has not been gained, which fee shall be determined from time to time by the Council.
- 1.40. "Garnishee order/emoluments order" refers to a court order for the deduction of an amount of money from the salary or other income of an account holder.
- 1.41. "Municipal Pay-Point" shall mean all Municipal Cash Offices and third party vendors who are authorized to collect monies on behalf of Municipality.
- 1.42. "Water Services Bylaws" - means the Water Services Bylaws published under notice no 58 of 24 June 2014.

## **2. AREA OF APPLICATION**

- 2.1. These Bylaws shall apply through the entire area of jurisdiction of the Msunduzi Municipality and to account holders residing outside the jurisdiction of the Msunduzi Municipality

## **3. APPLICATION FOR SERVICES AND SERVICE AGREEMENTS**

- 3.1. Only the owner shall enter into a service agreement for the provision of services, provided that the Chief Financial Officer may accept the power of attorney where the owner is not resident within the jurisdictional area of the Msunduzi Municipality, provided further that the purchaser of an immovable property in whose name registration of ownership has not yet taken place and in respect of which the necessary documents for the transfer of the property in question to the purchaser have been lodged in the Deeds Office, shall for the purpose of this

bylaw be authorized to apply for services and be empowered to conclude such a service agreement.

- 3.2. Directors of companies, members of Close Corporations and Trustees of Trusts shall sign personal deeds of surety with the Municipality when opening services accounts.
- 3.3. A new Service Agreement shall only be entered into in respect of a property, once all outstanding amounts owed in respect of the property are settled in full.
- 3.4. The owner of the property shall be responsible for the payment of rates and all municipal service charges applicable to the property notwithstanding the owner not having concluded a service agreement with the Msunduzi Municipality.
- 3.5. The Municipality shall make application forms available for the rendering of services at its municipal offices and such completed application forms shall be submitted to the Municipality at least 10 days prior to the intended occupation of the property failing which the applicant for services shall not be entitled to supply and provided further that this bylaw shall not be interpreted to apply for new service connections.
- 3.6. The Municipality shall render the first account after the first meter reading cycle following the date of signing the service agreement or as soon as is reasonably possible.
- 3.7. Any occupier who illegally consumes services without a valid service agreement shall be subject to disconnection and/or removal of the service and may be prosecuted in terms of these Bylaws or any other relevant legislation.
- 3.8. The service agreement shall set out the conditions under which the services are provided and shall require the signatories thereto to agree to abide by the provisions of the Municipalities Credit Control Policy and these Bylaws.
- 3.9. The owner of the property shall be jointly and severally liable with the consumer in respect of all amounts due for the municipal services provided to the property notwithstanding any other provisions of these Bylaws

#### **4. DEPOSITS AND GUARANTEES**

- 4.1. Deposits shall be payable on all new applications for municipal services at the time of application and prior to the rendering any services.
- 4.2. No interest shall accrue to the benefit of the applicant on any deposit.
- 4.3. The Council shall, subject to the provisions of the Promotion of Administrative Justice Act No 3 of 2000, have the power to increase the deposit payable by the account holder based on the consumption and payment patterns of the account holder and in the event of any contraventions of these Bylaws, including but not limited to the theft, tampering or interference with any services.

#### **5. ACCESS TO PROPERTY TO READ METERS**

- 5.1 The municipality shall estimate the consumption of the service and thereafter bill the account holder for the monetary value of such estimated consumption, where

the meter is in accessible or unreadable. Such estimation shall be in accordance with the provisions of the Water Services Bylaws and the Electricity Supply Bylaws of the Municipality.

- 5.2 Where the Council is unsuccessful in obtaining access to the property or meter for a period of 3 months, the Chief Financial Officer may disconnect the supply of services.
- 5.3. The consumer may supply readings of consumption on the Electricity and Watermeters to the Municipality, .subject to the following conditions:
  - 5.3.1. The Municipality is timeously provided with a final reading should the consumer move to another supply address;
  - 5.3.2. Should the consumer not provide the Municipality with advance warning of their fee determined in terms of S 75 (A) of the Local Government: Municipal Systems Act 32 of 2000 to cover the costs of obtaining a reading;
  - 5.3.3 The Municipality shall undertake audit of the readings supplied at least once every six months provided that where additional readings are required during the six month period, the costs thereof shall be borne by the consumer;
  - 5.3.4 Where the consumer fails to render readings on two or more consecutive occasions, the Chief Financial Officer may terminate this arrangement to supply voluntary readings subject to compliance with this policy and Bylaws.
- 5.4. The account holder shall notify the municipality of a final reading prior to moving premises and should the account holder fail to do so, the account holder shall be liable for the extra costs accrued as determined by the Chief Financial Officer.
- 5.5 The municipality shall audit all readings supplied by the account holder at least once in six months.

## **6 ACCOUNTS, BILLING AND PAYMENT**

- 6.1 The Council shall provide the account holder with a consolidated monthly bill for rates and service charges.
- 6.2 The Municipality shall furnish the consolidated account to the consumer address, in South Africa, as specified by each consumer in the services agreement. Non-receipt of an account shall not negate the responsibility of the customer to pay the amount owing by final date nor prevent interest charges and debt collection procedures. In the event of non-receipt of an account, the onus shall be on the account holder to obtain a free copy of the most recent account, before the final date.
- 6.3 The account holder shall notify the Municipality in writing of any change of address, including an e-mail address, and contact details.
- 6.4 Accounts must be paid in full on or the final date as indicated on the account, failure to comply with this section shall result in credit control measures being instituted against the account holder. Interest on capital arrears will accrue after the final date if the account remains unpaid.



- 6.5 The Chief Financial Officer shall determine the manner and place of payment of any accounts, provided that only bank guaranteed or attorneys' trust cheques shall be acceptable and be paid at the Ground Floor, 333 Church Street, Pietermaritzburg and provided further that where payment is made through or at third party agencies payment by cheque shall not be accepted.

## **7 INTEREST ON ARREARS AND OTHER PENALTY CHARGES**

- 7.1 Interest shall be charged on all arrear capital amounts for full month irrespective of when payment is made.
- 7.2 The Municipality shall be entitled to raise the following charges in addition to the interest charge contemplated in Bylaw 7.1:
- 7.2.1 A collection charge equal to 10% shall be raised sixty (60) days after the date of the final installment on the capital rates amount in arrears.
- 7.2.2 Charges for disconnection or reconnection of electrical services.
- 7.2.3 Charges for restriction or removal of Water Services.
- 7.2.4 Charges for reconnection or reinstatement of Water Services.
- 7.2.5 Charges for notices of default and other correspondence.
- 7.2.6 Surcharges and charges for contraventions of these bylaws, the Water Services Bylaws and Electricity Bylaws including but not limited to illegal connections and tampering .
- 7.2.7 Penalty charges for dishonored cheques.

## **8 AGREEMENTS AND ARRANGEMENTS FOR PAYMENT OF ARREAR ACCOUNTS**

- 8.1 The Municipality may enter into agreements with account holders in arrears and to grant account holders extensions of time for settlement of any amount due in accordance with its Credit Control and Debt Collection policy any. Any breach of the aforesaid agreement shall be dealt with in accordance with the aforesaid policy.
- 8.2 Any arrangement entered into between the account holder and municipality as contemplated above shall have no force and effect unless the owner of the property consents to such arrangement in writing. In such instances, the owner shall acknowledge that the municipality does not waive its rights as contemplated in Section 118 (i) of the Local Government: Municipal Systems Act (Act 32 of 2000).
- 8.3 Where consumers using prepaid meters have arrear amounts in respect of other rates and/or services rendered by the municipality the Council shall be entitled to allocate an amount up to a maximum of 40% of every purchase of prepaid electricity to arrear amounts until such time as the arrears have been brought up to date.

**9 ALLOCATION OF PAYMENTS AND PART-PAYMENTS**

- 9.1 Where an account holder pays only part of any amount due, the Municipality shall allocate such payment in the order as provided for in the Credit Control and Debt Collection Policy of the Msunduzi Municipality:

**10 QUERIES IN RESPECT OF ACCOUNTS**

- 10.1 An account holder who has lodged an enquiry on an account is not relieved of the responsibility to maintain regular payment on the account. Where an account holder provides reasonable grounds as a basis for a query on any item or items on the monthly municipal account, no action shall be taken against the account holder provided the account holder has paid, by due date, an amount equal to the monthly average of the three most recent undisputed accounts in respect of the service in dispute, as well as all undisputed balances on such account. When an enquiry has been investigated and finalised, the amount due determined by the Chief Financial Officer shall immediately become payable in full.

**11 DISCONNECTIONS/RESTRICTIONS OF SERVICES**

- 11.1 The municipality shall disconnect and restrict the services of account holders who are in arrears in accordance with the provisions of the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000) and in terms of its Credit Control and Debt Collection Policy.

**12 RECONNECTION/REINSTATEMENT OF TERMINATED/RESTRICTED SERVICES**

- 12.1 Services which have been terminated or restricted shall only be reconnected or reinstated by the municipality when all the conditions that are outlined in the Credit Control and Debt Collection Policy for such reconnection and reinstatement have been met.

**13 PERIOD FOR RECONNECTION OR REINSTATEMENT**

- 13.1 Where it is practically and reasonably possible, the municipality shall to reconnect or reinstate terminated or restricted services within 3 (three) working days after the date on which the conditions set out in the Credit Control and Debt Collection Policy relating to reconnection have been complied with or met.

**14 PROCEDURES FOR DEBT COLLECTION**

- 14.1 Where accounts are in arrears, the municipality may institute any action available in law for the purposes of recovering such debt in accordance with the procedure outlined in the Credit Control and Debt Collection Policy.

**15 RECOVERY OF OVERDUE RATES**

- 15.1 Where accounts are in arrears, the municipality may institute any action available in law for the purposes of recovering such debt in accordance with the procedure outlined in the Credit Control and Debt Collection Policy.

**16 TAMPERING WITH AND/OR THEFT OF SERVICES**

- 16.1 With regard to electricity and water services, if tampering of any nature or theft of such services is identified, the electricity supply to the property may be

discontinued by the removal of the meter and the cable and the water supply may be restricted and/or discontinued subject to the provisions of the Promotion of Administrative Justice Act, 3 of 2000.

- 16.2 Water and electricity metering and connection equipment remain the property of the municipality and anyone involved in instances of tampering, damaging or theft thereof will be liable for criminal prosecution shall be guilty of an offence and upon conviction be liable to a fine or imprisonment in accordance with the penalties as provided for in the Water Services and Electricity Supply Bylaws.
- 16.3 No person shall connect to the Municipality's Services without the consent of the Municipality, or in any way tamper or interfere with its services.
- 16.4 Where there is evidence of an illegal connection or services are found to have been tampered with, the owner or occupier of the property, on or in which such illegal connection or tampering has taken place, shall be presumed to have tampered with or illegally connected the services unless such owner or occupier proves otherwise.
- 16.5 Where the restricted water supply or any variable flow-restricting device is tampered with the water supply shall be discontinued and the meter shall be removed.

## **17 AUDIT OF SERVICES ON PROPERTIES**

- 17.1 The municipality may audit all services on properties in accordance with the provisions of the Credit Control and Debt Collection Policy.

## **18 WATER LEAKS**

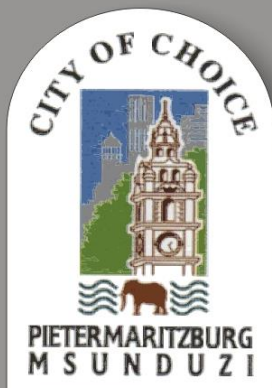
- 18.1 Any water leak will be dealt with in terms of the relevant water supply bylaws.

## **19 ENFORCEMENT OF OTHER LEGISLATION**

- 19.1 These bylaws shall not detract from the provisions of any other relevant legislation.
- 19.2 The provisions of these bylaws shall prevail in the event of any conflict between these bylaws and other bylaws of the Municipality.

## **20 REPEALS**

- 20.1 All Credit Control and Debt Collection Bylaws previously published in terms of Section 98 of the Local Government Municipal Systems Act No 32 of 2000, are hereby repealed.



# The Msunduzi Municipality

## ELECTRICITY SUPPLY BYLAWS



KWAZULU-NATAL PROVINCE  
KWAZULU-NATAL PROVINSIE  
ISIFUNDAZWE SAKWAZULU-NATALI

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**No. 1393**

## **MSUNDUZI MUNICIPALITY ELECTRICITY SUPPLY BYLAWS**

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## CHAPTER 1: GENERAL

### 1. Definitions. -

In these Bylaws, unless inconsistent with the context-

**"applicable standard specification"** means the standard specifications as listed in Schedule 1 attached to these Bylaws, including any amendments or additions thereto or substitution thereof;

**"certificate of compliance"** means a certificate issued in terms of the Regulations in respect of an electrical installation or part of an electrical installation by an registered person;

**"civil work permit"** means a permit issued to an applicant for a wayleave granting that applicant consent for the civil work to be undertaken;

**"Chief Financial Officer"** means the Chief Financial Officer of the Service Provider, or any other person lawfully acting in that capacity and any employee of the Service Provider duly authorized thereto by such Chief Finance Officer or person so acting;

**"consumer "** in relation to premises-

(i) (a) for supply agreements existing prior to the promulgation of these Bylaws means - any occupier thereof or any other person with whom the Service Provider has entered into an agreement to supply or is actually supplying electricity thereat;

(ii) if such premises are not occupied, any person who has a valid existing agreement with the Service Provider for the supply of electricity to such premises; or

(iii) if there is no such person or occupier, the owner of the premises;

(b) for supply agreements entered into after the promulgation of this Bylaw means the owner of the premises or his or her designated proxy;

**"credit meter"** means a meter where an account is issued subsequent to the consumption of electricity;

**"Electrical Engineer"** means the person appointed as the Head of Electricity of the Service Provider, any other person lawfully acting in that capacity and any employee of the Service Provider duly authorized thereto by such Head or person so acting;

**"electrical contractor"** means an electrical contractor as defined in the Regulations;

**"electrical installation"** means an electrical installation as defined in the Regulations;

**"high voltage"** means the set of nominal voltage levels that are used in power systems for bulk transmission of electricity in the range of 44 kV < Un " 220 kV. (SANS 1019);

**"low voltage"** means the set of nominal voltage levels that are used for the distribution of electricity and whose upper limit is generally accepted to be an a.c. voltage of 1 000 V (or a d.c. voltage of 1 500 V). (SANS 1019);

**"medium voltage"** means the set of nominal voltage levels that lie above low voltage and below high voltage in the range of 1 kV < Un " 44 kV. (SANS 1019);

**"meter"** means a device which records the demand and /or the electrical energy consumed and includes conventional and prepayment meters;

**"motor load, total connected"** means the sum total of the kW input ratings of all the individual motors connected to an installation;

**"motor rating"** means the maximum continuous kW output of a motor as stated on the maker's rating plate;

**"motor starting current"** in relation to alternating current motors means the root mean square value of the symmetrical current taken by a motor when energised at its rated voltage with its starter in the starting position and the rotor locked;

**"occupier"** in relation to any premises means-

- (a) any person in actual occupation of such premises;
- (b) any person legally entitled to occupy such premises;
- (c) in the case of such premises being subdivided and let to lodgers or various tenants, the person receiving the rent payable by such lodgers or tenants, whether on his own account or as agent for any person entitled thereto or interested therein; or
- (d) any person in control of such premises or responsible for the management thereof, and includes the agent of any such person when he /she is absent from the Republic of South Africa or his /her whereabouts are unknown;

**"owner"** in relation to premises, means the person in whom is vested the legal title thereto; provided that if the owner as hereinbefore defined is

deceased or insolvent, has assigned his estate for the benefit of his creditors, has been placed under curatorship by order of court or is a company being wound up or under judicial management, the person in whom the administration of such property is vested as executor, administrator, trustee, assignee, curator, liquidator or judicial manager, as the case may be;

is absent from the Republic of South Africa, or if his address is unknown to the Service Provider, any person who as agent or otherwise receives or is entitled to receive the rent in respect of such property; and

if the Service Provider is unable to determine who such person is, the person who is entitled to the beneficial use of such property, shall be deemed to be the owner thereof to the exclusion of the person in whom is vested the legal title thereto;

**"point of consumption"** means a point of consumption as defined in the Regulations;

**"point of metering"** means the point at which the consumer's consumption of electricity is metered and which may be at the point of supply or at any other point on the distribution system of the Service Provider or the electrical installation of the consumer, as specified by the Service Provider or any duly authorised official of the Service Provider; provided that it shall meter all of, and only, the consumer's consumption of electricity

**"point of supply"** means the point determined by the Service Provider or any duly authorised official of the Service Provider at which electricity is supplied to any premises by the Service Provider;

**"premises"** means any and or any building or structure above or below ground level, or part thereof, and includes any vehicle, aircraft or vessel;

**"prepayment meter"** means a meter that can be programmed to allow the flow of pre-purchased amounts of energy in an electrical circuit;

**"registered person"**; means a person registered in terms of the Regulations as an electrical tester for single phase, an installation electrician or a master installation electrician, as the case may be;

**"Regulations"** means Regulations made in terms of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);

**"retail wheeling"** means the process of moving third party electricity from a point of generation across the distribution systems of the Service Provider and selling it to a customer;

**"safety standard"** means the Code of Practice for the Wiring of Premises SANS 10142 -1 incorporated in the Regulations, including any amendments thereto or substitution thereof;

**"Service Authority"** means the Msunduzi Municipality established in terms of the Local Government: Municipal Structures Act, Act 117 of 1998;

**"service connection"** means all cables and equipment, including all metering equipment, load management equipment, all high, medium or low voltage switchgear and cables required to connect the supply mains to the electrical installation of the consumer at the point of supply;

**"service protective device"** means any fuse or circuit breaker installed for the purpose of protecting the Service Provider's equipment from overloads or faults occurring on the installation or on the internal service connection

**"Service Provider"** means the Service Authority and any entity duly authorized by the Service Authority to provide an electricity service within the jurisdiction of the Service Authority, in accordance with the provision of the Service Delivery Agreement concluded with the Service Authority;

**"standby supply"** means an alternative electricity supply from the Service Provider not normally used by the consumer;

**"supply mains"** means any part of the Service Provider's electricity distribution network;

**"tariff"** means the Service Provider's tariff of charges for the supply of electricity and sundry fees, as approved by the Service Authority;

**"temporary supply"**; means an electricity supply required by a consumer for a period normally less than one year;

**"the law"** means any applicable law, proclamation, ordinance, act of parliament or enactment having force of law;

**"token"** means the essential element of a prepayment metering system used to transfer information from a point of sale for electricity credit to a prepayment meter and vice versa;

**"voltage"** means the root -mean -square value of electrical potential between two conductors;

**"wayleave"** means the set of documentation providing information on the location of the supply mains of the Service Provider within the physical area covered by an application to undertake civil work within the municipal area and stipulates the conditions applicable to the work to be done in the vicinity of the affected supply mains.

2. Other terms. - All other terms used in these Bylaws shall, unless the context otherwise requires, have the meaning assigned thereto in the Electricity Regulation Act, 2006 (Act No. 4 of 2006), as amended, or the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), as amended.
3. Headings and titles. - The headings and titles in these Bylaws shall not affect the construction thereof.

## **CHAPTER 2 : GENERAL CONDITIONS OF SUPPLY**

### **4. Provision of electricity services.-**

- (1) Only the Service Provider shall supply or contract for the supply of electricity within the jurisdiction of the Service Authority. A third party may supply or contract for the supply of electricity within the jurisdiction of the Service Authority, subject to the consent of the Service Authority and the requirements of the Electricity Regulation Act.
- (2) The Service Provider may permit the retail wheeling of electricity through its network by another electricity supplier that is licensed for the trading of electricity in terms of the Electricity Regulation Act to the customers of this electricity supplier.
- (3) The Electrical Engineer and the Chief Finance Officer shall have the power to stipulate written terms or conditions in relation to and in respect of the supply of electricity by the Service Provider to any person who has applied for an electricity supply, including but not limited to the service connection, the point of supply or the point of metering, and any such terms or conditions shall be deemed to form part and be incorporated into the written supply agreement concluded with such person as contemplated in bylaw 5 below.
- (4) The Service Provider shall not be obliged to provide any electricity to a person who has failed to comply with the terms or conditions in terms of this bylaw.

### **5. Supply by agreement.-**

- (1) No person shall use or be entitled to use an electricity supply from the Service Provider unless or until a written agreement has been entered into with the Service Provider for such supply, and such agreement together with the provisions of this Bylaw shall in all respects govern such supply.

- (2) If electricity is consumed without the existence of a supply agreement, the owner of the premises on which the electricity is being used shall be liable for the cost of electricity used as stated in section 44 of these Bylaw, provided that this bylaw shall not be interpreted to detract from the right of the Service Provider to disconnect the supply of electricity in terms of bylaw 21.
- (3) Should the Service Authority appoint a different service provider at any date in the future, supply agreements with consumers of the Service Provider shall be deemed to be agreements with this new service provider.

#### **6. Service of notice.-**

- (1) Any notice or other document that is served on any person in terms of this Bylaw is regarded as having been served-
  - (a) when it has been delivered to that person personally;
  - (b) when it has been left at that person's place of residence or business in the Republic with a person apparently over the age of sixteen years;
  - (c) when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic and an acknowledgement of the posting thereof from the postal service is obtained;
  - (d) if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided by paragraphs (a), (b) or (c); or
  - (e) if that person's address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the property or premises, if any, to which it relates.
- (2) When any notice or other document must be authorized or served on the owner, occupier or holder of any property or right in any property, it is sufficient if that person is described in the notice or other document as the owner, occupier or holder of the property or right in question and is it not necessary to name that person.
- (3) Any legal process is effectively and sufficiently served on the Service Provider when it is delivered to the Electrical Engineer or an employee in attendance at the office of the Electrical Engineer.

#### **7. Compliance with notices.-**

Any person on whom a notice duly issued or given under this Bylaw is served shall, within the time specified in such notice, comply with its terms.

#### **8. Application for supply.-**

- (1) Application for the supply of electricity or for the increase in the capacity of an existing electrical supply, or for a prepayment arrangement shall be made in writing by the prospective consumer on the prescribed form obtainable at the

office of the Service Provider, and the notified maximum demand, in kVA, required for the installation, shall be stated therein. Such application shall be made as early as possible before the supply of electricity is required in order to facilitate the work of the Service Provider.

- (2) Applicants for the supply of electricity or for the increase in the capacity of an existing electrical supply, or for a prepayment arrangement shall submit the following documents with their application -
  - (a) An identity document or passport, and, in the case of a business, a letter of resolution delegating the authority to the applicant;
  - (b) The consumer shall provide a Deed of Sale or other proof of ownership of the premises for which a supply of electricity is required;
  - (c). Other documents required by the Electrical Engineer or the Chief Finance Officer.
- (3) Applicants for a supply of electricity shall be subject to a credit clearance check as far as debt to the Service Authority is concerned.
- (4) An application for a new temporary supply of electricity shall be considered at the discretion of the Electrical Engineer, who may specify any special conditions to be satisfied in such case.

**9. Processing of requests for supply.-**

Applications for the supply of electricity will be processed and the supply made available within the periods stipulated in the applicable standard specification, subject to the applicant complying with all written conditions and requirements duly imposed in terms of bylaw 4.

**10. Wayleaves and Servitudes on private property.**

- (1) The Service Provider may refuse to lay or erect a service connection above or below ground on any thoroughfare or land not vested in the Service Authority or on any private property, unless and until the prospective consumer shall have obtained and deposited with the Service Provider written permission granted by the owner of the said private property or by the person in whom is vested the legal title to the land or thoroughfare as aforesaid exists, as the case may be, authorising the laying or erection of a service connection thereon.
- (2) If such permission is withdrawn at any time or if the aforesaid private property or thoroughfare changes ownership and the new owner refuses to grant or continue such permission, the cost of any alteration required to be made to a service connection in order that the supply of electricity may be continued, and of any removal thereof which may become necessary in the circumstances, shall be borne by the consumer to whose premises the supply of electricity is required to be continued.
- (3) The Service Provider may remove any object or rectify any activity that may endanger the integrity of the distribution system as contemplated in bylaw 27.



- (4) The Service Provider may enforce the requirements for wayleaves and servitude as determined by the Electrical Engineer.

**11. Statutory Servitude.-**

- (1) Subject to the provisions of subsection (3) the Service Provider may within the municipal area of the Service Authority -
  - (a) provide, establish and maintain electricity services;
  - (b) acquire, construct, lay, extend, enlarge, divert, maintain, repair, discontinue the use of, close up and destroy electricity supply mains;
  - (c) construct, erect or lay any electricity supply main on, across, through, over or under any street or immovable property and the ownership of any such main shall vest in the Service Provider;
  - (d) do any other thing necessary or desirable for or incidental, supplementary or ancillary to any matter contemplated by paragraphs (a) to (c).
- (2) If the Service Provider constructs, erects or lays any electricity supply main on, across, through, over or under any street or immovable property not owned by the Service Authority or under the control of or management of the Service Authority, the Service Provider shall determine the restrictions to be imposed on the use of the property under a servitude agreement.
- (3) The Service Authority and the owner of such street or property shall enter into a servitude agreement which may include an agreed amount for compensation, or, in the absence of agreement, as determined either by arbitration or a Court of Law.
- (4) The Service Provider shall, before commencing any work other than repairs or maintenance on or in connection with any electricity supply main on immovable property not owned by the Service Authority or under the control or management of the Service Authority, give the owner or occupier of such property reasonable notice of the proposed work and the date on which it proposes to commence such work.

**12. Right of admittance to inspect, test and /or do maintenance work.-**

- (1) The Service Provider shall, through its employees, contractors and their assistants and advisers, have reasonable access to or over any property for the purposes of-
  - (a) doing anything authorised or required to be done by the Service Provider under this Bylaw or any other law;
  - (b) inspecting and examining any service mains and anything connected therewith including but not limited to periodic installation audits which will include assessment of appliances used to confirm the usage of electricity as per meter readings; ;
  - (c) enquiring into and investigating any possible source of electricity supply or the suitability of immovable property for any work, scheme or undertaking of the Service Provider and making any necessary survey in connection therewith;

- (d) ascertaining whether there is or has been a contravention of the provisions of this Bylaw or any other law; and
  - (e) enforcing compliance with the provisions of these Bylaws or any other law.
- (2) The Service Provider shall pay to any person suffering damage as a result of the exercise of the right of access contemplated by subsection (1), except where the Service Provider is authorised to execute on the property concerned any work at the cost of such person or some other person or to execute on such property any work and recover the cost thereof from such person or some other person, compensation in such amount as may be agreed upon by the Service Provider and such person or, in the absence of agreement, as may be determined by arbitration or Court of Law.
- (3) The Electrical Engineer may, by notice in writing served on the owner or occupier of any property, require such owner or occupier to provide, on the day and at the hour specified in such notice, access to such property to a person and for a purpose referred to in subsection (1).
- (4) The Service Provider may gain access to or over any property without notice and may take whatever action as may, in its opinion, be necessary or desirable in consequence of the existence of a state of war or the occurrence of any calamity, emergency or disaster or where the risk of injury to life and limb or death dictates otherwise.

**13. Refusal or failure to give information.-**

- (1) No person shall refuse or fail to give such information as may be reasonably required of him /her by any duly authorised official of the Service Provider or render any false information to any such official regarding any electrical installation work completed or contemplated.
- (2) The Service Provider shall not make any information available concerning the supply or account details for any premises to any third party without the express written permission from the consumer who signed the supply agreement for the supply to the premises concerned except to the owner of a property upon written request to the Service Provider.

**14. Refusal of admittance.-**

No person shall willfully hinder, obstruct, interfere with or refuse admittance to any duly authorized official of the Service Provider in the performance of his duty under this By - law or of any duty connected therewith or relating thereto.

**15. Improper use.-**

- (1) If the consumer uses the electricity for any purpose or deals with the electricity in any manner which the Service Provider has reasonable grounds for believing interferes in an improper or unsafe manner or is found to interfere in an improper or unsafe manner with the efficient supply of electricity to any other consumer, the Service Provider may disconnect the electricity.

- (2) Any fees or surcharges prescribed by the Service Provider for the disconnection and reconnection shall be paid by the consumer before the electricity supply is restored.

**16. Electricity tariffs, surcharges and fees. -**

- (1) Copies of charges, surcharges and fees may be obtained free of charge at the offices of the Service Provider.
- (2) Availability charges as may be determined from time to time by the Service Provider are payable to the Service Provider by the owner of immovable property with or without improvements if the property is not connected to the electricity distribution system of the Service Provider and if access to an electricity connection is available to the property, provided that the Service Provider may grant written partial or complete exemption from the payment of such charges, and provided further that the Service Provider may at any time withdraw such an exemption.
- (3) Quota charges as may be determined from time to time by the Service Provider are payable by developers or owners of land within the license supply area of the Service Provider when the authorised maximum demand allowed for any particular stand or premises and determined by the Service Provider on the basis of the size of the particular stand and its zoning is exceeded. These charges are used to cover the cost of extending the local distribution and reticulation network, which the Service Provider does not recover from the tariffs for the supply of electricity.

**17. Deposits.-**

- (1) The Service Provider, in terms of a Tariff Policy approved by the Service Authority, reserves the right to require the consumer to deposit a sum of money as security in payment of any charges which are due or may become due to the Service Provider.
- (2) The amount of the deposit in respect of each electricity installation shall be determined by the Chief Financial Officer. Each such deposit may be increased if the Chief Financial Officer deems the deposit held to be inadequate, or as a result of non-payment, or as a result of tampering, or as a result of unauthorized connections or unauthorized reconnections or any other failure to comply with these bylaws or the supply agreement.
- (3) Such deposit shall not be regarded as being in payment or part payment of any accounts due for the supply of electricity for the purpose of obtaining any discount provided for in the electricity tariff referred to in this Bylaw.
- (4) On cessation of the supply of electricity, the amount of such deposit, free of any interest, less any payments due to the Service Provider and /or the Service Authority shall be refunded to the consumer.
- (5) The payment of interest on deposits, held in terms of supply agreements by any previous supplier of electricity, shall cease on the date of transfer of such supplies to the Service Provider.

**18. Payment of charges.-**

- (1) The consumer shall be liable for all charges listed in the prescribed tariff for the electricity service as approved by the Service Authority. The consumer shall also be required to pay all charges of other services supplied by the Service Authority to ensure a continued supply of electricity.
- (2) All accounts shall be deemed to be payable when issued by the Service Provider and each account shall, on its face, reflect the due date and a warning indicating that the supply of electricity may be disconnected should the charges in respect of such supply remain unpaid after the due date.
- (3) An error or omission in any account or failure to render an account shall not relieve the consumer of his obligation to pay the correct amount due for electricity supplied to the premises and the onus shall be on the consumer to satisfy himself /herself that the account rendered is in accordance with the prescribed tariff of charges in respect of electricity supplied to the premises.
- (4) Where a duly authorised official of the Service Provider has visited the premises for the purpose of disconnecting the supply of electricity in terms of subsection (2) and he /she is obstructed or prevented from effecting such disconnection, the prescribed fee shall become payable for each visit necessary for the purpose of such disconnection.
- (5) After disconnection for non -payment of an account, the prescribed fees and any amounts due for electricity consumed shall be paid, or suitable arrangements have been made in terms of the Service Authority's Bylaw or Policies, before the electricity supply is reconnected.
- (6) Notwithstanding the fact that an occupier has an agreement for the supply of electricity, should the owner of immovable property apply for a clearance certificate, in terms of section 118, of the Local Government: Municipal Systems Act, No. 32 of 2000, then such owner will be liable for all charges due to the Service Provider, in respect of the said property, in order to obtain such certificate.

**19. Interest on overdue accounts.-**

The Service Provider may charge interest on accounts which are not paid by the due date appearing on the account, in terms of an approved Credit Control and Debt Collection Policy and any related indigent support.

**20. Principles for the resale of electricity.-**

- (1) Resellers shall comply with the licensing and registration requirements set out in the Electricity Regulation Act and regulations issued under this Act.
- (2) Unless otherwise authorised by the Electrical Engineer, no person shall sell or supply electricity, supplied to his /her premises under an agreement with the Service Provider, to any other person or persons for use on any other premises, or permit or suffer such resale or supply to take place.
- (3) If electricity is resold for use upon the same premises, the electricity resold shall be measured by a submeter of a type which has been approved by the South

African Bureau of Standards and supplied, installed and programmed in accordance with the standards of the Service Provider.

- (4) The tariff, rates and charges at which and the conditions of sale under which electricity is thus resold shall not be less favourable to the purchaser than those that would have been payable and applicable had the purchaser been supplied directly with electricity by the Service Provider.
- (5) Every reseller shall furnish the purchaser with monthly accounts that are at least as detailed as the relevant billing information details provided by the Service Provider to its electricity consumers.
- (6) The Reseller shall conclude written agreements with all purchasers of such resold electricity. It shall be a condition of supply to such purchaser that the Service Provider shall not accept any liability for and shall be indemnified against any claim for damages or losses arising from the disconnection of electricity due to tampering or non –payment notwithstanding the fact that the purchaser had paid the reseller for the electricity.

**21. Right to disconnect supply.-**

- (1) The Service Provider may, subject to subsection (2), disconnect the supply of electricity to any premises, which could include the restricting and /or allocation of credit purchases for prepayment meters as set out in the Service Authority's Credit Control and Debt Collection Policy-
  - (a) where the person liable to pay for such supply fails to pay any charge due to the Service Provider in connection with any supply of electricity which he or she may at any time have received from the Service Provider in respect of such premises; or
  - (b) where the Service Authority has requested the Service Provider to disconnect the supply of electricity where there are outstanding municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties; or
  - (c) where tampering with the service connection or supply mains has occurred, or
  - (d) where no supply agreement has been concluded, or
  - (e) where the terms and conditions of the supply agreement have not been complied with or
  - (f) where the applicant for supply of electricity intentionally or negligently misrepresented or otherwise incorrectly presented the facts or information in an application for supply,
  - (g) where the Service Provider has reasonable grounds for believing that the consumer has interfered in an improper or unsafe manner or was found to have interfered in an improper or unsafe manner with the efficient supply of electricity to any other consumer, in accordance with bylaw 15 or
  - (h) where the provisions of these bylaws have otherwise not been complied with or been contravened.

- (2) The Service Provider must a consumer, in the circumstances described in subsections (1) (a) to (h) notice of-
  - (a) the intention to disconnect electricity supply to the premises of such person;
  - (b) a reasonable opportunity for such person to make representations in respect of the intended disconnection; and
  - (c) all the relevant information including reasons for the intended disconnection and the notice period on or after which the disconnection will be effected.
- (3) The Service Provider may disconnect the supply of electricity to any premises without notice under the following circumstances-
  - (a) where there is a case of grave risk to any person or property; or
  - (b) for reasons of community safety or the safety of emergency personnel or other employees of the Service Provider;
- (4) For circumstances other than listed in subsection (3) the Service Provider shall give the person concerned fourteen days' notice to remedy his or her default prior to disconnection.
- (5) After the disconnection contemplated in subsection (1), the fees or surcharges as prescribed by the Service Provider for such disconnection or the reconnection of the service shall be paid by the person concerned.
- (6) In the case where an installation has been illegally reconnected on a consumer's premises after having been previously legally disconnected by the Service Provider, or in the case where the Service Provider's electrical equipment has been tampered with to prevent the full registration of consumption by the meter, the electricity supply may be physically removed from those premises.

**22. Non -liability of the service authority or service provider.-**

- (a) The Service Provider does not guarantee a continuous or consistent supply of electricity to its Consumers, but will take such reasonable precautions as it is able to endeavor to supply electricity to its Consumers in accordance with their requirements.

The Service Provider shall not be liable for any damage, loss. Direct or consequential caused to any Consumer from any interruption or diminution of the supply of electricity or any temporary increase or surge therein unless the same is due to the negligence of the Service Provider in failing to take such reasonable precautions as aforesaid and in any event shall not be liable for any consequential damage or loss as opposed to direct damage, or loss which may be suffered by any Consumer.

In no case shall the Service Provider be liable for any damage or loss where the same has been occasioned by strikes, lock outs, riots, war, Act of God or other cause beyond the control of the Service Provider affecting the supply of electricity.



- (b) The Consumer is deemed to hold the Service Provider indemnified against any action, claim, expense or demand arising from or in connection with any of the matters aforesaid.

**23. Leakage of electricity.-**

Under no circumstances shall any rebate be allowed on the account for electricity supplied and metered in respect of electricity wasted owing to leakage or any other fault in the electrical installation.

**24. Failure of supply.-**

- (1) The Service Provider does not undertake to attend to a failure of supply of electricity due to a fault in the electrical installation of the consumer, except when such failure is due to the operation of the service protective device of the Service Provider.
- (2) When any failure of supply of electricity is found to be due to a fault in the electrical installation of the consumer or to the faulty operation of apparatus used in connection therewith, the Service Provider shall have the right to charge the consumer the fee as prescribed by the Service Provider for each restoration of the supply of electricity in addition to the cost of making good or repairing any damage which may have been done to the service main and meter by such fault or faulty operation as aforesaid.

**25. Seals of the service provider.-**

The meter, service protective devices and all apparatus belonging to the Service Provider shall be sealed or locked by a duly authorised official of the Service Provider, and no person not being an official of the Service Provider duly authorised thereto shall in any manner or for any reason whatsoever remove, break, deface, or tamper or interfere with such seals or locks.

**26. Tampering with service connection or supply mains .**

- (1) No person shall in any manner or for any reason whatsoever tamper with, interfere with, vandalize, fix an advertising medium to, or deface any meter or metering equipment, tariff mcb, protection device, seal, lock or other electrical equipment belonging to the Service Provider . No person shall tap or attempt to tap or cause or permit to be tapped any supply other than or in excess of that contracted for, might be lawfully obtained, abstracted or diverted.
- (2) If the Electrical Engineer has reasonable grounds for believing that the Service Provider has sustained any loss due to tampering or interference with any supply mains, service connection, meter, tariff mcb, protective devices, seal, lock or other electrical equipment in contravention of sub Bylaw (1) hereof the Service Provider may estimate such loss and such loss will be payable by the Consumer. In addition such Consumer shall pay to the Service Provider any cost which it may incur in repairing or reinstating the equipment concerned, together with the prescribed fee or surcharges for resealing or relocking.

- (3) Where prima facie evidence exists of a consumer and /or any person having contravened subsection (1), the Service Provider may disconnect the supply of electricity to the consumer, and that person shall be liable for all fees and charges levied by the Service Provider for such disconnection.
- (4) Where interference or damage is caused by any individual, having contravened subsection (1), legal action may be instituted against such individual.
- (5) Where a consumer and /or any person has contravened subsection (1) and such contravention has resulted in the meter recording less than the true consumption, the Service Provider shall have the right to recover from the consumer the full cost of his estimated consumption.
- (6) The determination by the Service Provider shall be prima facie evidence of such consumption.

## **27. Protection of service provider's supply mains.-**

- (1) No person shall, without having in his possession on site a Wayleave and a Civil Work Permit issued by the Service Provider and subject to such conditions as may be imposed-
  - (a) construct, erect or lay, or permit the construction, erection or laying of any building, structure or other object, or plant trees or vegetation over or in such a position or in such a manner as to interfere with or endanger the supply mains;
  - (b) excavate, open up, remove the ground or alter the ground level, above, next to, under or near any part of the supply mains, or in any area falling under the jurisdiction of the Supply Authority;
  - (c) damage, endanger, remove or destroy, or do any act likely to damage, endanger or destroy any part of the supply mains;
  - (d) make any unauthorized connection to any part of the supply mains or divert or cause to be diverted any electricity there from.
- (2) The owner or occupier shall limit the height of trees or length of projecting branches in the proximity of overhead lines or provide a means of protection which in the opinion of the Service Provider will adequately prevent the tree from interfering with the conductors should the tree or branch fall or be cut down.
- (3) Should the owner fail to observe this provision the Service Provider shall have the right, after prior written notification, or at any time in an emergency, to cut or trim the trees or other vegetation in such a manner as to comply with this provision and shall be entitled to enter the property for this purpose. The owner shall, in such event, be liable for all cost incurred by the Service Provider which costs may be recovered from the owner by adding same to the owner's rates account.

- (4) The Service Provider may subject to obtaining an order of court demolish, alter or otherwise deal with any building, structure or other object constructed, erected or laid in contravention with this Bylaw.
- (5) The Service Provider may in the case of an emergency or disaster remove anything damaging, obstructing or endangering or likely to damage, obstruct, endanger or destroy any part of the electrical distribution system.

**28. Prevention of tampering with service connection or supply mains.-**

If the Electrical Engineer decides that it is necessary or desirable to take special precautions in order to prevent tampering with any portion of the supply mains, service connection or service protective device or meter or metering equipment, the consumer shall either supply and install the necessary protection or pay the costs involved where such protection is supplied by the Service Provider.

**29. Unauthorised connections.-**

No person other than a person specifically authorised thereto by the Electrical Engineer in writing shall directly or indirectly connect, attempt to connect or cause or permit to be connected any electrical installation or part thereof to the supply mains or service connection.

**30. Unauthorised reconnections.-**

- (1) No person other than a person specifically authorised thereto by the Electrical Engineer in writing shall reconnect, attempt to reconnect or cause or permit to be reconnected to the supply mains or service connection any electrical installation or installations which has or have been disconnected by the Service Provider.
- (2) Where the supply of electricity that has previously been disconnected is found to have been reconnected, the consumer using the supply of electricity shall be liable for all charges for electricity consumed between the date of disconnection and the date the electricity supply was found to be reconnected and any other charges raised in this regard.
- (3) Furthermore, the Service Provider reserves the right to remove part or all of the supply equipment until such time as payment has been received in full. In addition, the consumer will be responsible for all the costs associated with the reinstatement of such supply equipment.

**31. Temporary disconnection and reconnection.-**

- (1) The Service Provider shall, at the request of the consumer, temporarily disconnect and reconnect the supply of electricity to the consumer's electrical installation upon payment of the fee as prescribed by the Service Provider for each such disconnection and subsequent reconnection.
- (2) The Service Provider may inspect the service connection and /or require a Certificate of Compliance to be submitted before reconnecting the supply.

- (3) In the event of the necessity arising for the Service Provider to effect a temporary disconnection and reconnection of the supply of electricity to a consumer's electrical installation and the consumer is in no way responsible for bringing about this necessity, the Service Provider shall waive payment of the fee hereinbefore referred to.
- (4) The Service Provider may temporarily disconnect any installation for the purpose of repairs, test or overhaul without notice at any time

**32. Temporary supplies.-**

It shall be a condition of the giving of any temporary supply of electricity that if such supply is found to interfere with the efficient and economical supply of electricity to other consumers, the Service Provider shall have the right, with notice, or under exceptional circumstances without notice, to terminate such temporary supply at any time and, neither the Service Authority nor the Service Provider shall be liable for any loss or damage occasioned by the consumer by such termination.

**33. Temporary work.-**

- (1) Electrical installations requiring a temporary supply of electricity shall not be connected directly or indirectly to the supply mains except with the special permission in writing of the Electrical Engineer.
- (2) Full information as to the reasons for and nature of such temporary work shall accompany the application for the aforesaid permission, and the Electrical Engineer may refuse such permission or may grant the same upon such terms and conditions as it may appear desirable and necessary.

**34. Load reduction.-**

- (1) At times of peak load, or in an emergency, or when, in the opinion of the Electrical Engineer, it is necessary for any reason to reduce the load on the electricity supply system of the Service Provider, the Service Provider may without notice interrupt and, for such period as the Electrical Engineer may deem necessary, discontinue the electricity supply to any consumer's electrically operated thermal storage water heater or any specific appliance or the whole installation.
- (2) Neither the Service Authority nor the Service Provider shall be liable for any loss or damage directly or consequentially due to or arising from such interruption and discontinuance of the electricity supply.
- (3) The Service Provider may install upon the premises of the consumer such apparatus and equipment as may be necessary to give effect to the provisions of subsection (1), and any duly authorised official of the Service Provider may at any reasonable time enter any premises for the purpose of installing, inspecting, testing adjusting and /or changing such apparatus and equipment.
- (4) Notwithstanding the provisions of subsection (3), the consumer or the owner, as the case may be, shall, when installing an electrically operated water storage heater, provide such necessary accommodation and wiring as the Service

Provider may decide to facilitate the later installation of the apparatus and equipment referred to in subsection (3).

- (5) Notwithstanding and in addition to bylaw 34(1) the Service Provider shall be entitled to require a consumer to reduce the consumption of electricity so as to reduce the load on the electricity supply system by such margins or levels as reasonably determined by the Service Provider. In the event of a consumer failing to so reduce the consumption or to maintain such reduced consumption of electricity, the Service Provider shall be entitled to levy a surcharge on or a higher tariff in respect of the electricity consumed by such consumer.

**35. High, medium and low voltage switchgear and equipment.-**

- (1) In cases where a supply of electricity is given at either high, medium or low voltage, the supply and installation of the switchgear, cables and equipment forming part of the service connection shall, unless otherwise approved by the Electrical Engineer, be paid for by the consumer.
- (2) All such equipment installed on the consumer's premises shall be compatible with the Service Provider's electrical performance standards.
- (3) No person shall open, close, isolate, link or earth high or medium voltage switchgear or equipment without giving reasonable prior notice to the Service Provider's System Control Centre.
- (4) In the case of a high or medium voltage supply of electricity, where the consumer has high or medium voltage switchgear installed, the Service Provider shall be advised of the competent person appointed by the consumer in terms of the Regulations, and of any changes made to such appointments.
- (5) In the case of a low voltage supply of electricity, the consumer shall provide and install a low voltage main switch and /or any other equipment required by the Service Provider or any duly authorised official of the Service Provider.

**36. Substation accommodation.-**

- (1) The Service Provider may, on such conditions as may be deemed fit by the Electrical Engineer, require the owner to provide and maintain accommodation which shall constitute a substation and which shall consist of a separate room or rooms to be used exclusively for the purpose of housing high voltage cables and switchgear, medium voltage cables and switchgear, transformers, low voltage cables and switchgear and other equipment necessary for the supply of electricity requested by the applicant.
- (2) The Service Provider shall have the right to supply its own networks from its own equipment installed in such accommodation, and if additional accommodation is required by the Service Provider, such additional accommodation shall be provided by the applicant at the cost of the Service Provider.
- (3) The substation accommodation shall comply with specified requirements and dimensions determined by the Service Provider and shall incorporate adequate lighting, ventilation, fire prevention and fire extinguishing measures.

- (4) The substation accommodation shall be situated on ground floor level at a point to which free, adequate and unrestricted access is available at all times for purposes connected with the operation and maintenance of the equipment.
- (5) Vehicular access to the substation entrance door shall be provided from the adjacent road or driveway.
- (6) Where in the opinion of the Electrical Engineer the position of the substation accommodation is no longer readily accessible or has become a danger to life or property or has for justifiable reasons become unsuitable, the consumer shall remove it to a new position to the satisfaction of the Electrical Engineer, and the cost of such removal, which shall be carried out with reasonable dispatch, shall be borne by the consumer.

**37. Wiring diagram and specification.-**

- (1) When more than one electrical installation or electricity supply from a common main or more than one distribution board or meter is required for any building or block of buildings, the wiring diagram of the circuits starting from the main switch and a specification shall on request be supplied to the Service Provider in duplicate for written consent before the work commences.
- (2) Where an electrical installation is to be supplied from a substation on the same premises on which the current is transformed from high voltage, or from one of the substations of the Service Provider through mains separate from the general distribution system, a complete specification and drawings for the plant to be installed by the consumer shall, if so required, be forwarded to the Service Provider for written consent before any material in connection therewith is ordered.

**38. Standby supply.-**

No person shall be entitled to a standby supply of electricity from the Service Provider for any premises having a separate source of electricity supply except with the written consent of the Electrical Engineer and subject to such terms and conditions as may be laid down by the Electrical Engineer.

**39. Consumer's electricity generation equipment.-**

- (1) No electricity generation equipment provided by a consumer in terms of any Regulations or for his own operational requirements shall be connected to any installation without the prior written consent of the Electrical Engineer.
- (2) Application for such consent shall be made in writing and shall include a full specification of the equipment and a wiring diagram.
- (3) The electricity generation equipment shall be so designed and installed that it is impossible for the Service Provider's supply mains to be energized by means of a back - feed from such equipment.



- (4) The position of the installed generating equipment shall not interfere with the supply mains the generating equipment must be installed entirely on the consumer's premises.
- (5) The consumer shall be responsible for providing and installing all such protective equipment and for obtaining a Certificate of Compliance issued in terms of the Regulations for the work carried out.
- (6) Whereby special agreement with the Service Provider, the consumer's electricity generation equipment is permitted to be electrically coupled to, and run in parallel with the Service Provider's supply mains, the consumer shall be responsible for providing, installing and maintaining all the necessary synchronizing and protective equipment required for such safe parallel operation, to the satisfaction of the Electrical Engineer.
- (7) Under normal operating conditions, any export of surplus energy from the consumer to the Service Provider's network shall be subject to special agreement with the Service Provider.
- (8) In the event of a general power failure on the service provider's network protection equipment shall be installed by the consumer, subject to the Electrical Engineer's approval, so as to ensure that the consumer's installation is isolated from the Service Providers network until normal operating conditions are restored. The cost of any specialized metering equipment will be for the consumer's account.

**40. Technical Standards.-**

The Electrical Engineer may from time to time issue Technical Standards detailing the requirements of the Service Provider regarding matters not specifically covered in the Regulations or this Bylaw but which are necessary for the safe, efficient operation and management of the supply of electricity.

### **CHAPTER 3 : RESPONSIBILITIES OF CONSUMERS**

41. Consumer to erect and maintain electrical installation.- Any electrical installation connected or to be connected to the supply mains, and any additions or alterations thereto which may be made from time to time, shall be provided and erected and maintained and kept in good order by the consumer at his own expense and in accordance with this Bylaw and the Regulations.
42. Fault in electrical installation.-
  - (1) If any fault develops in the electrical installation, which constitutes a hazard to persons, livestock or property, the user of the electrical installation shall immediately disconnect the electricity supply.
  - (2) The user of the electrical installation shall without delay give notice thereof to the Service Provider and shall immediately take steps to remedy the fault.
  - (3) The Service Provider may require the consumer to reimburse it for any expense to which it may be put in connection with a fault in the electrical installation.

**43. Discontinuance of use of supply.-**

In the event of a consumer desiring to discontinue using the electricity supply, he /she shall give at least three full working days' notice in writing of such intended discontinuance to the Service Provider, failing which he /she shall remain liable for all payments due in terms of the tariff for the supply of electricity until the expiration of two full working days after such notice has been given.

**44. Change of consumer.-**

- (1) Three full working days' notice in writing shall be given to the Service Provider of the intention to discontinue using the electricity supply, failing which the owner shall remain liable for such supply.
- (2) If the person taking over occupation of the premises desires to continue using the electricity supply, the owner of such premises shall make application in accordance with the provisions of section 5 of this Bylaw, and if the owner fails to make application for an electricity supply within ten working days of the person taking occupation of the premises, the supply of electricity shall be disconnected, and the owner shall be liable to the Service Provider for the electricity supply from the date of occupation until such time as the supply is so disconnected.
- (3) Where premises are fitted with prepayment meters and there is no existing electricity supply agreement, until such time as an application is made by the owner for a supply of electricity, in terms of section 5 of this Bylaw, the owner shall be liable for all charges and fees owed to the Service Provider for that metering point as well as any outstanding charges and fees which have accrued to that metering point.
- (4) The Electrical Engineer may impose conditions, which may include the withholding of the electricity supply to premises, in cases where the previous consumer's electricity account at that premises is in arrears.

**45. Service apparatus.-**

- (1) The consumer shall be liable for all costs to the Service Provider arising from damage to or loss of any metering equipment, service protective device, service connection or other apparatus on the premises, unless such damage or loss is shown to have been occasioned by an Act of God or an act or omission of an employee of the Service Provider or caused by an abnormality in the supply of electricity to the premises.
- (2) If, during a period of disconnection of an installation from the supply mains, the service main, metering equipment or any other service apparatus, being the property of the Service Provider and having been previously used, have been removed without its permission or have been damaged so as to render reconnection dangerous, the owner or occupier of the premises, as the case may be, during such period shall bear the cost of overhauling and /or replacing such equipment.
- (3) Where there is a common metering position, the liability detailed in subsection (1) shall devolve on the owner of the premises.

- (4) The amount due in terms of subsection (1) shall be evidenced by a certificate from the Electrical Engineer which shall be final and binding.

#### **CHAPTER 4 : SPECIFIC CONDITIONS CF SUPPLY**

##### **46. Service connection.-**

- (1) The consumer shall bear the cost of the service connection, as approved by the Service Provider.
- (2) Notwithstanding the fact that the consumer bears the cost of the service connection, ownership of the service connection shall vest in the Service Provider, the Service Provider shall be responsible for the maintenance of such service connection up to the point of supply.
- (3) The consumer shall not be entitled to any compensation from the Service Provider in respect of such service connection.
- (4) The work to be carried out by the Service Provider at the cost of the consumer for a service connection to the consumer's premises shall be determined by the Electrical Engineer.
- (5) The consumer shall provide, fix and /or maintain on his premises such ducts, wireways, trenches, fastenings and clearance to overhead supply mains as may be required by the Electrical Engineer for the installation of the service connection.
- (6) Unless otherwise approved by the Electrical Engineer each registered erf shall only be provided with one service connection.
- (7) Any covers of a wireway carrying the supply circuit from the point of supply to the metering equipment shall be made to accept the seals of the Service Provider.
- (8) Within the meterbox, the service conductor or cable, as the case may be, shall terminate in an unobscured position and the conductors shall be visible throughout their length when cover plates, if present, are removed.
- (9) In the case of blocks of buildings occupied by a number of individual consumers, separate wireways and conductors or cables shall be laid from the common metering room or rooms to each individual consumer in the blocks of buildings. Alternatively, if trunking is used, the conductors of the individual circuits shall be clearly identified and tied together every 1,5 m throughout their length.
- (10) In the case of normal domestic and business premises a single phase service connection with a maximum capacity of 80A will be provided upon prepayment of the sum prescribed in the Service Provider 's tariff charges.
- (11) In all other cases the connection fees are as prescribed in the Service Provider 's tariff of charges.
- (12) Whether a service is erected in, on or over public or private property, and notwithstanding any payments which have been made by a Consumer by way of fees therefore, ownership of any service line, pole, cable or other apparatus

installed by the Service Provider shall remain vested in the Service Provider , and the Service Provider and its servants shall have rights of access at all times to the service for its proper maintenance, replacement or alteration, and the Service Provider shall retain the right to use the whole or any portion of such service for the purpose of supplying any other Consumer.

- (13) Where a supply is given to a property situated outside the area of jurisdiction of the Service Provider or to any property in a remote or sparsely developed area within its area of jurisdiction, and where the City Electrical Engineer may consider such a display necessary, the consumer shall display his name and the street number of his property clearly and legibly in a conspicuous position at the entrance to his property.

**47. Metering accommodation.-**

- (1) The consumer shall, if required by the Electrical Engineer, provide accommodation in an approved position, the meter board and adequate conductors for the Service Provider's metering equipment, service apparatus and protective devices.
- (2) Such accommodation and protection shall be provided and maintained, to the satisfaction of the Electrical Engineer, at the cost of the consumer or the owner, as the circumstances may demand, and shall be situated, in the case of credit meters, at a point to which free and unrestricted access shall be had at all reasonable hours for the reading of meters but at all times for purposes connected with the operation and maintenance of the service equipment.
- (3) Access at all reasonable hours shall be afforded for the inspection of prepayment meters.
- (4) Where sub metering equipment is installed, accommodation separate from the Service Provider's metering equipment shall be provided.
- (5) The consumer or, in the case of a common meter position, the owner of the premises shall provide a distribution board from which to supply adequate electric lighting and power in the space set aside for accommodating the metering equipment and service apparatus.
- (6) Where in the opinion of the Electrical Engineer the position of the meter, service connection, protective devices or main distribution board is no longer readily accessible or becomes a danger to life or property or in any way becomes unsuitable, the consumer shall remove it to a new position, and the cost of such removal, which shall be carried out with reasonable dispatch, shall be borne by the consumer.
- (7) The accommodation for the Service Provider's metering equipment and protective devices may, if approved, include the consumer's main switch and main protective devices.
- (8) No apparatus other than that used in connection with the supply of electricity and use of electricity shall be installed or stored in such accommodation unless approved.

## CHAPTER 5 : SYSTEMS OF SUPPLY

### 48. Nominal supply voltage.-

The nominal supply voltage at which a supply is given shall be determined by the Service Provider as necessitated by technical considerations to ensure the efficient operation of the supply mains.

### 49. Load requirements.-

Alternating current supplies shall be given as prescribed by the Electricity Regulation Act, 2006 (Act No. 4 of 2006), and in the absence of a quality of supply agreement, as set out in the applicable standard specification.

### 50. Load limitations.-

- (1) Where the estimated load, calculated in terms of the safety standard, does not exceed 15 kVA, the electrical installation shall be arranged for a two -wire single -phase supply of electricity, unless otherwise approved by the Electrical Engineer.
- (2) Where a three -phase four -wire supply of electricity is provided, the load shall be approximately balanced over the three phases but the maximum out -of-balance load shall not exceed 15 kVA, unless otherwise approved by the Electrical Engineer.
- (3) No current -consuming appliance, inherently single phase in character, with a rating which exceeds 15 kVA shall be connected to the electrical installation without the prior approval of the Electrical Engineer.

### 51. Interference with other persons' electrical equipment.-

- (1) No person shall operate electrical equipment having load characteristics which, singly or collectively, give rise to voltage variations, harmonic currents or voltages, or unbalanced phase currents which fall outside the applicable standard specification.
- (2) The assessment of interference with other persons' electrical equipment shall be carried out by means of measurements taken at the point of common coupling.
- (3) Should it be established that undue interference is in fact occurring, the consumer shall, at his /her own cost, install the necessary equipment to filter out the interference and prevent it reaching the supply mains.

### 52. Supplies to motors.-

- (1) Unless otherwise approved by the Electrical Engineer the rating of motors shall be limited as follows-
  - (a) Limited size for low voltage motors rating of a low voltage single -phase motor shall be limited to 2 kW and /or the starting current shall not exceed 70 All motors exceeding these limits shall be wound for three phases at low voltage or such higher voltage as may be required.
  - (b) Maximum starting and accelerating currents of three -phase alternating current motors.

The starting current of three -phase low voltage motors permitted shall be related to the capacity of the consumer's service connection, as follows:

Insulated service cable, size in mm <sup>2</sup> , copper equivalent mm <sup>2</sup>	Maximum permissible starting current A	Maximum motor rating in kW		
		Direct on line (6 x full-load current)	Star/Delta (2,5 x full-load current)	Other means (1,5 x full-load current)
		kW	kW	kW
16	72	6	13,5	23
25	95	7.5	18	30
35	115	9	22	36,5
50	135	10	25	45
70	165	13	31	55
95	200	16	38	67
120	230	18	46	77
150	260	20	52	87

- (c) Consumers supplied at medium voltage-  
In an installation supplied at medium voltage the starting current of a low voltage motor shall be limited to 1,5 times the rated full -load current of the transformer supplying such a motor. The starting arrangement for medium voltage motors shall be subject to the approval of the Electrical Engineer.

### 53. Power factor.-

- (1) If required by the Electrical Engineer, the power factor of any load shall be maintained within the limits 0,85 lagging and 0,9 leading.
- (2) Where, for the purpose of complying with subsection (1), it is necessary to install power factor corrective devices, such corrective devices shall be connected to the individual appliance terminals unless the correction of the power factor is automatically controlled.
- (3) The consumer shall, at his /her own cost, install such corrective devices.

### 54. Protection.-

Electrical protective devices for motors shall be of such a design as effectively to prevent sustained overcurrent and single phasing, where applicable.

## CHAPTER 6: MEASUREMENT OF ELECTRICITY

### 55. Metering.-

- (1) The Service Provider shall, at the consumer's cost in the form of a direct charge or prescribed fee, provide, install and maintain appropriately rated metering equipment at the point of metering for measuring the electricity supplied.



- (2) Except in the case of prepayment meters, the electricity used by a consumer during any metering period shall be ascertained by the reading of the appropriate meter or meters supplied and installed by the Service Provider and read at the end of such period except where the metering equipment is found to be defective, or the Service Provider invokes the provisions of section 59 (2) of this Bylaw, in which case the consumption for the period shall be estimated.
- (3) Where the electricity used by a consumer is charged at different tariff rates, the consumption shall be metered separately for each rate.
- (4) The Service Provider reserves the right to meter the supply to blocks of shops and flats, tenement -houses and similar buildings for the buildings as a whole, or for individual units, or for groups of units.
- (5) No alterations, repairs or additions or electrical connections of any description shall be made on the supply side of the point of metering unless specifically approved in writing by the Electrical Engineer.

**56. Accuracy of metering.-**

- (1) A meter shall be conclusively presumed to be registering accurately if its error, when tested in the manner prescribed in subsection (5) hereof, is found to be within the limits of error as provided for in the applicable standard specifications.
- (2) The Service Provider shall have the right to test its metering equipment. If it is established by test or otherwise that such metering equipment is defective, the Service Provider shall in the case of a credit meter, adjust the account rendered; in the case of prepayment meters, (a) render an account where the meter has been under -registering, or (b) issue a free token where the meter has been over -registering, in accordance with the provisions of subsection (6).
- (3) The consumer shall be entitled to have the metering equipment tested by the Service Provider on payment of the prescribed fee. If the metering equipment is found not to comply with the system accuracy requirements as provided for in the applicable standard specifications, an adjustment in accordance with the provisions of subsections (2) and (6) shall be made and the aforesaid fee shall be refunded.
- (4) In case of a dispute, the consumer shall have the right at his own cost to have the metering equipment under dispute tested by an approved independent testing authority, and the result of such test shall be final and binding on both parties.
- (5) Meters shall be tested in the manner as provided for in the applicable standard specifications.
- (6) When an adjustment is made to the electricity consumption registered on a meter in terms of subsection (2) or (3), such adjustment shall either be based on the percentage error of the meter as determined by the test referred to in subsection (5) or upon a calculation by the Service Provider from consumption data in its possession. Where applicable, due allowance shall be made, where possible, for seasonal or other variations which may affect the consumption of electricity.

- (7) When an adjustment is made as contemplated in subsection (6), the adjustment may not exceed a period of three years preceding the date on which the metering equipment was found to be inaccurate. The application of this section does not bar a consumer from claiming back overpayment for any longer period where the consumer is able to prove the claim in the normal legal process.
- (8) Where the actual load of a consumer differs from the initial estimated load provided for under section 8 (1) to the extent that the Service Provider deems it necessary to alter or replace its metering equipment to match the load, the costs of such alteration or replacement shall be borne by the Consumer.
- (9) (a) Prior to the Service Provider making any upward adjustment to an account in terms of subsection (6), the Service Provider shall notify the consumer in writing of the monetary value of the adjustment to be made and the reasons therefore; in such notification provide sufficient particulars to enable the consumer to submit representations thereon; and call upon the consumer in such notice to provide it with reasons in writing, if any, within 21 days or such longer period as the Electrical Engineer may permit why his /her account should not be adjusted as notified.  
  
(b) Should the consumer fail to make any representations during the period referred to in subsection 9 (a) (iii) the Service Provider shall be entitled to adjust the account as notified in subsection 9 (a) (i).  
  
(c) The Electrical Engineer shall consider any reasons provided by the consumer in terms of subsection (9) (a) and shall, if satisfied that a case has been made out therefore, adjust the account appropriately.  
  
(d) If the Electrical Engineer decides after having considered the representation made by the consumer that such representations do not establish a case warranting an amendment to the monetary value established in terms of subsection (6), the Service Provider shall be entitled to adjust the account as notified in terms of subsection 9 (a) (i), subject to the consumer's right to appeal the decision of the official in terms of section 62 of the Municipal Systems Act, 2000.

**57. Reading of credit meters.-**

- (1) Unless otherwise prescribed in the applicable standard specification, credit meters shall normally be read at intervals of one month and the fixed or minimum charges due in terms of the tariff shall be assessed accordingly. The Service Provider shall not be obliged to effect any adjustments to such charges.
- (2) If for any reason the credit meter cannot be read, the Service Provider may render an estimated account. The electrical energy consumed shall be adjusted in a subsequent account in accordance with the electrical energy actually consumed.
- (3) When a consumer vacates a property and a final reading of the meter is not possible, an estimation of the consumption may be made and the final account rendered accordingly.

- (4) If a special reading of the meter is desired by a consumer, this may be obtained upon payment of the prescribed fee.
  - (5) If any calculating, reading or metering error is discovered in respect of any account rendered to a consumer, the error shall be corrected in subsequent accounts. Any such correction shall only apply in respect of accounts for a period of three years preceding the date on which the error in the accounts was discovered, and shall be based on the actual tariffs applicable during the period.
- The application of this section does not prevent a consumer from claiming back overpayment for any longer period where the consumer is able to prove the claim in the normal legal process.

**58. Prepayment metering.-**

- (1) No refund of the amount tendered for the purchase of electricity credit shall be given at the point of sale after initiation of the process by which the prepayment meter token is produced.
- (2) Copies of previously issued tokens for the transfer of credit to the prepayment meter may be issued at the request of the consumer.
- (3) When a consumer vacates any premises where a prepayment meter is installed, no refund for the credit remaining in the meter shall be made to the consumer by the Service Provider.
- (4) The Service Provider shall not be liable for the reinstatement of credit in a prepayment meter lost due to tampering with, or the incorrect use or the abuse of, prepayment meters and /or tokens.
- (5) Where a consumer is indebted to the Service Provider for electricity consumed or to the Service Authority for any other service supplied by the Service Authority (including rates) or for any charges previously raised against him /her in connection with any service rendered, the Service Provider may deduct a percentage from the amount tendered to offset the amount owing to the Service Authority and /or the Service Provider, as set out in the section 5 agreement for the supply of electricity.
- (6) The Service Provider may, at its discretion, appoint vendors for the sale of credit for prepayment meters and shall not guarantee the continued operation of any vendor.
- (7) The Service Provider shall be competent to require that any or all of its existing consumers whose consumption is measured by credit meters be replaced with a system of prepayment metering or other method of measuring consumption or that any or all of its new consumers utilise a prepayment or other method of measuring consumption. The Service Provider shall be entitled to consider its operational requirements when acting in terms of this bylaw and shall, inter alia, be entitled to phase such replacement in over any period it deems fit. It shall also be permissible for the Service Provider to differentiate between consumers based on the use of their properties, the geographical location of consumers or any other basis provided that such differentiation does not amount to unfair

discrimination. The Service Provider shall be entitled to levy the necessary fees and tariffs to give effect to the replacement of the credit metering system and consumers shall be obliged to pay such fees and tariffs.

## **CHAPTER 7 : ELECTRICAL CONTRACTOR**

### **59. Electrical contractors' responsibilities. -**

In addition to the requirements of the Regulations the following requirements shall apply-

- (a) Where an application for a new or increased supply of electricity has been made to the Service Provider, the Electrical Engineer may at his /her discretion accept notification of the completion of any part of an electrical installation, the circuit arrangements of which permit the electrical installation to be divided up into well-defined separate portions, and such part of the electrical installation may, at the discretion of the Electrical Engineer, be inspected, tested and connected to the supply mains as though it were a complete installation.
- (b) The examination, test and inspection that may be carried out at the discretion of the Electrical Engineer in no way relieves the electrical contractor /registered person or the user or lessor, as the case may be, from his responsibility for any defect in the installation. Such examination, test and inspection shall not be taken under any circumstances (even where the electrical installation has been connected to the supply mains) as indicating or guaranteeing in any way that the electrical installation has been carried out efficiently with the most suitable materials for the purpose or that it is in accordance with this Bylaw or the safety standard, and neither the Service Authority nor the Service Provider shall be held responsible for any defect or fault in such electrical installation.

### **60. Work done by electrical contractors.-**

- (1) Where an application for a new or increased supply of electricity or form prepayment metering has been made to the Service Provider , the Electrical Engineer may at his or her discretion accept notification of the completion of any part of the electrical installation, the circuit arrangements of which permit the electrical installation to be divided into well- defined separate portions. Any part of the electrical installation may, at the discretion of the Electrical Engineer be inspected, tested and connected to the supply mains as though that part of the electrical installation were a complete installation. Subject to the submission by the owner, consumer or applicant, as the case may be, of a certificate of compliance for that part of the installation.
- (2) Neither the Service Authority nor the Service Provider shall be held responsible for the work done by the electrical contractor /registered person on a consumer's premises and shall not in any way be responsible for any loss or damage which may be occasioned by fire or by any accident arising from the state of the wiring on the premises.

## **CHAPTER 8: COST OF WORK**

### **61. Repair of damage.-**

- (1) The Service Provider may repair and make good any damage done in contravention of this Bylaw or resulting from a contravention of this Bylaw. The cost of any such work carried out by the Service Provider which was necessary due to the contravention of this Bylaw, shall be to the account of the person who acted in contravention of this Bylaw.

## **CHAPTER 9: PENALTIES**

### **62. Penalties.-**

- (1) Any person who contravenes any of the provisions of these Bylaws shall be guilty of an offence.
- (2) Any person who continues to commit an offence after notice has been served on him /her to cease committing such offence or after he /she has been convicted of such offence shall be guilty of a continuing offence.
- (3) Any person who knows or has reason to suspect or should reasonably have known or suspected that any electrical installation or apparatus or any radio aerial or support thereof on or over any premises owned or occupied by him is in a condition likely to be dangerous to himself or to any other person, or to cause damage to the service connection or supply mains shall be guilty of an offence unless he shall immediately either report the same to the Service Provider.
- (4) Any person convicted of an offence under this Bylaw shall be liable to a fine or to imprisonment imposed by a competent Court, or in the case of a continuing offence, to an additional fine or additional imprisonment determined by such a Court or to both such additional fine and imprisonment for each day on which such offence is continued.
- (5) Every person committing a breach of the provisions of this Bylaw shall be liable to recompense the Service Authority and /or the Service Provider for any loss or damage suffered or sustained by it in consequence of such breach.

## **CHAPTER 10: ESTIMATION OF CONSUMPTION**

### **63. Estimation of consumption.-**

- (1) The Service Provider may estimate the quantity of electricity provided in respect of a period or periods within the interval between successive measurements which may not be more than 90 days apart, and may render an account to a consumer for the services so estimated, which estimate shall, for the purposes of these By-laws, be regarded as an accurate measurement until the contrary is proved.
- (2). For purposes of assessing the quantity of electricity supplied to a consumer during any period and measured by a measuring device installed by the Service

Provider over a specific period, for the purposes of these By -laws it will be deemed that-

- (a) the quantity is represented by the difference between measurements taken at the beginning and end of such period;
  - (b) the measuring device was accurate during such period; and
  - (c) the entries in the records of the Service Provider were correctly made.
- (3) If electricity is supplied to, or taken by, a consumer without its passing through a measuring device, or where tampering or interference with such measuring device has taken place, the estimate by the Service Provider of the quantity of such electricity shall be deemed to be correct.
- (4) Where electricity supplied by the Service Provider to any premises is in any way taken by the consumer without such electricity passing through any measuring device provided by the Service Provider, the Service Provider may-for the purpose of rendering an account, make an estimate, in accordance with subsection (5), of the quantity of electricity supplied to the consumer during the period that electricity is so taken by the consumer.
- (5) For the purposes of subsection (4), an estimate of the quantity of electricity supplied to a consumer shall be based on-
- (a) the average monthly consumption of electricity on the premises registered over three succeeding measuring periods taken over not more than 180 days in total, after the date on which the irregularity referred to in subsection (2) was discovered and rectified; and /or
  - (b) the period preceding the date referred to in subsection (2) but not exceeding 36 months.
- (6) Nothing in these By -laws may be construed as imposing on the Service Provider an obligation to cause any measuring device installed on any premises to be measured at the end of any fixed period, and the Service Provider may estimate the quantity of electricity supplied over any period during the interval between successive measurements of the measuring device, which may not be more than 90 days apart, and render an account to a consumer for the quantity of electricity so estimated.
- (7) The Service Provider shall, on receipt from the consumer of written notice of not less than seven days and subject to payment of the prescribed fees, measure the quantity of electricity supplied to such consumer at a time or on a day other than that upon which it would normally be measured.
- (8) If a contravention of section 26 occurs, the consumer shall pay to the Service Provider the cost of such quantity of electricity estimated by the Service Provider to have been supplied to the consumer.
- (9) Where electricity supply services are provided through a communal electricity services work, the amount due and payable by consumers gaining access to electricity supply services through that communal electricity services work, will be based on the estimated average consumption of electricity supplied to that

electricity services work, and the decision of the Service Provider in arriving at that amount is final and binding on each consumer affected thereby, unless legally set aside.

- (10) Failure by the Service Provider to comply with the periods of 90 and 180 days referred to above will not disentitle the Service Provider from recovering any monies due to it by a consumer.

## **CHAPTER 11 : MISCELLANEOUS**

### **64. Miscellaneous**

- (1) All electrical installations shall be maintained and kept in good order by the Consumer, and the service provider will not be responsible for the efficient and proper execution of any work on the Consumer's premises other than that done by the service provider's own workmen, the inspection, insulation, test and service fuses being for the requirements of the service provider only.
- (2) Every facility must be given to authorised Officials of the Service Provider to inspect any part or parts of any installation connected to or intended to be connected to the Service Provider's mains, and suitable trap doors in floors and ceilings must be provided for this purpose where necessary.
- (3) Only one service connection to any one premise will be made or permitted to be retained except with the consent, in writing, of the Electrical Engineer, which consent will only be granted when, in his opinion, special technical considerations render such additional connection necessary or desirable. The Consumer shall pay the entire cost of any service connection made, in addition to the first connection, and shall be liable for payments under the tariff of charges for electricity as if each such connection were made to separate premises.
- (4) The Service Provider will supply any number of Consumers in one building and may lay services direct to each Consumer, but the Service Provider reserves the right to supply the building at a central point. Each separate Consumer's installation must be wired at his own expense. Owners of buildings may fix meters and measure current consumed by tenants in their buildings, but the Service Provider will accept no responsibility for any meters other than those supplied and fixed by the Department.
- (5) These Bylaws apply to the supply of electricity by the Service Provider within its licensed supply area irrespective whether or not the place of consumption falls within the boundaries of the Municipality.

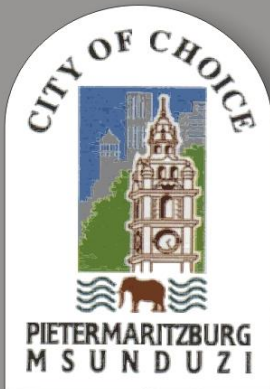
## **CHAPTER 12: REPEAL OF BYLAWS**

65. All existing Electricity Bylaws including the City of Pietermaritzburg Electricity Supply Bylaws are hereby repealed.



**SCHEDULE 1**  
**STANDARD SPECIFICATIONS**

SANS 1019	Standard voltages, currents and insulation levels for electricity supply;
SANS 1607	Electromechanical watt -hour meters;
SANS 1524 -	1 Electricity payment systems;
SANS IEC 60211	Maximum demand indicators, Class 1.0;
SANS IEC 60521 & 2);	Alternating current electromechanical watt -hour meter (Classes 0.5, 1
SANS 10142 -1	Code of practice for the wiring of premises;
NRS 047	Electricity Supply -Quality of Service;
NRS 048	Electricity Supply -Quality of Supply; and
NRS 057	Electricity Metering: Minimum Requirements,



# The Msunduzi Municipality

## BYLAWS FOR THE ESTABLISHMENT OF SPECIAL RATING AREA



KwAZULU-NATAL PROVINCE  
KwAZULU-NATAL PROVINSIE  
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**Provincial Gazette • Provinsiale Koerant • Igazethi Yesifundazwe**

**GAZETTE EXTRAORDINARY – BUITENGEWONE KOERANT – IGAZETHI EYISIPESHELI**

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18 kuMASINGANA 2013

**No. 881**

## MSUNDUZI MUNICIPALITY

### BY-LAW: ESTABLISHMENT OF SPECIAL RATING AREAS

To provide for the establishment of special rating areas; to provide for additional rates in those areas; and to provide for matters incidental thereto.

BE IT ENACTED BY THE MSUNDUZI MUNICIPALITY as follows:

#### CHAPTER 1

#### ESTABLISHMENT OF SPECIAL RATING AREAS

##### 1. DEFINITIONS

In this By-law, words or expressions shall bear the meaning assigned to them and, unless the context otherwise indicates –

**“additional rate”** means a rate payable in addition to the rates that would normally be levied on properties falling within a special rating area;

**“council”** means the council of the Msunduzi Municipality;

**“majority”** means a simple majority of the owners of properties falling within a special rating area, namely 50% plus 1 of those owners;

**“management entity”** means a company incorporated in terms of section 21 of the Companies Act, 1973 (Act No. 61 of 1973) established to undertake the upgrading or improvement of a special rating area;

**“Local Government: Municipal Property Rates Act”** means the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004);

**“owner”** has the meaning assigned to it in section 1 of the Local Government: Municipal Property Rates Act;

**“property”** has the meaning assigned to it in section 1 of the Municipal Property Rates Act; and

**“special rating area”** means a special rating area established by the council in terms of section 22 of the Local Government: Municipal Property Rates Act and section 7 of this By-law.

## 2. ESTABLISHMENT OF SPECIAL RATING AREAS

The municipality may, by resolution of the council –

- (1) establish an area falling within its area of jurisdiction as a special rating area; and
- (2) determine the commencement date of the special rating area concerned.

## 3. PUBLIC MEETINGS

- (1) Any owner of a property falling within the area of jurisdiction of the municipality, or any group of property owners or any person representing such property owners, wishing to apply for the determination of a special rating area must hold a public meeting for the purpose of consulting the owners of properties falling within the proposed special rating area regarding:
  - (a) Whether or not a special rating area should be established;
  - (b) The proposed boundaries of the special rating area; and
  - (c) The proposed improvement or upgrading of the area.
- (2) Before holding the public meeting, the applicant must give notice to the owners of all properties falling within the proposed special rating area of the applicant's intention to apply for the determination of a special rating area. The notice must–
  - (a) state the purpose of the meeting;
  - (b) give details as to the place, date and time when the meeting will be held; and
  - (c) indicate that, if approved, an additional rate as determined by the municipality will be levied on properties falling within the special rating area.
- (3) The public meeting must be –
  - (a) held not less than seven days and not more than thirty days after the date of the notice;
  - (b) held at the place, date and time stated in the notice, provided that the place is either within the boundaries of the proposed special rating area or easily accessible to the property owners within the area; and
  - (c) chaired by a suitably qualified and experienced person appointed by the municipal manager.
- (4) People attending the public meeting be –

- (a) furnished with all relevant information relating to the proposed special rating area, including the information to be set out in the motivation report and implementation plan; and
  - (b) given an opportunity to ask questions, express their views and make representations.
- (5) If any material aspect of the proposed special rating area is changed after a public meeting has been held, then the applicant shall call a further public meeting to consult on the changes.
- (6) The provisions of this section 3 apply equally to any second or subsequent public meeting.

#### 4. APPLICATION

- (1) An applicant may, after having held a public meeting in accordance with the requirements of section 3, apply for the determination of a special rating area.
- (2) All costs incurred by the applicant in respect of the establishment of a special rating area shall be for his or her own account, provided that after the determination of the special rating area, the management entity may in its discretion reimburse the applicant for reasonable costs incurred.
- (3) Any application for the establishment of a special rating area must –
  - (a) be in writing;
  - (b) be in such a form as the municipality may determine;
  - (b) be submitted not more than nine months after the date on which the public meeting, or the second or subsequent public meeting, referred to in section 3 is held;
  - (c) be accompanied by –
    - (i) a diagram indicating the boundaries of the proposed special rating area;
    - (ii) details of the improvements or upgrading which are proposed for the special rating area;
    - (iii) an implementation plan setting out the steps which will be taken to bring about the improvements or upgrading of services;
    - (iv) a budget for the first year following the determination of the proposed special rating area;



- (iv) a list of properties falling within the proposed special rating area, together with the contact details of the owners and the value of each property as set out in the municipality's general valuation roll;
  - (v) the written consent of a majority of the owners of the properties falling within the proposed special rating area;
  - (vi) proof of notice of the required public meeting or meetings;
  - (vii) minutes of the required public meeting or minutes;
  - (viii) the proposed founding documents of the management entity; and
  - (ix) payment of such fees, if any, as the council may determine;
- (d) must include the following:
- (i) reasons why the proposed special rating area will not be used to, or have the effect of, reinforcing existing inequities in the development of the municipality;
  - (ii) reasons why the proposed special rating area is consistent with the municipality's integrated development plan;
  - (iii) an explanation of how the proposed improvements or upgrades are logically linked to the geographic area comprising the proposed special rating area; and
  - (iv) evidence that the special rating area will be financially viable.

## 5. ADVERTISING OF APPLICATION AND OBJECTIONS

- (1) The applicant must within 30 days after the application is lodged with the municipality –
- (a) give written notice of the application to the owners of all properties falling within the proposed special rating area, such notice to be given by registered post or hand delivery; and
  - (b) cause notice of the application to be published in two newspapers circulating in the area of jurisdiction of the municipality, stating that –
    - (i) copies of the application are available from the municipality and from at least one accessible property falling within the proposed special rating area;
    - (ii) written objections to the establishment of the proposed special rating area may be lodged with the municipality by a date specified in the

notice, which date shall not be less than thirty days after the publication of the notice.

- (2) Any property owner who will be liable for paying the additional rate may submit written objections to the determination of the special rating area, which objections must be received by the municipality not later than the date stipulated in the notice referred to in subsection (1).
- (4) The application must be available for inspection at the offices of the municipality and at a property falling within the proposed special rates area for the period referred to in subsection (1).

## 6. DECISION

- (1) After the provisions of sections 3 to 5 have been complied with, the council may –
  - (a) establish a special rating area with such modifications or conditions as the council may consider to be in the public interest;
  - (b) refuse the application, in which event the council must, within thirty days, furnish the applicant with written reasons for not approving the determination of the special rating area; or
  - (c) refer the application back to the applicant for amendment in such manner as the council may direct.
- (2) If the motivation report or the implementation plan is amended in any material respect at any time before the determination, the council may require that the application be re-advertised in accordance with the provisions of section 5, with the necessary changes.

## CHAPTER 2

### STRUCTURES AND FINANCES

## 7. ESTABLISHMENT, COMPOSITION, POWERS AND DUTIES OF A MANAGEMENT ENTITY

- (1) The applicant shall establish a management entity for the special rating area, which must be a company incorporated in terms of section 21 of the Companies Act, 1973 (Act No. 61 of 1973).
- (2) The management entity shall –
  - (i) determine the funding required each year and make a recommendation to the municipality's chief financial officer as part of the municipality's annual budget;



- (ii) appoint contractors to undertake the improvements and upgrades set out in the implementation plan;
  - (iii) receive the additional rate collected by the municipality; and
  - (iv) disburse funds in accordance with the implementation plan.
- (3) The memorandum and articles of association of the company must specify that membership is available to property owners who pay the additional rate and for only as long as they own property within the special rating area. Any new property owners who become liable to pay the additional rate must be admitted as members of the company.
- (4) The ward councillor or councillors in whose ward/s the special rating area is established shall be entitled to attend meetings of the management entity as observers.
- (5) Within ninety days of the end of each financial year, the management entity must provide the municipal manager with:
  - (a) Its audited financial statements for the immediately preceding year; and
  - (c) An annual report on its progress during the preceding year in effecting the provisions of the implementation plan to improve and upgrade the special rating area.
- (6) The municipality shall establish a committee to act as a consultative and advisory forum for the municipality on the improvement and upgrading of the special rates area. The committee shall comprise -
  - (a) The ward councillor or councillors in whose ward/s the special rating area is established;
  - (b) Two nominees of the management entity; and
  - (c) Three representatives of the communities in the special rating area, who shall be appointed bearing in mind the needs of representivity and gender representivity.

## 8. FINANCIAL CONSIDERATIONS

- (1) Within sixty days after receipt of the first payment of the additional rate by the municipality to the management entity, the provisions of the implementation plan must be initiated.
- (2) The financial year of the company must coincide with the financial year of the municipality.

- (3) The municipality must levy, and pay over to the management entity, an additional rate on properties falling within any special rating area, such that sufficient funds will be recovered to fund the budgeted activities of the management entity for the ensuing year, provided that property owners exempted from the payment of rates in terms of the municipality's rates policy, shall not be liable for the payment of any additional rate.
- (4) The additional rate due in terms of this By-law is a debt due to the municipality and is payable, and must be collected, in the same manner as other property rates imposed by the municipality.
- (5) At its discretion, the council may decide to apply a different and lower rebate to properties within the special rating area as an alternative to applying an additional rate. In this event, the difference between the normal and the adjusted rebates will constitute the additional rate and the amount to be paid over by the municipality to the management entity.
- (7) The municipality and each management entity shall conclude an agreement which must regulate, among other things –
  - (a) the mechanisms and manner of payment; and
  - (b) terms on which payment to the relevant management entity is to be made.
- (8) Subject to the provisions of its memorandum and articles of association, the management entity is entitled to raise its own funds through commercial activities, donations or any other lawful means.

## 9. ROLE OF THE CHIEF FINANCIAL OFFICER

The Chief Financial Officer of the municipality must –

- (1) establish separate accounting and other record-keeping systems regarding the revenue generated by the additional rate and the improvement and upgrading of the special rating area;
- (2) monitor compliance with the applicable legislation, including this By-Law, by–
  - (a) receiving and considering the audited financial statements and reports regarding the carrying out of duties laid out in the implementation plan;
  - (b) nominating at least one representative to attend and participate, but not vote, in meetings of the management entity.

### **CHAPTER 3**

#### **AMENDMENT AND EXTENSION OF IMPLEMENTATION PLANS**

##### **10. AMENDMENT**

- (1) An implementation plan, including the geographical boundaries of the special rating area or the approved budget, may be amended by the Council on written application by the management entity at any time after the establishment of the special rating area.
- (2) The council may approve an application for an amendment referred to in subsection (1) where the council considers it unlikely to materially affect the rights or interests of any property owner.
- (3) Before approving such an application, the council must be shown that the proposed amendment has been advertised and that affected parties have been provided with an adequate opportunity to present any objections which should be considered by both the management entity and the council.

##### **11. EXTENSION**

- (1) If it elects to extend the term of the implementation plan for a further period, a management entity must submit an application to the council for approval.
- (2) This must be done on or before 1 January of the year in which the implementation plan is due to terminate.
- (3) Any extension of the implementation plan may only be approved by the council in accordance with the provisions of Chapter 1.

### **CHAPTER 4**

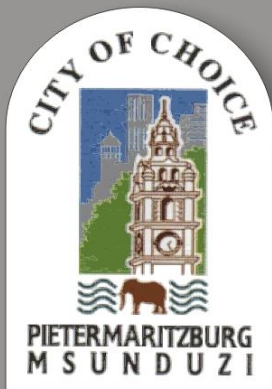
#### **DISSOLUTION OF A SPECIAL RATING AREA**

##### **12. DISSOLUTION**

- (1) The council may dissolve a special rating area –
  - (a) on written application signed by a majority of owners of properties falling within the special rating area and who are liable for the additional rate; or

- (b) following the dissolution of the management entity; or
  - (c) after prior consultation by the municipal manager with the management entity or the community, for any good cause.
- (2) Upon the dissolution of a management entity, the assets remaining after the satisfaction of all its liabilities shall revert to the municipality which must use them to upgrade or improve the area falling within the dissolved special rating area.





# The Msunduzi Municipality

## FIRE BRIGADE BYLAWS

The Administrator has in terms of section 271 of the Local Authorities Ordinance, 1974 (Ordinance 25 of 1974), read with section 17 of the Fire Brigade Services Ordinance, 1978 (Ordinance 31 of 1978), framed the following Standard Bylaws:

LOCAL AUTHORITIES ORDINANCE, N° 25 OF 1974

STANDARD BYLAWS FRAMED UNDER THE PROVISIONS OF SECTION 271  
AMENDMENT

The Standard Bylaws published on 10 March 1953 under Provincial Notice 87, as amended, are hereby further amended by the insertion after Chapter XVII of the following chapter :

### CHAPTER XVIII

#### BYLAWS RELATING TO THE FIRE

##### INDEX

1. Definitions
2. Organisation of service
3. Duty to assist
4. Procedure on the outbreak of fire
5. Closing of streets
6. Obstruction and damage
7. Wearing of uniforms and insignia
8. Combustible material
9. Safety of premises and buildings
10. Exits
11. Gas-filled devices
12. Making of fires
13. Fires in chimney, flues and ducts
14. Attendance of firemen
15. Removal of liquid or other substances
16. Payment for attendance and service
17. Non-payability of charges

18. False information
19. Telephones, fire alarms and other apparatus
20. Notices
21. Offences and penalties  
Schedule

### Definitions

1. In these bylaws, unless the context otherwise indicates -

**"approved"** means approved by the chief fire officer;

**"chief fire officer"** means the person appointed by the Council in terms of section 3(1) of the Ordinance and includes any member of the Service representing the chief fire officer in the administration of these bylaws and any official representing the chief fire officer and in control of any section, station, substance, fire fighting operation or other emergency operation, situation or inspection, as the case may be;

**"Council"** means the City Council of the City of Pietermaritzburg

**"emergency situation"** means a situation or event which constitutes or may constitute a serious danger to any person or property;

**"Occupier"** means any person in actual occupation or control of any land, premises, or building, or any portion thereof without regard to the title under which he occupies or controls such land, premises, building, or portion thereof;

**"Ordinance"** means the Fire Brigade Services Ordinance, 1978 (Ordinance 31 of 1978)

**"owner" -**

- (a) means in relation to land, premises or a building -
  - (i) the registered owner of the land concerned and includes any person receiving the rents or profits of such land, premises or building from any tenant or occupier thereof, whether on his own account or as the agent for any person entitled thereto or interested therein;
  - (ii) in the case of sectional title schemes, the body corporate established in terms of the Sectional Title Act, 1971 (Act 66 of 1971);
- (b) in relation to any vehicle, bears its ordinary meaning; and
- (c) includes, if an owner is insolvent, in liquidation, or dead, the trustee, liquidator, executor or administrator, as the case may be, in the estate of such owner.

**"police force"** means a police force established under any law;

**"Service"** means a fire brigade service established in terms of section 2 of the Ordinance;

**"traffic officer"** means a traffic officer appointed in terms of section 2 of the Road Traffic Ordinance, 1966 (Ordinance 21 of 1966).

### **Organisation of Service**

2. (1) The chief fire officer may exercise control over any fire-fighting organisation and any fire appliance whether owned by the Council or by any other person, which is at the scene of a fire and he shall be entitled to make such use as he thinks fit of any fireman, volunteer and any fire appliance and other apparatus.  
(2) The Service may be divided into such sections as the Council may determine and each section shall be under the control of an official appointed by the Council or by the chief fire officer appointed in terms of section 3(1) of the Ordinance if such power is delegated to him

### **Duty to assist**

3. Any member of a fire brigade service or fire fighting body, whether it is controlled by the Council or not, shall, when called upon to do so by the chief fire officer, render all assistance in his power to any official of the Service in execution of such official's duty in connection with an outbreak of fire or any other emergency situation.

### **Procedure on the outbreak of fire**

4. (1) When the Service has been notified of or there is reason to believe that an outbreak of fire or an emergency situation has occurred for which its services are required, the chief fire officer shall, without delay, with such personnel and appliances as he thinks necessary, go to the place where the fire or emergency situation, according to the report, has occurred, or where he has reason to believe that it has occurred.  
(2) The chief fire officer shall be entitled to assume command of, or interfere with, or to put a stop to, any existing situation or any operation being conducted in respect of a fire by any person not employed in the service, including the owner of the premises and his employee or agent, and no person shall fail to comply with any order or direction given by the chief fire officer in pursuance of this sub-bylaw.

### **Closing of streets**

5. (1) The chief fire officer or any traffic officer or any member of a police force may close any street, passage or place for as long as he thinks necessary, for the effective fighting of a fire or dealing with any emergency situation.  
(2) Any person who is ordered to leave an area closed in terms of sub-bylaw (1), shall immediately obey such order.

### **Obstruction and damage**

6. (1) No person shall interfere with, molest or obstruct any official of the Service, or any traffic officer or member of a police force or other person acting under the orders of such official, officer, or member in the execution of his duties under these bylaws or the Ordinance.



- (2) No person shall wilfully or negligently, drive a vehicle over any hose or damage, tamper or interfere with any such hose or any appliance or apparatus of the Service.

### **Wearing of uniforms ad insignia**

7. (1) No person other than a member of the Service shall wear a uniform of the Service or any uniform intended to convey the impression that he is such a member or in any other manner represent himself to be such a member.
- (2) If the Service is subsidised in terms of section 2(2) of the Ordinance, the chief fire officer and every member of the Service shall wear such uniforms, rank markings and insignia as may have been prescribed by the Administrator in terms of that section.

### **Combustible material**

8. (1) If the chief fire officer is of the opinion that any person –
- (a) has stored or caused or permitted to be stored, whether inside or outside any building, any timber, forage, packing cases, straw or other combustible material in such quantities or in such a position, or in such manner as to create a danger of fire to any building; or
  - (b) in occupation or control of any premises has permitted any trees, bushes, weeds, grass or other vegetation to grow on such premises or any rubbish to accumulate thereon in such a manner or in such quantities as to create a danger of fire to any building or on any premises, the chief fire officer may by notice in writing require the person concerned or the owner or occupier concerned to remove the said combustible material or grass, weeds, trees, other vegetation or rubbish, or to take such other reasonable steps by a specified date to remove the danger of fire as he may prescribe in such notice.
- (2) If by the date so specified such notice has not been complied with, the chief fire officer may take such steps as he deems necessary to remove such danger, and the cost thereof shall be paid to the Council by the person to whom the notice was directed.

### **Safety of Premises and Buildings**

9. (1) The chief fire officer may, whenever he deems it necessary and at any time which, in his opinion, is reasonable in the particular circumstances, enter any land, premises or building and inspect -
- (a) such land, premises, or building for the purpose of ascertaining whether any condition, circumstances or practice exists which is likely to cause a fire or emergency situation or which will or may increase the risk of, or contribute towards the spread of, fire or the creation of an emergency situation or obstruct or interfere with the escape of persons to safety;
  - (b) any fire alarm, sprinkler system and other fire-fighting or fire-detecting appliance;
  - (c) any manufacturing process involving the danger of fire or explosion;

- (d) the method of storage acetylene or other flammable gas, chemicals, oils, explosives, fireworks or any other flammable or hazardous substance; and
  - (e) any installation making use of any substance referred to in paragraph (d).
- (2) If the chief fire officer on or in any land, premises, or building, finds -
- (a) any condition, whether of a structural nature or otherwise, or any circumstances or practice which in his opinion is likely to -
    - (i) increase the risk of fire danger to life or property in the event of fire or other emergency situation;
    - (ii) contribute to the spread of fire or creation of an emergency situation;
    - (iii) interfere with the proper operation of the Service in the event of fire or an emergency situation; or
    - (iv) obstruct or interfere with the escape of persons in the event of fire or an emergency situation; or
  - (b) any defective or inferior fire appliance or an insufficient number of such appliances; or
  - (c) a fire escape or means of escape which is, in his opinion, inadequate for the number of persons which is likely to be in the building concerned at any time; or
  - (d) that a fire alarm or other system of communication is required,

the chief fire officer, shall in writing notify the owner or occupier of the land, premises, or building concerned of the findings and require him to take such steps as the chief fire officer may specify in such notice at such owner's or occupier's own cost.

- (3) Notwithstanding the provisions of sub-bylaw (2), if the chief fire officer is of the opinion that the steps which he deems necessary should be taken immediately, he may verbally direct the owner or occupier to forthwith take such steps at such owner's or occupier's own cost.
- (4) If the owner or occupier fails or refuses to comply with a notice in terms of sub-bylaw (2) within the time specified in such notice or forthwith with a direction in terms of sub-bylaw (3), the council may itself take the steps specified in the notice or direction and may recover any expenditure incurred thereby from the owner or occupier to whom the notice or direction was given.

### **Exits**

10. Every door which affords a way of escape from a building in the event of fire shall be kept unlocked and in working order and shall be clearly indicated with approved exit signs; provided that such door may be locked by means of any approved device installed in an approved manner which enables such door to be opened from inside the building at all times.

### **Gas-filled devices**

11. (1) No person shall fill any balloon, toy or other device with hydrogen without prior written permission of the chief fire officer subject to such conditions as he may impose having regard to all the circumstances of the particular case; provided that

such permission shall only be granted after the person concerned has furnished the Council with an indemnity in the form set out in the Schedule.

- (2) No person shall keep, store, use or display or permit to be kept, used, stored or displayed any balloon, toy or other device filled with hydrogen on or in any land, building or premises to which the public ordinarily has access or which is used as a club or any place of assembly.
- (3) Nothing contained in this bylaw shall be construed as preventing the use of balloons filled with hydrogen for meteorological or other bona fide scientific or educational purposes.
- (4) For the purposes of this bylaw, "hydrogen" includes any mixture of gasses in which hydrogen is present unless the mixture is either flammable nor explosive.

#### **Making of fires**

12. (1) No person shall make a fire, or cause, or permit or allow a fire to be made, in such a place or in such a manner as to endanger any building, premises or property.
- (2) Notwithstanding the provisions of sub-bylaw (1), no person shall, without the prior written permission of the chief fire officer, burn any rubbish, wood, straw or other material in the open air or cause, permit or allow it to be done, except for the purpose of preparing food.
- (3) Any permission granted in terms of sub-bylaw (2) shall be subject to such conditions as the chief fire officer may impose.

#### **Fires in chimneys, flues and ducts**

13. No occupier of a building shall wilfully or negligently allow soot or any other combustible substance to accumulate in any chimney, flue or duct of the building in such quantities or in such manner as to create a danger of fire to the building.

#### **Attendance of firemen**

14. (1) If at any entertainment, amusement or recreation or at a meeting held at a place of entertainment, amusement or recreation (excluding the showing of films at licensed cinemas) one hundred or more persons are likely to be present, the person conducting such entertainment, amusement or recreation or convening such meeting, as the case may be shall by written notice delivered to the chief fire officer not less than 48 hours before any such entertainment, amusement, recreation or meeting take place, notify such officer of the time and premises at which such entertainment, amusement or recreation or meeting will take place.
- (2) If, in the opinion of the chief fire officer, the presence of a fireman is necessary on the grounds of safety, he may provide one or more firemen who shall be in attendance at any premises during the whole or part of any entertainment, amusement, recreation, meeting or other event or occasion as the chief fire officer may decide.

- (3) The person in control of such entertainment, amusement, recreation, meeting or other event or occasion shall be required to pay the charges set out in the Council's tariff of charges for any service rendered in terms of sub-bylaw (2).

#### **Removal of liquid or ther substances**

15. The chief fire officer may at the request of the owner or occupier of any premises pump or otherwise remove any liquid or other substance, from such premises, subject to payment for such service of the appropriate charge set out in the Council's tariff of charges.

#### **Payment for attendance and service**

16. (1) Subject to the provisions of bylaw 17, the owner or occupier of land or premises, or both such owner and occupier jointly and severally, or the owner of a vehicle, as the case may be, at or in connection with which the attendance of the Service is required or any services of the Service is rendered, shall pay to the Council for such attendance or service, including the use and supply of water, chemicals, equipment and other means, a sum of money which the chief fire officer has assessed to be due in accordance with the charges set out in the Council's tariff of charges.
- (2) (a) Notwithstanding the provisions of sub-bylaw (1), where a service is rendered by the Service to more than one person, the chief fire officer may apportion the aggregate of the charges payable in terms of sub-bylaw (1) in respect of the said service between the said persons in such proportions as he may deem fit; provided that no portion payable by any one such person shall be less than 10% of such aggregate; and provided further that in assessing such charges or portion thereof, due regard shall, amongst other relevant factors, be had to -
- (i) the fact that the amount so assessed should be commensurate with the service rendered;
  - (ii) the manner and place of origin of the fire; and
  - (iii) the loss which may have been caused by the fire to the person liable to pay the charges if the services of the Service had not been rendered,
- (b) If charges are assessed in terms of this bylaw and the person liable to pay such charges is dissatisfied therewith he may appeal against such assessment as provided for in section 9(1) of the Ordinance.
- (c) An appeal in terms of paragraph (b) shall be lodged by forwarding to the Council by registered post within 14 days after receiving an account for the assessed charged, a notice of appeal in which the grounds of appeal are fully set out, and by forwarding a copy of such notice to the chief fire officer by registered post who shall forward his comments thereon on the Council within 14 days of the receipt of such copy.
- (d) An account and copy of a notice of appeal contemplated in paragraphs (b) and (c), shall, unless the contrary is proved, be deemed to have been

received on the date upon which it would have been delivered in the ordinary course of the post.

### **Non-payability of charges**

17. Notwithstanding the provisions of bylaw 16, no charges shall be payable -
- (a) if a false alarm is given in good faith;
  - (b) if the services of the Service were required as a result of civil commotion, riot or natural disaster;
  - (c) if the services of the Service were not rendered in the interest of a specific person, but purely in the interest of public safety;
  - (d) if the chief fire officer considers that the services of the Service were of a purely humanitarian nature or were rendered solely for the saving of life;
  - (e) by the owner of a vehicle if he furnishes proof to the satisfaction of the chief fire officer that such vehicle was stolen from him and that it has not been recovered by him at the time when the services of the Service were rendered in respect thereof;
  - (f) by any person, including the State, with whom the Council has entered into an agreement in terms of section 14 of Ordinance whereby the services of the Service are made available to such person against payment specified in such agreement.

### **False information**

18. Any person who wilfully gives to any member of the State any notice or any information relating to an outbreak of fire or to any other emergency situation requiring the attendance of the Service which to his knowledge is false or inaccurate, shall be guilty of an offence in terms of these bylaws and shall, in addition to any penalty which may be imposed in terms of bylaw 21, be liable to the Council for the turning-out charge of the Service as prescribed in the Council's tariff of charges.

### **Telephones, fire alarms and other apparatus**

19. (1) The Council may affix or remove any telephone, fire alarm or other apparatus for the transmission of calls relating to fire as well as any notice indicating the nearest fire hydrant or other fire fighting equipment, to or from, any building, wall, fence or other structure.
- (2) No person shall move, remove, deface, damage or interfere with anything affixed in terms of sub-bylaw (1).

### **Notices**

20. Unless otherwise specified a notice in terms of these bylaws shall be in writing and shall be served on the person concerned by post or by handing it to him personally.

### **Offences and Penalties**

21. (1) Any person who -
- (a) contravenes or fails to comply with any provision of these by-laws; or

- (b) fails to comply with any order, direction, request or condition given, made or imposed in terms of these bylaws; or
  - (c) fails to comply with any notice given in terms of these bylaws, shall, where such is not elsewhere declared to be an offence, be guilty of an offence and liable on conviction to a fine not exceeding five hundred rand or, in default of payment, to imprisonment for a period not exceeding six months or to both such fine and such imprisonment, and in the case of a continuing offence, to a fine not exceeding fifty rand for each day on which the contravention continued subject to a maximum of five hundred rand.
- (2) No provision of these bylaws shall be constructed so as to affect any liability in terms of sub-bylaw(1)

22. In the case of any conflict between these and any other bylaws of the Council these bylaws shall prevail.

### **SCHEDULE**

Form of indemnity in terms of bylaw 11(1) of the Bylaws relating to the Fire Brigade Services.

### **INDEMNITY**

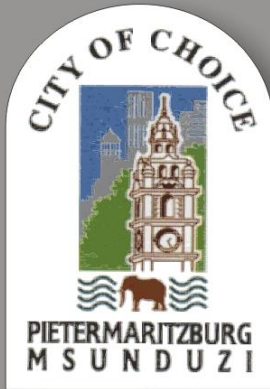
In consideration of the permission to be granted to me by the Chief Fire Officer of \_\_\_\_\_ on \_\_\_\_\_ (date) to inflate certain balloons, toys or other devices as to be specified therein, I, the undersigned hereby indemnify and hold harmless the Council and all its employees against all actions, suits, proceedings, claims, demands, costs and expenses whatsoever which may be taken or made against it or be incurred or become payable by it arising out of or in connection with any damage, death or injury caused or alleged to have been caused by or as a result of such inflation, or by the use of mere possession by any person of any of the said toys, balloons or devices.

Signed at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ 19

\_\_\_\_\_

**APPLICANT**

**WITNESSES:**     1.  
                             2.



# The Msunduzi Municipality

## FIRE PREVENTION AND FLAMMABLE LIQUIDS & SUBSTANCES BY-LAWS

### FIRE PREVENTION AND FLAMMABLE LIQUIDS & SUBSTANCES BY-LAWS

[MUNICIPAL NOTICE NO. 55 OF 2014.]

[DATE OF COMMENCEMENT: 24 JUNE, 2014.]

These By-laws were published in *Provincial Gazette* No. 1163 dated 24 June, 2014.

MSUNDUZI LOCAL MUNICIPALITY

BY -LAWS RELATING TO FIRE PREVENTION AND FLAMMABLE LIQUIDS & SUBSTANCES

### BY-LAWS RELATING TO FIRE PREVENTION AND FLAMMABLE LIQUIDS & SUBSTANCES

The Msunduzi Municipality acting in terms of section 98 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), read with section 13 of the said Act, hereby publishes the By-laws set forth hereafter, as made by the Municipality, which By- laws shall come into effect on the date of publication thereof.



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## CHAPTER 1

### 1. Definitions and interpretation.—

In these By-laws, unless the context indicates otherwise—

**“above ground storage tank”** means a tank situated above ground for the storage of flammable substances as contemplated in SANS 0131, SANS 089 Part 1 and SANS 087 Part 3.

**“approved”** means approved by the Chief Fire Officer.

**“area”** means the area of jurisdiction of the Msunduzi Municipality.

**“building”** means—

- (a) Any structure, whether of a temporary or permanent nature and irrespective of the materials used in the construction thereof, erected or used for in connection with—
  - i The accommodation or convenience of human beings or animals
  - ii The manufacture, processing, storage or sale of any goods
  - iii The rendering of any service
  - iv The destruction or treatment of combustible refuse or combustible waste
  - v The cultivation or growing of any plant or crop
- (b) Any wall, swimming pool, reservoir or bridge or any other structure connected therewith
- (c) Any fuel pump or any tank used in connection therewith
- (d) Any part of any building, including a building as defined in paragraph (a) or (b).
- (e) Any facilities or system, or part or portion thereof, within or outside but incidental to a building, for the provision of supplying water supply, drainage, sewerage, storm water disposal, electricity supply or other similar service in respect of the building;

**“Building Control Officer”** means the person appointed or deemed to be appointed as a building control officer by a local authority in terms of section 5 of the National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977).

**“bulk depot”** means any premises defined as such in SANS Code of Practice 089: Code of Practice for the Petroleum Industry: Part 1 - 1983: The handling, storage and distribution of petroleum products, as published under General Notice 463 of 1982 dated 9 July 1982, that is, premises that normally receive supplies from a refinery or installation by road, rail, water, or pipeline or by a combination of these methods, and from which the products are delivered directly to consumers.

**“bund wall”** means a containment wall surrounding an above ground storage tank, constructed of an impervious material and designed to contain 100% of the contents of the tank and 10% including a flammable liquid store.

**“certificate of competence” means** a certificate issued by South African Qualifications Authority

**“certificate of registration” means** a certificate issued by the Chief Fire Officer in terms of section 60 of these By-laws which authorises a person to occupy the registered premises, or to use the premises for spray-painting activities or for the storage or handling of dangerous goods, flammable liquid substance including L.P. gases by having complied with all fire related requirements.

**“Chief Fire Officer” means** the person appointed by the Council in terms of section 5 (1) of the Fire Brigade Services Act, No.99 of 1987), and includes any member who exercises any power or performs any duty delegated by the Chief Fire Officer to that member under section 19 of the Act, and also includes an Acting Chief Fire Officer appointed in terms of section 5 (3) of the Act,

**“Manager: Fire Services”** has a corresponding meaning.

**“Chief Inspector of Explosives” means** the Chief Inspector of Explosives appointed in terms of section 2 of the Explosives Act, 1956.

**“Civil Aviation Authority” means** the South African Civil Aviation Authority established in terms of section 2 of the South African Civil Aviation Authority Act, 1998 (Act no. 4 of 1998).

**“classification of flammable liquids & substances”**

**Group I: Explosives**

Fireworks

**Group II: Gases**

- 2.1 Flammable gases with total cylinder capacity not exceeding 100kg
- 2.2 Non-flammable gases with total cylinder capacity not exceeding 333 kg
- 2.3 Toxic gases

**Group III: Flammable liquids**

- 3.1 With flash points greater than 18 °c and with total quantity not exceeding 100 l
- 3.2 With flash points greater than 18 ° c and with total quantity not exceeding 420 l
- 3.3 With flash points greater than 23 °c and with total quantity not exceeding 1 100l
- 3.4 With flash points greater than 61 °c and with total quantity not exceeding 1 100l

**Group IV: Flammable solids**

- 4.1 Flammable solids with total quantity not exceeding 250 kg
- 4.2 Pyrophoric substances
- 4.3 Water-reactive substances

**Group V: Oxidising agents and organic peroxides**

- 5.1 Oxidising agents with total quantity not exceeding 200 kg
- 5.2 Group I organic: peroxides
- 5.3 Group II organic peroxides in packs not exceeding 200 kg

**Group VI: Toxic/infective substances**

- 6.1 Group I toxic substances with total quantity in packets not exceeding 5 kg
- 6.2 Group II toxic substances with total quantity in packets not exceeding 50 kg
- 6.3 Group III toxic substances with total quantity in packets not exceeding 500 kg
- 6.4 Infective substances

**Group VII: Radioactive materials****Group VIII: Corrosive/caustic substances**

- 8.1 Group I acids in packets with total quantity not exceeding 50 kg
- 8.2 Group II acids in packets with total quantity not exceeding 200 kg
- 8.3 Group III acids in packets with total quantity not exceeding 1 000 kg
- 8.4 Group I alkaline with total quantity not exceeding 50 kg
- 8.5 Group II alkaline with total quantity not exceeding 200 kg
- 8.6 Group III alkaline with total quantity not exceeding 1 000 kg

**Group IX: Miscellaneous substances**

- 9.1 Liquids Total quantity may not exceed 210 l
- 9.2 Solids Total quantity may not exceed 210 kg

**“competent person”** means a person who is qualified by virtue of his or her experience and/or training.

**“Constitution”** means the Constitution of the Republic of South Africa.1996 (Act No. 108 of 1996)

**“container”** means any vessel used or intended to be used for the holding of flammable liquids, but shall not include the fuel tank of any motor vehicle or stationary internal combustion engine for normal use as such.

**“Council”** means the duly constituted Msunduzi Municipality and includes **Municipality**.

**“dangerous goods”** means any flammable gas, flammable liquid or flammable solid as contemplated in SANS 0228.

**“designated area”** means a place designated in relation to fireworks as such in terms of—

- (i) The municipality may designate any public place or street or any part thereof within the municipal area as the only place at which fireworks may be discharged.
- (ii) The municipality may, on application by the owner or lawful occupier of any private open space as defined in the applicable zoning scheme regulations in its area of jurisdiction, designate such private open space as a place where fireworks may be discharged.
- (iii) The list of places designated in terms of subsections (i) and (ii) or any amendment thereof must be published by the municipality in terms of its communication protocol.



- (iv) The municipality may impose conditions as to the dates, periods or time and hours when the discharge of fireworks may take place in any designated area and may impose further conditions as to the manner of discharge.

**“designated premises”** means any premises designated by the Chief Fire Officer to have an emergency evacuation plan as contemplated in section 29 of these By-laws.

**“dump”** means to abandon or discard any hazardous substance by depositing, discharging, spilling or releasing it.

**“emergency”** means any incident or eventuality which seriously endangers or may endanger any life or property.

**“emergency evacuation plan”** means a written procedure and a set of detailed plans as contemplated in section 28 of these By-laws.

- (i) The Chief Fire Officer may, by written notice, designate any premises as premises requiring an emergency evacuation plan.
- (ii) The notice contemplated in subsection (i) must be served on the premises concerned and addressed to the owner or person in charge of the premises.

**“explosive(s)”** means explosive as defined in the Explosives Act (No. 15 of 2003) and any Regulations made under that Act.

**“firebreak burning season”** means a specific time bound period as determined by the Chief Fire Officer in conjunction with any other party which may include a registered Fire Protection Association or Department of Water Affairs and Forestry.

**“Fire Brigade Services Act”** means the Fire Brigade Services Act, (No. 99 of 1987) and any regulations made under that Act.

**“Fire extinguisher”** means a portable or mobile rechargeable container which has a fire extinguishing substance that is expelled by the action of internal pressure for the purposes of extinguishing a fire.

**“fire fighting equipment”** means any portable or mobile fire extinguisher, hose reel, fire hydrant, sprinkler system or related fire fighting equipment.

**“fire hazard”** means any situation, process, material or condition which may cause a fire or explosion or provide a ready fuel supply to increase the spread or intensity of the fire or explosion and which poses a threat to life or property.

**“fire installation”** means any water installation which conveys water solely for the purposes of fire fighting.

**“fire official”** means the Chief Fire Officer and any other official of the Fire Brigade Service who has been duly appointed by the municipality to undertake or perform any of the functions of a fire official under this By-law.

**“fire point”** means the temperature at which a substance evolves into flammable vapours at a rate fast enough to sustain combustion once an ignition source has been applied.

**“fire protection plan”** means an approved plan containing aspects of compliance and requirements for fire protection.

**“fireworks”** means any explosive device or substance which burns or explodes after ignition, including firecrackers, and which is regulated under the Explosives Act.

**“fireworks display”** means the use of fireworks for purposes of a public display

**“fireworks inspector”** means a person deputised to act as an inspector under the Act; and/ or is a Peace Officer of the municipality.

**“flame and vapour proof”** when applied to an apparatus denotes that the containing case or other enclosure is certified by its supplier or manufacturer, and can withstand without injury an application to it of a flame under practical conditions of operation and will prevent the transmission of flame, sparks and flashes such that would ignite flammable liquid or gas and the transmission of vapour.

**“flammable gas”** means a gas which, at 20°C and having a standard pressure of 101, 3 kilopascals—

(a) Is ignitable when in a mixture of 13% or less by volume with air, or

(b) Has a flammable range with air of at least 12%, regardless of the lower flammable limit.

**“flammable liquid”** means a liquid or combustible liquid which has a closed-cap flash point of 93°C or below.

**“flammable solid”** means a solid that is easily ignited by external sources, such as sparks and flames, solids that are readily combustible, solids that are liable to cause or contribute to, a fire through friction or solids that are desensitised (wetted) explosives that can explode if not diluted sufficiently.

**“flammable liquid store”** means a store that is used for the storage of flammable liquids.

**“Flammable substance”** means any flammable liquid, combustible liquid or flammable gas.

**“flash point”** means the lowest temperature at which a substance gives off sufficient flammable vapour to produce a momentary flash on the application of a small flame.

**“hazardous substance”** means any hazardous substance contemplated in the Hazardous Substances Act, (No. 15 of 1973).

**“Hazardous Substances Act”** means the Hazardous Substances Act, (No. 15 of 1973) and any regulations made under this Act.

**“liquefied petroleum gas (LPG)”** means a mixture of light hydrocarbons (predominantly propane, and butane) that is gaseous under conditions of ambient temperature and pressure and that is maintained in a liquid state by an increase of pressure or lowering of temperature.

**“municipality”** shall mean the Msunduzi Municipality.

**“municipal manager”** means the person appointed by the council in terms of section 82 of the Municipal Structure’s Act, (Act 117 of 1998).

**“member”** means a member of the service with fire-fighter experience.

**“National Building Regulations”** means the National Building Regulations made in terms of section 17 of the Act and to be read in conjunction with the Building Standard Act (Act No. 103 of 1977).

**“Non-combustible”** in relation to building materials, means non-combustible when tested in accordance with the South African National Standards Code of Practice.

**“Occupancy compliance certificate”** means a certificate contemplated in section 31 Of these By-laws, which has been issued by the Chief Fire Officer in terms of fire related requirements to authorise a person to occupy the designated premises (being a public building), accordingly.

**“Occupier”** includes any person in actual occupation of premises, without regard to the title under which he occupies.

**“owner”** in relation to premises, means the registered owner of the premises and includes—

(a) Any person who receives rental or profit from the premises, whether on own account or as an agent

(b) A body corporate in respect of any sectional title scheme contemplated under the sectional titles act 1986. (Act No. 95 of 1986) and

(c) An executor or curator of any deceased or insolvent estate

**“power isolating switch”** bipolar switch fitted to dangerous goods vehicles to cut off engine and battery supply.

**“peace officer”** shall have the meaning assigned thereto in the Criminal Procedure Act, 1997 (Act 51 of 1997), in respect of persons authorised by the Municipality to enforce the provisions of this By-law.

**“premises”** means any land, building, terrain road, construction or structure or part thereof an includes any train, boat, aircraft or other vehicle

**“public building”** means any building where people gather to view theatrical and operatic performances, orchestral and choral recitals, and cinematographic screenings, or to attend or participate in indoor sports activities, including any place where people dance or practise or perform any physical activity.

**“public gathering”** means a public gathering as defined in Disaster Management Act (No.57 of 2002).

**“public place”** means any path, street, walk-way, side-walk, park, place of rest or other place in which the public has authorised unimpeded access.

**“pyro-technician”** means any appropriately qualified person responsible for the setting and lighting of fireworks at a fireworks display.

**“registered premises”** means premises in respect of which a certificate of registration has been issued.

**“SANS”** means the South African National Standards Code of Practice.

**“source of ignition”** is any means whereby sufficient energy is supplied to ignite a flammable source.

**“spontaneous ignition temperature”** means the temperature at which a flammable liquid or substance will ignite of its own accord when heat, and not a naked light or flame, is applied to it.

**“spray booth”** means any subdivision or compartment that is independent of a spraying room used for the purpose of spraying vehicles or articles.

**“spray room”** means any room or structure used or intended to be used for the purpose of spraying vehicles or articles.

**“storage tank”** means a tank of adequate strength used or intended to be used for the storage or conveyance of flammable liquids or substances.

**“store room”** means any approved building or part thereof which is used or intended to be used for the storage of flammable liquids or substances.

**“tariff of charges”** a list of services charged by the Local Municipality related to Fire and emergency services which are upgraded on a yearly basis.

**“temporary settlement area”** means the established residential site for a limited period as approved by the municipality.

**“transfer under seal”** means the transfer of flammable liquid from or to a road tank wagon in such a manner as to prevent the escape of flammable liquid or its vapour at any point during transit except in the case of vapour through a vent pipe designed for the purpose

**“vent pipe”** means a vertical pipe so constructed and so installed so as to allow the escape of vapour from flammable liquids into the atmosphere.

## CHAPTER 2 ADMINISTRATIVE PROVISIONS

### 2. Administrative Functions.—

(1) The Council has established a Fire Brigade Service as contemplated in section 3 of the Fire Brigade Services Act, Act no. 103 of 1997, as amended.

(2) The Council shall maintain the Service within its area, which includes—

- (a) The appointment of a Chief Fire Officer and the necessary members of the Service
- (b) Ensuring that the members and other personnel are properly trained and correctly attired
- (c) Acquisition of vehicles, machinery, equipment, devices and accessories to ensure that the Service is effective and able to attain its objective being—
  - (i) Preventing the outbreak or spread of fire.
  - (ii) Fighting or extinguishing a fire.
  - (iii) The protection of life or property against a fire or other threatening danger.
  - (iv) The rescue of life or property from a fire or other threatening danger.

### 3. Delegation.—

- (1) The municipal manager may delegate any power granted to him in terms of this By-law in accordance with the system of delegation of the Municipality developed in terms of section 59 of the Municipal Systems Act.

- (2) The Chief Fire Officer may delegate any power granted to him in terms of this By-law in accordance with section 19 of the Fire Brigade Services Act.
- (3) The Chief Fire Officer may make such orders as he deems necessary for the safeguarding of life and protection of property from fire.
- (4) (a) The Chief Fire Officer is responsible and accountable for the day to day running of the Service.  
(b) If the Chief Fire officer is, for any reason, unable to perform his/her duties of office, the Municipal Manager will appoint a member as Acting Chief Fire Officer to perform the duties and functions of the Chief Fire Officer.
- (5) The Council may, in terms of an agreement as contemplated in section 12 of the Fire Brigade Services Act, 1987, employ its Service within or outside its area of jurisdiction, against payment of the tariffs determined by Council.

**4. Procedure & Duties During An Emergency Situation.—**

- (1) The Chief Fire Officer or a member who is in charge of an emergency situation must ensure that—
  - (a) Adequate available manpower and the appropriate apparatus and equipment are used without delay;
  - (b) the emergency situation is assessed and that additional equipment and/or assistance where applicable, is acquired without delay.
  - (c) all pertinent information, including information about places and times and relevant particulars, is recorded during the emergency situation or as soon as possible thereafter, and that the recorded information is preserved in accordance with the provisions of the National Archives of South Africa Act, 1966 (Act 43 of 1996), and any regulations made under the Act.
  - (d) any building or premises are sealed off by temporarily closing a street, passage or place which he/she deems necessary for public safety or for effectively fighting a fire or dealing with any other emergency that may give rise to a fire, explosion or other threat to life or limb, and a member may remove, using no more force that is reasonably necessary, any person who refuses to leave the street, passage or place after having been requested by the member to do so.

**5. Designated Officers.—**

- (1) Designated Officers shall be suitably trained and certified as peace officers and be appointed as such in terms of Government notice R 159 of 2 February 1979, as amended:
- (2) All designated officers have the power—
  - (i) in terms of the provisions of section 56, read with section 57, of the Criminal Procedure Act, 1977 (Act 51 of 1977), to issue summons involving a spot fine;
  - (ii) in terms of the provisions of section 341 of the Criminal Procedure Act, 1977, to issue spot fines for certain minor offences;
  - (v) in terms of the provisions of section 44 of the Criminal Procedure Act, 1977, to issue a warrant of arrest;
  - (vi) in terms of the provisions of section 41 of the Criminal Procedure Act, 1977, to ask certain persons for their names and addresses and to arrest persons without a warrant if duly authorised to do so; and

- (vii) in terms of the provisions of section 54 of the Criminal Procedure Act, 1977, to serve summons in order to secure the attendance of the accused in a magistrate's court.

**6. Fire Official Powers.—**(1) A fire official may as often as may be deemed necessary or desirable—

- (a) Enter any premises for the purpose of identifying any hazardous condition, circumstance or practice which may result in a fire or to inspect hazardous manufacturing processes, and the storage facilities pertaining thereto and any installation, in which acetylene or other gases, chemicals, oils, explosives, flammable liquids or substances and other hazardous liquids or substances are used and any fire alarms, sprinkler systems and fire fighting equipment;
- (b) Inspect any premises, except the interior of private dwellings, for the purpose of identifying any defective fire fighting equipment and any condition liable to cause or to facilitate the spread of fire and;
- (c) Take such steps as he may consider necessary in the circumstances to prevent any injury to persons or damage to property through fire which may arise from a condition, circumstance or practice referred to an (a) or (b) above;

**7. Impersonating A Member Of The Service.—**

- (1) No person, except a member, may wear any official clothing, uniform, badge or insignia of the Service;
- (2) No person may pretend to be a member of the Service
- (3) Any person who represents himself/herself as a member must identify himself/herself by producing the relevant certificate of appointment, or by furnishing proof of identity within a reasonable period of time.

**8. Authority to Investigate.—**

- (1) Notwithstanding anything to the contrary contained in any other by-law, the Chief Fire Officer has the authority to investigate the cause, origin and circumstances of any fire or other threatening danger and should include:
  - (a) Death
  - (b) Arson
  - (c) Unknown cause
  - (d) Major incident

**9. Failure To Comply With Provisions.—**

- (1) When Chief Fire Officer finds that there is a non-compliance with the provisions of this By-law, a written notice, including the following, must be issued—
  - (a) Confirmation of the findings
  - (b) Outlining the contravention of any conditions imposed upon the granting of any application, consent, approval, concession, relaxation, certificate, permit or authority in terms of these By-laws, the remedial action required, and;
  - (c) The time within which the notice must be complied with.
- (2) An order or notice issued under this By-law must be served either by personal delivery or registered mail upon a person who, in the opinion of the Chief Fire Officer, is deemed to be the appropriate person.



- (3) For unattended or abandoned premises, a copy of such order or notice must be posted on the premises in a conspicuous place at or near the entrance to such premises, and the order or notice must be mailed, by registered mail, to the last known address of the owner, the person in charge of the premises, or both.
- (4) Notwithstanding the provisions contained in subsection (1), a spot fine may be issued when a Chief Fire Officer finds that there is non-compliance with the provisions of this by-law.

**10. Denial, Suspension Or Revocation Of An Approval Or A Certificate.—**

- (1) The Chief Fire Officer may refuse, suspend or revoke an approval or a certificate required by these By-laws for:
  - (a) Failure to meet the provisions of this By-law for the issuance of the approval or certificate; or
  - (b) Non-compliance with the provisions of the approval or certificate.

**11. Charges.—**

- (1) The Municipality may determine the fees payable by a person on whose behalf, the controlling authority rendered a service, as contemplated in section 10 of the Fire Brigade Services Act.
- (2) The Municipality may charge a fee for the provision of an inspection, re-inspection or any other service, as well as the issuing of permits, approvals, or certificates in accordance with the applicable local government legislation regulating the charging of fees.

**12. Indemnity.—**

The municipality shall not be liable for damage or loss as a result of bodily injury, loss of life, or loss of or damage to property, or financial loss, which is caused by, or arises out of, or in connection with anything done or performed in good faith in the exercise or performance of a power, function, or duty performed, or imposed in terms of By-laws.

**13. Reporting A Fire Hazard And Other Threatening Danger.—**

An owner, occupier, or the person who in the opinion of the Chief Fire Officer is in charge or any other person of any premises, upon discovering any evidence of a fire hazard or other threatening danger pertaining to this By-law, must immediately notify the Fire Department of such hazard.

## **CHAPTER 3 FIRE PROTECTION**

**14. General Provisions.—**

- (1) The Chief Fire Officer must take steps to prosecute a contravention of the National building Regulations relating to Fire Safety of buildings and premises.
- (2) Every owner of any building must submit a fire plan to the municipality save for a dwelling house unless deemed necessary.

**15. Design and construction of other structures and sites.—**

- (1) Every person who designs, constructs or erects any of the following structures, must ensure that they comply with a design as contemplated by the National Building Regulations in relation to—
  - (a) any grain silo;
  - (b) any atrium;
  - (c) any air traffic control tower;
  - (d) any tower for telecommunications or other use;
  - (e) any thatched structure which is larger than 20 square metres and situated within 4, 5 metres of any boundary line of the property concerned;
  - (f) any tent or other temporary structure for holding a public gathering;
  - (g) any open-plan commercial or industrial premises with a distance that exceeds 45 metres measured from any point in the premises to any escape or exit door.
- (2) Every person who designs or constructs any aircraft hanger or helicopter pad, must ensure that it—
  - (a) complies with a design as contemplated in the National Building Regulations;
  - (b) provides for the effective drainage of any liquid from the floor of the hanger or helicopter pad or any approach to the aircraft hanger or helicopter pad;
  - (c) provides for the effective channeling of any liquid from the floor of the hanger or helicopter pad to a drainage area connected to a separator well;
  - (d) prevents the spread of any liquid from the floor of the hanger or helicopter pad;
  - (e) is equipped with effective earthing devices for the discharge of static electricity.

**16. Requirements For Sprinkler Systems.—**

- (1) If a sprinkler system is required in any building or if the Chief Fire Officer so requires, the owner or person in charge of the premises must ensure that the building is equipped with such sprinkler system.
- (2) Every person who designs, constructs or installs a sprinkler system must ensure that it is designed, constructed and installed with the requirements of applicable legislation insofar as it relates to fire protection.

**17. Requirements for Extractor Fan Systems.—**

- (1) Every person who designs, constructs or installs an extractor fan system, any related ducts or any similar chimney system and every owner or person in charge of the building in which such a system is installed must ensure that—
  - (a) it is designed, constructed and installed in a manner that provides for clearly demarcated, adequate and easy access for inspection, maintenance and repairs; and
- (2) The conduit and outlet of any such system is installed in a manner that does not result in a fire hazard to any person or property.
  - (a) Every owner, occupier, or the person who in the opinion of the Chief Fire Officer is in charge of a building in which an extractor fan system, any related ducts or any similar chimney system has been installed, must ensure that every filter, damper, screen or conduit forming an integral part of the system is regularly inspected, cleaned and maintained to ensure that fat residue or any other combustible residues do not accumulate.

**18. Requirements For Emergency Exits.—**

- (1) Every owner of a building must ensure that any escape door in that building-
  - (a) is fitted with hinges that open in the direction of escape; and
  - (b) is equipped with a fail-safe locking device or devices that do not require a key in order to exit.
- (2) Every owner of a building must ensure that any door in a feeder route-
  - (a) is a double swing-type door;
  - (b) is not equipped with any locking mechanism,
- (3) Notwithstanding the provisions of subsection (2), if it is necessary that a door in a feeder route be locked for security reasons, the owner or person in charge of the building must provide an alternative means of escape approved by the Chief Fire Officer
- (4) No person may obstruct or allow the obstruction of any escape route from any premises that may prevent or hinder the escape of any person or animal from the premises in an emergency.
- (5) Where required by the Chief Fire Officer, an escape route must be clearly indicated with signage, which complies with SANS 1186 as amended, indicating the direction of travel in the event of fire or any other emergency.

**19. Requirements Regarding Fire Doors and Assemblies.—**

- (1) Subject to the provisions of SANS 1253 as amended, a fire door and assembly must be maintained in such a manner that, in the event of a fire, it retains its integrity, insulation and stability for the time period required for that particular class of door.
- (2) A fire door may be kept open, only when it is equipped with an automatic releasing hold-open device approved by the chief fire officer.
- (3) A fire door and assembly may not be rendered less effective through the following actions-
  - (a) altering the integrity, insulation or stability of a particular class of door;
  - (b) disconnecting the self-closing mechanism;
  - (c) wedging, blocking or obstructing the door so that it cannot close;
  - (d) painting the fusible link actuating mechanism of a door;
  - (e) disconnecting or rendering less effective an electric or electronic release mechanism, or
  - (f) any other action that renders a fire door or assembly less effective.

**20. Design, Identification and Access For Fire-Fighting And Rescue Purposes.—**

- (1) Subject to the requirements of any applicable zoning scheme regulations or the conditions of establishment of any township, every person who plans, designs or constructs a building, excluding a dwelling house, must ensure that the premises on which the building is situated, are planned, designed and constructed so that—
  - (a) at least one elevation of the building fronts onto a street;
  - (b) if the premises do not front onto a street, an access road is provided with dimensions and carrying capacity approved in writing by the chief fire officer;
  - (c) a motorised or electronically operated gate is equipped in such a manner that access to the premises can be gained without the use of a motor or any other electronic device or any other assistance;

- (d) there is a climate-proof and weather-proof parking surface for parking and operating fire brigade machines and equipment in an emergency—
  - (i) of dimensions at least 10 meters wide;
  - (ii) that runs the full length of the side elevation of the building that borders the surface
  - (iii) with a carrying capacity of at least 70 metric tons; and
  - (iv) any entrance arch to the premises provides an opening with dimensions at least 4.5 metres wide and high respectively, unless there is an alternative and easy access route to the premises of at least the same dimensions.
- (2) For purposes of easy identification by any member in an emergency, every owner or person in charge of the premises must ensure that the correct street number of the premises—
  - (a) is displayed clearly on the street boundary of the premises in numbers at least 75 millimeters high;
  - (b) is visible from the street; and
  - (c) is maintained in a legible condition at all times.

**21. Accessibility of fire-fighting equipment and fire installations.—**

- (1) Any fire-fighting equipment or fire protection installations installed on any premises must be accessible to the fire service at all times. Any person, who causes or permits any fire-fighting equipment or fire protection installations to be obstructed or impedes such accessibility or operation, commits an offence.

**22. Barricading of vacant buildings.—**

- (1) Every owner, occupier, or the person who in the opinion of the Chief Fire Officer is in charge of a building or portion of a building that is vacant must, to the satisfaction of the Chief Fire Officer—
  - (a) remove all combustible waste and refuse from the building; and
  - (b) block, barricade or otherwise secure all windows, doors and other openings in the building in a manner that will prevent the creation of any fire hazard caused by the entering of the building by any unauthorised person.

## **CHAPTER 4 CONTROL OF FIREFIGHTING EQUIPMENT**

**23. Repairing, servicing and installation of fire fighting equipment.—**No person shall cause or permit fire fighting equipment on any premises to be dismantled, recharged, disconnected, serviced or repaired or sold or any new, repaired equipment to be installed housed or placed premises except by or under the control and supervision of a holder of a Certificate of Competence issued or recognised in terms of these By-laws.

**24. Examination of fire fighting equipment.—**The owner, occupier or person in charge of any premises in which any portable fire extinguisher, sprinkler system or other fire fighting equipment or any fire alarm system has been installed in terms of these By-laws, shall cause such extinguisher, equipment or system to be examined at least once every calendar year by the holder of a certificate of competence.

**25. Report on condition of fire fighting equipment.**—The person carrying out the examination of the equipment referred to in the preceding section shall cause a label to be accurately affixed thereto in a prominent position on which shall be written in ink—

- (1) The name of the person conducting the examination.
- (2) The number of his/her Certificate of Competence
- (3) The date of the examination
- (4) The condition of equipment
- (5) Date of next service.

If any defect is discovered during the examination, he shall inform the owner or occupier of the premises thereof in writing and deliver a copy of such report to the Chief Fire Officer.

**26. Restriction on removal, alteration and installation of fire fighting equipment.**—

- (1) No portable fire extinguisher shall temporarily be removed from any premises for servicing or repair unless such appliances are temporarily replaced by similar serviceable equipment.
- (2) No fire fighting equipment shall permanently be removed from any premises or rendered unserviceable without due notice, in writing, being given to the Chief Fire Officer.
- (3) No fire fighting equipment shall be installed, changed or added to without the authority of the Chief Fire Officer.
- (4) Whenever sprinkler/detection/auto extinguisher alarm systems are repaired, serviced or removed the local fire authority must be notified timeously.

**27. Portable fire extinguishers to be periodically tested.**—Every portable fire extinguisher shall be subject to servicing and pressure testing in accordance with applicable classification.

## CHAPTER 5 EMERGENCY EVACUATION PLANS

**28. Chief Fire Officer may designate premises for emergency evacuation plans.**—

- (1) The Chief Fire Officer may, by written notice, designate any premises as premises requiring an emergency evacuation plan.
- (2) The notice contemplated in subsection (1), must be served on the premises concerned and addressed to the owner or person who in the opinion of the Chief Fire Officer is in charge of the premises.

**29. Duties of owner or occupier of designated premises.**—

- (1) The owner, or with the approval of the Chief Fire Officer, the occupier, of any premises designated in terms of section 28 must—
  - (a) Prepare a comprehensive emergency evacuation plan for the premises and submit it to the chief fire officer within 30 days of receipt of the notice;
  - (b) Ensure that the emergency evacuation plan is reviewed—
    - (i) At least every 12 months;
    - (ii) Whenever the floor layout of the premises is altered: and
    - (iii) Whenever the Chief Fire Officer requires revision of the plan;
  - (c) Display the emergency evacuation plan at conspicuous positions inside the premises: and

- (d) Identify an assembly point where persons who reside or work on the designated premises may gather during an emergency for the purpose of calling the roll.

## **PART D : PUBLIC GATHERINGS**

### **30. Prohibition of public gatherings in certain circumstances.—**

- (1) No person may hold a public gathering or allow a public gathering to be held in any building or temporary structure unless a Occupancy Compliance Certificate has been issued by the Chief Fire Officer in respect of that building or temporary structure, such public gathering may be held if the existing Certificate is still valid.
- (2) Subsection (1) does not apply in respect of a building or temporary structure which existed at the commencement of these By-laws, unless
  - (a) the building or temporary structure is rebuilt, altered, extended or its floor layout is altered; or
  - (b) ownership or control of the building or structure changes hands.

### **31. Application for Occupancy Compliance Certificate.—**An application must be submitted at least 30 days before any intended public gathering.

### **32. Requirements for Occupancy Compliance certificate.—**

- (1) The chief fire officer may not issue an Occupancy Compliance Certificate in respect of a building or temporary structure—
  - (a) Unless the Municipality is in possession of an up-to-date set of building plans for the premises;
  - (b) Unless the building or temporary structure complies with the requirements of these By-laws; and also in accordance with the requirements of the National building Regulations.
  - (c) For a period of validity not exceeding 12 months for a temporary structure.

### **33. Particulars of Occupancy Compliance Certificate.—**

- (1) A Occupancy Compliance Certificate must be in the form as prescribed and must at least record the following information, where applicable—
  - (a) the trade name and street address of the building or temporary structure;
  - (b) a description of the type of activity carried out in the building or structure;
  - (c) the full names and addresses of the persons who are in occupation or who are owners of the building.
  - (d) the maximum permissible number of people who may be admitted to the useable floor area of the building or structure;
  - (e) the number of emergency exits and their dimensions; and
  - (f) the dates of issue and expiry of the certificate.
- (2) Notwithstanding subsection (1), the Chief Fire Officer may request additional information from the applicant.

### **34. Duties of holder of Occupancy Compliance Certificate.—**The holder of an Occupancy Compliance Certificate must comply with the provisions of the certificate.



## CHAPTER 6: WATER SUPPLY FOR FIRE FIGHTING PURPOSES

### 35. Township development water supply requirements.—

- (1) Any person who develops or redevelops a township must design and develop that township with sufficient supply of water, minimum flow and hydrant requirements as contemplated in section 11 of SANS 10090 of 2003 and must furnish written proof of such compliance to the Chief Fire Officer.
- (2) The fire official must inspect the fire hydrants and conduct flow and pressure tests as contemplated in SANS 10090 of 2003.

### 36. Township development fire-extinguishing stream requirements.—Any person who develops or redevelops a township must ensure that the water supply provides a fire-extinguishing stream that is immediately available to the service in an emergency, of the following volume and duration—

Fire risk category	Minimum volume of extinguishing stream (litres per minute)	Minimum duration of extinguishing stream (hours)
High risk	11 500	6
Moderate risk	5 750	4
Low risk	37. 300	2

### 37. Township development fire hydrant requirements.—(1) Every person who develops or redevelops a township must ensure that fire hydrants are plotted on a plan and installed in accordance with the following minimum delivery volumes and distance frequencies:

Fire risk category	Minimum fire hydrant delivery volume measured at peak consumption (litres per minute)	Minimum distance between fire hydrants (metres)
High risk	1 980	120
Moderate risk	1 150	180
Low risk	900	240

- (2) Every person who develops or redevelops a township must ensure that the position of fire hydrants is plotted accurately on a plan that is furnished to the Chief Fire Officer for operational fire-fighting purposes.

### 38. Fire risk categories.—

- (1) For purposes of Chapter 6, the following areas of a township must be regarded—
  - (a) as high risk—
    - (i) any factory area, high density shopping area, warehouse or commercial building;
    - (ii) any plantation, timber yard or wooden building;

- (iii) any building higher than 3 storeys;
  - (iv) any building in which hazardous substances are used, handled or stored or in which hazardous processes are conducted; and
  - (v) any other area that has a high fire risk or high fire spread risk;
- (b) as moderate risk—
  - (i) any area in which—
    - (aa) factories, commercial buildings or residential buildings are generally detached from each other and do not exceed 3 storeys; and
    - (bb) The Chief Fire Officer has not declared the materials processed or stored in these buildings as highly dangerous;
  - (ii) any area where the fire risk and fire spread risk is moderate; and
  - (iii) any other area that is not a high or low risk area; and
- (c) as low risk—
  - (i) any area that is mainly residential or semi-rural;
  - (ii) any area that has predominantly detached, duet, cluster or town house developments; and
  - (iii) any area where the fire risk or spread risk is slight or insignificant.

### **39. Connections to water reticulation system.—**

- (1) No person may obtain a water connection to the water reticulation system of the municipality unless the fire protection plans for the premises to be connected have been approved by the Chief Fire Officer.
- (2) Every person or owner of premises who requires a water connection to the water reticulation system of the municipality must—
  - (a) if the premises to be connected are protected by a sprinkler installation, ensure that—
    - (i) the connection is calculated and designed for each sprinkler installation in accordance with a rational design as contemplated in the National Building Regulations, and
    - (ii) the size, delivery pressure and flow of the water connection is calculated in advance by the responsible engineer;
  - (b) ensure that the size, work pressure and delivery flow, except in the case of a water connection to a sprinkler installation, is calculated and designed in accordance with SANS 10400; and
  - (c) ensure that the water installation upon completion complies with the provisions of SANS-10400.

## **CHAPTER 7 FIRE PERMITS AND RESTRICTIONS**

### **40. Prevention of fire hazards.—**

- (1) No person shall burn or set alight any rubbish, tree, weeds, grass or any other substance or matter outside the confines of a building except with the prior written consent of the Chief Fire Officer.
- (2) The Chief Fire Officer in granting consent in terms of subsection (1) may impose such conditions as he deems fit; provided that no authority granted shall be in conflict with any of the provisions of the Atmosphere Pollution Prevention Act, 1965 (Act 45 of 1965).

**41. Storage and accumulation of combustible material.—**

- (1) No person may store any combustible material or allow it to be stored, at any place or in any manner that may pose a fire hazard to any person, animal or property.
- (2) No person may allow the accumulation of dust at any place in quantities sufficient to pose a fire hazard to any person, animal or property.
- (3) No person may use or allow to be used any sawdust or similar combustible material to soak up any flammable liquid.
- (4) No person may allow soot or any other combustible material to accumulate in any chimney, flue or duct in such quantities or in any manner that may pose a fire hazard to any person or property.
- (5) No person may allow any vegetation to become overgrown at any place under that person's control that may pose a fire hazard to any person, animal or property.
- (6) If a fire hazard contemplated in subsection (5) arises, the owner or person in charge of the premises must without delay eliminate the hazard or cause the hazard to be eliminated by—
  - (a) cutting any grass, leaves or weeds associated with the fire hazard to a maximum height of 150 millimetres;
  - (b) pruning, chopping down or sawing any shrub or tree; and
  - (c) removing any resulting combustible residue from the property.

**42. Electrical fittings, equipment and appliances.—**

- (1) No person may cause or allow—
  - (a) any electrical supply outlet to be overloaded; or
  - (b) any electrical appliance or extension lead to be used in any manner that may pose a fire hazard to any person, animal or property.

**43. Flame-emitting devices.—**No person may use or cause or allow the use of any flame-emitting device, including but not limited to any candle, lantern or torch, in any manner that may pose a fire hazard to any person, animal or property.**44. Discarding of flammable liquid or substance in sewers or drains.—**

- (1) No person may discard into, or cause, permit or allow any flammable liquid or flammable substance to enter any waste or foul water or storm water sewer or drain whether underground or on the surface.
- (2) A person who becomes aware of any escape, whether accidental or otherwise, of any quantity of flammable liquid or flammable substance which is likely to constitute a fire hazard, from any premises or vehicle into any sewer or drain or any inlet or drain linking with such sewer or drain, must immediately report such escape to the Chief Fire Officer.

**45. Flammable gas.—**No person may fill any balloon or other device with flammable gas without the written authority of the Chief Fire Officer, and subject to such conditions as he may require after having regard to the circumstances of the specific case.**46. Smoking restrictions and discarding of combustibles.—**

- (a) If conditions in the opinion of the Chief Fire Officer exist where smoking may create a fire hazard on any premises, smoking must be prohibited and “No Smoking” signs must be prominently displayed in positions as directed by the controlling authority.

- (b) A person may not remove or damage a “No Smoking” sign.
- (c) No person may light or smoke a cigarette or any other smoking materials or ignite or otherwise set fire to other material, nor hold or discard any lit or smoldering substance in any place where expressly prohibited.
- (d) The owner or person in charge of any premises may not allow or permit any person to light or smoke a cigarette or any other smoking materials or ignite or otherwise set fire to any other material, nor hold or discard any lit or smoldering substance in any place where expressly prohibited.
- (e) Where smoking is permitted, adequate provision must be made for the safe disposal of any smoking materials and matches.
- (f) No person may discard or otherwise dispose of a burning cigarette or any other burning materials or objects including materials capable of self-ignition or capable of spontaneous combustion, on any road, in any road reserve or in any other public place.
- (7) Where any cigarette, smoking materials or other burning materials, including materials capable of self-ignition or spontaneous combustion are discarded from a vehicle onto a road, or in any road reserve or any other place, it shall be presumed, in the absence of evidence to the contrary, that such action was performed by the driver of such vehicle.

**47. Safety requirements for temporary settlement areas.—**

(1) In the event of the establishment of any temporary settlement area, the following minimum requirements shall apply—

- (a) a safety distance of 3 metres between structures shall be maintained;
- (b) the settlement must be divided into blocks of not more 20 structures per block, with a minimum distance of 6 metres between blocks.
- (c) sufficient access routes for the purposes of firefighting which shall not be less than 4,5 meters in width.
- (d) sufficient access to water for firefighting purposes.

## **CHAPTER 8 REGULATION OF FIREWORKS**

**48. License to deal in fireworks.—**No person shall sell or supply fireworks without being in possession of a valid license.

**49. Requirements for the handling and storage of fireworks.—**

- (1) Premises in which fireworks are handled should have at least two exits. Where any premises have only one exit the fireworks shall be restricted to 150Kg and be kept at the rear (relative to the exit) of the premises.
- (2) The doors to the exits shall be kept clear and accessible at all times.
- (3) A dealer shall have a 9Kg dry chemical fire extinguisher which shall be serviced annually on the premises, in a readily accessible position or as determined by a designated Fire Officer.
- (4) A dealer may keep, on his premises, no more than 1000 kilograms gross mass of fireworks or the amount stipulated at the discretion of the Chief Fire Officer, provided that the fireworks, contained in their inner or outer packages, are kept on shelves or other fittings separated from goods of a flammable or combustible nature.

- (5) Fireworks in excess of 1000 kilograms gross mass shall be stored in a fireworks magazine built according to legislative specifications.
- (6) Notices with 100mm red lettering on a white background must be provided as follows—
  - (a) To the outside of the premises in a prominent position adjacent to every entrance, reading “Dealer in Fireworks”.
  - (b) In prominent positions inside the premises, “No Smoking” and “No Naked lights” in appropriate official languages.
  - (c) Goods of a dangerous nature such as flammable liquids, acids, alkalis and the like shall not be kept on the same premises together with fireworks and safety matches.

**50. Public Fireworks displays.—**

- (1) Application for permission to operate a public display of fireworks shall be made in writing to the Chief Fire Officer and shall provide—
  - (a) The name of the person or the organization sponsoring the display, together with the names and qualifications of the persons in actual charge of the firing of the display who shall be at least 18 years of age and competent for the work.

**CHAPTER 9 : CERTIFICATE OF REGISTRATION FOR USE, HANDLING AND STORAGE OF FLAMMABLE SUBSTANCES**

**51. Use, Handling & Storage of flammable substances prohibited in certain circumstances.—**(1) No person shall manufacture, store, convey, sell, use or handle flammable liquids or substances except in accordance with the provisions of these By- laws.

**52. Certificate of Registration Requirements.—**

- (1) No person shall—
  - (a) Use any premises as a spraying room or booth
  - (b) Transport or convey any flammable liquid, substance or liquefied petroleum gas or vapours by means of any vehicle within the City without a certificate of registration in respect of such premises or of such vehicle as contemplated in section 54 and 55.
  - (c) Without a certificate of registration in respect of any premises as contemplated in section 54 and 55 store, manufacture, sell, use or handle any flammable gas/liquids/substances on any premises in excess of the following quantities—

**Group III: Flammable liquids**

- 3.1 with flashpoints < 18°C but but Total quantity may not exceed not < 23°C - 100 ℓ.
- 3.2 with flashpoints > 18°C 420 ℓ. Total quantity may not exceed
- 3.3 with flashpoints > 23°C but < Total quantity may not exceed 1 61°C - 100 ℓ.
- 3.4 with flashpoints > 61°C but < Total quantity may not exceed 100°C - exceed 1 100 ℓ.

- (3) For the purpose of subsection 1, any container for liquefied petroleum gas found on any premises shall be deemed to be full until the contrary is proven.

**Application for Certificate of Registration.—**

- (1) An application for a Certificate of Registration in respect of premises shall be submitted to the Chief Fire Officer on the form prescribed in the Third Schedule to these By-laws and shall be accompanied by—
  - (a) A plan of the premises in respect of which the certificate is required, drawn to a scale of not less than one in a hundred (1 : 100) which shall indicate the proposed installation or room in which the flammable liquid or substance is to be stored, used or handled, describe the material with which such installation or room is to be constructed and indicate the position of any pump, storage tank, store, pipeline, dry cleaning machinery, spraying room, spraying booth or ventilating equipment;
  - (b) A block plan of such premises drawn to a scale of not less than one in five hundred (1: 500) which shall specify—
    - (i) The buildings in relation to adjoining subdivisions and the materials of which such buildings are constructed or to be constructed;
    - (ii) The subdivisions and lots immediately adjoining the premises giving their street, block and postal numbers;
    - (iii) The names of any streets on which the premises abut; and (iv) The north point.
- (2) Where the plan relates to existing premises in respect of which a Certificate of Registration has been issued and wherein it is proposed to make alterations or additions to any building or equipment or apparatus lawfully used or intended to be used thereon for the storage or handling of flammable liquid or the existing Certificate of Registration to be adjusted if required;
  - (a) All plans shall be signed by the applicant or his agent;
  - (b) Every application for a certificate of registration for purposes of the conveyance of flammable liquids or substances shall be submitted to the Chief Fire Officer.

**53. Issue of Certificates of Registration.—**

- (1) No Certificate of Registration shall be issued until the premises or the vehicle in respect of which it is issued, as the case may be, complies with the requirements of these By-laws.
  - (2) A Certificate of Registration, once issued, shall be valid for 12 months or until cancelled or revoked. All certificates issued in terms of these By-laws shall be on the standard form as prescribed in the fifth schedule.
  - (3) The local authority may recognise a certificate issued by another authority with similar by-laws.
  - (4) Every person to whom a Certificate of Registration has been issued shall cause such certificate to be affixed and displayed in a conspicuous position on the registered premises/vehicle, and he shall ensure that the said certificate is at all times legible.

**55. Supply of flammable liquids or substances.—**

- (1) No person shall supply or deliver or cause or permit any flammable liquid or substances to be supplied or delivered at any time to any premises or vehicle in excess of the quantities specified in section 54, unless the occupier or person having control of such premises/



vehicle is in possession of a Certificate of Registration issued in terms of section 55 in respect of the said premises/vehicle.

(2) No person shall receive or accept delivery or cause or permit any flammable liquids or substances to be received at any one time—

- (a) In excess of the quantities specified in section 54, at any premises or vehicle the occupier or person having control of which, as the case may be, is not in possession of a certificate of registration issued in terms of section 55 in respect of the said premises/vehicle.
- (b) At any premises or in any vehicle in excess of the amount specified on the certificate of registration relating to such premises or vehicle.

**56. Register for Certificates of Registration.—**

The Chief Fire Officer shall maintain a register in which he enters full particulars of the premises/vehicles in respect of which he has issued a certificate and the names and addresses of the person to whom it has been issued and the date of the issue, as well as the date of any transfer, cancellation, suspension or inspections.

**57. Exemptions.—**

Notwithstanding anything contained in these By-laws flammable liquids shall be deemed not to be stored or conveyed or transported when contained in the fuel tank of a motor vehicle or stationary engine in normal use.

**58. Transfer of Certificate of Registration.—**

- (1) A Certificate of Registration may be transferred from one person to another but no certificate of registration shall be transferred from one premise to another or from one vehicle to another.
- (2) The person desiring such transfer shall make application in writing to the Chief Fire Officer on the form prescribed in the Seventh Schedule to these By-laws. Such application shall be accompanied by the Certificate of Registration relating to the premises or vehicle in respect of which such transfer is desired.

**CHAPTER 10: GENERAL PROVISIONS REGARDING THE USE, HANDLING AND STORAGE OF FLAMMABLE SUBSTANCES**

**59. General provisions regarding the use, handling and storage of flammable substances.—**Except as otherwise provided by these By-laws, no person shall store, use or handle or permit or cause to be stored, used or handled any flammable liquid or substance on any registered premises—

- (1) In circumstance that such flammable liquid or substance, or its vapour comes or is likely to come into contact with any fire, flame, naked light or other agency likely to ignite such flammable liquid or substance or its vapour;
- (2) Unless such premises are situated or constructed or so protected by surrounding walls or bunds so as to adequately protect adjoining premises or part thereof from the risk of danger from fire;
- (3) That prevents, or impede the escape of any person or animal;

- (4) Unless all equipment used in such premises for the storage, use and handling of flammable liquid or substance is maintained in good and proper order and free from leakage of flammable liquid or substance;
- (5) Unless such person has taken all due precautions for the prevention of accidents by fire or explosion on such premises and for the prevention of unauthorised persons obtaining access to the flammable liquid or substance kept thereon;
- (6) That makes or allows any fire device capable of producing an open fire flame or allow any other person to do so, within 5 metres of any place where flammable substance is stored. That delivers or supplies or allows to be delivering or supplying, any flammable liquid substance to any premises unless the owner or person in charge of the premises is in possession of a valid certificate of registration.

**60. Use, handling and storage of Liquefied petroleum gas.—**

- (1) No person may use, handle or store liquefied petroleum gas in any quantity exceeding that stipulated in the Fourth Schedule unless:
- (2) Liquid petroleum gas may only be used, handled or stored within property boundaries and in compliance with safety distances.
- (3) No liquid petroleum gas cylinder may be used, handled or stored at any public exhibition or demonstration without the prior written permission of the Chief Fire Officer.
- (4) The Chief Fire Office may impose any reasonable condition on the use, handling and storage of liquid petroleum gas cylinders at a public exhibition or demonstration, including but not limited to, the number of cylinders, the manner of storage, safety distances and other safety requirements.
- (5) Any person using, handling or storing any liquid petroleum gas cylinder at any public exhibition or demonstration must comply with any condition imposed by the Chief Fire Officer.
- (6) No person shall cause or allow more than 19kg of liquefied petroleum gas to be kept or stored in any building and for the purpose of this provision any container for liquefied petroleum gas found in any building shall be deemed to be full until the contrary is proved.

**61. Construction of storage tanks.—**

- (1) Every storage tank containing flammable substances shall be constructed of iron, steel or other suitable metal plates of adequate strength and properly welded, brazed or otherwise secured by some equally satisfactory process.
- (2) The top and sides of a storage tank shall be supported and strengthened by such uprights, girders, angle-irons and ties as, having regard to the capacity, shape and situation of the tank may be necessary to render it sufficiently strong for the purpose to which it is to be used.
- (3) Every opening in an underground storage tank other than a vent pipe shall be securely closed by an effective and properly secured cap, cover, tap or valve.
- (4) All pipes and other pipes connected to an underground storage tank shall be carried to within 100mm of the bottom of the tank.
- (5) Every surface storage tank shall have an adequate system of ventilation so as to prevent excessive internal pressure.

- (6) The whole of the exterior of all tanks shall receive an approval coating to prevent corrosion.
- (7) The holder of a certificate of registration in respect of premises in which are situated bulk liquid petroleum gas storage vessels, vaporisers, pipe works and fittings shall ensure that they conform with SANS 10131.

**62. Installation of storage tanks.—**

- (1) Every person who installs or uses a storage tank shall ensure that it complies with the requirements of these By-laws.
- (2) Any underground tank shall be installed that no part of it shall be within 2m of any part of a building, or 3.6m from the boundary of any premises or 6m from any basement, cellar or pit.
- (3) No part of any underground tank shall be covered until all piping has been subjected to an air test to a pressure of 25,6cm on a monometer of 40 kpa or a pressure gauge for a period of 30 minutes.
- (4) No underground storage tank shall have more than one filler point, one vent and one dipping hole pipe.

No portion of a building, other than a canopy or similar projection to which the occupants of such building have no direct access, shall be erected over an underground storage tank or any pump connected to it unless—

- (a) the underside of such portion is at least 3,6m above ground level;
- (b) the floor forming the underside of such portion has a fire-resistance of at least 4hours and extends at least 2m in every direction beyond the sides of the pump and tank concerned.
- (c) the floor below such pump, where such pump is erected over a basement storey, has a fire resistance of at least 4 hours and extends at least 2m in every direction beyond the sides of the pump and tank concerned.

**63. Ventilation of Underground storage.—**The holder shall ensure that every underground storage tank installed on the premises in respect of which a certificate of registration has been issued has a ventilation pipe of not less than 30mm internal diameter.

**64. Storage Tanks in Basement.—**(1) No person shall erect an above-ground tank or install storage tank in a basement of a building unless he has obtained the prior written authority from the Chief Fire Officer and complies with all the requirements of SANS 10131.

(2) A basement storage tank authorised in terms of subsection 1 shall have a capacity not exceeding 1500 litres and the person to whom authority has been given under that subsection shall comply with all conditions subject to which such authority has been given.

**65. Storage in Open air.—**No person shall store flammable liquid outside a building or elsewhere in the open air except in accordance with the following requirements—

- (1) the flammable liquid may only be stored in sealed containers which shall be stacked to a height not exceeding three containers;
- (2) No flammable liquid or drum shall be nearer than -
  - (a) 3m from any boundary of the premises or any drain
  - (b) 6m from any building on the premises

- (c) 15m from any building on adjacent premises
- (3) The area demarcated for storage shall be to the satisfaction of the Chief Fire Officer.
- (4) Signs prohibiting smoking and naked flames shall at all times be displayed so as to be visible to all persons approaching the storage area.

**66. Provision of stores.—**

- (1) When deemed necessary by the Chief Fire Officer, having regard to the nature and quantity of flammable liquids and substances to be stored, the nature and proximity of adjacent buildings and other attendant risks, the occupier of the premises shall provide thereon a store in accordance with the requirements of these By-laws for the storage of such liquids or substances.
- (2) No person who is the holder of a certificate of registration shall store in any store provided in terms of these By-laws any greater quantity of flammable liquids or substances than is permitted by the certificate of registration issued in respect of that store.

**66. Use of store.—**

No person shall, without the prior written authority of the Chief Fire Officer—

- (1) Use any store or cause or permit such store to be used for any purpose other than the storage of flammable liquids or substances and their containers.
- (2) Be present in or cause or permit any other person to be present in any store unless all doors of the store are fully open and kept entirely unobstructed.

**68. Unauthorised persons entering store.—**

No person shall enter any store or cause or permit any store to be entered without the express permission of the occupier of the premises or other responsible person in charge of such store.

**69. Signage.—**

- (1) No person shall use or permit the use of a store for the purpose of storing flammable liquid or substance, unless it complies with the requirements of these By-laws and until warning notices SANS 1186 as amended are legibly painted or otherwise displayed on the outer face of the door of such store and such notices shall at all times be maintained in such position and in a legible condition.

**70. Electrical equipment in storeroom.—**

- (1) The owner, occupier, or the person who in the opinion of the Chief Fire Officer is in charge of any storeroom must ensure that all electrical apparatus, fittings or switch gear used or installed in the storeroom are used or installed in accordance with relevant legislation.
- (2) Any electrical installation in a storeroom must be installed and certified only by an electrician who is qualified and competent by virtue of his or her training and experience.
- (3) The owner, occupier, or the person who in the opinion of the Chief Fire Officer is in charge of a storeroom must submit the certificate contemplated in subsection 2 to the Chief Fire Officer for record purposes immediately after installation contemplated in such subsection.

**71. Abandoned tanks.—**

(1) The following steps shall be carried out before any storage tank is removed—

- (a) all flammable liquid shall be removed from the tank and from connecting pipes;
- (b) the suction, filler, vent and dipping hole pipes shall be disconnected;
- (c) the tank shall be rendered thoroughly airtight after disconnecting all pipes by blanking off all flanges and screwing in metal gas plugs onto any sockets in the tank.
- (d) All leakage holes shall be plugged with lead or hardwood plugs.

(2) An underground storage tank which is no longer in use must be filled with sand or liquid concrete or polyurethane foam if such tank is not removed.

(3) Where a tank is to be disposed of as scrap, it shall, before disposal be re-tested for explosive vapours and, if necessary, be rendered gas-free and a sufficient number of holes or openings shall be made in such tank so as to render it unfit for future use.

(4) Unhitched trailer tanks shall not be left unattended in public areas.

**72. Construction of portable tanks.—**

No person shall store or convey or cause or permit to be stored or conveyed Group III flammable liquid in a quantity exceeding 5 Litres except in a container constructed of metal having a thickness of at least 1,25mm, or liquefied petroleum gas except in a container constructed in accordance with the requirements of Portable metal containers for compressed gases. SANS 10019 of

**73. Filling of Containers.—**

(1) No person shall fill a container with Group II and Group III flammable liquid other than in a room or building constructed of non-combustible materials and used solely for such purpose, which room or building shall be adequately ventilated or in the open air at a distance of not less than 15m from any fire, flame, naked light or any other agency likely to ignite flammable liquid or its vapour.

(2) No person shall fill a container with liquefied petroleum gas (Group II) or cause or permit it to be filled except in accordance with the requirements of SANS 10087 (Part I): retail outlets and similar LP gas filling sites for small containers.

(3) A person who fills a container with Group II liquefied petroleum gas or Group III flammable liquid shall ensure that both it and the container which it is filled is properly earthed.

**74. Quantity in Containers.—**

(1) No container shall be filled with flammable liquid to more than ninety five percent of its capacity; provided that in the case of liquefied petroleum gas, containers shall not be filled to more than eighty percent of their capacity.

**75. Storage of empty containers.—**

(1) No person shall place or keep any used container or cause or permit any used empty container to be placed or kept in any part of any premises other than a store; provided, however, that-

- (a) Such a container may be stored in the open air at a distance of not less than 6m from any fire, flame, naked light, or other agency likely to ignite flammable liquid or its vapour.
  - (b) No person shall cause or allow any used empty container to remain in or on any public street or public place.
- (2) The person who stores used empty containers in terms of subsection (1) shall at all times ensure that they are securely closed with a bung or other suitable stopper.
- (3) The holder of a certificate of registration in respect of any premises shall ensure that the storage of filled liquefied petroleum gas containers and empty cylinders shall be in accordance with the requirements of legislation.

#### **76. Marking of containers.**

- (1) No person shall supply or deliver to any person any Group II and Group III flammable liquids or gas as contemplated in group ii or group iii in any container unless such container bears in conspicuous symbols or letter the words "FLAMMABLE" and the marking of liquefied petroleum gas containers.

### **CHAPTER 11 DANGEROUS GOODS**

#### **77. Transport of dangerous goods prohibited without permits issued by the relevant authority.**

- (1) The owner of any vehicle used for transporting dangerous goods must-
  - (a) be in possession of a valid transport permit issued in accordance with the relevant authority and
  - (b) ensure that the transport permit is available in the vehicle for inspection at all times.

#### **78. Application for Transport permits.**

- (1) An application for a transport permit must be completed and submitted to the Chief Fire Officer.
- (2) The application must be accompanied by proof of payment as prescribed in the Municipal Tariff Policy.
- (3) A transport permit is only valid for a period of 12 months.

#### **79. Permit Validity.**

- (1) The Chief Fire Officer reserves the right to cancel any permit issued by Msunduzi Municipality and/or
- (2) Not to adopt the validity of a transport permit issued by any other authority.
- (3) In the event of a disputed permit, the relevant authority is to be notified.

### **CHAPTER 12 GENERAL**

#### **80. Offences.—**

- (1) Any person who—
  - (a) Contravenes any provision of these By-laws; or
  - (b) Contravenes any conditions imposed upon the granting of any application, consent, approval, concession, relaxation, certificate, permit or authority in terms of these By-laws; or



- (c) Fails to comply with the terms of any order given to or notice served upon such person in terms of these By-laws,
- (d) shall be guilty of an offence and liable, upon conviction, to the maximum penalty of the court having jurisdiction may impose in any criminal proceedings herein.
- (e) Failure to comply with the terms of any condition or notice referred to subsection (1) (b) or (c) above shall constitute a continuing offence and any person failing to comply with the terms of such condition or notice shall be guilty of a separate offence for each day during which such person fails to comply with such terms.

**81. Repeal.**—The City of Pietermaritzburg: Bylaws Relating to Fire Prevention and Flammable Liquids and Substances approved and published by the Administrator in terms of section 268 of the Local Authorities Ordinance No. 25 of 1974, read with section 17 of the Fire Brigade Services Ordinance No. 31 of 1978, as amended, are hereby repealed.

**SCHEDULE 1****APPLICATION FOR APPROVAL OF FIXED OR TEMPORARY PREMISES FOR  
USE AS A PLACE OF ASSEMBLY OR CONGREGATION FOR PURPOSES OF  
RECREATION OR ENTERTAINMENT**

<b>FIXED</b>	<input type="checkbox"/>	<b>TEMP</b>	<input type="checkbox"/>
<b>NAME OF OWNER:</b> _____			
<b>NAME OF TENANT/OCCUPIER:</b> _____			
<b>NAME OF PREMISES:</b> _____			
<b>USED FOR/AS:</b> _____			
<b>STREET ADDRESS:</b> _____			
_____			
<b>SIGNATURE OF OWNER:</b> _____			
<b>SIGNATURE OF OCCUPIER/TENANT:</b> _____			
<b>DATE:</b> _____			
_____			
<b>FOR OFFICE USE ONLY</b>			
_____			
<b>NAME OF EXAMINING OFFICER:</b> _____			
<b>OCCUPANCY CLASSIFICATION</b> _____			
<b>TOTAL FLOOR AREA (m<sup>2</sup>)</b> _____			
<b>NUMBER TEMP/FIXED SEATS:</b> _____			
<b>REQUIRED NO. OF EXITS:</b> _____			
<b>WIDTH OF EXITS: (mm)</b> _____			
<b>aisle SPACING: ((mm)</b> _____			
<b>FIRE EQUIPMENT:</b> _____			
_____			
<b>APPROVED EVACUATION PLAN:</b>		<input type="checkbox"/> <b>Yes</b>	<input type="checkbox"/> <b>N/A</b>
<b>CERTIFICATION - STRUCTURAL/ELECTRICAL</b> _____			
<b>MAXIMUM NO. OF PERSONS PERMITTED:</b> _____			
<b>COMMENT:</b> _____			
_____			

## SCHEDULE 2

### CERTIFICATE OF OCCUPANCY COMPLIANCE

\_\_\_\_\_  
*Name of Premises*

The maximum number of persons permitted within such premises is \_\_\_\_\_

This Certificate is issued subject to the following conditions—

- A) The maximum number of persons must not be exceeded unless approved by the Chief Fire Officer.
- B) For a fixed structure, a sign depicting the maximum number of persons allowed must be displayed at the entrance/reception area.
- C) Standard Sign Description
  - 1. Size: 300mm x 300mm.
  - 2. White background with red writing.
  - 3. Font - Roman Bold.
  - 4. Sign should read:- maximum number of persons permitted is \_\_\_\_\_
- D) For a temporary structure, the certificate shall expire on DATE: \_\_\_\_\_

\_\_\_\_\_  
CHIEF FIRE OFFICER

\_\_\_\_\_  
DATE

## SCHEDULE 3

### MSUNDUZI MUNICIPALITY FIRE AND RESCUE SERVICES

#### BY-LAWS RELATING TO FIRE SAFETY

#### APPLICATION FOR PERMIT TO STORE DANGEROUS GOODS

Date: \_\_\_\_\_

This form must, in terms of the Msunduzi Municipal Fire By-laws be completed and forwarded to the Chief Fire Officer together with a plan of the premises

Name of Applicant \_\_\_\_\_

Trading as \_\_\_\_\_

Name of Manager: \_\_\_\_\_

Name of Owner: \_\_\_\_\_

Name of Premises: \_\_\_\_\_

Street no. & Name: \_\_\_\_\_

Suburb: \_\_\_\_\_

State type of Business: \_\_\_\_\_

\_\_\_\_\_  
Give a full description of existing and proposed buildings:

\_\_\_\_\_  
How many spraying rooms are there on the premises?

If this application is for additional storage, \_\_\_\_\_

State the number of extra litres. Litres: \_\_\_\_\_

How many flammable liquid tanks are there on the premises? No \_\_\_\_\_

Capacity of each: \_\_\_\_\_

How many flammable liquid stores are there on the premises? Number of stores \_\_\_\_\_

State capacity of store in litres: Capacity \_\_\_\_\_ Litres \_\_\_\_\_

State total quantity in litres or kgs. Proposed to be kept on premises

Class 0 _____ kgs	Liquid Petroleum Gas (LPG)
	Flashpoint below 18°C.
Class II _____ Litres	Flashpoint between $\geq 18^{\circ}\text{C}$ & $\leq 23^{\circ}\text{C}$ .
Class III _____ Litres	Flashpoint between $\geq 23^{\circ}\text{C}$ & $\leq 61^{\circ}\text{C}$
Class IV _____ Litres	Flashpoint between $\geq 61^{\circ}$ & $\leq 100^{\circ}\text{C}$ .
Other _____	

Does the premises comply with the relevant Fire Regulations:?

YES

NO

Signature of Applicant: \_\_\_\_\_

Capacity of Signatory: \_\_\_\_\_

Address: \_\_\_\_\_

Postal Address \_\_\_\_\_ Phone: \_\_\_\_\_

Issuing Officer: \_\_\_\_\_

## SCHEDULE 4

### FIRE & RESCUE SERVICES

#### BY-LAWS RELATING TO FIRE SAFETY

#### PERMIT TO STORE DANGEROUS GOODS

This is to certify that the premises situated at \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Occupied by \_\_\_\_\_  
 And used as a \_\_\_\_\_

Have been duly registered by the Chief Fire Officer under the said fire by-laws. The maximum quantity of dangerous goods kept or handled at this address shall not exceed—

#### Dangerous goods

Class 0	_____	kgs
Class I	_____	Litres
Class II	_____	Litres
Class III	_____	Litres

**Class IV** \_\_\_\_\_ **Litres**

**Other**

(Specify types) \_\_\_\_\_ **Kgs/Litres**

This certificate is issued subject to the following conditions:-

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\_\_\_\_\_  
CHIEF FIRE OFFICER

\_\_\_\_\_  
Date Stamp

This Permit must be displayed in a  
conspicuous position on the registered  
premises.

## **SCHEDULE 5**

### **FIRE AND RESCUE SERVICES**

#### **BY-LAWS RELATING TO FIRE SAFETY**

#### **APPLICATION FOR OCCUPANCY COMPLIANCE CERTIFICATE**

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

This form must, in terms of the Msunduzi Municipal Fire By-laws, be completed  
and forwarded to the Chief Fire Officer.

Name of applicant: \_\_\_\_\_

Trading as: \_\_\_\_\_

Street Number and Name: \_\_\_\_\_

Suburb: \_\_\_\_\_

- |                           |                                   |
|---------------------------|-----------------------------------|
| 1. Type of Vehicle: _____ | 5. Make & Model of vehicle: _____ |
| 2. Registration No: _____ | 6. Year of manufacture: _____     |
| 3. Tare : _____           | 7. Engine No.: _____              |
| 4. Load: _____            | 8. Chassis no.: _____             |

Make & Model of vehicle: \_\_\_\_\_

Quantity of liquid or of flammable liquid to be conveyed: \_\_\_\_\_

<b>Class O</b>	_____	<b>kg</b>	<b>Liquid Petroleum Gas (LPG)</b>
<b>Class I</b>	_____	<b>Litres</b>	<b>Flashpoint below 18°C.</b>
<b>Class II</b>	_____	<b>Litres</b>	<b>Flashpoint <math>\geq 18^{\circ}\text{C}</math> &amp; <math>\leq 23^{\circ}\text{C}</math>.</b>

**SCHEDULE 6****MSUNDUZI MUNICIPALITY****FIRE AND RESCUE SERVICES****BY-LAWS RELATING TO FIRE SAFETY****TRANSPORTATION OF DANGEROUS GOODS PERMIT**

This is to certify that the vehicle particulars of which are given below, has been examined and found to comply with the prescribed structural requirements as contained in the Fire Safety Bylaws relating to dangerous goods for the conveyance of:

<b>Class</b>	<b>Description / quantity</b>
Class 0	210 kg LPG
Class II	600 L Paraffin
Multi Load	Yes/No

Name of Company \_\_\_\_\_

Owners Name: \_\_\_\_\_

Address: \_\_\_\_\_

Registration: \_\_\_\_\_

Type of Vehicle: \_\_\_\_\_

Make of vehicle: \_\_\_\_\_

This permit is not a warranty of fitness of the vehicle herein described and any owner, driver or other person interested should satisfy himself as to the construction and condition of the said vehicle.

\_\_\_\_\_  
**CHIEF FIRE OFFICER**\_\_\_\_\_  
**DATE****SCHEDULE 7****MSUNDUZI MUNICIPALITY****FIRE & RESCUE SERVICES****BY-LAWS RELATING TO FIRE SAFETY****APPLICATION FOR TRANSFER OF CERTIFICATE OF REGISTRATION**

I hereby apply for the transfer Certificate of Registration



<b>Issued on</b>	_____	<b>Date</b>	_____
<b>In respect of the premises situated at</b>	_____		
<b>Used as</b>	_____		
<b>Or in respect of the vehicle with registration no.</b>	_____	<b>Make</b>	_____
<b>Type</b>	_____		
	to be transferred to: - _____		
<b>NAME:</b>	_____		
<b>ADDRESS:</b>	_____		
<b>The reason for this application to transfer the Certificate of Registration from one person or firm to another person or firm is because</b>			
_____			
_____			
<b>Date:</b>	_____		
	<b>SIGNATURE OF APPLICANT:</b>		
<b>Address:</b>	_____		
<b>Phone:</b>	_____		
	<b>P O BOX</b>		
	_____		

## SCHEDULE 8

### BY-LAWS RELATING TO FIRE SAFETY

#### HOT WORKS PERMIT

**Date:** \_\_\_\_\_

**Permission is granted to:** \_\_\_\_\_

**To use:** \_\_\_\_\_ **In the** \_\_\_\_\_  
(exact location)

**Dates:** \_\_\_\_\_

**Times:** \_\_\_\_\_

The onus remains with the Permit Holder to ensure strict adherence to the following—

- a) First Aid fire equipment is available for use at any time. This includes the use of fire extinguishers and fire hose reels.
- b) The emergency contact number of the local fire department is on hand.
- c) The area of operations is kept free of flammable solids, liquids, vapours and gases.

\_\_\_\_\_  
**SIGNATURE OF PERMIT  
HOLDER**

\_\_\_\_\_  
**SIGNATURE OF ISSUING  
OFFICER**

\_\_\_\_\_

**BY-LAWS RELATING TO FIRE SAFETY****APPLICATION FOR APPROVAL OF PREMISES FOR THE SALE OF  
FIREWORKS.**

NAME OF APPLICANT \_\_\_\_\_

NAME OF OWNER  
(PREMISES) \_\_\_\_\_CONSENT OF OWNER  
(PREMISES) I AGREE.☐ Yes☐ No

SIGNATURE: \_\_\_\_\_

NAME OF PREMISES: \_\_\_\_\_

STREET ADDRESS: \_\_\_\_\_

SIGNATURE OF APPLICANT \_\_\_\_\_

DATE: \_\_\_\_\_

NB. This approval by no means serves as a license to sell fireworks. An application for such permit must be made to the S.A.P. Explosives Unit.

**THE FOLLOWING MUST BE COMPLIED WITH BEFORE ANY APPROVAL IS  
GRANTED**

1. Premises must comply with any relevant section of the Explosives Act and Regulations.
2. Stocks must not exceed 1000Kg at any one time.
3. Fireworks must be displayed out of reach of customers in glass cases which are locked at all times.
4. Storage elsewhere in the shop is not permitted.
5. Fire escapes must be properly demarcated and not obstructed.
6. Install 1 x 4,5Kg DCP fire extinguisher.
7. At every entrance to such premises, a notice reading "Dealer in Fireworks" be prominently placed.
8. Post SABS approved "No Smoking" and "No Naked Lights" signs, dimensions 190mm x 190mm in prominent positions.

NAME OF EXAMINING OFFICER: \_\_\_\_\_

APPROVED: ☐

SIGNATURE OF EXAMINING OFFICER: \_\_\_\_\_

**SCHEDULE 10****BY-LAWS RELATING TO FIRE SAFETY****APPLICATION FOR BURN PERMIT**

1. **DATE:**
2. **NAME OF APPLICANT:**
3. **ADDRESS OF APPLICANT:**
4. **ADDRESS OR PREMISES FOR CONTROLLED BURNING:**
5. **PREFERRED DATES:**
6. **SIGNATURE OF APPLICANT:**

N.B. A signed permit from the Environment Health Section is to be accompanied with this application.

**FOR OFFICE USE ONLY**

1. **WAS THE PREMISES / AREA INSPECTED?** \_\_\_\_
2. **IS THE BURNING WITHIN THE CAPABILITIES OF EXTINGUISHMENT BY A RESPONSIBLE PERSON OR PERSONS?** \_\_\_\_  
(Refer to National Veld & Forest Fire Act No.101 1998.)
3. **DOES THE APPLICANT HAVE THE EMERGENCY SERVICES CONTACT DETAILS?** \_\_\_\_
4. **HAVE THE NECESSARY PERSONS, (viz: NEIGHBOURS, FIRE PROTECTION ASSOCIATION, ETC. BEEN INFORMED OF THE INTENDED BURNING?** \_\_\_\_

\_\_\_\_\_  
CHIEF FIRE OFFICER

**SCHEDULE 11****BY-LAWS RELATING TO FIRE SAFETY****APPLICATION FOR FIREWORKS DISPLAY SITE APPROVAL**

1. **DATE:** \_\_\_\_\_
2. **NAME OF APPLICANT / PYROTECHNICIAN:** \_\_\_\_\_
3. **ADDRESS OF APPLICANT / PYROTECHNICIAN** \_\_\_\_\_
4. **ADDRESS OR PREMISES FOR FIREWORKS DISPLAY** \_\_\_\_\_

<b>5. DATE OF DISPLAY:</b>	<b>TIME OF DISPLAY</b>
<b>6. SIGNATURE OF APPLICANT / PYROTECHNICIAN</b>	

---

**FOR OFFICE USE ONLY**

<b>1. WAS THE AREA/SITE INSPECTED?:</b>	
<b>2. IS ADEQUATE/CORRECT FIRE EQUIPMENT IN POSITION?</b>	
<b>3. IS THE BURNING OF FIREWORKS WITHIN THE CAPABILITIES OF EXTINGUISHMENT BY A RESPONSIBLE PERSON OR PERSONS ?</b>	
<b>4. IS THE DISPLAY AREA SUFFICIENTLY CORDONED OFF TO A DISTANCE OF 50 METRES TO DISALLOW UNAUTHORISED PERSONS FROM GAINING ACCESS TO THE SITE?</b>	
<b>5. DOES THE APPLICANT HAVE THE EMERGENCY SERVICES CONTACT DETAILS: ?</b>	
<b>6. APPLICATION:APPROVED/NOT APPROVED</b>	

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**CHIEF FIRE OFFICER**

**SCHEDULE 12**

**BY-LAWS RELATING TO FIRE SAFETY**

**PERMIT TO STORE AND SELL FIREWORKS.**

This is to certify that the premises situated at

---

**Occupied by**

**And used as a Retailer of Fireworks**

**Have been duly registered by the Chief Fire Officer under the said fire by-laws.**

**The maximum quantity of fire works kept or handled at this address shall not exceed:-  
1000KG**

**It be duly note that the permit serves only to inform/advise the S.A.P. Explosives Unit that the Chief Fire Officer is satisfied that the conditions in the By-laws have been complied with.  
Licence to sell fireworks must be obtained from the S.A.P. Explosives Unit.**

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**Chief Fire Officer**

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**Date Stamp**

**This permit must be displayed in a conspicuous position on the registered premises.**

**ANNEXURE I**

**MSUNDUZI MUNICIPALITY  
FIRE & RESCUE SERVICES  
BY-LAWS RELATING TO FIRE SAFETY**

**SPRAY BOOTH / ROOM CONSTRUCTION**

<b>ITEM</b>	<b>REQUIREMENT</b>
WALLS	225mm thick / concrete / non combustible material
ROOF	Reinforced concrete
FLOOR	Concrete or other impervious material
WATER FLOORS	Sunken water-filled floor covered at the level of the sill by a sturdy, stable, non-combustible and corrosion-free grill.
DOORS	<p>Constructed of 50mm hardwood, completely covered, insulating the edges with metal not less than 100mm in thickness secured to the door with bolts at 30mm centres along the edges. The doors to open outwards and to be and be hung on Tee hinges bolted to the door.</p> <p>Close fitting metal doors not less than 3mm in thickness, carried on an angle iron frame and having an all round overlap of not less than 50mm.</p> <p>A second means of escape must be provided at the furthest point from the main door.</p>
WINDOWS	The window frames must be of steel and have window panels that cannot be opened, which panels must be a maximum size of 450mm x 450mm and fitted with wire glass with a minimum thickness of 8mm.
POSITIONING OF VENTILATION INLETS	<p>All ventilation inlets and outlets shall be so placed as to effect a continuous and complete change of air within any such spraying room or spraying booth. The ventilation inlets shall be substantially equivalent to the exhaust capacity required in terms of this section. The ventilation system shall be so installed that all flammable liquid vapours shall pass as near as reasonably possible from the area where spraying takes place directly into the ventilation outlet.</p> <p>There will be installed a mechanical system of exhaust and inlet ventilation such as will remove vapour from and be capable of changing the air in the spraying room at least thirty (30) times in every hour.</p> <p>The blades of any fan used in the spraying room shall be of non-ferrous metal.</p>
POSITIONING OF VENTILATION OUTLETS	All outlet openings must be designed and positioned so as to release all fumes into the open air at a place at least 1m above a roof and 4m above the ground level and at least 5m from any opening of a building.

ELECTRICAL INSTALLATION	<p>Only incandescent electric lights enclosed in outer flame and vapour proof may be installed.</p> <p>All electric wires must be protected throughout by seamless metal tubes.</p> <p>All electrical motors to be of flame and waterproof construction.</p> <p>All electrical work must be certified by a qualified electrician.</p>
FIRE EQUIPMENT	Minimum requirement 2 x 9Kg DCP fire extinguishers and any additional at the discretion of the Chief Fire Officer.
PROHIBITIVE NOTICES	<p>In accordance with provisions of SANS 1186.</p> <p>No unauthorised entry</p> <p>No Naked flame</p> <p>No Smoking</p> <p>No cell phones</p>

**ANNEXURE II**  
**MSUNDUZI MUNICIPALITY**  
**FIRE & RESCUE SERVICES**  
**BY-LAWS RELATING TO FIRE SAFETY**

**CONSTRUCTION REQUIREMENTS OF DANGEROUS GOODS STORES**  
**Construction of store**

Every store shall be constructed in accordance with the following requirements:

1.	Walls	The walls shall be constructed of brick and concrete
2.	Floor	the floor or concrete or other impervious material
3.	Roof	the roof shall be constructed of reinforced concrete, provided however, that the roof may be constructed of other non-combustible material where such store is not likely to endanger any room, building or adjoining premises in case of fire.
4.	Doors	<p>(a) The store shall be fitted only with a hardwood door or doors, suitably covered with metal of not less than 1mm thickness and carried on a metal door frame, or a well fitted metal door of not less than 4mm thickness, carried on an angle frame and having an all-round overlap of not less than 50mm. such doors shall open outwards and be fitted with a substantial lock.</p> <p>(b) A store with a floor area in excess of 10m shall be provided with at least two doors, complying with paragraph B? hereof and situated at such a distance from each other as to allow the free and unimpeded escape of persons within the store from either door in case of fire or other danger.</p>
5.	Window Frames	shall be constructed of metal and glazed with wire-woven glass and all windows shall be so constructed and secured as to be incapable of being opened and as to prevent the escape of vapours



6.	Catch-pit	a store shall be constructed in such manner that the flammable liquid therein cannot escape there from with sills at every doorway so as to form a well of sufficient capacity to contain the maximum liquid capacity of the store, plus ten percent (10%) thereof.
7.	Ventilation	<p>(a) The store shall be ventilated by an approved ventilation system of such design, construction and capacity as will prevent the accumulation of flammable liquid vapour within the store and will discharge such vapour into the open air at a point or points where such vapour is not likely to come into contact with any fire, flame, open light or other agency likely to ignite such vapour; provided however, that where for any reason such ventilation can only be secured by means of a mechanical system of ventilation, such systems shall conform to the provision of section 107.???</p> <p>(b) All ventilating openings which are fitted into walls shall be set in iron frames and fitted tightly to the interior faces of the walls. The low ventilating openings shall be installed as near to the level of the well, referred to in 4. Above, as possible, but shall be above such level.</p> <p>(c) The openings shall be protected by non-corrodible wire gauze of not less than eleven (11) meshes to the linear centimetre.</p>
8.	Lighting	All lights installed shall be of the incandescent electric type, which shall be enclosed in an outer flame and vapour proof fitting, and all wiring shall be armoured cable or enclosed in seamless metal tubes, the junctions of which are screwed together. All switches, junction boxes, fuses and other electrical equipment shall be outside the store
9.	Maintenance	Every store shall be maintained at all times so as to comply with this section.

### ANNEXURE III

#### BY-LAWS RELATING TO FIRE SAFETY

#### CONSTRUCTION & DESIGN REQUIREMENTS FOR VEHICLES OTHER THAN ROAD TANKERS.

ITEM	REQUIREMENT
Vehicles	<p>(i) To be designed and constructed to safely transport the quantity and type of dangerous goods for which the vehicle is intended.</p> <p>(ii) To have at least two independent axle systems, excluding any trailer forming part of an articulated vehicle.</p>
Safety edge / Safety Rail	<p>(i) To be at least one metre high when measured from the surface of the body of the vehicle.</p> <p>(ii) capable of securing dangerous goods containers</p>
Strapping	<p>(i) Must be durable and strong</p> <p>(ii) capable of fastening dangerous goods containers securely to the body of the vehicle;</p> <p>(iii) that are anchored firmly to the bodywork of the vehicle; and</p> <p>(iv) fitted with the reversible cog winch mechanism that can be locked</p>
Electrical	(i) All electrical wiring to comply SANS 10 018

	<p>(ii) Fitted with a double pole isolating switch capable of cutting off the engine in an emergency and all electrical current closest to the battery.</p> <p>(iii) Battery must be enclosed with a cover.</p>
Wheel blocks	At least two (2), and to be static free.
Fuel tank	Must be spark-proof and static-free tank that is designed, constructed and equipped to protect any dangerous goods consignment from shock or ignition while in transit.
Fire Equipment	2 x 9Kg DCP fire extinguishers
Signage To comply with SANS 1186, mounted on either side including the rear of the vehicle	<p>(i) Hazchem</p> <p>(ii) No Naked Flame</p> <p>(iii) No Smoking</p> <p>(iv) No Cell phones</p> <p>(v) Orange diamond</p>
Exhaust	Must be one meter away from delivery point

## ANNEXURE IV

### BY-LAWS RELATING TO FIRE SAFETY

#### FIRE INVESTIGATION REPORT.

##### 1. DETAILS OF INCIDENT

Date of incident: \_\_\_\_\_

Incident No: \_\_\_\_\_

Day: \_\_\_\_\_

Time: \_\_\_\_\_

Street no. and Name: \_\_\_\_\_

Officer i/c: \_\_\_\_\_

Time i/a: \_\_\_\_\_

Name of Investigation Officer: \_\_\_\_\_

Time i/a: \_\_\_\_\_

##### 2. DETAILS OF PREMISES

Occupancy & Description: \_\_\_\_\_

Insurance: Contents: \_\_\_\_\_

Building: \_\_\_\_\_

##### 3. WEATHER CONDITIONS

Type: \_\_\_\_\_

Wind: \_\_\_\_\_

Direction: \_\_\_\_\_

##### 4. OBSERVATIONS

Flame Colour: \_\_\_\_\_

Smoke colour: \_\_\_\_\_

Detail unusual smells: \_\_\_\_\_

Detail areas of unusual intense burning \_\_\_\_\_

**5. ENTRY TO PREMISES**

Found open on arrival: \_\_\_\_\_ Forced: \_\_\_\_\_ Unlocked: \_\_\_\_\_ Doors: \_\_\_\_\_

Windows: \_\_\_\_\_ Other: \_\_\_\_\_

Give detail: \_\_\_\_\_

Detail Brigade forced entry: \_\_\_\_\_

**6. DETAIL ACTION DURING OPERATIONS**

Disturbance of layout, content or debris

\_\_\_\_\_  
\_\_\_\_\_

**7. PREMISES SECURED:**

For firefighting: \_\_\_\_\_ For Safety: \_\_\_\_\_ For investigation: \_\_\_\_\_ Guard placed: \_\_\_\_\_

DETAIL: \_\_\_\_\_

**8. VICTIMS:**

Deaths: \_\_\_\_\_ Number: \_\_\_\_\_

Injuries: \_\_\_\_\_ Number: \_\_\_\_\_

DETAIL: \_\_\_\_\_

**9. PHOTOGRAPHS & SAMPLES**

Photographs taken: \_\_\_\_\_ Samples taken: \_\_\_\_\_ Analysed by: \_\_\_\_\_

Results: \_\_\_\_\_

**10. NON-COMPLIANCE WITH LAWS OR CONDITIONS**

Detail: \_\_\_\_\_

**11. PERSONS QUESTIONED:**

NAME	FIRE RELATIONSHIP	ADDRESS
------	-------------------	---------

a)	_____	_____
b)	_____	_____
c)	_____	_____
d)	_____	_____
e)	_____	_____

Remarks: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**12. GENERAL NOTES**

\_\_\_\_\_  
\_\_\_\_\_

13. **CAUSE:**  
**Fire Pattern:** \_\_\_\_\_  
**Smoke Pattern:** \_\_\_\_\_  
**Point of origin located:** \_\_\_\_\_  
**Detail suspected cause and motivate:** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
14. **BRIGADE INVESTIGATING OFFICER:**  
**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

## ANNEXURE V

### BY-LAWS RELATING TO FIRE SAFETY

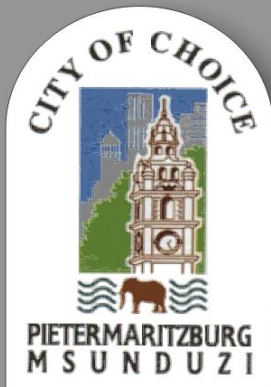
#### FIRE INVESTIGATION REPORT REQUEST FORM

**Name:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**Contact details: Cell:** \_\_\_\_\_ **Office:** \_\_\_\_\_  
**Date of Incident:** \_\_\_\_\_  
**Time:** \_\_\_\_\_  
**Street No. & Name of Incident:** \_\_\_\_\_  
**Description: Building** \_\_\_\_\_ **Transport:** \_\_\_\_\_  
**Reason(s) for request:** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
**Signature of Applicant** **Date**

Please note that the Msunduzi Municipality Tariff of Charges will apply for the Investigation Report.

\_\_\_\_\_



# The Msunduzi Municipality

## GENERAL BYLAWS

### GENERAL BY-LAWS

[MUNICIPAL NOTICE NO. 89 OF 2012.]

[DATE OF COMMENCEMENT: 20 SEPTEMBER, 2012.]

These By-laws were published in *Provincial Gazette Extraordinary* No. 821  
dated 20 September, 2012.

The Municipal Manager of the Msunduzi Municipality hereby, in terms of section 13 (a) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), publishes the General By laws for the Msunduzi Municipality, as adopted by its Council, as set out hereunder

1. Definitions
2. Restricting access
3. Powers of authorised officials
4. Breaches of the peace
5. Indecent behavior
6. Indecent or offensive literature or representation
7. Dangerous acts
8. General offences
9. Cleaning of sidewalks and verges
10. Obstructions
11. Obstructions caused by plants
12. Disposal of property found in street or public place
13. Begging and gambling
14. Camping and sleeping
15. Nuisances arising from the use of premises
16. Lighting of fires

17. General offences relating to municipal property
18. Selling and special events
19. Private premises
20. Naming of streets
21. Restoration or removal notices
22. Presumptions
23. Offences and penalties
24. Repeal of By laws

## 1. Definitions

In these By laws, except as otherwise expressly provided, or unless the context otherwise requires

“authorised official” means an official of the Council to whom it has assigned or delegated a duty, function or power under these By-laws in relation to the exercise or performance of that duty, function or power and includes any employee acting under the control and direction of such officer and any member of the South African Police Services;

“canopy” means a rigid roof--like projection from the wall of a building;

“City” means the City of Pietermaritzburg and includes any area comprising part of the area of jurisdiction of the Council;

“Council” means the Msunduzi Municipality and its successors in law, and includes the Council of the Municipality or its Executive Committee or any other body acting by virtue of any power delegated to it in terms of legislation, as well as any officer to whom the Executive Committee has delegated any powers and duties in relation to these By--laws;

“dependence”--producing substance” means a dependence--producing substance as defined in the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992);

“discharge” in relation to the use of a gun includes the act of discharging a blank cartridge;

“gun” includes a weapon of any description from which any bullet, pellet, shot or any missile of any description can be discharged, whether or not activated by an explosive;

“police officer” means a member of any police force established under any law and includes a traffic officer employed by the Municipality;

“prescribed” means prescribed by the Council;

“public place” means any land which——

- (a) owned by an organ of State; or
- (b) is controlled and managed by the Municipality and is either——
  - (i) set aside in terms of any law, zoning scheme or spatial plan, for the purposes of public recreation, conservation, the installation of public infrastructure or agriculture; or

- (ii) is predominantly undeveloped and open and has not yet been set aside for a particular purpose in terms of any law, zoning scheme or spatial plan;
- (c) managed by or on behalf of the Municipality for the purposes of providing a public service, which includes road reserves and areas subject to electrical, pipeline and other public utility servitudes;
- (d) is managed by or on behalf of the Municipality for public recreational purposes, and includes any park, botanical garden, sports ground and playground, but excludes any golf course;

“road traffic sign” bears the meaning given to it by the Road Traffic Act, 1989 (Act No. 29 of 1989);

“sidewalk” means the portion of a verge intended for the exclusive use of pedestrians;

“special event” means a parade, procession, race, concert, show, exhibition, festival, ceremony, film shoot or similar event which requires, for that purpose, exclusive use of a part of a public place;

“verge” means that portion of a street which is not constructed, or intended, for vehicular traffic;

“waste” means——

- (a) domestic waste;
- (b) garden waste;
- (c) building and demolition waste;
- (d) business waste; and
- (e) the categories of other waste as defined in the Municipality’s Waste Management By--laws.

“water body” means any body of water within a public place and includes any fountain, artificial watercourse, dam, lake, canal, reservoir, stream, river and wetland.

## **2. Restricting access.**

The Municipality may restrict access to any public place or to any part of a public place for a specified period of time——

- (a) to protect any aspect of the environment within such public place;
- (b) to reduce vandalism and destruction of property;
- (c) to improve the administration of such public place;
- (d) to develop a public place;
- (e) to enable a special event which has been permitted by the Municipality;
- (f) to undertake any activity which the Municipality reasonably considers necessary or appropriate to achieve the purposes of these By--laws.

## **3. Powers of authorised officials.**——In relation to any public place, an authorized official may-

- (a) to the extent authorised by the Municipality, administer, implement and enforce the provisions of these By--laws;
- (b) issue any notice in terms of section 18;



- (c) instruct any person to leave a public place if such authorised official believes that such person is contravening any provision of these By-laws and fails to immediately terminate such contravention upon the instruction of that official; and
- (d) if such official is a peace officer, exercise any power which may be exercised by a peace officer under the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

**Breaches of the peace.—**

No person shall, in a street or public place—

- (a) accost, insult, interfere with, threaten or harass another person;
- (b) associate, or act in concert, with, another person in a manner which causes or is likely to cause a breach of the peace;
- (c) fight or incite or invite another person to fight.

**5. Indecent behavior.—**

(1) No person shall, in view of a street or public place—

- (a) expose his person or be clothed in a manner which results in such exposure;
- (b) perform any indecent act or incite any person to commit such an act.

(2) No person shall loiter in any street or public place for the purpose of prostitution or solicit any other person for such purpose.

**6. Indecent or offensive literature or representation.—**

No person shall, in a street or public place—

- (a) display, distribute, expose to view or sell or offer for sale, in a manner likely to cause offence, any indecent or offensive picture or other representation or written or printed matter;
- (b) draw, print, write or otherwise produce, any immoral, indecent or offensive, figure, letter, picture, word or other representation or matter so that the same is in the public view or may be seen by any other person.

**7. Dangerous acts.—**

No person shall, in a street or public place—

- (a) handle or use any material, object or thing which is likely to cause injury to a person or to intimidate such person or to damage property or does so in a manner likely to result in such injury, intimidation or damage;
- (b) lights, uses or benefits from a fire other than in a facility provided by the Council for that purpose;
- (c) attach any object to, or suspend any object from, a canopy, verandah, pillar, pole, post or other projection, in a manner likely to cause damage or injury to a person, unless such object is attached or suspended with the approval of the Council;
- (d) perform any act which may cause injury or damage to a person or to property.

**8. General offences.—**

(1) No person shall, in a street or public place—

- (a) defecate or urinate except in a facility provided by or on behalf of the Council for that purpose;
- (b) spit;

- (c) be under the influence of liquor;
  - (d) be under the influence of a dependence--producing substance or administer a dependence--producing substance, to himself or another person, or sell or give a dependence--producing substance to another person;
  - (e) contravene the provisions of any notice within any public place;
  - (f) unlawfully enter a public place to which access has been restricted;
  - (g) bathe, wade or swim in, or wash himself, an animal or any object, including clothing, in any water body.
- (2) No person shall keep any wild or ferocious animal so as to be a danger to the public and any such animal found to be at large may, if considered necessary to safeguard human life, be destroyed by an authorised official.
  - (3) No person shall turn loose or allow to wander in any street or public place, any horse, cattle, donkey, pig, sheep or goat and any such animal so found, may be impounded.
  - (4) No person shall allow any duck, goose or poultry to be at large or to trespass on any private property.

**9. Cleaning of sidewalks and verges.—**

- (1) An occupier of premises which constitute a factory as defined in subsection (3) or on or in which there is carried on any business, occupation or trade, shall at all times while any activity is being carried on in the factory or while the premises are open for business or the occupation or trade is being carried on, keep any sidewalk or verge abutting or adjoining the premises, including any gutter or kerb, free of waste and put or keep the same in a clean and satisfactory state.
- (2) The occupier referred to in subsection (1) shall cause all waste removed in terms that subsection, to be placed in a refuse receptacle provided by the Council for such purpose.
- (3) For the purpose of subsection (1), “factory” shall have the meaning given to it in the Occupational Health and Safety Act, 1993 and the regulations thereunder.

**10. Obstructions.—**

No person shall, in a street or public place—

- (a) leave anything unattended so as to cause or be likely to cause an obstruction to persons or vehicles;
- (b) carry, deposit, handle or introduce anything so as to obstruct or interfere with the free movement of persons or vehicles or with the use of a street or public place by persons or vehicles or to cause injury to any person or damage to any property;
- (c) deposit on such street or in such public place, for the purpose of, or in the course of, loading or unloading, a vehicle or of delivering anything to premises having access to such street or public place for a period longer than is necessary for such purpose;
- (d) obscure a road traffic sign or obscure, or place any poster, sign, billboard or the like in front of, any surveillance camera;
- (e) gather with, or cause a gathering of, persons in a place or in a manner which obstructs or is likely to obstruct or interfere with the movement of persons or

vehicles or the use or enjoyment of the street or public place, unless such gathering has been authorised in terms of the Regulation of Gatherings Act, 1996 (Act No. 90 of 1996).

11. Obstructions caused by plants.—

- (1) If a tree, shrub or other plant, or any part or portion of such tree, shrub or plant, growing on any premises which abut a street or public place—
  - (a) obstructs the view of the driver of any vehicle in such street or public place;
  - (b) obscures a road traffic sign;
  - (c) obscures, or interferes with the operation of, a street surveillance camera;
  - (d) obstructs or causes a nuisance to persons using such street or public place, or if any part of such tree, shrub or plant causes or is likely to cause a nuisance or danger to person or property, an authorised officer may serve a notice on the owner of the premises or, if the premises are occupied by a person other than the owner, on the occupier thereof, requiring him to cut down, remove or trim the tree, shrub or plant from which the nuisance or source of danger originates, within the period stated in the notice, and any person who fails to comply with such notice shall be guilty of an offence.
- (2) If a person on whom a notice has been served in terms of subsection (1) fails to comply with such notice within the period stated therein, an authorised official may cause the work specified in such notice to be carried out and such person shall be liable to the Council for the cost of the work incurred by the Council.

12. Disposal of property found in street or public place.—

- (1) When anything has been left in a street or public place in terms of section 10 (a), an authorised official may remove it to a store designated by the Municipality for such purposes: provided that if such thing is in the opinion of the authorised official of no commercial value, he may dispose of same in such manner as he deems fit and the person who committed the offence shall be liable to the Council for the costs of such disposal as determined by such authorised official.
- (2) Anything which has been removed to a store in terms of subsection (1) shall be released to the person who, within seven days of such removal or within such longer period as may be allowed by the authorised official in charge of such store, proves to the satisfaction of the authorised official that he is the owner of such item or is entitled to possession thereof, and pays for the cost of removal and storage thereof in accordance with the Council's tariff of charges: provided that such authorised official may cause an item which is of a perishable nature and has not been claimed before it has ceased to have any commercial value, or before it has become offensive or a danger to health, to be destroyed or otherwise disposed of in such manner as he deems fit or to be removed to a municipal waste disposal site.
- (3) Any item which has not been released or disposed of in terms of subsection (2) shall be disposed of in terms of the Council's policy on the disposal of movable assets.

- (4) The proceeds of any sale in terms of subsection (3) shall first be applied in payment of—
  - (a) the cost of removal and storage as determined in terms of subsection (2);
  - (b) any costs which may have been incurred in attempting to trace the owner of the item;
  - (c) the costs of sale of the item, and the balance shall be forfeited to the Council if not claimed within one year from the date of the sale by the person who established his legal right thereto.
- (5) If the proceeds of the sale are not sufficient to meet the costs referred to in subsection (4) the owner of the item sold and the person who committed any offence in terms of these By-laws in relation thereto, shall be jointly and severally liable to the Council for payment of the unsatisfied balance.
- (6) If the item cannot be sold in terms of subsection (3) the authorised official in charge of the store may dispose of such item in such manner as he deems fit and the provisions of subsection (5) shall mutatis mutandis apply in respect of any costs incurred in effecting such disposal.
- (7) The exercise of any powers conferred by this section shall not render the Council or any authorised official liable for loss or theft of, or any damage to, anything removed in terms of subsection (1).

**14. Begging and gambling.—**

No person shall, in a street or public place—

- (a) beg for money or goods or ask for or solicit anything, whether by gesture, word or otherwise;
- (b) gamble or play any game for gain, whether monetary or otherwise, or cause or induce another person to perform any of the activities mentioned in paragraphs (a) or (b).

**15. Camping and sleeping.—**

No person shall, in a street or public place, or on any premises owned or under the control of the Council not intended for such purpose—

- (a) camp, sleep or use any portion thereof for the purpose of habitation, except with the express permission of the Council;
- (b) lie or sleep on any bench or seat provided by the Council for the use of the public.

**16. Nuisances arising from the use of premises.—**

(1) No owner or occupier of premises shall—

- (a) use them for a purpose;
- (b) cause, allow or permit their use;
- (c) organise or allow or permit an activity, event or function therein, which by its nature or otherwise, or by reason of its consequences, creates or is likely to create, a nuisance.

(2) Whenever an authorised official is of the opinion that a contravention of subsection (1) is being committed, he may instruct the owner or occupier of the premises or any person responsible for, or participating in, the use, activity, event or function, to take such steps as he may specify to abate the nuisance or to avoid the creation of a nuisance or, if this can only be achieved by the cessation

of the use, activity, event or function, to bring it to an end forthwith or within a time prescribed by him.

- (3) In enforcing the provisions of subsection (2), an authorised official may invoke the provisions of the Municipality's Noise Abatement Bylaws or any noise regulations promulgated under national legislation.

**17. Lighting of fires.**

No person shall on any premises light a fire or burn or attempt to burn any rubbish or refuse or any grass or other vegetation without taking adequate precautions to prevent the uncontrolled spread of fire or the creation of a nuisance, whether as a result of the production of ash, flames, fumes, heat, smoke or otherwise.

**18. General offences relating to municipal property.**

- (1) No person shall, in relation to any property in the ownership or possession of or under the control of the Council, whether movable or immovable, and including any street or public property—
- (a) willfully or negligently damage or destroy such property or any part thereof;
  - (b) remove any earth, sand, shale, stone, turf or any other material or part thereof;
  - (c) erect, build or assemble any structure, including a hut, tent, screen, bulletin board, pole, stand or stage;
  - (d) break, cut, destroy or remove any bush, shrub, tree or other plant or remove any branch, flower, leaf or other part thereof;
  - (e) attach to or place next to, such property, any thing, including any advertisement, bill, pamphlet, placard or poster or other illustrative, written or printed matter, or hang or suspend any thing on or from such property;
  - (f) deface any such property by any means whatsoever or plug, tamper with or in any way damage any plumbing, electrical, heating or other fixtures or installations;
  - (g) extinguish any lamp or light or displace or remove any barricade or enclosure, fence, lamp, light, notice or sign;
  - (h) make any excavation in or disturb the surface of such property or alter the slope or drainage pattern of such property so as to interfere with the access of water, air or nutrients to any tree or other plant;
  - (i) climb or sit upon, hang onto, or from, or mount, such property;
  - (j) introduce any object or material, or erect any structure, on such property;
  - (k) capture or attempt to capture, chase, shoot at, injure, throw objects at, tease, molest or in any other way, disturb any animal, fish or bird;
  - (l) disturb, damage or destroy any bird nest or egg;
  - (m) walk any dog unless—
    - (i) it is in a public place or any part thereof which has not been designated by the Municipality as an area where no dogs are allowed, and it is on a leash and under the control of a person; or
    - (ii) it is in a public place or any part thereof designated by the Municipality as area where dogs may run free: Provided that if any dog excretes in a

- public place, the person in control of the dog shall immediately remove such excrement and dispose of it in a waste bin or other receptacle provided by the Municipality for that purpose;
- (n) allow, cause or permit any other person to commit any of the aforesaid acts, unless he does so in the performance of a lawful right or duty or with the prior consent of an authorised official or in accordance with the provision of any law: Provided that nothing contained herein shall prevent the owner or occupier of premises from planting and maintaining grass or plants on that portion of the verge of a street which abut such premises as long as the lawful passage of vehicles and pedestrian traffic and the lawful parking of vehicles is not thereby obstructed or impeded and such grass or plants are properly maintained and do not give rise to a nuisance.
- (2) No person shall, within a public place——
- (a) deposit, dump or discard any waste, other than in a receptacle provided by the Municipality for that purpose; or
- (b) pollute a water body or deposit any waste or thing in a manner which may detrimentally impact on a water body; or
- (c) act in any manner which contravenes the Municipality's Waste Management Bylaws.
- (3) Any person who is convicted of an offence under subsection (1) shall pay to the Council the cost of remedying any loss or damage suffered by the Council as a result of the commission of that offence and the cost of removal or disposal of any material, object or structure involved in the commission of the offence and for this purpose the provisions of section 12 shall apply.

## **18. Selling and special events.**

- (1) No person shall, within a public place——
- (a) use municipal property in a way that unfairly restricts or prevents other users of such place from enjoying such municipal property; or
- (b) except within such public place or part thereof, which has been let to a person by the Municipality for that purpose, sell, hawk, offer or display any goods or articles for sale or hire.

## **19. Private premises.**

- (1) No person shall on any private premises——
- (a) excavate or remove soil or other material in a position in relation to a boundary of the premises with other premises or a street or public place which removes or is likely to remove lateral support from those premises or that street or public place or to create a source of danger to life or damage to property;
- (b) allow any well, pond reservoir, pit, hole, excavation or earthwork or any tree or other vegetation on such premises to be in such a condition or to be so unprotected as to constitute a danger to the safety of persons or property;
- (c) cause or allow anything to project from such premises over or into a street or public place, except in an area zone for industrial purposes, and to an

- extent necessarily consistent with the use to which such premises are put;
- (d) whether such person is the owner or occupier of such premises, deposit, store or cause, allow or permit, to be deposited or stored, or accumulate so as to be visible from a street or public place, abandoned, derelict or disused furniture, machinery, vehicles or other objects or parts thereof or scrap metal or other derelict or waste materials;
  - (e) without the consent of the owner or occupier thereof, attach or place anything to or on any premises or in any way deface such premises, whether by use of chalk, ink or paint or by any other means whatsoever, unless he is authorised by any law to do so.
- (2) An authorised official may order a person who has contravened or is contravening paragraph (c) or (e) of subsection (1) to remove the thing to which the contravention relates from the premises concerned within a specified time and if he fails to do so, the provisions of section 12 shall, mutatis mutandis, apply.

**20. Naming of streets.**

- (1) The Council reserves the right to give such names as it may deem fit to any new streets or roads or to alter the names of existing streets or roads or public places within its jurisdiction.
- (2) The Council may paint or otherwise place the names of streets or roads at some conspicuous point or on any building at or near the corner of any street or road.

**21. Restoration or removal notices.**

- (1) Unless permission or a permit to do so has been issued by the Municipality, an authorised official may issue a restoration or removal notice to any person who has in a public place——
  - (a) damaged, defaced, disturbed, destroyed, demolished or removed vegetation or a municipal structure;
  - (b) erected, built or assembled a structure; or
  - (c) dumped, discarded or deposited any waste other than in a receptacle provided by the Municipality for that purpose.
- (2) The restoration or removal notice may direct the person concerned within a reasonable time specified in the notice to take stated reasonable steps specified in the notice——
  - (a) to restore or rehabilitate the affected area to the reasonable satisfaction of the Municipality; or
  - (b) to remove a structure or thing and restore the affected site, as nearly as practicable, to its former condition.

**22. Presumptions.**

- (1) When an employee of a person in the course of his employment performs any act or is guilty of an omission which constitutes an offence under these By-laws, the employer shall be deemed also to have performed the act or to be guilty of the omission, and shall be liable on conviction to the penalties referred to in section 23 unless he proves to the satisfaction of the Court that——
  - (a) his employee was acting without his knowledge or permission;



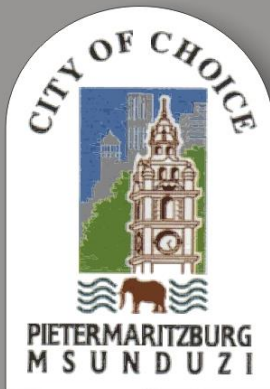
- (b) all reasonable steps were taken by him to prevent the act or omission in question;
- (c) it was not within the scope of the authority or in the course of the employment of the employee to perform an act of the kind in question.
- (2) The fact that an employer issued an instruction forbidding any act or omission of the kind referred to in subsection (1) shall not of itself be accepted as sufficient proof that he took all steps referred to in paragraph (b) of subsection (1).
- (3) When an employer is by virtue of the provisions of subsection (1) liable for any act or omission of his employee, that employee shall also be liable to prosecution for that offence.
- (4) In any prosecution for an offence under these By--laws, an allegation in the charge concerned that any place was situate in a street or public place or within a particular area or was a place of a specified kind, shall be presumed to be correct unless the contrary is proved.

### **23. Offences and penalties.**

- (1) Any person who contravenes or fails to comply with any provisions of these By-laws or fails to comply with any lawful instruction given in terms of these By-laws or fails to comply with any notice issued or displayed in terms of these By-laws or obstructs or hinders any representative or employee of the Municipality in the execution of his or her duties under these By-laws shall be guilty of an offence and liable on conviction to a fine or to imprisonment or to both such fine or imprisonment decided by a competent Court, provided that in the case of a continuing offence such person shall be liable on conviction to an additional fine or imprisonment for each day on which such offence continues.
- (2) Nothing in these By-laws shall detract from a Court's discretion to postpone the passing of sentence on the condition that a person convicted under these By-laws shall perform community service as contemplated in section 297 of the Criminal Procedure Act, (Act No. 51 of 1977), as amended.

### **24. Repeal of By--laws.—**

The following provisions of the General By--laws, published on 9 July 1931 under Provincial Notice No. 230 of 1931, as amended, are hereby repealed: The definitions under Chapter 1, sections 1 to 7, 14, 18 A -- J, L -- P and 19.



# The Msunduzi Municipality

## SPATIAL PLANNING AND LAND USE MANAGEMENT BY-LAWS



KwAZULU-NATAL PROVINCE  
KwAZULU-NATAL PROVINSIE  
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***Provincial Gazette • Provinsiale Koerant • Igazethi Yesifundazwe***

**EXTRAORDINARY — BUITENGEWOON**

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**MUNICIPAL NOTICE 103 OF 2021: MSUNDUZI MUNICIPALITY  
SPATIAL PLANNING AND LAND USE MANAGEMENT BY-LAW: 2021  
SUSTAINABLE DEVELOPMENT AND CITY ENTERPRISES  
CONTACT NO. 033 392 2490**

To provide for the establishment of the Municipal Planning Approval Authority, Municipal Planning Appeal Authority and the Municipal Planning Enforcement Authority; to provide for the adoption and amendment of the Municipality's land use scheme, to provide for applications for municipal planning approval; to provide for appeals against decisions of the Municipal Planning Approval Authority; provide for offences and penalties; to provide for compensation and matters incidental thereto.

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**CHAPTER 1 : PRELIMINARY PROVISIONS****Definitions**

1. In this By-law, unless the context clearly gives it another meaning—

"adjacent land" means all land that borders a property and all land that would have bordered a property, if they were not separated by a river, road, railway line, power transmission line, pipeline, or a similar feature;

"appellant" means a person who has lodged an appeal in terms of section 63(2);

"approval" in relation to an application for Municipal Planning Approval means approval in terms of section 59(4)(a) of this By-law and includes the conditions of approval;

"Architectural Profession Act" means the Architectural Profession Act, 2000 (Act No. 44 of 2000);

"attorneys or advocates" means a person admitted to practice as an attorney or as an advocate in terms of the Legal Practice Act No.28 of 2014;

"building line" means a rear space, side space or street front space;

"consent use in terms of the land use scheme" includes—

- (a) consent to use land for a purpose that is only permitted in the zone with the Municipality's consent;
- (b) consent for the relaxation of a development control, including a building line, if the land use scheme provides for the relaxation thereof; and
- (c) consent for any other action which requires the Municipality's consent in terms of the land use scheme.

"consolidation" means the joining of two or more pieces of land into a single entity;

"Deeds Registries Act" means the Deeds Registries Act, 1937 (Act No. 47 of 1937);

"Deeds Registry" means a deeds registry established in terms of section 1(1)(a) of the Deeds Registries Act, 1937 (Act No 47 of 1937);

"Development Facilitation Act" means the Development Facilitation Act, 1995 (Act No. 67 of 1995);

"District Municipality" means the uMgungundlovu District Municipality;

"engineering services" means infrastructure for—

- (a) roads;
- (b) stormwater drainage;

- (c) water;
- (d) electricity;
- (e) telecommunication;
- (f) sewerage disposal;
- (g) waste water disposal; and
- (h) solid waste disposal;

"Executive Authority" means the executive committee or executive mayor of the Municipality or, if the Municipality does not have an executive committee or executive mayor, a committee of councillors appointed by the Municipal Council;

"Gazette" means the KwaZulu-Natal Provincial Gazette;

"Geomatics Professions Act" Geomatics Professions Act, 2013, (Act No. 19 of 2013)

"indemnify" means an undertaking to pay any damages, claim or taxed costs awarded by a court or agreed to by the municipality in terms of a formal settlement process;

"Integrated Development Plan" means the Integrated Development Plan adopted by the Municipality in terms of section 25(1) of the Municipal Systems Act;

"KwaZulu-Natal Liquor Licensing Act" means the KwaZulu-Natal Liquor Licensing Act, 2010 (Act No. 6 of 2010);

"land" means—

- (a) any piece of land depicted on a diagram approved by the Surveyor General and registered in the Deeds Registry, including an erf, a sectional title unit, a lot, a plot, a stand, a farm and a portion or piece of land, and
- (b) unsurveyed state land;

"land owner's association" means an organisation established by owners of a group of properties to

collectively regulate their conduct and share the costs of maintaining and improving shared infrastructure and

services, including a home owner's association;

"Liquor Act" means the Liquor Act, 2003 (Act No. 59 of 2003);

"Local Authorities Ordinance" means the Local Authorities Ordinance, 1974 (Ordinance No. 25 of 1974);

"lodge" has the same meaning as "serve", except in relation to the lodging of plans and documents with the Surveyor-General or the lodging of deeds, plans and documents with the Registrar of Deeds;

"Municipality" means the Msunduzi Local Municipality;

"municipal area" means the area of jurisdiction of the Municipality determined from time to time by the Municipal Demarcation Board established by section 2 of the Local Government: Municipal Demarcation Act, 1998 (Act No 27 of 1998);

"Municipal Council" means the Municipal Council of the Municipality established in terms of section 18 of the Municipal Structures Act;

"Municipal Planning Appeal Authority" means the Executive Authority of the Municipality, unless the Municipal Council has delegated the power to decide appeals to –

- (a) a Municipal Councillor;
- (b) a committee of municipal officials; or
- (c) a municipal official.

"Municipal Planning Approval Authority" means the Municipal Planning Approval Authority which comprises of the –

- (a) the Municipal Planning Authorised Officer
- (b) the Municipal Planning Tribunal; and
- (c) the Municipal Council.

"Municipal Property Rates Act" means the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004);

"Municipal Structures Act" means the Local Government: Municipal Structures Act, 1998 (Act No 117 of 1998);

"Municipal Systems Act" means the Local Government: Municipal Systems Act, 2000, (Act No 32 of 2000);

"newspaper" means—

- (a) newspapers circulating widely in the area of the municipality in the dominant languages spoken in the municipality, if a matter affects the whole municipality;
- (b) a newspaper circulating in the affected area, in the dominant languages spoken in that area, if a matter affects only a particular area;

"notify" has a corresponding meaning as "serve";

"organ of state" means an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996;

"owner" means—

- (a) the person in whose name land is registered in the deeds registry for KwaZulu-Natal;
- (b) the beneficial holder of a real right in land;
- (c) the person in whom land vests;

"pending application" means an application that has been made but for which the approval authority did not issue a record of decision or similar document before the commencement of this By-law;

"person" means a natural or juristic person and includes an organ of state;

"Planning and Development Act" means the KwaZulu-Natal Planning and Development Act, 2008, (Act No. 6 of 2008);

"Presiding Officer" means—

- (a) a member of a Municipal Planning Tribunal designated to preside over the determination of an application for municipal planning approval; or
- (b) the Presiding Officer of the Municipal Planning Appeal Authority;

"Promotion of Access to Information Act" means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);



"public facility" includes a crèches, primary school, secondary school, college, technikon, university, nursing home, frail care unit, clinic, hospital, playground, sports field, public open space, community centre, church, mosque, synagogue, temple, cemetery, taxi rank, bus depot and parking lot;

"public service infrastructure" means public service infrastructure as defined in section 1 of the Municipal Property Rates Act;

"rear space" means a space, along the inside of a boundary of a property that does not meet a street boundary, in which no buildings may be erected, the extent of which is determined by a parallel line which is a set distance from the boundary;

"Record of Decision" means a Record of Decision of an application for municipal planning approval;

"Registered Planner" means a professional or technical planner registered in terms of the Planning Profession Act, 2002 (Act No 36 of 2002), unless the South African Municipal Council for Planners has reserved the work to be performed by a Registered Planner in terms of section 16(2) of that Act in which case a 'Registered Planner' means the category of registered persons for whom the work has been reserved;

"Sectional Titles Act" means the Sectional Titles Act, 1986 (Act No. 95 of 1986);

"serve" in relation to a notice, order or other document means to serve the document concerned in the manner set out in sections 135 to 137;

"shared services agreement" means an agreement entered into between two or more municipalities, including the District Municipality, whereby the participating municipalities agree to share services described in the agreement;

"side space" means a space, along the inside of a boundary of a property that meets a street boundary, in which no buildings may be erected, the extent of which is determined by a parallel line which is a set distance from the boundary;

"street front space" means a space along the inside of a boundary of a property, that is contiguous with a street, public right of way or road reservation, in which no buildings may be erected, the extent of which is determined by a parallel line which is a set distance from the boundary;

"Spatial Planning and Land Use Management Act" means the Spatial Planning and Land Use Management Act 2013 (Act No. 16 of 2013);

"Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters" means the Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters, 2015 (Government Notice No. 239 of 2015);

"Spatial Development Framework" means the Spatial Development Framework adopted by the Municipality in terms of section 25(1) of the Municipal Systems Act and section 20(1) of the Spatial Planning and Land Use Management Act;

"subdivision" means the division of a piece of land into two or more portions;b

"Subdivision of Agricultural Land Act" means Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970);

"Surveyor-General" means the Surveyor-General as defined in the Land Survey Act, 1997 (Act No. 8 of 1997);

"Town Planning Ordinance" means the KwaZulu-Natal Town Planning Ordinance, 1949 (Ordinance No. 27 of 1949).

"Township" means an area of land divided into erven, and may include public places and roads indicated as such on a general plan.

### **Application of By-law**

2. (1) This By-law is subject to section 2(2) of the Spatial Planning and Land Use Management Act that provides that, except as provided in the Spatial Planning and Land Use Management Act, no legislation may prescribe an alternative or parallel mechanism, measure, institution or system on spatial planning, land use, land use management and land development in a manner inconsistent with it.
- (2) In terms of regulation 14 the Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters—
  - (a) the manner and format in which an application for Municipal Planning Approval must be submitted shall be the manner and format prescribed in this By-law;
  - (b) the timeframes applicable to steps in the application process shall be the time frames prescribed in this By-law;
  - (c) the manner and extent of the public participation process for each type of application for Municipal Planning Approval shall be the manner and extent of public consultation prescribed in this By-law;;
  - (d) the manner and extent of the intergovernmental participation process for each type of application for Municipal Planning Approval shall be the manner and extent of public consultation prescribed in this By-law;;
  - (e) procedures for site inspections shall be the procedures prescribed in this By-law;
  - (f) procedures for an amendment to an application for Municipal Planning Approval shall be the procedures prescribed in this By-law;
  - (g) the place where an application for Municipal Planning Approval must be submitted shall be the place prescribed in this By-law; and
  - (h) the procedure that provides for an application for Municipal Planning Approval that is, on face value, when submitted to a municipality, incomplete and an application for Municipal Planning Approval that, after substantive scrutiny by a municipality, requires additional information from the applicant shall be the procedure prescribed in this By-law.
- (3) This By-law applies to all land within the jurisdiction of the Municipality, including land owned by an organ of state and the Municipality.
- (4) This By-law binds every owner and their successors-in-title and every user of land, including the state, any organ of state or the Municipality.

### **Principles, norms and standards and policies**

3. (1) Any development principles and any norms and standards applicable to spatial planning, land development and land use management made in terms of national or

provincial legislation apply to the Municipality.

(2) The Municipal Council may adopt policies not inconsistent with national legislation, provincial legislation or this By-law to guide applications or decision making in terms of this By-law.

(3) If the Municipal Council intends to adopt or amend a policy that may materially and adversely affect the rights of any individual or the public, the Municipality must follow a participation process and procedure which meets the requirements of the Municipal Systems Act.

## **CHAPTER 2 : CATEGORIES OF SPATIAL PLANNING, MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK AND PACKAGE OF PLANS**

### **Part 1: Categories of spatial planning**

#### **National Planning**

4. National planning, for the purposes of this By-law, consists of the following elements:
- (a) The compilation, approval and review of spatial development plans and policies or similar instruments, including a national spatial development framework;
  - (b) the planning by the national sphere for the efficient and sustainable execution of its legislative and executive powers insofar as they relate to the development of land and the change of land use; and
  - (c) the making and review of policies and laws necessary to implement national planning, including the measures designed to monitor and support other spheres in the performance of their spatial planning, land use management and land development functions.

#### **Provincial Planning**

5. Provincial planning, for the purposes of this By-law, consists of the following elements:
- (a) The compilation, approval and review of a provincial spatial development framework;
  - (b) Monitoring compliance by municipalities with this By-law and provincial legislation in relation to the preparation, approval, review and implementation of land use management systems;
  - (c) the planning by a province for the efficient and sustainable execution of its legislative and executive powers insofar as they relate to the development of land and the change of land use; and
  - (d) The making and review of policies and laws necessary to implement provincial planning.

#### **Municipal Planning**

6. Municipal planning, for the purposes of this By-law, consists of the following elements:
- (a) The compilation, approval and review of integrated development plans;
  - (b) the compilation, approval and review of the components of an integrated development plan prescribed by legislation and falling within the competence of a municipality, including a spatial development framework and a land use scheme; and

- (c) the control and regulation of the use of land within the municipal area where the nature, scale and intensity of the land use do not affect the provincial planning mandate of provincial government or the national interest.

## **Part 2: Municipal Spatial Development Framework**

### **Status of spatial development frameworks**

7. (1) A decision maker required or mandated to make a land development decision in terms of this By-law or any other law relating to land development, may not make a decision which is inconsistent with the Municipal Spatial Development Framework: Provided that the Tribunal may depart from the provisions of the Municipal Spatial Development Framework where site specific circumstances justify such a deviation.
- (2) The site specific circumstances contemplated in subsection (1) include but are not limited to where—
- (a) the Municipal Council has adopted a local area plan and such plan has yet to be translated into the land use scheme; or
  - (b) there is an existing pre-scheme or non-conforming use right on the land: Provided that the use right has not ceased to operate for a period of 18 months or more.
- (3) The Tribunal must take into consideration the impact, amenity and land use applicability when making a decision to deviate based on site specific circumstances.
- (4) The Municipality must keep a register containing information regarding the type of deviation and reason for the deviation, in respect of any decisions taken to deviate from the provisions of the Municipal Spatial Development Framework.

### **Preparation of municipal spatial development framework**

8. (1) The national and provincial spheres of government and each municipality must prepare spatial development frameworks that—
- (a) Interpret and represent the spatial development vision of the responsible sphere of government and competent Authority;
  - (b) Are informed by a long-term spatial development vision statement and plan;
  - (c) Represent the integration and trade-off of all relevant sector policies and plans;
  - (d) Guide planning and development decisions across all sectors of government;
  - (e) Guide a provincial department or municipality in taking any decision or exercising any discretion in terms of this By-law or any other law relating to spatial planning and land use management systems;
  - (f) Contribute to a coherent, planned approach to spatial development in the national, provincial and municipal spheres;
  - (g) Provide clear and accessible information to the public and private sector and provide direction for investment purposes;
  - (h) Include previously disadvantaged areas, areas under traditional leadership, rural areas, informal settlements, slums and land holdings of state-owned enterprises and government agencies and address their inclusion and integration into the spatial, economic, social and environmental objectives of the relevant sphere;
  - (i) Address historical spatial imbalances in development;

- (j) Identify the long-term risks of particular spatial patterns of growth and development and the policies and strategies necessary to mitigate those risks;
  - (k) Provide direction for strategic developments, infrastructure investment, promote efficient, sustainable and planned investments by all sectors and indicate priority areas for investment in land development;
  - (l) Promote a rational and predictable land development environment to create trust and stimulate investment;
  - (m) Take cognisance of any environmental management instrument adopted by the relevant environmental management authority;
  - (n) Give effect to national legislation and policies on mineral resources and sustainable utilisation and protection of agricultural resources; and (o) Consider and, where necessary, incorporate the outcomes of substantial public engagement, including direct participation in the process through public meetings, public exhibitions, public debates and discourses in the media and any other forum or mechanisms that promote such direct involvement.
- (2) (a) The national government, a provincial government and a municipality must participate in the spatial planning and land use management processes that impact on each other to ensure that the plans and programmes are coordinated, consistent and in harmony with each other.
- (b) A spatial development framework adopted in terms of this By-law must guide and inform the exercise of any discretion or of any other law relating to land use and development of land by that sphere of government.
- (3) The national spatial development framework must contribute to and give spatial expression to national development policy and plans as well as integrate and give spatial expression to policies and plans emanating from the various sectors of national government, and may include any regional spatial development framework.
- (4) A provincial spatial development framework must contribute to and express provincial development policy as well as integrate and spatially express policies and plans emanating from the various sectors of the provincial and national spheres of government as they apply at the geographic scale of the province.
- (5) A municipal spatial development framework must assist in integrating, coordinating, aligning and expressing development policies and plans emanating from the various sectors of the spheres of government as they apply within the municipal area.
- (6) Spatial development frameworks must outline specific arrangements for prioritising, mobilising, sequencing and implementing public and private infrastructural and land development investment in the priority spatial structuring areas identified in spatial development frameworks.

### **Content of municipal spatial development framework**

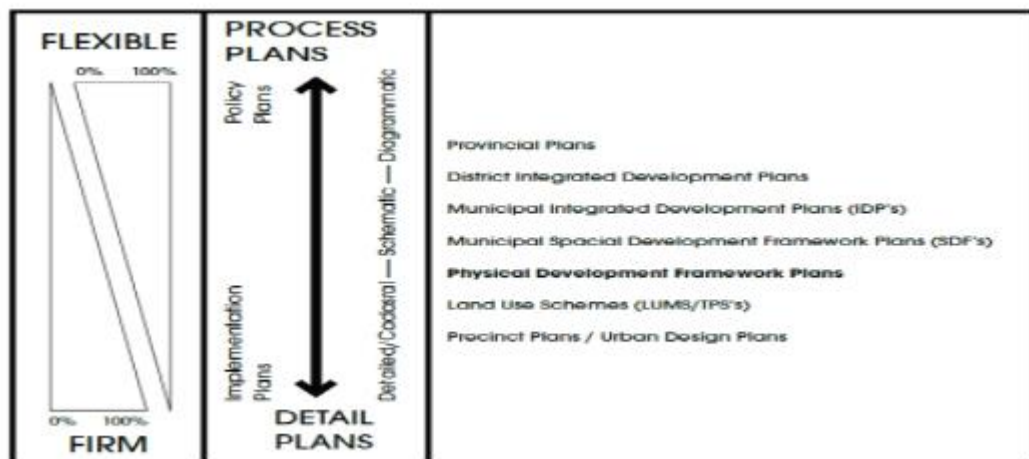
9. (1). The national spatial development framework must—
- (a) Give effect to the development principles and norms and standards set out in Chapter 2 of the Spatial Planning and Land Use Management Act, 16 of 2013.
  - (b) Give effect to relevant national policies, priorities, plans and legislation;
  - (c) Coordinate and integrate provincial and municipal spatial development frameworks;
  - (d) Enhance spatial coordination of land development and land use management activities at national level;

- (e) Indicate desired patterns of land use in the Republic; and
- (f) Take cognisance of any environmental management instrument adopted by the relevant environmental management authority.

### Part 3: Package of plans

#### Package of plans

11. (1) The Msunduzi Municipality has embraced the concept of a Hierarchy of Plans as illustrated in Figure below:



### CHAPTER 3 : LAND USE SCHEME

#### Adoption of land use scheme

11. (1) The Municipality must adopt a land use scheme for its whole municipal area.
- (2) A land use scheme may be progressively adopted and made applicable as resources and circumstances permit.

#### Resolution to prepare Land Use Scheme

12. (1) The Municipal Council must adopt a resolution to commence the preparation of a land use scheme where no land use scheme exists.

#### Preparation of Land Use Scheme

13. (1) The Municipal Council must, after public consultation, adopt a land use scheme for its entire area within five years from the commencement of SPLUMA.
- (2) A land use scheme adopted in terms of subsection (1) must—
- (a) include appropriate categories of land use zoning and regulations for the entire municipal area, including areas not previously subject to a land use scheme;
  - (b) take cognisance of any environmental management instrument adopted by the relevant environmental management authority, and must comply with environmental legislation;
  - (c) include provisions that permit the incremental introduction of land use management and regulation in areas under traditional leadership, rural areas, informal settlements, slums and areas not previously subject to a land use scheme;
  - (d) include provisions to promote the inclusion of affordable housing in residential land development;



- (e) include land use and development incentives to promote the effective implementation of the spatial development framework and other development policies;
  - (f) include land use and development provisions specifically to promote the effective implementation of national and provincial policies; and
  - (g) give effect to municipal spatial development frameworks and integrated development plans.
- (3) A land use scheme may include provisions relating to—
- (a) the use and development of land only with the written consent of the municipality;
  - (b) specific requirements regarding any special zones identified to address the development priorities of the municipality; and
  - (c) the variation of conditions of a land use scheme other than a variation which may materially alter or affect conditions relating to the use, size and scale of buildings and the intensity or density of land use.
- (4) The Municipal Council may approach the district municipality to prepare a land use scheme applicable to the municipal areas of the constituent local municipalities within that district municipality.

#### **Purpose of land use scheme**

14. The purpose of the land use scheme is to determine development rights and parameters in the Municipality in order to—
- (a) give effect to the policies and plans of national, provincial and municipal government, including the Municipality's own policies and plans;
  - (b) protect reasonable individual and communal interests in land;
  - (c) promote sustainable and desirable development;
  - (d) develop land in a manner that will promote the convenience, efficiency, economy, health, safety and general welfare of the public;
  - (e) promote social integration;
  - (f) promote economic growth and job creation;
  - (g) restrict nuisance and undesirable conditions in the development of land;
  - (h) restrict and mitigate the impact of development on the natural environment;
  - (i) promote the protection of valuable natural features and the conservation of heritage sites and areas of public value; and
  - (j) promote national food security.

#### **Contents of land use scheme**

15. (1) The land use scheme must cover the whole municipal area.
- (2) The land use scheme adopted in terms of this By-law must include provisions that permit the incremental introduction of land use management and regulation in areas under traditional leadership, rural areas, informal settlements, slums and areas not previously subject to a land use scheme;
- (3) The land use scheme must—
- (a) be shown on maps with accompanying provisions and any other information that the Municipality considers necessary for illustrating or explaining the extent, content and effect of the land use scheme;
  - (b) define the area to which it applies;
  - (c) define the terminology used in the maps and clauses;



- (d) include—
  - (i) land use zones;
  - (ii) land uses that are permitted in a zone and the conditions under which they are permitted;
  - (iii) land uses that are permitted in a zone with the municipality's consent;
  - (iv) land uses that are not permitted in a zone; and
  - (v) a register of all amendments to the land use scheme.
- (4) The land use scheme must—
  - (a) provide for the inclusion of affordable housing in residential land development;
  - (b) provide for land use and development incentives to promote the effective implementation of the Municipality's Spatial Development Framework and development policies; and
  - (c) determine the extent to which land that was being used lawfully for a purpose that does not conform to the land use scheme may be continued to be used for that purpose and the extent to which buildings or structures on that land may be altered or extended; and
  - (d) take cognisance of any environmental management instrument adopted by the relevant environmental management authority, and must comply with environmental legislation.
- (5) A land use scheme may include—
  - (a) a schedule of land use scheme amendments and consents;
  - (b) a schedule of consents granted in terms thereof
  - (c) schedules containing guidelines, forms and other information that is purely intended for information purposes;
  - (d) provisions relating to—
    - (i) the use and development of land only with the written consent of the municipality;
    - (ii) specific requirements regarding any special zones identified to address the development priorities of the municipality; and
    - (iii) departures from the provisions of the land use scheme with the written consent of the municipality including departures relating to the size, scale and position of buildings and the intensity or density of land use.

### **Legal effect of land use scheme**

16. (1) Land may be used for the purposes permitted in the land use scheme, unless it can be proven that there was an error when the rights were recorded in the land use scheme.
- (2) The land use scheme has the force of law and is binding on all persons and all organs of state, including the municipality.
- (3) The right to use land for a purpose without the need to first obtain the consent of the Municipality in terms of the land use scheme vests in the land and not in a person.
- (4) Consent in terms of the land use scheme vests in land and not in a person, unless the Municipal Planning Approval Authority concerned has determined that it constitutes a personal right in favour of a defined person and may only be exercised by that person.

(5) The right to use land for a purpose may not be alienated separately from the land to which it relates, unless the Municipality has provided in a this By-law for the transfer of land use rights to other land.

(6) Land that was being used lawfully before the effective date for the adoption of the land use scheme for a purpose that does not conform to the land use scheme may continue to be used for that purpose.

(7) If the use of land as contemplated in subsection (5) is discontinued for an uninterrupted period of more than 12 months, the land may no longer be used for that purpose.

### **Existing land use scheme**

17. Until the Municipality has adopted a land use scheme that is fully compliant with the Spatial Planning and Land Use Management Act, the land use scheme shall consist of—

- (a) any land use scheme, including amendments to it, adopted in terms of section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;
- (b) any town planning scheme adopted, altered or amended in terms of section 47bis(4)(a) or section 47bisA(4) of the Town Planning Ordinance;
- (c) any amendments by the Development Tribunal in terms of section 33(2)(h)(i) of the Development Facilitation Act to a town planning scheme adopted in terms of section 47bis(4)(a) or section 47bisA(4) of the Town Planning Ordinance; and
- (d) any area for which the Municipality has approved a land use scheme or which the Municipality has included in its land use scheme.

### **Inclusion of land that is occupied in an unstructured manner by a traditional community in the land use scheme.**

18. (1) The settlement patterns and land use management practices of a traditional community that occupy land in an unstructured manner may not be unduly disturbed when the land is included in the land use scheme.
- (2) The regulation of land use, controls associated therewith and the enforcement thereof may be introduced progressively as, in the opinion of the Municipal Council, adherence to the land use scheme warrants their introduction.
- (3) The community and its leadership, including traditional leaders, must be consulted when land occupied by a traditional community is included in a land use scheme.
- (4) The Municipality, in consultation with the community and its leadership, including traditional leaders must—
- (a) identify all existing non-residential and non-agricultural informal rights to the land;
  - (b) identify the land uses associated with the rights and the nature and extent of the rights;
  - (c) locate the rights geographically on a map;
  - (d) identify and record for each holder of a non-residential and non-agricultural informal right to the land—
    - (i) the name, identity number and contact details of the holder of the informal right to the land;
    - (ii) the name of the household which the holder of the informal right to the land represents;
    - (iii) the name of the traditional area and of the isiGodi where the land is situated, if applicable;

- (iv) the name of the Inkosi of the traditional area and of the isiInduna of the isiGodi, if applicable;
  - (v) the GPS co-ordinates for the site to which the informal right applies with sufficient details to indicate its approximate extent; and
  - (vi) photographic evidence of the site.
- (5) The information contained in subsection (4) must inform the Municipality in the preparation of the land use scheme.

### **Effect of change of municipal boundary on land use scheme**

19. Where the boundaries of a municipal area are altered—

- (a) the affected municipalities must, in consultation with each other, amend their respective land use schemes accordingly; and
- (b) until the necessary amendments are effected, the provisions of the land use scheme remain in force in the areas to which they applied before the boundaries were altered, but the new municipality must assume responsibility for their enforcement.

### **Amendment of Land Use Scheme**

20. (1) The Municipality may, after public consultation amend its land use scheme if the amendment is—
- (a) in the public interest;
  - (b) to advance the interest of or in the interest of a disadvantaged community; or
  - (c) in order to further the vision and development goals of the Municipality.
- (2) Notwithstanding the provisions of subsection (1), the Municipality may, after public consultation amend its land use scheme by zoning or rezoning any land considered necessary by the Municipality to achieve the development goals and objectives of the Municipal Spatial Development Framework.
- (3) Any amendment to the land use scheme of the Municipality affecting the scheme regulations may only be authorised by Council.
- (4) Any appeal arising from a decision of Council contemplated in subsection (3) must be decided upon by the appropriate Appeal Authority.

### **Review of land use scheme**

20. (1) The Municipality must review the land use scheme on an annual basis in accordance with section 45.
- (2) The process for the amendment of the land use scheme must be followed to update the land use scheme in accordance with the Municipality's recommendations.

## **CHAPTER 4: LAND DEVELOPMENT APPLICATIONS AND MUNICIPAL PLANNING APPROVALS**

### **Part 1: Land development applications**

#### **Persons who may make an application**

21. (1) No person may commence, carry on or continue with any land development without the prior written approval having been granted in terms of this By-law.

- (2) All land development applications must be submitted to the Municipality, as the authority of first instance.
- (3) Notwithstanding the provisions of subsection (2) above, where any authorisation is required from an organ of state, such authorisation must accompany the submission of the land development application to the Municipality.
- (4) A land development application may be submitted by—
  - (a) an owner;
  - (b) a person acting on behalf of the owner in terms of a written consent to that effect or in any other capacity;
  - (c) a person to whom land has been made available for development in writing by an organ of state or such person's authorised agent; or
  - (d) a service provider responsible for the provision of infrastructure, utilities or other related services.
- (5) If land, which is the subject of an application for Municipal Planning approval is transferred to a new owner, the new owner may continue with the application as the legal successor-in-title of the previous owner.

**Applications that must be prepared by a person with a qualification and experience in land use planning or law**

23. (1) Notwithstanding the provisions of section 22 (4), applications for municipal planning approval must be prepared and compiled by a professional person, being a Registered Planner, a person registered in terms of section 18(1)(a) of the Architectural Profession Act, or a person registered in terms of section 13(1)(d) of the Geomatics Professions Act as a Land Surveyor, or a person admitted to practice as an attorney or as an advocate in terms of the Legal Practice Act No.28 of 2014, or under the direction or in association with such a person who is registered with his or her appropriate governing body.
- (2) A person under whose direction or with whom a person has prepared an application for municipal planning as contemplated in subitem (1) must sign the application and by their signature assumes responsibility for the application, as if he or she has prepared the application himself or herself.
  - (3) Notwithstanding the provisions of subitem 23 (1) and (2), consent applications and development applications located outside the land use scheme that will not require specialist studies may be submitted by any person prescribed under By-law 22 (4).

**Pre-application procedure**

24. (1) An applicant must obtain approvals from organs of state, including municipal departments, and any other information which are necessary for determining an application for municipal planning approval.
- (2) Organs of state, including municipal departments, must provide an applicant with the information that he or she needs in order to make an application for municipal planning approval within 60 days from being served with a request for the information, or such further period as agreed upon with the applicant.
  - (3) The Municipal Planning Registrar may assist an applicant to identify the information that is required to make an application for municipal planning approval.
  - (4) The Municipal Planning Registrar may not give advice on the merits of an application for municipal planning approval when it assists an applicant.

- (5) A Municipal Planning Approval Authority may require an applicant to provide proof of any other statutory approval if, in its opinion, it is necessary to enable it to decide an application for municipal planning approval.

### **Failure by an organ of state to comment on an application for municipal planning approval**

26. (1) An organ of state shall be regarded as having no comment on an application for municipal planning approval, if it did not provide comment on the proposed application within the time permitted, unless the use or development of land is dependent on an engineering service that it must provide.
- (2) An organ of state may refuse to comment on an application for municipal planning approval, if a separate application for its approval is required in terms of a law administered by it.
- (3) The Municipal Planning Registrar may proceed with the processing of an application for municipal planning approval, if an organ of state failed to provide comment on a proposed application for municipal planning approval within the timeframe specified, or such further period as agreed upon with the organ of state, unless –
- (a) the use or development of land is dependent on an engineering service that must be provided by the organ of state;
  - (b) the organ of state refused to comment on the application because a separate application for its approval is required in terms of a law administered by it; or
  - (c) another law prohibits the Municipal Planning Registrar from proceeding with the application.

### **Lodging of application**

26. (1) An application for municipal planning approval must be accompanied by—
- (a) an application form;
  - (b) a comprehensive motivation by the applicant in support of the application;
  - (c) proof of registered ownership and a copy of the property diagram, unless the application relates to a general amendment of a land use scheme;
  - (d) written consent of the registered owner of that land, if the applicant is not the owner thereof, and a bond holders consent where applicable, unless the application relates to a general amendment of a land use scheme;
  - (e) written confirmation by the land owner's association, body corporate established in terms of section 36(1) of the Sectional Titles Act, or a share block company contemplated in section 1 of the Share Blocks Control Act that the application complies with its design guidelines and rules for plan approval, if applicable;
  - (f) written support of the traditional council for the application, if the land is located in a traditional authority area;
  - (g) proof of circulation of an application to organs of state, including municipal departments;
  - (h) if an application is an application for the subdivision or consolidation of land or township establishment—
    - (i) whether the Surveyor General must approve—
      - (aa) a diagram; or
      - (bb) a general plan, for the subdivision or consolidation of the land or establishment of a township;

- (ii) whether the Surveyor-General must approve the land—
    - (aa) as a farm or a subdivision of a farm, including a portion or a remainder of a farm;
    - (bb) as a subdivision of land that is not a farm;
    - (cc) as an erf in an existing township; or
    - (dd) as an erf in a new township;
  - (i) the proposed property descriptions;
  - (j) a layout plan, if applicable;
  - (k) an approved service agreement, if applicable;
  - (l) a phasing plan, if applicable;
  - (m) any other plans, diagrams, reports, specialist studies, Shapefiles or other information that the Municipal Planning Registrar may require; and
  - (n) the application fee.
- (2) An application for municipal planning approval must be lodged with—
  - (a) the Municipal Planning Registrar;
  - (b) another person designated by the Municipal Manager to receive applications for municipal planning approval; or
  - (c) the Municipal Manager, if a Municipality has not appointed the Municipal Planning Registrar and the Municipal Manager has not appointed any other person to receive applications for municipal planning approval.
- (3) The Municipal Planning Registrar may refuse to accept an application for municipal planning approval if the application fee is not paid in full.
- (4) The Municipal Planning Registrar may not refuse to accept an application for municipal planning approval because the application is incomplete.

**Records of receipt of application, request for additional information and confirmation that application is complete**

27. (1) The Municipal Planning Registrar must record receipt of an application for municipal planning approval in writing on the day of receipt.
- (2) The Registrar must notify the applicant in writing within 30 days after receipt of an application, or such further period as agreed upon with the applicant, which may not be more than 60 days after receipt of the application-
- (i) that the application is complete; or
  - (ii) of any additional plans, documents other information or fees required.(2)
- (3) An application for municipal planning approval is regarded as complete, if the Municipal Planning Registrar did not request additional information within 30 days, or a further period as agreed upon with the applicant.

**Provision of additional information to the Registrar**

28. (1) An applicant must provide the Municipal Planning Registrar with the additional information required for the completion of an application for municipal planning approval contemplated in item 27(2)(ii) within 90 days, or such further period as agreed upon with the applicant, which may not be more than 180 days from the request for additional information.



(2) An applicant may decline in writing to provide the additional information required, in which case the Municipal Planning Registrar must proceed with the processing of the application for municipal planning approval.

(3) An application for municipal planning approval lapses, if an applicant failed to submit plans, documents or information required by the Municipal Planning Registrar within the time permitted, unless the applicant declined in writing to provide the additional plans, documents or information before the application lapsed.

(4) The Municipal Planning Approval Authority may refuse an application for municipal planning approval, if it does not contain information that is necessary for it to make an informed decision contemplated section 6(2)(e)(iii) of the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000).

#### **Confirmation of lodging of complete application, if additional information was required**

29. (1) The Municipal Planning Registrar must notify the applicant in writing within 14 days after receipt of the additional plans, documents or information required—

- (a) that the application is complete; or
- (b) that the additional plans, documents or information do not meet the Municipality's requirements.

(2) If the time in which the applicant must provide the additional plans, documents or information has not yet expired, the applicant may resubmit the improved plans, documents or information, in which case the procedure in subitem (1) must be repeated.

(3) An application for municipal planning approval is regarded as a complete, if the Municipal Planning Registrar failed to notify the applicant in writing within 14 days—

- (a) that the application is complete; or
- (b) that the additional plans, documents or information do not meet the Municipality's requirements.

#### **Referral of application affecting the national interest to the Minister of Rural Development and Land Reform**

30. If an application for municipal planning approval affects the national interest as contemplated in section 52(1) and (2) of the Spatial Planning and Land Use Management Act, the Municipal Planning Registrar must serve a copy of the application on the Minister—

- (a) upon confirmation that the application is complete; or
- (b) upon the application being regarded as complete.

#### **Monitoring of application by the responsible Member of the Executive Council**

31. If the responsible Member of the Executive Council has determined that an application for municipal planning approval must be submitted to him or her for monitoring and support purposes as contemplated in section 105(2) of the Municipal Systems Act, the Municipal Planning Registrar must serve a copy of the application on him or her—

- (a) upon confirmation that the application is complete; or
- (b) upon the application being regarded as complete.

#### **Public consultation**

32. (1) The Municipal Planning Registrar must determine if it is necessary to consult the public on an application for municipal planning approval within—



- (a) 14 days of having notified the applicant that the application is complete, or such further period as agreed upon with the applicant which period may not exceed 60 days after having notified the applicant that the application is complete; or
  - (b) 14 days after the application is regarded as complete, or such further period as agreed upon with the applicant which period may not exceed 60 days after the application is regarded as complete.
- (2) An application for municipal planning approval lapses if the applicant failed to consult the public on an application for municipal planning approval within the time permitted or agreed upon with the Municipal Planning Registrar, which period may not exceed 60 days after the application is regarded as complete.
- (3) The closing date for submitting comments on an application for municipal planning approval may not be less than 30 days from the date of the notice.
- (4) A notice of an application for municipal planning approval must include the items listed in item 2 of Schedule 5.
- (5) The public consultation process must be completed within 30 days, or such further period as agreed upon with the applicant which period may not exceed 60 days after the Municipal Planning Registrar has determined that it is necessary to consult the public.
- (6) An application for municipal planning approval lapses if the public consultation process was not completed within the time permitted contemplated in subitem (5).
- (7) An applicant may give notice of an application for municipal planning approval jointly with an application for environmental authorisation as contemplated in item 3 of Schedule 5 or with an application for a mining right as contemplated in item 4 of Schedule 5.
- (8) An applicant must provide the Municipal Planning Registrar with proof in a form of sworn affidavit, attaching all necessary documents that notice was given of an application for Municipal Planning Approval.

### **Applicant's right to respond**

33. (1) The Municipal Planning Registrar must serve—
- (a) copies of all comments received in response to a notice of an application; and
  - (b) a notice informing the applicant of the applicant's right to respond to the comments and the right to waive the right to respond to the comments, on an applicant within 7 days after the closing date for comment.
- (2) An applicant may, within 30 days from the date that the Municipal Planning Registrar served the comments and accompanying notice on the applicant, lodge a written response to the comments with the Municipal Planning Registrar.
- (3) An applicant may in writing waive the right to respond to comments.

### **Referral of application to Municipal Planning Approval Authority**

34. (1) The Municipal Planning Registrar must confirm that the application for municipal planning approval complies with items 26 to 33 of this chapter, and if it does not, provide details of the defect.
- (2) The Planner must ensure that the application complies with section 51 and submit the evaluation report to the Municipal Planning Registrar within 30 days or such further period as agreed upon with the applicant which period may not exceed 60 days.

- (3) The Municipal Planning Registrar must compile the documents for consideration by the Municipal Planning Authorised Officer or Municipal Planning Tribunal, which must include—
  - (a) the application for municipal planning approval;
  - (b) proof that the applicant gave notice of the application, if notice was required;
  - (c) comments received in response to the notice of the application, if any;
  - (d) the applicant's response to the comments, if any; and
  - (e) confirmation that the application complies with items 26 to 32 of this chapter, or details of the defect, if it does not.
- (4) The Municipal Planning Registrar must refer an application for municipal planning approval and the accompanying documents—
  - (a) that must be decided by a Municipal Planning Authorised Officer to the Municipal Planning Authorised Officer;
  - (b) that must be decided by the Municipal Planning Tribunal or Chairperson of the Municipal Planning Tribunal to the Chairperson of a Municipal Planning Tribunal;
  - (c) that must be decided by the Municipal Council to the Chairperson of a Municipal Planning Tribunal for the Municipal Planning Tribunal's technical evaluation and recommendation.
- (5) An application for municipal planning approval that has been referred to a Municipal Planning Authorised Officer or the Chairperson of a Municipal Planning Tribunal must be accompanied by—
  - (a) proof that the applicant gave notice of the application, if applicable;
  - (b) comments received in response to the notice, if any; and
  - (c) the applicant's response to the comments, if any.
- (6) The Municipal Planning Registrar must refer an application for municipal planning approval to the Municipal Planning Authorised Officer or the Chairperson of a Municipal Planning Tribunal—
  - (a) if it was not necessary to give public notice of an application—
    - (i) within 30 days of confirming that the application is complete, or such further period as agreed upon with the applicant, which period may not exceed 60 days after confirming that the application is complete;
  - (b) if notice must be given of an application—
    - (i) within 30 days of the closing date for representations contemplated in item 2(f) of Schedule 5, if no comments were received, or such further period as agreed upon with the applicant, which period may not exceed 60 days after the closing date for representations;
    - (ii) within 30 days of receipt of an applicant's response to comments contemplated in item 33(2), or such further period as agreed upon with the applicant, which period may not exceed 60 days after receipt of an applicant's response;
    - (iii) within 30 days of the expiry of the 30 days within which the applicant may respond to comments contemplated in item 33 (2), or such further period as agreed upon with the applicant, which period may not exceed 60 days after the expiry of the 30 days within which the applicant may respond to comments;
    - (iv) within 30 days of receipt of an applicant's waiver of the right to respond to comments contemplated in item 33 (3), or such further period as agreed upon with the applicant, which period may not exceed 60 days after receipt of an applicant's waiver of the right to respond; or

- (v) within 30 days of receipt of conformation of—
  - (aa) the approval or refusal an application for environmental authorisation; or
  - (bb) the granting or refusal of a mining right, or such further period as agreed upon with the applicant, which period may not exceed 60 days after the conformation, if joint notice was given of applications as contemplated in items 3 and 4 of Schedule 5.
- (c) If no referral is made within the period referred to in this section, it is considered undue delay for purposes of the Act and the applicant or interested person may report the non-performance of the Municipal Planning Registrar to the Chairperson of the Municipal Planning Tribunal , who must report it to the Municipal Manager.

### **Request for additional information by Municipal Planning Approval Authority**

35. (1) The Municipal Planning Approval Authority may request additional information if—
- (a) the information was not requested when the application was scrutinised for completeness as contemplated item 27(2) and (3); and
  - (b) the information is essential to make an informed decision contemplated section 6(2)(e)(iii) of the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000).
- (2) The Municipal Planning Approval Authority must notify the applicant in writing within 30 days after receipt of an application for municipal planning approval and accompanying documents from the Municipal Planning Approval Authority, or such further period as agreed upon with the applicant, which may not be more than 60 days after receipt of the application and accompanying documents of any additional plans, documents other information required.

### **Provision of additional information to Municipal Planning Approval Authority**

36. (1) An applicant must provide the Municipal Planning Approval Authority with the additional information required contemplated in item 35 within 60 days, or such further period as agreed upon with the applicant, which may not be more than 90 days from the request for additional information.
- (2) The provisions of item 25 apply to additional information that is required from an organ of state.
  - (3) An applicant may decline in writing to provide the additional information required, in which case the Municipal Planning Approval Authority must proceed to decide the application for municipal planning approval.
  - (4) An application for municipal planning approval lapses, if an applicant failed to submit plans, documents or information required by the Municipal Planning Approval Authority within the time permitted, unless the applicant declined in writing to provide the additional plans, documents or information before the application lapsed.
  - (5) A Municipal Planning Approval Authority may refuse an application for municipal planning approval, if it does not contain information that is necessary for it to make an informed decision contemplated.

### **Site inspection**

37. (1) If the application requires a site inspection, and the Municipal Planning Approval Authority is a Municipal Planning Authorised Officer, he or she must conduct a site inspection within 30 days from the date that an application for municipal planning approval and accompanying documents were referred to him or her.

- (2) If the Municipal Planning Approval Authority is a Municipal Planning Tribunal or the Municipal Council—
- (a) the Municipal Planning Tribunal must decide whether to conduct a site inspection within 21 days from the date that an application for municipal planning approval and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal;
  - (b) the Municipal Planning Registrar must in writing notify—
    - (i) the applicant; and
    - (ii) any other person identified by the Presiding Officer; of the date and time for the site inspection; and
  - (d) the site inspection must be conducted within 60 days from the date that an application for municipal planning approval and accompanying documents were referred to the Municipal Planning Tribunal.
- (3) A Municipal Planning Authorised Officer or Municipal Planning Tribunal must leave land or a building as effectively secured against trespassers as it found it, if the owner or occupier is not present.
- (4) A person who has entered upon land or entered a building for the purposes of this item, who has gained knowledge of any information or matter relating to another person's private or business affairs in the process, must treat that information or matter as confidential and may not disclose it to any other person.
- (5) A person is guilty of an offence and liable on conviction to a fine or to a period of imprisonment not exceeding one year, or both, if that person subsequently discloses to any other person trade secrets or any privileged information obtained whilst entering upon land or entering a building, except if the disclosure—
- (a) was made for the purposes of deciding the appeal; or
  - (b) was ordered by a competent court or is required under any law.
- (6) A person who wilfully obstructs a person from entering upon land or entering a building contemplated in this item is guilty of an offence and is liable on conviction to a fine or to a period of imprisonment not exceeding six months, or both.

## Hearing

- 38.** (1) If the Municipal Planning Approval Authority is the Municipal Planning Tribunal or the Municipal Council, the Municipal Planning Tribunal must decide whether to hold a hearing within 21 days from the date that an application for municipal planning approval and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal.
- (2) A hearing should only be convened if, in the opinion of the Municipal Planning Tribunal, a hearing will—
- (a) assist in resolving disputes of fact or of law;
  - (b) assist the parties to the application to resolve differences of opinion arising from the application or any objections made thereto; or
  - (c) promote consensus on any aspect of the application.
- (3) The Municipal Planning Tribunal must hold a hearing, if necessary, within 60 days from the date that an application for municipal planning approval and accompanying documents were referred to it.
- (4) The Municipal Planning Registrar must in writing notify—
- (a) the applicant; and

- (b) all parties who commented on an application for municipal planning approval, of the hearing.
- (5) A notice of a hearing must—
  - (a) specify the place, date and time thereof;
  - (b) state the purpose thereof; and
  - (c) inform parties of their rights contemplated in this item—
    - (i) to be present or represented; and
    - (ii) to state their case or lead evidence in support thereof.
- (6) Any person has a right to attend the hearing or to be represented at the hearing, and to personally, or through their representative—
  - (a) state their case;
  - (b) call witnesses to testify and to present other evidence to support their case;
  - (c) cross-examine any person called as a witness by any opposite party;
  - (d) have access to documents produced in evidence; and
  - (e) address on the merits of the application for municipal planning approval.
- (7) A person who is present at a hearing who is not a party to the application, representing a party to the application or a member of the Municipal Planning Tribunal designated by the Chairperson of the Municipal Planning Tribunal to decide the application contemplated in section 17(1), may not speak at the hearing without the leave of the Presiding Officer who may impose any conditions limiting the person's address.
- (8) Any person that disrupts or interrupts the proceedings of a hearing may be asked to leave the hearing.
- (9) A Municipal Planning Approval Authority may take cognisance of any evidence produced at a hearing when it considers an application for municipal planning approval.

### **Registered planner's report on an application**

39. (1) The Municipal Planning Approval Authority must assess merits of the application for municipal planning approval in writing or refer the application to a Registered Planner employed by the Municipality to—
  - (i) assess the merits of the application in writing; and
  - (ii) make a recommendation on the application.
- (2) If the application for municipal planning approval is a rectification of contravention as contemplated in section 123(a), the Registered Planner's report must include a recommendation on the amount that the Municipal Planning Approval Authority should impose as an administrative penalty, unless the applicant is a public benefit organization registered in terms of section 30 of the Income Tax Act, 1962 (Act No. 58 of 1962).

### **Time in which a Municipal Planning Authorised Officer or a Municipal Planning Tribunal must decide an application**

40. (1) If the Municipal Planning Approval Authority is a Municipal Planning Authorised Officer or a Municipal Planning Tribunal, it must decide the application for municipal planning approval—
  - (a) within 60 days from the date that the application and accompanying documents—
    - (i) were referred to the Municipal Planning Authorised Officer, or
    - (ii) were referred to the Chairperson of the Municipal Planning Tribunal,if the Municipal Planning Authorised Officer or Municipal Planning Tribunal did not conduct a site inspection or hold a hearing;

- (b) within 30 days after the date of the site inspection or hearing, whichever is the later date, if Municipal Planning Authorised Officer or Municipal Planning Tribunal did conduct a site inspection or held a hearing; or
  - (c) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to—
    - (i) the Municipal Planning Authorised Officer, or
    - (ii) the Chairperson of the Municipal Planning Tribunal.
- (2) If no decision is made within the period referred to in this section, it is considered undue delay for purposes of the Act and the applicant or interested person may report the non-performance of the Municipal Planning Tribunal or authorised official to the municipal manager, who must report it to the municipal council and mayor

**Municipal Planning Tribunal's recommendation on an application that must be decided by the Municipal Council**

41. (1) If the Municipal Planning Approval Authority is the Municipal Council, a Municipal Planning Tribunal must make a recommendation on the application for municipal planning approval to the Municipal Council—
- (a) within 60 days from the date that the application and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal, if the Municipal Planning Tribunal did not conduct a site inspection or hold a hearing;
  - (b) within 30 days after the date of the site inspection or hearing, whichever is the later date, if the Municipal Planning Tribunal did conduct a site inspection or held a hearing; or
  - (c) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal.

**Referral of application that must be decided by the Municipal Council to the council**

42. (1) Upon receipt of a Municipal Planning Tribunal's recommendation the Municipal Planning Registrar must refer an application for municipal planning approval to the Municipal Council.
- (2) An application for municipal planning approval that must be decided by the Municipal Council must be accompanied by—
- (a) a summary of the comments received in response to the public consultation process, if any;
  - (b) the applicant's response to the comments, if any;
  - (c) the Municipal Planning Tribunal's report on the application;
  - (d) the Municipal Planning Tribunal's recommendation on the application; and
  - (e) the Municipal Planning Tribunal's decision on any application for municipal planning approval relating to the same development that it decided.
- (3) The Municipal Planning Registrar must refer an application for municipal planning approval to the Municipal Council within 60 days of receipt of a Municipal Planning Tribunal's recommendation, or such further period as agreed upon with the applicant, which period may not exceed 180 days after receipt of a Municipal Planning Tribunal's recommendation.



- (4) ) If no referral is made within the period referred to in this chapter, it is considered undue delay for purposes of the Act and the applicant or interested person may report the non-performance of the Municipal Planning Registrar to the Chairperson of the Municipal Planning Tribunal , who must report it to the Municipal Manager.

**Time in which the Municipal Council must decide an application**

43. (1) The Municipal Council must decide an application for municipal planning approval—
- (a) within 60 days after it received the documents contemplated in item 34; or
  - (b) within 60 days after a Municipality resolved whether or not to amend its Integrated Development Plan to accommodate an application for municipal planning approval contemplated in section 1(6) of schedule 4; or
  - (c) within 90 days after a Municipality resolved whether or not to amend its spatial development framework to accommodate an application for municipal planning approval contemplated in section 2(9) of schedule 4; or
  - (d) within such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to the Municipal Council.
- (2) If no decision is made within the period referred to in this section, it is considered undue delay for purposes of the Act and the applicant or interested person may report the non-performance of the Municipal Council to the MEC of Corporate Governance and Traditional Affairs, who must instruct the Municipality to make a decision.

**Time in which the Municipal Planning Tribunal must decide an application to zone or rezone land that involves the introduction of a new zone or an amendment to the Land Use Scheme**

- 44.(1) The Municipal Planning Registrar must inform the Municipal Planning Tribunal of the Municipal Council's decision, if—
- (a) the application for municipal planning approval includes an application for the zoning or rezoning of land; and
  - (b) a new zone has to be introduced in the Land Use Scheme or it has to be amended in order to zone or rezone the land.
- (2) The Municipal Planning Registrar must inform the Municipal Planning Tribunal of the Municipal Council's decision within 60 days of the Municipal Council's decision, or such further period as agreed upon with the applicant, which period may not exceed 180 days after the date of the Municipal Council's. decision.
- (3) The Municipal Planning Tribunal must decide an application for municipal planning approval to zone or rezone land that involves the introduction of a new zone or an amendment to the Land Use scheme within 60 days after it was notified of the Municipal council's decision, or within such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that it was notified of the Municipal council's decision.
- (4) If no decision is made within the period referred to in this section, it is considered undue delay for purposes of the Act and the applicant or interested person may report the non-performance of the Municipal Planning Tribunal to the municipal manager, who must report it to the municipal council and mayor.



## Part 2: Municipal planning approvals

### Activities for which an application for municipal planning approval is required

45. An application for municipal planning approval is required for—

- (a) the adoption of a land use scheme;
- (b) the amendment of a land use scheme;
- (c) the review of a land use scheme
- (d) the reservation , zoning or rezoning of land;
- (e) a Municipality's consent in terms of a land use scheme;
- (f) the repeal of a land use scheme;
- (g) the development of land that is situated outside the area of a land use scheme,
- (h) the extension or replacement of a non-residential building on land that is situated outside the area of a land use scheme, notwithstanding that municipal planning approval was not required at the time that the use of the original building for that purpose commenced;
- (i) the subdivision of a land;
- (j) the consolidation of land;
- (k) the extension of a sectional title scheme by the addition of land to common property in terms of section 26 of the Sectional Titles Act which is must be regarded as the consolidation of land for the purposes of this By-law;
- (l) the notarial tying of adjacent land;
- (m) The establishment of a township or the extension of the boundaries of a township;
- (n) the permanent closure of a municipal road or a public place;
- (o) the removal, amendment or suspension of a restrictive condition of title or a servitude;
- (p) an amendment to a Municipal Planning Approval authority's Record of Decision to correct an error in the wording of the decision, correct a spelling error, update a property description, or update a reference to a law, person, institution, place name or street name;
- (q) an amendment to the land use scheme to correct a spelling error, update a property description, update a reference to a law, person, institution, place name or street name or correct an error that occurred when rights were recorded in the land use scheme;
- (r) a non-material amendment to a decision on an application for municipal planning approval;
- (s) a material change to a Municipality's decision on an application for municipal planning approval;
- (t) the cancellation of a Municipality's decision on an application for municipal planning approval, except a decision to adopt or amend a land use scheme; and
- (u) Application for a dwelling on land demarcated for the settlement in an unstructured manner by a traditional community.
- (v) Temporary departure from the land use scheme.
- (w) Amendment, phasing or cancellation of subdivision plan;
- (x) Amendment or cancellation in whole or in part of a general plan of a township;

### Activities for which an application for municipal planning approval is not required

46. (1) An application for municipal planning approval is not required —

- (a) to record the actual use of a land or preferred use of land that is used in accordance with the provisions of the land use scheme, unless the land use scheme expressly provides otherwise;
  - (b) to record features and attributes, like historical buildings, archaeological sites and prominent ridges;
  - (c) to identify and show land that is subject to the Subdivision of Agricultural Land Act;
  - (d) to identify and show geographical areas in which activities may not commence without environmental approval contemplated in section 24(2)(a) of the National Environmental Management Act, 1998 (Act No. 107 of 1998);
  - (e) to identify and show geographical areas in which activities may commence without environmental approval contemplated in section 24(2)(b) of the National Environmental Management Act, 1998 (Act No. 107 of 1998);
  - (f) to amend a schedule consisting of a register of land use scheme amendments;
  - (g) to amend a schedule consisting of a register of consents granted in terms of the land use scheme; and
  - (h) to amend a schedule consisting of guidelines, forms and other information that is purely intended for information purposes.
- (2) An application for municipal planning approval is not required for the use of a building that is situated outside the area of a land use scheme, if—
- (a) the building has been used for a purpose defined in Schedule 3; and
  - (b) the use of the building for that purpose has commenced—
    - (i) before development approval was required for the development in terms of section 11(2) of the Town Planning Ordinance with effect from 1 August 1951;
    - (ii) before section 11(2) of the Town Planning Ordinance was amended to require development approval for the development with effect from 10 October 2008;
    - or
    - (iii) before development approval was required in terms of section 14 of the KwaZulu Land Affairs Act, 1992 (Act No. 11 of 1992) with effect from 19 June 1998.
- (3) An application for municipal planning approval contemplated in section 45(n) is not required for the permanent closure of a municipal road or a public place that has not been registered separately from the land that was subdivided to create the municipal road or public place, but an application contemplated in section 45 (r ) may be required to remove references to the proposed municipal road or public place from the Municipal Planning Approval Authority's Record of Decision.
- (4) Exemption of subdivisions and consolidations -
- (a) If the subdivision or consolidation arises from the implementation of a court ruling.
  - (b) The Municipality must certify in writing that the subdivision has been exempted from the provisions of this Chapter and impose any condition it may deem necessary.

**Determining if an application should be an application for the subdivision of land or for the subdivision of land and township establishment**

47.(1) If it is an applicant's intention to divide land—

- (a) that is not registered in a township register contemplated in section 46(1) of the Deeds Registries Act; or
- (b) that is not registered in a sectional title scheme contemplated in section 12(1)(b) of the Sectional Titles Act, for the purposes of agriculture, forestry, mining, conservation,

engineering services or a dam, the applicant must make an application for the subdivision of the land.

(2) If it is an applicant's intention to divide land—

(a) that is not registered in a township register contemplated in section 46(1) of the Deeds Registries Act; or

(b) that is not registered in a sectional title scheme contemplated in section 12(1)(b) of the Sectional Titles Act, and consolidate it with other land in order to create a parent property for the establishment of a township, the applicant must make an application for the subdivision of land for the purposes of creating the parent property.

(3) If it is an applicant's intention to divide land—

(a) that is not registered in a township register contemplated in section 46(1) of the Deeds Registries Act; or (b) that is not registered in a sectional title scheme contemplated in section 12(1)(b) of the Sectional Titles Act, for purposes other than agriculture, forestry, mining, conservation, engineering services or a dam, the applicant must make an application for the subdivision of land and township establishment.

(4) If it is an applicant's intention to divide land that is registered in a township register contemplated in section 46(1) of the Deeds Registries Act into less than 50 erven, excluding erven used for road purposes, the applicant may make an application for the subdivision of the land.

(5) If it is an applicant's intention to divide land that is registered in a township register contemplated in section 46(1) of the Deeds Registries Act into more than 50 erven, excluding erven used for road purposes, the applicant must make an application for the subdivision of land and township establishment to open a new township register.

(6) An applicant may have to apply for township establishment for only the part of a development that falls within the ambit of subsection (3), if a part of a development falls within the ambit of subsection (1) and another part of the development falls within the ambit of subsection (3).

### **Removal, amendment and suspension of restrictive conditions of title and servitudes**

48. (1) A condition of title or servitude—

(a) that is registered against land;

(b) that the land is subject to; and

(c) that relates to—

(i) the subdivision or consolidation of the land;

(ii) the purpose for which the land may be used; or

(iii) requirements that must be complied with for the erection of buildings or the use of the land; may be removed, amended or suspended in terms of this By-law

(2) An endorsement in a title deed that a part of a property has been expropriated may be removed, suspended or altered in terms of this By-law with the express written consent of the organ of state that expropriated the land.

(3) The Municipal Planning Approval Authority may remove, amend or suspend a restrictive condition of title without the written consent of the person or entity in whose favour the condition of title is registered—

(a) if the Municipality has not been able to obtain the person or entity's consent after it made a reasonable attempt to locate and contact the person or entity; or

(b) if the person or entity has refused to grant consent.

(4) If the Municipal Planning Approval Authority removes, amend or suspends a restrictive condition of title or servitude without the written consent of the person or entity in whose favour the condition of title is registered, it must do so—

- (a) in accordance with the Constitution and the Spatial Planning and the Land Use Management Act; and
- (b) with due regard to the rights of all those affected and the public interest.

(5) If the removal, amendment or suspension of a restrictive condition of title without the written consent of the person or entity in whose favour the condition of title is registered will deprive any person of property as contemplated in section of the Constitution, the Municipal Planning Approval Authority must remove, amend or suspend the restrictive condition of title or servitude in the manner prescribed in terms of the Spatial Planning and the Land Use Management Act.

(6) The Municipal Planning Approval Authority is not liable to compensate any person for any loss arising from or related to a decision made in good faith to remove, amend or suspend a restrictive condition of title or servitude.

(7) A restrictive condition of title or servitude that benefits land may not be removed, amended or suspended, unless the corresponding restrictive condition of title or servitude that is subject to the condition is also removed, amended or suspended.

(8) A mineral right registered against land may not be removed, amended or suspended in terms of this By-law.

(9) A restrictive condition of title relating to the sale of land, including a right to purchase land and a condition that the value of a building must exceed a minimum amount, may not be removed, suspended or altered in terms of this By-law without the express consent of the person or entity in whose favour the condition of title is registered, even if the condition was imposed or is in favour of the municipality.

(10) A restrictive condition or servitude relating to the inheritance of land, including a condition that grants a person the right to use the land for the person's lifetime, may not be removed, suspended or altered in terms of this Bylaw.

(11) A restrictive condition of title or servitude imposed by the Minister responsible for agriculture, a Premier, a MEC responsible for agriculture in terms of the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970), the Conservation of Agricultural Resources Act, 1983 (Act No. 43 of 1983) or any other national or provincial law that regulates agricultural land may not be removed, amended or suspended in terms of this By-law without the express consent of the Minister responsible for agriculture, the Premier or the MEC responsible for agriculture.

(12) A restrictive condition of title or servitude imposed by the Minister responsible for environmental management, the Premier or MEC responsible for the environment in terms of environmental legislation may not be removed, amended or suspended in terms of this By-law without the express consent of the Minister responsible for environmental management, the Premier or MEC responsible for the environment.

(13) A restrictive condition of title or servitude imposed by the Minister responsible for nature conservation, a Premier, a MEC responsible for the nature conservation or an organ of state responsible for nature conservation in terms in terms of any legislation that regulates nature conservation may not be removed, amended or suspended in terms of this By-law without the express consent of the Minister responsible for nature conservation, Premier or MEC responsible for the nature conservation or an organ of state responsible for nature conservation.

- (14) A restrictive condition or servitude imposed by the Administrator, Premier or responsible Member of the Executive Council for Transport in terms of—
- (a) section 9(3) or 9A(1) of the Advertising on Roads and Ribbon Development Act, 1940 (Act No. 21 of 1940);
  - (b) the Roads Ordinance, 1968 (Ordinance No. 10 of 1968); or
  - (c) the KwaZulu Roads Amendment Act, 1978 (KwaZulu Act No. 11 of 1978), may be removed, suspended or altered in terms of this By-law with the express written consent of the Member of the Executive Council responsible for Transport
- (15) A restrictive condition of title or servitude imposed by the South African Roads Board in terms of—
- (a) the South African Roads Board Act, 1988 (Act No. of 1988); of
  - (b) the South African National Roads Agency Limited (SANRAL) in terms of section 44(3) of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998), may not be removed, amended or suspended in terms of this By-law without the express consent of SANRAL.

**Conditions of title and servitudes that may not be removed, amended or suspended in terms of this By-law**

49. (1) A condition of title or servitude that benefits land may not be removed, amended or suspended, unless the corresponding restrictive condition of title or servitude that is subject to the condition or servitude is also removed, amended or suspended.
- (2) A mineral right registered against land may not be removed, amended or suspended in terms of this By-law.
- (3) A restrictive condition of title in favour of the KwaZulu-Natal Nature Conservation Board may not be removed, amended or suspended in terms of this By-law without the Board's written permission.
- (4) A restrictive condition of title or servitude imposed by the South African Roads Board in terms of the South African Roads Board Act, 1988 (Act No. of 1988) may not be removed, amended or suspended in terms of this Bylaw.
- (5) A restrictive condition of title or servitude imposed by the South African National Roads Agency Limited (SANRAL) in terms of section 44(3) of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998) may not be removed, amended or suspended in terms of this By-law.
- (6) A restrictive condition of title or servitude imposed by the Minister or the responsible Member of the Executive Council responsible for Roads in terms of sections 10(1)(c), 13(2)(b), 20(2)(b) or 21(2)(b) of the KwaZulu-Natal Provincial Roads Act may not be removed, amended or suspended in terms of this By-law.
- (7) A restrictive condition relating to the sale of land, including a right to purchase land and a condition that the value of a building must exceed a minimum amount, may not be removed, suspended or altered in terms of this Bylaw.
- (8) A restrictive condition relating to the inheritance of land, including a condition that grants a person the right to use the land for the person's lifetime, may not be removed, suspended or altered in terms of this By-law.

**Municipal Planning Approval Authority's decision**

50. (1) A Municipal Planning Approval Authority must consider the matters listed in section 51 when it decides or make a recommendation on an application for municipal planning approval.
- (2) If the Municipal Planning Approval Authority is the Municipal Council –
- (a) it may consider a summary of the comments received in response to the public consultation process, instead of the comments; and
  - (b) it must consider the Tribunal's recommendation on the application in addition to the matters in section 51.
- (3) The Municipal Planning Approval Authority must—
- (a) approve, including partly approve; or
  - (b) refuse,
- an application for municipal planning approval.
- (4) The Municipal Planning Approval Authority may not approve an application for municipal planning approval that is inconsistent with—
- (a) national planning norms and standards contemplated in section 8 of the Spatial Planning and Land Use Management Act;
  - (b) provincial planning norms and standards contemplated in section 144(1)(a) of the KwaZulu-Natal Planning and Development Act;
  - (c) the national Spatial Development Framework contemplated in section 13(1) of the Spatial Planning and Land Use Management Act;
  - (d) the provincial Spatial Development Framework contemplated in section 15(1) of the Spatial Planning and Land Use Management Act;
  - (e) a regional Spatial Development Framework contemplated in section 18(1) of the Spatial Planning and Land Use Management Act;
  - (f) its Integrated Development Plan;
  - (g) its Spatial Development Framework, except where site specific circumstances justify a departure from its provisions.
- (5) The Municipal Planning Approval Authority may not approve an application for municipal planning approval for—
- (a) the Municipality's consent in terms of a land use scheme;
  - (b) the subdivision of land;
  - (c) the consolidation of land;
  - (d) the notarial tying of adjacent land; or
  - (e) the permanent closure of a municipal road or a public place, that is in conflict with its land use scheme.
- (6) The Municipal Planning Approval Authority may not approve an application for municipal planning if it is not satisfied that the land can be serviced and that the necessary arrangements have been made for the provision and construction of engineering services and public or private social facilities to the Municipality's satisfaction.
- (7) The Municipal Planning Approval Authority may approve an application for municipal planning approval, subject to any conditions, including conditions relating to—
- (a) the provision of engineering services;
  - (b) the provision of public or private social facilities;
  - (c) the provision of public and private open space and conservation areas;
  - (d) the provision of any other areas for the benefit of the public or community as determined by the municipality;



- (e) the registration of a servitude in favour of the land or against the land in favour of other land, including a condition that the owner of a land must register a servitude at his or her cost in favour of an entity determined by the Municipality for purposes of protecting or securing the land for the purposes referred to in paragraphs (a) to (d);
  - (f) the removal, suspension or amendment of a condition of title or a servitude that prevents the development of the land in accordance with the Municipal Planning Approval Authority's decision;
  - (g) a duty to furnish to the Municipality with a guarantee issued by a financial institution or other guarantor acceptable to the Municipality, within a period specified in the condition for an amount sufficient to cover the costs of—
    - (i) fulfilling the obligations of the applicant to provide engineering services;
    - (ii) fulfilling the obligations of the applicant to provide public facilities; or
    - (iii) complying with any other condition of approval;
  - (h) a condition that land must be transferred to the municipality or another entity determined by the municipality for the purposes of providing engineering services, providing public social facilities, providing public open spaces, conserving public land or securing the use of the land for the benefit of the public or a community;
  - (i) a prohibition on the alienation of a part of the land by means of a sectional title scheme in terms of the Sectional Titles Act or a share block in terms of the Share Blocks Control Act, 1980 (Act No. 59 of 1980);
  - (j) the regulation of buildings in the case of an application for a development situated outside the area of a land use scheme, including—
    - (i) the maximum or minimum number of buildings which may be built;
    - (ii) the maximum or minimum size of buildings;
    - (iii) the location of buildings; and
    - (iv) restrictions on building materials.
- (8) The Municipal Planning Approval Authority must determine which conditions must be complied with before—
- (i) the erection of a structure on the land or the use of the land in accordance with the approval;
  - (ii) the construction of a building on the land;
  - (iii) the occupation of the land;
  - (iv) subdivided land may be registered for the first time separately from the land which was subdivided to create the subdivision; or
  - (v) consolidated land may be registered for the first time separately from the land which was consolidated to create the consolidation; or
  - (vi) the commencement of another event.
- (b) The Municipal Planning Approval Authority must determine which conditions must which conditions must be registered against the land.
- (9) The Municipal Planning Approval Authority must make the conditions that it intends to impose available to the applicant and give the applicant a reasonable amount of time to comment on the conditions.
- (10) If it is a condition for the approval of the subdivision of land or establishment of a township that the Municipality requires land for use as a municipal road, park or other open space, the applicant must, at his, her or its own cost



transfer the land for use as a road, park or other open space to the Municipality free of charge.

(11) Land that the Municipality requires for use as a municipal road, park or other open space must be regarded as land of which the ownership vests in the municipality contemplated in section 32 of the Deeds Registries Act.

(12) Approval for an activity in terms of this By-law does not constitute approval for the same activity in terms of any other law or exempt a person from the need to also obtain approval for the activity in terms of another law.

**Matters that a Municipal Planning Approval Authority must consider when it decides or makes a recommendation on an application for municipal planning approval**

51. (1) A Municipal Planning Approval Authority must take the following matters into account when it decides or makes a recommendation on an application for municipal planning approval, if applicable—

- (a) the application and accompanying documentation ;
- (b) comments received in response to the public consultation process;
- (c) the applicant's reply;
- (d) the Municipal Planning Registrar's assessment of compliance of the application with the application process;
- (e) the Registered Planner's report and recommendation on the application, if applicable;
- (f) the development principles in terms of section 7 of the Spatial Planning and Land Use Management Act;
- (g) policies, including national and provincial policies adopted in terms of any law and the Municipality's own policies;
- (h) norms and standards, including—
  - (i) national norms and standards for land use management and land development in terms of section 8 of the Spatial Planning and Land Use Management Act;
  - (ii) provincial planning norms and standards contemplated in section 144(1)(a) of the KwaZulu-Natal Planning and Development Act; and
  - (iii) the Municipality's own norms and standards;
- (i) spatial development frameworks, including—
  - (i) a national spatial development framework adopted in terms of section 13(1) of the Spatial Planning and Land Use Management Act;
  - (ii) a provincial spatial development framework adopted in terms of section 15(1) of the Spatial Planning and Land Use Management Act;
  - (iii) a regional spatial development framework adopted in terms of section 18(1) of the Spatial Planning and Land Use Management Act; and
  - (iv) the municipal spatial development framework adopted in terms of section 25(1) of the Municipal Systems Act read with section 20(1) of the Spatial Planning and Land Use Management Act;
  - (j) the Municipality's Integrated Development Plan in terms of section 25(1) of the Municipal Systems Act;
  - (k) the Municipality's land use scheme, including matters that a Municipality must consider that have been identified in the land use scheme;

- (l) the design guidelines and rules for plan approval of the land owner's association, body corporate or share block company that has been deposited with the Municipality;
- (m) the authorisation in terms of the Environmental Impact Assessment Regulations;
- (n) the potential impact, including the cumulative impact, on—
  - (i) the environment;
  - (ii) socio-economic conditions;
  - (iii) cultural heritage;
  - (iv) existing developments;
  - (v) existing rights to develop land; and
  - (vi) mineral rights;
- (o) the human and financial resources likely to be available for implementing the municipal planning approval;
- (p) the benefits that accrue from the adoption, replacement or amendment of land use scheme compared to the cost of compensation in terms of Chapter 8;
- (q) the impact, including the cumulative impact, of the application on the national, provincial and municipal road networks, public transport, municipal services, sewage and waste water disposal, water and electricity supply, waste management and removal, policing and security;
- (r) the need to provide new engineering services, upgrade existing engineering services and maintain engineering services;
- (s) access to health, educational, recreational and other public or private social facilities;
- (t) the historical effects of past racially discriminatory and segregatory legislation on land ownership, land development and access to engineering services and public or private social facilities, and the need to address the historical imbalances;
- (u) the protection or preservation of cultural and natural resources, including agricultural resources, unique areas or features, landscape character and biodiversity;
- (v) the natural and physical qualities of that area;
- (w) the need for the establishment of a property owners association to manage the land;
- (x) the need to prohibit the alienation of a part of the land by means of a sectional title scheme in terms of the Sectional Titles Act or a share block in terms of the Share Blocks Control Act, 1980 (Act No. 59 of 1980);
  - (aa) the provisions of section 13 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989) relating to the zoning of land owned by Transnet and other laws which regulate the zoning of land;
  - (ab) any local practice or approach to land use management that is consistent with—
    - (i) the laws of the Republic;
    - (ii) the provincial planning norms and standards; and
    - (iii) the Municipality's Integrated Development Plan;
  - (ac) the public interest; and

- (ad) Any improvements to the land in relation to a temporary departure must be considered in terms of the land use restrictions and specific conditions that apply to the land and all such improvements are done at the risk of the applicant.
- (ae) any other relevant factor.
- (2) A reduction in the value of land cannot be the sole consideration for the purposes of determining the merits of an application for municipal planning approval.
- (3) If the Municipal Planning Approval Authority is the Municipal Council—
  - (a) it may consider a summary of the comments received in response to the public consultation process, instead of the comments; and
  - (b) it must consider the Municipal Planning Tribunal's recommendation on the application in addition to the matters in this Schedule.

### **Record of Decision**

52. (1) If the Municipal Planning Approval Authority is an Municipal Planning Authorised Officer, the Municipal Planning Authorised Officer must draft the Record of Decision.
- (2) If the Municipal Planning Approval Authority is a Municipal Planning Tribunal or the Municipal Council, a Registered Planner member designated by the Chairperson of a Municipal Planning Tribunal in terms of section 152(2) must draft the Record of Decision.
- (3) If a development involved both a decision from a Municipal Planning Tribunal and the Municipal Council, a Registered Planner member designated by the Chairperson of a Municipal Planning Tribunal in terms of section 152(2) must draft a combined Record of Decision.
- (4) A Record of Decision must include the information listed in section 51.

### **Integrated authorisation**

53. (1) If an activity requiring authorisation in terms of this By-law is also regulated in terms of another law, the Municipality and the organ of state empowered to authorise the activity in terms of the other law may exercise their respective powers jointly by issuing—
- (a) separate authorisations; or
  - (b) an integrated authorisation.
- (2) An integrated authorisation contemplated in subsection (1)(b) may be issued only if—
- (a) the relevant provisions of all applicable legislation have been complied with; and
  - (b) the integrated authorisation specifies the—
    - (i) provisions in terms of which it has been issued; and
    - (ii) relevant authorities that have issued it.

### **Persons who must be informed of a Municipal Planning Approval Authority's decision**

54. The Municipal Planning Registrar must, within 21 days after a Municipal Planning Approval Authority decided to approve or refuse an application for municipal planning approval, serve a copy of the Record of Decision –
- (a) on the applicant;
  - (b) on every person who has lodged written comments in response to an invitation to comment on the application by the closing date stated in the invitation; and
  - (c) every person who has been granted leave to intervene in the application for municipal planning approval.

**Effective date of Municipal Planning Approval Authority's decision on application**

55. A decision on an application for municipal planning approval comes into effect upon –

- (a) the date of the Record of Decision, if –
  - (i) no comments were received in response to an invitation for the public to comment on the application;
  - (ii) no person has applied for leave to intervene before the application was decided; and
  - (iii) the applicant has waived the right to appeal;
- (b) the expiry of the 21 day period contemplated in section 70(1), if –
  - (i) comments were received in response to an invitation for the public to comment on the application;
  - (ii) a person has applied for leave to intervene before the application was decided; or
  - (iii) the applicant has not waived the right to appeal;
- (c) the date upon which the Presiding Officer of the Municipal Planning Appeal Authority confirmed that an appeal is invalid, if an applicant or a Municipality successfully made an urgent application to declare an appeal invalid, unless the application for municipal planning approval is subject to another valid appeal;
- (d) the date upon which the Presiding Officer of the Municipal Planning Appeal Authority has confirmed that –
  - (i) a decision on an application for municipal planning approval may commence in respect of land that is not affected by the appeal; or
  - (ii) parts of a decision for municipal planning approval that are not affected by the appeal may commence, if an applicant or the Municipality successfully made an urgent application for the partial commencement of a decision to approve an application for municipal approval;
- (e) the date upon which an appeal is withdrawn, unless the application for municipal planning approval is subject to another appeal;
- (f) the finalisation of an appeal, if an appeal was lodged against the decision of a Municipal Planning Authorised Officer or the Municipal Planning Tribunal and –
  - (i) the Chairperson of the Municipal Planning Appeal Authority has not declared the appeal invalid; or
  - (ii) granted approval for the partial commencement of the decision of the Municipal Planning Approval Authority in respect of the properties or parts of the decision of the Municipal Planning Approval Authority.

**Prohibition on making a substantially similar application, if an application was refused**

56. (1) If a Municipal Planning Approval Authority refused an application for municipal planning approval, a substantially similar application may not be brought in terms of this By-law, or any other law, within a period of two years after the date of refusal, without its written permission.

(2) A Municipal Planning Approval Authority may grant permission in writing that a substantially similar application for municipal planning approval may be brought in terms of this By-law within a period of less than two years after the date that it refused an application for municipal planning approval, if circumstances have changed to such an extent that there is a reasonable prospect that the application may be approved.

**Certification of compliance with conditions of approval**

57. (1) A Municipality must certify that the conditions of approval that must be complied with –
- (a) before the erection of a structure on land or the use of land in accordance with the approval;
  - (b) before the construction of a building on the land;
  - (c) before occupation of the land; and
  - (d) before the land may be registered in separate ownership have been complied with.
- (2) The prohibition on the use of land before compliance with the conditions of approval does not prohibit the use of the land for the purposes that it was lawfully used before municipal planning approval was applied for, unless a Municipal Planning Approval Authority directed otherwise in the conditions of approval.
- (3) The prohibition on the occupation of a building before compliance with the conditions of approval does not prohibit the occupation of a building that was lawfully in existence on the land before municipal planning approval was granted, unless a Municipal Planning Approval Authority directed otherwise in the conditions of approval.

#### **Transfer of roads, parks and other open spaces**

58. (1) If it is a condition for the approval of the subdivision land that the Municipality requires land for use as a municipal road, park or other open space, the applicant must, at his, her or its own cost transfer the land for use as a road, park or other open space to the Municipality.
- (2) Land that the municipality requires for use as a municipal road, park or other open space must be regarded as land of which the ownership vests in the Municipality contemplated in section 32 of the Deeds Registries Act.

#### **Disclosure that land is not registrable before compliance with conditions**

59. An agreement for the alienation of a subdivision of land or for consolidated land that was approved by a Municipality, but for which it has not issued a certificate that the owner has complied with the conditions of approval before it may be registered in separate ownership, must contain a clause disclosing –
- (a) that the owner has not yet complied with the conditions of approval; and
  - (b) that the land is not registrable as contemplated in section 1 of the Alienation of Land Act, 1981 (Act No. 68 of 1981).

#### **Vesting of ownership of land after permanent closure of municipal road or public place**

60. (1) The ownership of land that formed part of a municipal road or a public place, must, upon the permanent closure of the municipal road or public place –
- (a) vest in the person in whose name the land was registered before the permanent closure of the municipal road or public place;
  - (b) vest in a person agreed to in writing between –
    - (i) that person;
    - (ii) the municipality; and
    - (iii) the person in whose name the land was registered before the permanent closure of the municipal road or public place; or
  - (c) vest in the municipality, if the municipality has taken reasonable steps to locate the person in whose name the land was registered before the permanent closure of the municipal road or public place without success.

- (2) For the purpose of subsection (1)(c), reasonable steps include the publication of a notice in a local newspaper inviting anyone who has an interest in the ownership of the land to contact the municipality by a date specified in the notice, which date may not be earlier than 30 days, excluding public holidays, after the date that the notice is published.

**Vesting and transfer of land for social facilities, open spaces, conservation and other purposes for the benefit of the public or a community**

61. (1) Land for public social facilities, open space conservation areas and other areas for the benefit of the public or a community shall vest in the municipality, or the entity determined by the Municipal Council—
- (a) upon the first registration of any subdivision that is located within the same phase of the land development as the phase that the land is located;
  - (b) upon the first registration of a sectional title that is located within the same phase of a sectional title development as the phase that the land is located; or
  - (c) if the land is not located within the land development or the land development does not involve the subdivision of land or opening of a sectional title register, the land vests in the municipality or the entity determined by the municipality upon an event to be determined by the Municipal Council or land development authorisation authority in the conditions of approval of the land development application.
- (2) Land that vests in the Municipality, or another entity determined by the Municipal Council, must be transferred to the Municipality, or the entity determined by the Municipal Council, by the land owner at his or her own cost within six months after the vesting took effect, or within such longer period as a land development authorisation authority may allow in the conditions of approval.
- (3) Land to be used as a municipal road, park or other public open space must be regarded as land of which the ownership vests in the Municipality contemplated in section 32 of the Deeds Registries Act.

**Lodging of plans and documents with Surveyor-General for the subdivision of a land, consolidation of land or the permanent closure of a municipal road or public place**

62. (1) An owner must –
- (a) ensure that all unapproved diagrams, unapproved general plans, plans and other documents, that the Surveyor-General may require for the registration of the subdivision or consolidation of land, establishment of a township, or recording the permanent closure of a municipal road or a public place that are shown as a road or a public place on a general plan are lodged with the Surveyor-General; and
  - (b) submit a certified copy of the approved diagram or general plan, to the Municipality within 30 days after the date on which the Surveyor-General has approved the diagram or general plan, if the applicant is a person or an organ of state, other than the Municipality.
- (2) A professional land surveyor who lodges unapproved diagrams, unapproved general plans, plans and other documents on behalf of an owner with the Surveyor-General, must include an affidavit in the submission confirming –
- (a) that the decision of the Municipal Planning Approval Authority is authentic and that it was made by a person or body authorised to make the decision; and



- (b) that the layout plan is the layout plan that was approved by the municipal planning approval authority.

**Lodging of deeds, plans and documents with Registrar of Deeds for permanent closure of municipal road or public open space**

63. (1) An owner must ensure that all diagrams, plans and other documents that the Registrar of Deeds may require to record the permanent closure of a municipal road or a public open space are lodged with the Registrar of Deeds.
- (2) If a Municipality has determined that the ownership of land that formed part of a municipal road or a public open space, will, upon the closure thereof vest in it or in another organ of state—
- (a) it is not necessary for the land to be transferred to the Municipality or the organ of state; and
  - (b) subject to national legislation, the Registrar of Deeds must make the necessary entries to give effect to registration of the land in the name of the Municipality or organ of state.

**Lodging of deeds, plans and documents with Registrar of Deeds pursuant to an application for the removal, amendment, or suspension of a restrictive condition of title or servitude and certificate of compliance with certain conditions of approval**

64. (1) A land owner must ensure that the deeds and other documents that the Registrar of Deeds may require to record the removal, amendment, or suspension of a restrictive condition of title or servitude are lodged with the Registrar of Deeds.
- (2) A person may not apply to the Registrar of Deeds to record the removal, amendment, or suspension of a restrictive condition of title or servitude, unless the Municipality has issued a certificate stating that the conditions of approval that have to be complied with before the condition of title or servitude may be removed, amended or suspended have been complied with.

**Diagram and general plan for the subdivision of land or consolidation of land**

65. If an approval for the subdivision of land involves the creation of less than ten subdivisions, excluding land that will be used for the purpose of constructing roads, the Surveyor-General may approve a diagram for each property, or a general plan for all the land.

**Lapsing of municipal planning approval**

66. (1) The Municipal Planning Approval Authority or Municipal Planning Appeal Authority must specify the validity period of an application for municipal planning approval in the conditions of the approval.
- (2) The Municipal Planning Approval Authority or Municipal Planning Appeal Authority may not specify a validity period for an approval for an application for municipal planning approval of more than five years from the effective date of the approval.
- (3) If the Municipal Planning Approval Authority or Municipal Planning Appeal Authority did not specify a validity period in the conditions of approval of an application for municipal planning approval, the approval lapses five years from its effective date.
- (4) An applicant may apply to the Municipal Planning Approval Authority for an extension of the validity period of an approval for an application for municipal planning approval.



(5) The validity period of an approval for an application for municipal planning approval, together with any extension which may be granted, may not exceed five years from the effective date of the approval.

(6) An application for an extension of the validity period of an approval for an application for municipal planning approval must be made by the applicant and decided by the Municipal Planning Approval Authority before the approval expires.

(7) With the exception of land that is zoned for agricultural purposes or conservation purposes, municipal planning approval for the zoning or rezoning of land lapses upon the expiry of the validity period for the approval, if—

- (a) the land is not used in accordance with the zoning;
  - (b) a building or structure has to be extended or erected on the land in order to use it in accordance with the zoning and lawful construction of the building or structure or extension to the building or structure has not commenced; or;
  - (c) the zoning implies that the land must be subdivided or that a township must be established on the land and the subdivided land has not been registered separately from the land which was subdivided to create the subdivision;
  - (d) the zoning implies that the land must be consolidated or that a township must be established on the land and the consolidated land has not been registered separately from the land which was consolidated to create the consolidated land;
- or

(8) If land development approval for the rezoning of land lapses, the zoning of the land shall revert back to its previous zoning, unless the Municipal Planning Approval Authority or Municipal Planning Approval Authority has determined in the municipal planning approval that the land must be regarded as being zoned for undetermined purposes if the approval lapses.

(9) If land for which the zoning has lapsed was not previously zoned, the land must be regarded as being zoned for undetermined purposes.

(10) Municipal planning approval for consent in terms of a land use scheme or for the development of land situated outside the area of a land use scheme lapses upon the expiry of the validity period if—

- (a) if the land is not used in accordance with the approval; or
- (b) if a building or structure has to be extended or erected on the land in order to use it in accordance with the approval and lawful commencement of construction has not occurred.

(11) Municipal planning approval to use land for a purpose that requires the municipality's consent in terms of its land use scheme lapses if the use of the land for that purpose is discontinued for two years.

(12) Municipal planning approval for the subdivision of land or township establishment lapses if none of the resulting subdivisions or erven has been registered separately from the land which was subdivided to create the subdivision in the Surveyor-General's office before the expiry of the validity period of the approval.

(13) Municipal planning approval for notarial tying of adjacent land lapses if the notarial deed is not registered before the expiry of the validity period of the approval.

(14) Municipal planning approval for the consolidation of land or township establishment lapses if the consolidated land is not registered separately from the land which was consolidated to create the consolidated land in the Deeds Office before the expiry of the validity period of the approval.

(15) Municipal planning approval for the removal, amendment or suspension of a restrictive condition of title or servitude lapses, if the Registrar of Deeds Office did not endorse the relevant deed before the expiry of the validity period of the approval.

(16) The municipality must update its records, including its land use scheme, to reflect the lapsing of an approval of an application for municipal planning approval.

(17) The Surveyor General and Registrar of Deeds may require the Municipal planning Approval Authority to confirm in writing whether municipal planning approval for the subdivision of land, consolidation of land, township establishment or the removal, amendment or suspension of a restrictive condition of title or servitude has lapsed.

### **Updating of records to show lapsing or partial lapsing of municipal planning approval**

67. (1) The Municipality must notify the Surveyor General and Registrar of Deeds of the lapsing or partial lapsing of an application for—

- (a) the subdivision of land;
- (b) township establishment;
- (c) consolidation of land;
- (d) notarial tying of adjacent land; or
- (e) for an extension of a sectional title scheme by the addition of land to common property in terms of section 26 of the Sectional Titles Act.

(2) The Municipality must notify the Registrar of Deeds of the lapsing of an application for the removal, amendment or suspension of a restrictive condition of title.

(3) The Surveyor General and Registrar of Deeds may request the Municipality to verify that a Record of Decision for municipal planning approval is valid.

(4) The Municipality, Surveyor General and Registrar of Deeds must update their records to show the lapsing or partial lapsing of an application for municipal planning approval.

(5) The Municipal Planning Approval Authority may issue a new Record of Decision for an application for municipal planning approval that lapsed partially.

(6) For the purposes of this By-law, the date of the new Record of Decision must be regarded as the same date as the original new Record of Decision.

## **CHAPTER 5 : MUNICIPAL PLANNING PROPOSAL BY A MUNICIPALITY**

### **Municipal Planning proposal by a Municipality**

68. (1) The Municipality may on its own initiative propose –

- (a) to adopt a land use scheme;
- (b) to amend a land use scheme;
- (c) to repeal a land use scheme; and
- (d) a material amendment to its decision to adopt, amend or repeal a land use scheme, irrespective of who the affected properties belong to.

(2) The Municipality may propose to the Municipal Planning Approval Authority –

- (a) to use land for a purpose or in a manner that requires an application for its consent in terms of the land use scheme;

- (b) to develop land situated outside the area of a land use scheme;
  - (c) to subdivide land;
  - (d) to consolidate land;
  - (e) to establish a township;
  - (f) to notarial tie adjacent land;
  - (g) to extend a sectional title scheme by adding land to the common property in terms of section 26 of the Sectional titles Act;
  - (h) to remove, amend or suspend a restrictive condition of title or a servitude; and
  - (i) to cancel its municipal planning approval, if it is the owner of the land or in the process of acquiring it.
- (3) The Municipality may propose a non-material amendment to the Municipal Planning Approval Authority's decision –
- (a) on a proposal contemplated in subsection (1); and
  - (b) on a proposal contemplated in subsection (2), if it is the owner of the land or in the process of acquiring it.

### **Process for municipal planning approval for a proposal by a Municipality**

69. The provisions of Chapter 4 apply to municipal planning approval for a proposal by the Municipality, except –
- (a) a reference to an applicant must be regarded as a reference to the Municipality; and
  - (b) a period in which the Municipality must conclude a step in the application process is the maximum period prescribed, inclusive of the maximum time by which that period may be extended.

## **CHAPTER 6 : APPEALS**

### **Part 1: Appeal processes**

#### **Lodging of memorandum of appeal**

70. (1) A person whose rights are affected by a decision by a Municipal Planning Approval Authority to approve or refuse an application for municipal planning approval may appeal against that decision by lodging a notice of appeal together with the prescribed administration fee with the Municipal Manager within 21 days of the date of notification of the decision.
- (2) A memorandum of appeal must—
- (a) provide the essential facts of the matter;
  - (b) state the grounds of appeal and the relief sought;
  - (c) raise any issues, which the appellant wants the Municipal Planning Appeal Authority to consider in making its decision;
  - (d) fully motivate an application for condonation; and
  - (e) fully motivate an award for costs, if the relief sought includes a request for costs against the Municipality, on the grounds that its decision is—
    - (i) grossly unreasonable;
    - (ii) manifestly in disregard of—
      - (aa) the procedures prescribed in this By-law; or
      - (bb) the development principles in terms of section 7 of the Spatial Planning and Land Use Management Act;

- (cc) policies, including national and provincial policies adopted in terms of any law and the Municipality's own policies; or
  - (dd) national norms and standards for land use management and land development in terms of section 8 of the Spatial Planning and Land Use Management Act, provincial planning norms and standards or the Municipality's own norms and standards.
- (3) If the appellant is an applicant, the appellant must serve the memorandum of appeal on—
- (a) the Municipal Planning Appeal Authority Registrar;
  - (b) the Municipal Manager; and
  - (c) all the persons who responded in writing to an invitation to comment on the application for municipal planning approval who –
    - (i) responded before the closing date for comments; and
    - (ii) have provided their contact details.
- (4) If the appellant is a person who lodged a written comment in terms of item 2(d) of Schedule 5, the appellant must serve the memorandum of appeal on—
- (a) the Municipal Planning Appeal Authority Registrar;
  - (b) the Municipal Manager; and
  - (c) the applicant.
- (5) If possible, an appellant must also submit a copy of the memorandum of appeal by electronic mail to the Municipal Planning Appeal Authority Registrar.

### **Lodging of responding memorandum**

71. (1) A person on whom a memorandum of appeal has been served, may lodge a responding memorandum.
- (2) A responding memorandum must—
- (a) state whether the appeal is opposed or not, and, if opposed, the grounds of opposition;
  - (b) raise any issues or matters, which that party wants the Municipal Planning Appeal Authority to consider in making its decision;
  - (d) fully motivate an application for condonation; and
  - (c) include any request for an order for costs against the appellant and the reasons for the request, including an order for costs on the grounds that the appeal is vexatious or frivolous.
- (3) A person who wants to lodge a responding memorandum must, within 30 days after the memorandum of appeal was served on that person serve the responding memorandum on—
- (a) the Municipal Planning Appeal Authority Registrar; and
  - (b) the Municipal Manager.
- (4) If possible, a person who wants to lodge a responding memorandum must also submit a copy of the responding memorandum by electronic mail to the Municipal Planning Appeal Authority Registrar.

### **Parties to an appeal hearing**

72. Only the following persons shall be parties to an appeal hearing—
- (a) the applicant; and
  - (b) a person who has lodged a written comment in terms of item 2(d) of Schedule 5—

- (i) who has lodged an appeal against the decision of the Municipality; or
- (ii) who has lodged a responding memorandum.

**Withdrawal of appeal or opposition to appeal**

73. (1) An appellant may withdraw an appeal by serving written notice of its withdrawal on the Municipal Planning Appeal Authority Registrar, the Municipal Manager and on every other party to the appeal.
- (2) A respondent may withdraw its opposition to an appeal by serving a written notice of withdrawal of that opposition on the Municipal Planning Appeal Authority Registrar, the appellant and every other party to the appeal hearing.
- (3) A party to an appeal hearing, who is aggrieved by the withdrawal of an appeal by an appellant, may apply to the Municipal Planning Appeal Authority for an award of costs against the appellant.

**Powers of Municipal Planning Appeal Authority with regard to witness**

74. (1) The Presiding Officer may subpoena any person to attend the site inspection or appeal hearing, in order—
- (a) to testify and be questioned as a witness with regard to any relevant matter; or
  - (b) to produce any document or object in the possession or under the control of that person, and to be questioned with regard thereto.
- (2) The law relating to privilege in a civil court of law applies to a witness subpoenaed or called to give evidence or to produce a document.

**Issuing and service of subpoena to secure attendance of witness**

75. (1) A subpoena contemplated in section 74(1) must be issued by the Presiding Officer under his or her signature, and must—
- (a) specifically require the person named in it to appear before the Municipal Planning Appeal Authority to testify or produce a document or any other object to the Municipal Planning Appeal Authority;
  - (b) state the reasons why the person is required to appear before the Municipal Planning Appeal Authority to testify or produce a document or any other object to the Municipal Planning Appeal Authority;
  - (c) if applicable, sufficiently identify the document or object which the person is required to produce; and
  - (d) state the date, time and place at which the person must appear before the Appeal Authority
- (2) A subpoena must be served on a person by a person who has been authorised in writing by the Municipal Planning Appeal Authority Registrar to serve it.
- (3) A person who is serving a subpoena must display to the person who is served with a subpoena the original subpoena or the written authorisation to serve the subpoena, if requested to do so.
- (4) A person who is serving a subpoena must provide a written return of service to the Municipal Planning Appeal Authority Registrar, including the manner in which the subpoena was served.

**Powers of Municipal Planning Appeal Authority with regard to document required to decide appeal**

76. (1) The Presiding Officer, upon request of members of the Municipal Planning Appeal Authority or of any party to the appeal hearing, may subpoena any person to lodge any document in the possession or under the control of that person with the Municipal Planning Appeal Authority Registrar.
- (2) A person who has been subpoenaed to lodge a document with the Municipal Planning Appeal Authority Registrar must serve the document on the Municipal Planning Appeal Authority Registrar at least 21 days before the appeal hearing commences.
- (3) If the Presiding Officer has subpoenaed a Municipality to lodge a document that the Municipality relied on when it decided an application for municipal planning approval, and the Municipality fails to serve the document on the Municipal Planning Appeal Authority Registrar, the Municipal Planning Appeal Authority may uphold the appeal on the ground that the Municipality did not apply its mind when it decided the application.
- (4) The law relating to privilege in a civil court of law applies to a person subpoenaed to lodge a document with the Municipal Planning Appeal Authority Registrar.

**Issuing and service of subpoena to obtain document**

77. (1) A subpoena contemplated in section 74 (1) must be issued by the Presiding Officer under his or her signature, and must—
- (a) specifically require the person named in it to lodge the document with the Municipal Planning Appeal Authority Registrar;
  - (b) state the reasons why the document is required by the Municipal Planning Appeal Authority;
  - (c) sufficiently identify the document which the person is required to lodge with the Municipal Planning Appeal Authority Registrar;
  - (d) state to how, where and by which date the document must be lodge with the Municipal Planning Appeal Authority Registrar.
- (2) If the Presiding Officer has subpoenaed the Municipal Planning Approval Authority to lodge a document that it relied on when it decided an application for municipal planning approval, a warning that if it fails to serve the document on the Municipal Planning Appeal Authority Registrar, the Municipal Planning Appeal Authority may uphold the appeal on the ground that the Municipal Planning Approval Authority did not apply its mind when it decided the application.
- (3) A subpoena must be served on a person by a person who has been authorised in writing by the Municipal Planning Appeal Authority Registrar to serve it.
- (4) A person who is serving a subpoena must display to the person who is served with a subpoena the original subpoena or the written authorisation to serve the subpoena, if requested to do so.
- (5) A person who is serving a subpoena must provide a written return of service to the Municipal Planning Appeal Authority Registrar, including the manner in which the subpoena was served.



(6) The law relating to privilege in a civil court of law applies to a person subpoenaed to lodge a document with the Municipal Planning Appeal Authority Registrar.

### **Collation of documents required to decide appeal**

78. (1) A party to an appeal hearing must serve every document on which the party intends to rely on at an appeal hearing on the Municipal Planning Appeal Authority Registrar at least 21 days before the appeal hearing commences.

(2) If possible, a party to the appeal hearing must also submit copies of the documents by electronic mail to the Municipal Planning Appeal Authority Registrar.

(3) The Municipal Planning Appeal Authority Registrar must collate all the memoranda and any other documents received from a party to an appeal hearing or requested by the Presiding Officer and post the collated documents on the Internet at least 14 days before the appeal hearing commences.

(4) If a party to an appeal hearing does not have access to the Internet, the party may obtain a copy of the collated documents from the Municipal Planning Appeal Authority Registrar at the cost of reproduction and posting.

## **Part 2: Setting down of appeal for hearing, site inspection and hearing of appeal**

### **Setting down of appeal for hearing**

79. (1) The Municipal Planning Appeal Authority Registrar must forward the memoranda to the Presiding Officer—

- (a) upon expiry of the period allowed by section 71(3) for the lodging of responding memorandum; or
- (b) as soon as the Municipal Planning Appeal Authority Registrar has been advised in writing by the parties entitled to lodge responding memoranda, that they do not intend to do so, whichever occurs first.

(2) The Municipal Planning Appeal Authority Registrar must—

- (a) within 21 days after receipt by the Presiding Officer of the memoranda contemplated in item 1(1) of this Schedule, set the date, time and place for the hearing of the appeal, which date may not be later than—
  - (i) 90 days after the date on which the memorandum of appeal was lodged with the Municipal Planning Appeal Authority Registrar; or
  - (ii) such extended date as may be agreed upon between the parties to the appeal and the Registrar;
- (b) in writing, notify all the parties to the appeal of the date, time and place set for the hearing thereof.

### **Rescinding of an appeal due to undue delay by appellant**

80. The Presiding Officer may in writing rescind an appeal, if he or she is satisfied—

- (a) that the Municipal Planning Appeal Authority Registrar has made at least three attempts to set a date, time and place to hear the appeal;
- (b) that the appellant has been warned that failure to agree to a date, time and place to hear the appeal can lead to the appeal being rescinded; and
- (c) the appellant had sufficient opportunity to agree to a date, time and place to hear the appeal.



**Postponement of site inspection or hearing**

81. (1) Any party to an appeal may request in writing that the site inspection or hearing be postponed at least 10 days prior to the site inspection or hearing.
- (2) The presiding officer may grant a postponement upon good cause shown and must notify the parties of his or her decision within 5 days of the party's request.
- (3) If the postponement is opposed, the presiding officer may request the parties to the appeal to make representations before ruling on the matter.

**Site inspection**

82. (1) Members of the Municipal Planning Appeal Authority may enter upon land or a building relevant to an appeal before it, during normal business hours or at any other reasonable hour, to conduct an inspection of the site.
- (2) All the parties to an appeal hearing are entitled to attend an inspection and may be represented at the inspection.
- (3) The Municipal Planning Appeal Authority Registrar must notify all parties to the appeal hearing in writing, of the Municipal Planning Appeal Authority's intention to carry out an inspection.
- (4) The notice of the inspection must—
- (a) specify the place, date and time of the inspection;
  - (b) state the purpose of the proposed inspection; and
  - (c) invite all parties to the appeal hearing to be present during the inspection.
- (5) The date and time of the inspection must be determined by the Municipal Planning Appeal Authority Registrar after consultation with the occupiers of the land or buildings concerned.
- (6) In the event that the owner or occupier is not present during the inspection, the members of the Municipal Planning Appeal Authority must leave the land or building as effectively secured against trespassers as they found it.
- (7) Any person who enters upon land or enters a building to attend a site inspection by the Municipal Planning Appeal Authority, who gains knowledge of another person's private or business affairs in the process, must treat that information as confidential and may not disclose it to any other person.
- (8) A person who discloses knowledge of another person's private or business affairs that has been gained in the process of attending a site inspection of the Municipal Planning Appeal Authority is guilty of an offence, and liable upon conviction to a fine or to a period of imprisonment not exceeding one year, or both, unless the disclosure—
- (a) was made for the purposes of deciding the appeal;
  - (b) was ordered by a competent court; or
  - (c) is required under any law.
- (9) A person who wilfully obstructs the Municipal Planning Appeal Authority from entering upon land or a building contemplated in this item, is guilty of an offence and is liable upon conviction to a fine.

**Hearing**

83. (1) The Municipal Planning Appeal Authority Registrar must notify all parties to an appeal hearing in writing of the time and place of the appeal hearing.
- (2) The Presiding Officer—
- (a) determines the procedure of the appeal hearing; and

- (b) decides all questions and matters arising with regard to the procedure at the appeal hearing.
- (3) The Municipal Planning Appeal Authority must consider the merits of the matter on appeal, and to that end the Presiding Officer may allow the appellant and other parties in the appeal to raise new issues and to introduce new evidence, whether oral or documentary.
- (4) A party to an appeal hearing is entitled to be present at the hearing of the appeal, and to—
  - (a) be represented by a legal representative or any other person;
  - (b) state a case and lead evidence in support thereof or in rebuttal of the evidence;
  - (c) call witnesses to testify and question those witnesses;
  - (d) present other evidence;
  - (e) cross-examine any person called as a witness by any other party; and
  - (f) address the Municipal Planning Appeal Authority on the merits.
- (5) A party to an appeal hearing may object to the opposite party raising any issue or relying on any document not relied on in that party's memorandum on the ground that—
  - (a) the opposite party has not established good reason for the introduction of that issue or document in the proceedings; or
  - (b) the introduction thereof in the proceedings is likely to cause the objecting party unfair prejudice.
- (6) The Presiding Officer must make a ruling as to whether or not the objection to the raising of the new issue or reliance on a new document is to be upheld, and, in the light of that ruling, may make any appropriate order, including an order for the—
  - (a) payment of the costs relating to the determination of the objection, or
  - (b) adjournment of the hearing for a period stipulated in the order.

#### **Hearing of appeal in absence of parties**

84. The Municipal Planning Appeal Authority may, after a notice of hearing has been served on all the parties, hear an appeal by means of a written hearing; or an oral hearing.

#### **Circumstances in which hearing may be dispensed with**

85. (1) A written hearing may be held if it appears to the appeal authority that the issues for determination of the appeal can be adequately determined in the absence of the parties by considering the documents or other material lodged with or provided to it.
- (2) An oral hearing may be held -
- (a) if it appears to the appeal authority that the issues for determination of the appeal cannot be adequately determined in the absence of the parties by considering the documents or other material lodged with or provided to it; or
  - (b) if such hearing would assist in the expeditious and fair disposal of the appeal.
- (3) If appropriate in the circumstances, the oral hearing may be held by electronic means.

#### **Period in which the Municipal Planning Appeal Authority must adjudicate an appeal**

86. The Municipal Planning Appeal Authority must reach a decision on the outcome of an appeal heard by it within fourteen days after the last day of the hearing.

**Application for late lodging of memorandum of appeal**

87. (1) An applicant or a person who has a right of appeal, may, within the 21 days allowed for the lodging of an appeal, apply to the Chairperson for an extension of the period within which to lodge a memorandum of appeal.
- (2) An application for an extension of the period within which to lodge a memorandum of appeal must be in the form of an affidavit, showing good cause as to why the application should be granted.
- (3) An application for an extension of the period within which to lodge a memorandum of appeal must be served on—
- (a) the Municipal Planning Appeal Authority Registrar;
  - (b) the Municipality; and
  - (c) the applicant, if the person lodging the application for the late lodging of a memorandum of appeal is not the applicant.

**Opposition by an applicant to late lodging of a memorandum of appeal**

88. (1) An opposition by an applicant to the late lodging of a memorandum of appeal must be in the form of an affidavit, showing good cause why the application for the late lodging of an appeal should not be granted.
- (2) An applicant that intends to oppose an application for the late lodging of an appeal must serve an affidavit opposing the application for the late lodging of an appeal within 14 days after having been served with an application for the late lodging of a memorandum of appeal on—
- (a) the Municipal Planning Appeal Authority Registrar;
  - (b) the Municipality;
  - (c) the person who lodged the application for an extension of the period within which to lodge a memorandum of appeal; and
  - (d) all parties who lodged a written comment on an application for municipal planning approval in terms of item 2(d) of Schedule 5, if the person lodging the application for the late lodging of a memorandum of appeal is the applicant.

**Matters relevant in determining merits of late lodging of a memorandum of appeal**

89. The Presiding Officer must consider the following matters, in so far as they may be relevant, in deciding on an application for the late lodging of a memorandum of appeal—
- (a) the information and reasons contained in the application for the late lodging of a memorandum of appeal;
  - (b) the information and reasons contained in the affidavit opposing the late lodging of a memorandum of appeal;
  - (c) the underlying facts and circumstances for the application for the late lodging of a memorandum of appeal;
  - (d) the potential prejudice to any party to the appeal; and
  - (e) the time that has elapsed from the date of notice of the Municipality's decision.

**Decision on application for late lodging of a memorandum of appeal**

90. The Presiding Officer must—
- (a) rule on an application for late lodging of a memorandum of appeal within 30 days of the expiry of the period for the lodging of an application for the late lodging of a memorandum

- of appeal, which ruling may include an order as to costs as the Presiding Officer considers fair and appropriate;
- (b) in the event that an application for late lodging of a memorandum of appeal is granted, review and adjust the time limits relating to the lodging of memoranda and the hearing of the appeal by the Municipal Planning Appeal Authority.

**Notice of decision on application for late lodging of a memorandum of appeal**

91. The Municipal Planning Appeal Authority Registrar must, within seven days after the Chairperson has made a ruling on an application for the late lodging of a memorandum of appeal, serve written notice of the ruling on—
- (a) the Municipality;
  - (b) the person who lodged the application for an extension of the period within which to lodge a memorandum of appeal; and
  - (c) the applicant, if the applicant was not the person who lodged the application for an extension of the period within which to lodge a memorandum of appeal.

**Urgent application to the Municipal Planning Appeal Authority to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval**

92. (1) An applicant may apply to the Presiding Officer before the appeal is heard—
- (a) to confirm that an appeal is invalid, if—
    - (i) the appeal was lodged by a person who is not entitled to lodge an appeal to the Municipal Planning Appeal Authority; or
    - (ii) if the appellant is an applicant, he or she failed to serve a copy of the memorandum on a person contemplated in section 70(3);
    - (iii) if the appellant is a person who lodged a written comment in terms of item 2(d) of Schedule 5, he or she failed to serve a copy of the memorandum on a person contemplated in section 70(4);
  - (b) for the commencement of—
    - (i) a decision on an application for municipal approval in respect of land that is not affected by the appeal; or
    - (ii) the parts of a decision on an application for municipal planning approval that are not affected by the appeal.
- (2) An urgent application must be in the form of an affidavit, showing good cause as to why the application should be granted.
- (3) An urgent application must be served on—
- (a) the Municipal Planning Appeal Authority Registrar;
  - (b) the Municipality; and
  - (c) the person who lodged the appeal.

**Opposition to an urgent application**

93. (1) An opposition to an urgent application must be in the form of an affidavit, showing good cause why the urgent application should not be granted.
- (2) An appellant who intends to oppose an urgent application must serve an affidavit opposing the urgent application within 14 days after having been served with the urgent application on—
- (a) the Municipal Planning Appeal Authority Registrar;

- (b) the Municipality; and
- (c) the applicant.

**Matters relevant in determining merits of an urgent application to confirm that an appeal is invalid**

94. The Presiding Officer must consider the following matters, in so far as they may be relevant, in deciding on an urgent application to confirm that an appeal is invalid—
- (a) the information and reasons contained in the application;
  - (b) the underlying facts and circumstances for the application; and
  - (c) the potential prejudice to any party to the application.

**Matters relevant in determining merits of an urgent application for the partial commencement of a decision approving an application for municipal planning approval**

95. The Presiding Officer must consider the following matters, in so far as they may be relevant, in deciding on an urgent application for the partial commencement of a decision approving an application for municipal planning approval—
- (a) the information and reasons contained in the application;
  - (b) the extent to which the land that will remain subject to the appeal will be affected by a decision to allow the commencement of the decision to grant municipal approval in respect of the balance of the land;
  - (c) the extent to which it is possible to distinguish between the parts of the decision to grant municipal approval that may commence and the parts that may not;
  - (d) the underlying facts and circumstances for the application; and
  - (e) the potential prejudice to any party to the application.

**Decision on urgent application**

96. A Presiding Officer must rule on an urgent within 14 days of the expiry of the period for the lodging of an opposition to the application, which ruling may include an order as to costs as the Chairperson considers fair and appropriate.

**Notice of decision on urgent application**

97. The Municipal Planning Appeal Authority Registrar must, within seven days after a Presiding Officer has made a ruling on an urgent application, serve written notice of the ruling on—
- (a) the appellant whose appeal was the subject of the urgent application; and
  - (b) the applicant.

**Condonation**

98. (1) A person can apply for condonation for—
- (a) failure to lodge a memorandum of appeal within 21 days of being regarded as having been notified of the Municipality's decision; and
  - (b) failure to comply with—
    - (i) the procedure for the lodging and hearing of an appeal contemplated in Chapter 6 of this By-law;
    - (ii) the procedure for the late lodging of a memorandum of appeal contemplated in Chapter 6 of this Bylaw;

- (iii) the procedure for an urgent application to confirm that an appeal is invalid contemplated in Chapter 6 of this By-law; and
  - (iv) the procedure for an urgent application for the partial commencement of a decision approving an application for municipal planning approval contemplated in Chapter 6 of this By-law.
- (2) If all the other parties to an appeal condoned the failure, the Municipal Planning Appeal Authority must grant condonation.
- (3) If all the other parties to an appeal did not condone the failure, the Municipal Planning Appeal Authority must consider the following matters when it decides whether to grant or refuse condonation—
- (a) the object of the provisions of section 70 relating to the lodging of a memorandum of appeal and section 71 of relating to the lodging of a responding memorandum;
  - (b) whether the Municipality informed the applicant for condonation in writing of his or her rights and obligations;
  - (c) the applicant for condonation's explanation for the failure;
  - (d) whether it was practical to service a document, if an application for condonation is for condonation for failure to serve a document;
  - (e) whether the applicant for condonation is the only appellant, or if there are other appellants that also appealed against the decision of the Municipality on similar grounds;
  - (g) the importance of the appeal;
  - (f) prejudice that may be suffered by the applicant, the applicant for condonation, or any other person, including the public;
  - (g) the applicant for condonation's interest in the outcome of the appeal;
  - (h) the applicant for condonation's prospects of success;
  - (i) the degree of lateness;
  - (j) avoidance of unnecessary delay in the administration of justice;
  - (k) the convenience of the Municipal Planning Appeal Authority; and
  - (l) any other relevant factor.
- (4) The Municipal Planning Appeal Authority can decide an application for condonation—
- (a) when it decides an appeal as contemplated in Chapter 6 of this By-law;
  - (b) when it decides an application for the late lodging of an appeal contemplated in Chapter 6 of this By-law;
  - (c) when it decides an urgent application to confirm that an appeal is invalid contemplated in Chapter 6 of this By-law; or
  - (d) when it decides an application for the partial commencement of a decision approving an application for municipal planning approval contemplated in Chapter 6 of this By-law.

### **Decision of Municipal Planning Appeal Authority**

99. (1) The Municipal Planning Appeal Authority must adjudicate an appeal against the decision of a Municipal Planning Approval Authority without undue delay and within the timeframe prescribed in Chapter 6 of this By-law.
- (2) If the Municipal Planning Appeal Authority is—
- (a) the executive committee of the Municipality;
  - (b) a committee of councillors, if a Municipality does not have an executive committee or executive mayor; or

- (c) a committee of municipal officials; an appeal is decided by a majority of the members who have been designated by the chairperson of the Municipal Planning Appeal Authority to hear the appeal.
- (3) The Presiding Officer has a casting vote in the event of an equality of votes.
- (4) The Municipal Planning Appeal Authority may—
  - (a) uphold and confirm the decision of the Municipality against which the appeal is brought;
  - (b) alter the decision of the Municipality;
  - (c) set the decision of the Municipality aside, and
    - (i) replace the decision of the Municipality with its own decision; or
    - (ii) remit the matter to the Municipality for reconsideration in the event that a procedural defect occurred; or
  - (d) make an order of costs contemplated in section 104.
- (5) The decision on the outcome of the appeal may be given together with any order issued by the Municipal Planning Appeal Authority which is fair and reasonable in the particular circumstances.
- (6) The Presiding Officer must sign the decision of the Municipal Planning Appeal Authority and any order made by it.
- (7) A decision of the Municipal Planning Appeal Authority is binding on all parties.

#### **Reasons for decision of Municipal Planning Appeal Authority**

- 100.(1) The Presiding Officer must prepare written reasons for the decision of the Municipal Planning Appeal Authority within 30 days after the last day of the hearing.
- (2) The reasons for the decision must, among other things—
  - (a) summarise the decision of the Municipal Planning Appeal Authority and any order made by it; and
  - (b) in the case of a split decision, summarise the decision and order proposed by the minority and the reasons therefore.
- (3) The Presiding Officer must sign the reasons for the Municipal Planning Appeal Authority's decision

#### **Notification of outcome of appeal**

- 101. The Municipal Planning Appeal Authority Registrar must—
  - (a) before the conclusion of an appeal hearing, determine the manner in which the parties must be notified of the decision of the Municipal Planning Appeal Authority; and
  - (b) notify the parties of the decision of the Municipal Planning Appeal Authority within seven days after the Municipal Planning Appeal Authority handed down its decision, including the reasons for its decision.

#### **Relationship between appeals in terms of this By-law and appeals in terms of section 62 of the Municipal Systems Act**

- 102. No appeal may be lodged in terms of section 62 of the Municipal Systems Act against a decision taken in terms of this By-law.



**Proceedings before Municipal Planning Appeal Authority open to public**

- 103.(1) The Presiding Officer may direct that members of the public be excluded from the proceedings, if he or she is satisfied that evidence to be presented at the hearing may—
- (a) cause a person to suffer unfair prejudice or undue hardship; or
  - (b) endanger the life or physical well-being of a person.
- (2) Any person who fails to comply with a direction issued in terms of this section is guilty of an offence, and on conviction may be sentenced to a fine or to a period of imprisonment not exceeding one year, or to both the fine and the period of imprisonment.

**Costs**

- 104.(1) The Municipal Planning Appeal Authority may not make any order in terms of which a party in any appeal proceedings is ordered to pay the costs of any other party in those proceedings in prosecuting or opposing an appeal, except as provided for in Chapter 6 of this By-law.
- (2) The Presiding Officer must afford the parties an opportunity to make oral or written representations before an order of costs is made.

**Offences in connection with proceedings before Municipal Planning Appeal Authority**

- 105.(1) A person is guilty of an offence, if the person—
- (a) without good reason, and after having been subpoenaed to appear at the proceedings to testify as a witness or to produce a document or other object, fails to attend on the date, time and place specified in the subpoena;
  - (b) after having appeared in response to the subpoena, fails to remain in attendance at the venue of those proceedings, until excused by the Presiding Officer;
  - (c) without good reason fails to produce a document or object in response to a subpoena;
  - (d) wilfully hinders or obstructs the Municipal Planning Appeal Authority in the exercise of its powers;
  - (e) disrupts or wilfully interrupts the proceedings;
  - (f) insult, disparages or belittles any member of the Municipal Planning Appeal Authority; or
  - (g) prejudices or improperly influences the proceedings.
- (2) A person is guilty of an offence—
- (a) when obstructing the Municipal Planning Appeal Authority in exercising a power under this By-law by failing, without good reason, to answer, to the best of that person's ability, a lawful question by the Municipal Planning Appeal Authority;
  - (b) when obstructing a person who is acting on behalf of the Municipal Planning Appeal Authority; or
  - (c) when attempting to exercise a power under this By-law on behalf of the Municipal Planning Appeal Authority, without the necessary authority.
- (3) A person convicted of an offence in terms of this section is liable on conviction to a fine.

**Municipal Planning Appeal Authority Registrar must keep records relating to appeals**

- 106.(1) The Municipal Planning Appeal Authority must keep a record of its proceedings.
- (2) The Municipal Planning Appeal Authority Registrar must keep a register in which the following particulars are recorded in respect of every appeal:
- (a) the date on which the appeal was lodged;

- (b) the reference number assigned to the appeal;
- (c) the names of—
  - (i) every appellant;
  - (ii) the Municipality against whose decision the appeal is brought; and
  - (iii) every other party to the appeal;
- (d) the names of the members of the Municipal Planning Appeal Authority designated by the Chairperson of the Municipal Planning Appeal Authority to hear the appeal; and
- (e) the decision of the Municipal Planning Appeal Authority, including -
  - (i) whether the decision was unanimous or was the decision of the majority of the members; and
  - (ii) the date of the decision.
- (3) A copy of the reasons for every decision of the Municipal Planning Appeal Authority and every ruling given by the Chairperson of the Municipal Planning Appeal Authority must be filed by Municipal Planning Appeal Authority Registrar.
- (4) The register and records of the Municipal Planning Appeal Authority Registrar must be open for inspection by members of the public during normal office hours.

## **CHAPTER 7 : ENFORCEMENT**

### **Part 1: Offences, penalties and disconnection of engineering services**

#### **Offences and penalties in relation to municipal planning approval**

107.(1) A person who—

- (a) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land, or transforms land or demolishes buildings or structures for that purpose, without municipal planning approval, if municipal planning approval is required in terms of this By-law;
- (b) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land, or transforms land or demolishes buildings or structures for that purpose, contrary to a provision of a land use scheme;
- (c) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land, or transforms land or demolishes buildings or structures for that purpose, contrary to a restrictive condition of title or servitude;
- (d) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land, or transforms land or demolishes buildings or structures for that purpose, contrary to a Municipality's Record of Decision for municipal planning approval as contemplated in section 52(4);
- (e) fails to disclose that land is not registrable as contemplated in section 59;
- (f) removes a site notice declaring that an activity on land is unlawful as contemplated in section 121;
- (g) offers or pays a reward for—
  - (i) the written support of an organ of state in support of an application for municipal planning approval or a non-material amendment to Municipality's decision;

- (ii) the written support of a Traditional Council for an application for municipal planning approval or a nonmaterial amendment to Municipality's decision; or
    - (iii) the approval or refusal of an application for municipal planning approval or a non-material amendment to Municipality's decision;
  - (h) requests or accepts a reward for—
    - (i) the written support of an organ of state in support of an application for municipal planning approval or a non-material amendment to Municipality's decision;
    - (ii) the written support of a Traditional Council for an application for municipal planning approval or a nonmaterial amendment to Municipality's decision; or
    - (iii) the approval or refusal of an application for municipal planning approval or a non-material amendment to Municipality's decision; or
  - (i) abuses, molests, hinders, obstructs or refuses entry on the land or into a building by a person conducting an investigation for enforcement purposes that has been duly authorised to enter on the land or into the building in terms of section 115(1), is guilty of an offence.
- (2) An owner who permits land to be used in a manner contemplated in subsection (1)(a) to (d) and who does not cease that use or take reasonable steps to ensure that the use ceases is guilty of an offence.
- (3) A person convicted of an offence in terms of this section is liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.
- (4) The levying of rates in accordance with the use of land as contemplated in section 8(1) of the Municipal Property Rates Act does not render the use of the land lawful for the purposes of this By-law.

### **Additional criminal penalty**

- 108.(1) When the court convicts a person of an offence contemplated in section 107(1) and (2), it may—
- (a) at the written request of the Municipality, summarily enquire into and determine the monetary value of any advantage which that person may have gained as a result of that offence; and
  - (b) in addition to the fine or imprisonment contemplated in section 109, order an award of damages, compensation or a fine not exceeding the monetary value of any advantage which that person may have gained as a result of that offence.
- (2) The court may sentence a person who fails to pay a fine imposed under this section to imprisonment for a period not exceeding one year.

### **Administrative penalty for using or permitting land to be used in a manner that constitutes an offence in terms of this By-law**

- 109.(1) A Municipal Council may impose an administrative penalty when an owner uses land or permits land to be used in the manner referred to in section 107(1) in respect of each day on which he or she continues or has continued with such conduct up to a maximum of 30 days.
- (2) In addition to subsection 1, failure to cease the unauthorised land use may result in the following being actioned against the offender;

- (a) The change of rate coding to unauthorised use according to the Municipality Rates Policy
  - (b) At the discretion of the Municipality, a notice shall be served in accordance to Section 56 of the Criminal Procedures Act 51 of 1977
  - (c) At the discretion of the Municipality, a summon shall be served in accordance to Section 54 of the Criminal Procedures Act 51 of 1977.
- (3) The amounts charged by a Municipal Council in terms of this section must be calculated in accordance with an applicable legislation.

#### **Administrative penalty for failing to obtain prior municipal planning approval**

110. (1) The Municipal Planning Approval Authority may impose an administrative penalty when it grants municipal planning approval for a building that has been erected without its prior approval or the use of land without its prior approval.
- (2) The Municipal Planning Approval Authority must consider the following matters when it determines whether to impose an administrative penalty and the amount to impose, if applicable—
- (a) the municipality's policy on the imposition of an administrative penalty in terms of this By-law, if any;
  - (b) the Municipality's Integrated Development Plan, including its Spatial Development Framework, in terms of section 25(1) of the Municipal Systems Act;
  - (c) if the use of the land is similar or compatible with other land uses in the surrounding area, irrespective of whether or not the surrounding land uses have planning approval;
  - (d) site specific circumstances in favour or against the use of the land for the purpose for which it is used;
  - (e) whether the applicant was the owner or occupant of the land at the time that the buildings were erected on the land or the land was used without prior planning approval;
  - (f) the extent to which the applicant has co-operated with the Municipality and the Municipal Planning Approval Authority;
  - (g) whether any act, omission or negligence by the Municipality contributed to the failure to obtain prior planning approval;
  - (h) the nature, duration and impact of the activity for which prior municipal planning approval was not obtained;
  - (i) the extent and value of any significant profit or other benefit derived from the failure by the applicant to obtain prior municipal planning approval;
  - (j) any loss or damage suffered by the Municipality or a third party as a result of the applicant or the person that erected buildings on the land or used the land without prior planning approval's failure to obtain prior municipal planning approval;
  - (k) the extent of the applicant's knowledge and experience of municipal planning and the law related thereto; and
  - (l) whether the applicant has previously been found in contravention of this By-law or any other planning law.
- (3) An administrative penalty may not exceed—
- (a) the value of any building or part of a building erected without the Municipal Planning Authority's prior approval; or
  - (b) the value of the unlawful activity, if—

- (i) the unlawful activity is performed in an existing building that was previously lawfully used for a different purpose; or
  - (ii) the unlawful activity is not performed in a building.
- (4) Unless proven otherwise, the value of an unlawful activity must be regarded as 10% of the aggregate annual turnover generated by the activity—
  - (a) calculated over the last 36 months of operation; or
  - (b) if it has been in operation for less than 36 months, calculated over the period that the activity has been in operation.
- (5) The applicant bears the onus of proving the value of the building or part thereof or the value of the unlawful activity.
- (6) The Municipal Planning Approval Authority may request proof from an applicant to substantiate the amount claimed by it to be the value of the building or part thereof or the value of the unlawful activity.
- (7) The Municipal Planning Approval Authority may refuse an application for rectification of a contravention, if an applicant failed to submit adequate proof of the value of the building or part thereof or the value of the unlawful activity.
- (8) The Municipal Planning Approval Authority must specify the period or date by which the administrative penalty must be paid in its Record of Decision, which may not be more than 3 years after notice of municipal planning approval was served on the applicant.
- (9) An administrative penalty imposed in terms of this section constitutes a levy that must be paid in full before the transfer of a property may be registered as contemplated in section 118(1) of the Municipal Systems Act.
- (10) Municipal planning approval does not lapse as a result of failure by an applicant to pay an administrative penalty within the period specified in the Municipal Planning Approval Authority's Record of Decision.
- (11) An applicant may claim an amount equivalent to the amount paid as an administrative penalty to the Municipality together with the costs that he or she incurred in paying the administrative penalty from—
  - (a) the person who owned the land at the time that the building was erected on the land without the municipality's prior approval; or
  - (b) the person who first conducted the unlawful activity, if—
    - (i) the unlawful activity is performed in an existing building that was previously lawfully used for a different purpose; or
    - (ii) the unlawful activity is not performed in a building.

### **Amnesty**

- 111.(1) The Municipality may by notice in a newspaper declare an amnesty period.
- (2) The notice in the newspaper must—
- (a) specify the beginning and end date of the amnesty period; and
  - (b) invite any person who has failed to obtain prior municipal planning approval in terms of this By-law before the start of the amnesty period—
    - (i) to apply to the Municipal Planning Approval Authority for amnesty; and
    - (ii) to apply to the Municipal Planning Approval Authority for municipal planning approval.

- (3) If the application for municipal planning approval is approved, the Municipal Planning Approval Authority must grant the applicant amnesty.
- (4) If an application for municipal planning is partly approved, the Municipal Planning Approval Authority must only grant amnesty for the part of the application that it has approved.
- (5) A person who has received amnesty shall not be criminally liable for the offence for which he or she received amnesty.
- (6) Any criminal proceedings against a person for an offence for which he or she has been granted amnesty shall be void.
- (7) The Municipal Planning Authority may not impose an administrative penalty as contemplated in section 109(1) or 110(2), if it has granted amnesty to an applicant.
- (8) The Municipal Planning Authority must inform an applicant whether it granted him or her amnesty at the same time that it informs the applicant that his or her application for municipal planning approval has been approved.

**Reduction or disconnection of engineering services to prevent the continuation of activity that constitutes an offence**

- 112.(1) The Municipality must obtain a court order before it reduces or disconnects engineering services to prevent the continuation of an activity that constitutes an offence contemplated section 107(1)(a)-(d).
- (2) If the Municipality is not the service provider for an engineering service, the court may order the service provider responsible for it to reduce or disconnect the service.
  - (3) The Municipality may reduce or disconnect engineering services to prevent the continuation of an activity that constitutes an offence contemplated in section 107(1)(a)-(d) without a court order, if irreparable harm will be caused by the illegal activity to land, a building, a structure or the environment.
  - (4) The Municipality must obtain a court order as soon as possible, after it reduced or disconnected engineering services to prevent irreparable harm to land, a building, a structure or the environment as contemplated in subsection (3).
  - (5) The Municipality may not disconnect engineering services to prevent the continuation of an activity that constitutes an offence contemplated in section 107(1)(a)-(d), if the land is also used for a lawful activity and it is not possible to disconnect the engineering services serving the unlawful activity without also disconnecting the engineering services serving the lawful activity.
  - (6) The Municipality may disconnect engineering services to prevent the continuation of an activity that constitutes an offence contemplated in section 107(1)(a)-(d), even if payment for the engineering service is not in arrears.
  - (7) The right of the Municipality to reduce or disconnect water to prevent the continuation of an activity that constitutes an offence contemplated in section 107 (1)(a)-(d) must be regarded as a condition under which water services are provided contemplated in section 21(2)(b)(ii) of the Water Services Act, 1997, (Act No. 108 of 1997).
  - (8) For the purposes of section 21(5) of the Electricity Regulation Act, 2006 (Act No. 4 of 2006), the use of electricity for an activity that constitutes an offence contemplated in



section 92(1)(a)-(d) must be regarded as dishonouring by a customer of the agreement with the licensee.

## **Part 2: Prosecution and Contravention notices**

### **Lodging of complaint**

- 113.(1) Any person may request the Municipality in writing or telephonically to investigate an alleged offence contemplated in section 107(1).
- (2) A written complaint in which it is alleged that a person is committing an offence as contemplated in section 107(1) must be supported by relevant documentation and other evidence which may include , but not limited to the following:
- (a) the name of the alleged offender, if known;
  - (b) street Address and or property description if known;
  - (c) photographs if available;
  - (d) description of the alleged contravention of the scheme and the impact.
- (3) The Municipality must within 7 days from the date of the lodgement of the complaint—
- (a) acknowledge receipt of the complaint, if it contains the complainant's name, address or contact number; and
  - (b) invite the person against whom the complaint is lodged to submit a response within 7 days of being notified of the complaint.
- (4) The person designated by the Municipality to conduct the investigation must complete the investigation into the alleged offence contemplated in section 107(1) within 30 days from the date that the complaint was lodged.
- (5) The Municipality must inform the complainant of the outcome of the investigation, if the complaint contained the complainant's name, address or contact number.

### **Compliance notice served on persons suspected of certain offences under this By-law**

- 113A.(1) A municipality must serve a compliance notice on a person if it has reasonable grounds to suspect that the person is guilty of an offence contemplated in section 107 of this By-law.
- (2) At least 14 days, after service of the notice, must be given for comments to be lodged in response to a compliance notice.

### **Contents of compliance notice**

- 113B. A compliance notice must -
- (a) identify the person at whom it is directed;
  - (b) describe the activity concerned and the land on which it is being carried out;
  - (c) state that the activity concerned is illegal and inform that person of the particular offence contemplated in section 107 of this By-law, which that person allegedly has committed or is committing through the carrying on of that activity;
  - (d) invite the person to comment in writing on the alleged contravention;
  - (e) call on the person to lodge the comments with the contact person stated in the notice;
  - (f) state how the comments may be lodged;
  - (g) state the date by when the comments must be received;



- (h) inform the person identified of the latter's right to remain silent, and of the fact that any confession, admission or other statement made by that person could be used in evidence against that person; and
- (i) Issue a warning to the effect that (i) the person could be prosecuted for and convicted of an offence contemplated in 107 of this By-law;
- (ii) on conviction of an offence, the person could become liable to the penalties provided for in sections 107 and 108; and
- (iii) if convicted, the person could be required by an order of the High Court to demolish, remove or alter any building. structure or work illegally erected or constructed. or to rehabilitate the land concerned.

### **Appointment of enforcement officer**

114.(1) A Municipal Council may designate a municipal official or appoint any other person to investigate—

- (a) non-compliance with its spatial development framework;
- (b) non-compliance its land use scheme;
- (c) failure to obtain municipal planning approval for an activity contemplated in section46; or
- (d) non-compliance with a record of decision of the Municipal Planning Approval Authority.

(2) A Municipal Council must issue the person with a letter of appointment stating that the person has been appointed to conduct an investigation in terms of this By-law.

(3) A person conducting an investigation must on request produce his or her letter of appointment.

(4) A person conducting an investigation his or her spouse, immediate family, business associate, employer (other than the Municipality) or employee, may not have any interest, whether pecuniary or otherwise in the matter to be investigated.

(5) A person conducting an investigation must fully disclose the nature of an interest and recuse him or herself from the investigation, if the he or she becomes aware of the possibility of having a disqualifying interest in an investigation.

### **Functions and powers of a person conducting an investigation for enforcement purposes**

115.(1) A person conducting an investigation may, with the permission of the occupier or owner of the land or a warrant from a court, and during the municipality's normal business hours, enter upon the land or enter a building for the purposes of ensuring compliance with—

- (a) this By-law,
- (b) a land use scheme;
- (c) a record of decision of an application for municipal planning approval;
- (d) a record of decision of a municipal planning appeal authority; or
- (e) a restrictive condition of title or servitude that may be removed, amended or altered in terms of this By-law.

(2) A person conducting an investigation may enter upon land or enter a building for the purposes of subsection (1) outside its normal business hours—

- (a) with the permission of the occupier or owner of the land; or
  - (b) if entering upon the land or entering a building outside the municipality's normal business hours is essential.
- (3) A person conducting an investigation may be accompanied by an interpreter, a police official or any other person who may be able to assist with the inspection.
- (4) A person who controls or manages land must provide the facilities that are reasonably required by a person conducting an investigation to enable him or her to perform his or her functions effectively and safely.
- (5) A person conducting an investigation may question any person on that land who, in his or her opinion, may be able to furnish information on a matter to which this By-law relates.
- (6) A person conducting an investigation may inspect and take a picture or video footage—
- (a) of any article, substance, or machinery which is or was on the land,
  - (b) of any work performed on the land or any condition prevalent on the land.
- (7) A person conducting an investigation may seize any document, record, article, substance, or machinery which, in his or her opinion, is necessary as evidence at the trial of any person charged with an offence under this By-law or the common law.
- (8) A person conducting an investigation may grant a user of a document or record the right to make copies of the book or record before its seizure.
- (9) A person conducting an investigation must issue a receipt to the owner or person in control of document, record, article, substance, or machinery which he or she has seized.
- (10) A person conducting an investigation who enters and searches any land or buildings must conduct the search or seizure with strict regard for decency and order, and with regard for persons' right to dignity, freedom, security and privacy.
- (11) A person conducting an investigation must leave the land or building as effectively secured against trespassers as he or she found it, if the owner or occupier is not present.
- (12) A person conducting an investigation may direct any person to appear before him or her at such time and place as may be agreed upon and question the person.
- (13) A person conducting an investigation may issue a compliance notice to the person who controls or manages the land or the owner or person in control of a private dwelling if a provision of this By-law has not been complied with.
- (14) A compliance notice remains in force until the relevant provision of this By-law has been complied with and the municipality has issued a compliance certificate in respect of that notice.

### **Entry for enforcement purposes**

- 116.(1) A municipality may enter upon the land or enter a building with the prior permission of the occupier or owner of land.
- (2) A judge of division of the High Court, a magistrate for the district in which the land is situated or a municipal court may, at the request of a municipality, issue a warrant to if—
- (a) the cannot be obtained after reasonable attempts; or
  - (b) the purpose of the inspection would be frustrated by the prior knowledge thereof.

(3) A judge or magistrate may only issue a warrant if he or she is satisfied that there are reasonable grounds for suspecting that any activity that is contrary to the provisions of this By-law or a municipality's land use scheme, has been or is about to be carried out on that land or building.

(4) A municipality may execute a warrant to enter upon the land or to enter the building.

(5) A warrant authorises a municipality to enter upon the land or to enter the building on one occasion only, and that entry must occur—

(a) within one month of the date on which the warrant was issued; and

(b) at a reasonable hour, except where the warrant was issued on the grounds of urgency.

**Presumption that member of the managing body of a corporate body or partner in a partnership committed activity that constitutes an offence**

117. A person is personally guilty of an offence contemplated in this By-law if—

(a) the offence was committed by—

(i) a corporate body established in terms of any law; or

(ii) a partnership;

(b) the person was a member of the board, executive committee, close corporation or other managing body of the corporate body or the partnership at the time that the offence was committed; and

(c) the person failed to take reasonable steps to prevent the offence.

**Failure by land owner's association, body corporate or share block company to execute obligation in terms of condition of approval**

118. If a land owner's association, a body corporate established in terms of section 36(1) of the Sectional Titles Act, or a share block company contemplated in section 1 of the Share Blocks Control Act, fails to execute an obligation imposed on it in terms of a condition of approval contemplated in section 50(7) or by the Municipal Planning Appeal Authority, the Municipality may rectify the failure and recover the cost thereof from the members of the land owners association, body corporate or shareholders of the share block company.

**Relief by court**

119.(1) If the Municipality has instituted proceedings against a person for an offence contemplated in section 107(1) or (2), it may simultaneously apply to a court for appropriate relief.

(2) A court may grant any appropriate relief, including—

(a) a declaration of rights;

(b) an order or an interdict preventing a person from—

(i) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land without municipal planning approval, if municipal planning approval is required in terms of this By-law;

(ii) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land contrary to a provision of a land use scheme;

(iii) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land contrary to a restrictive condition of title or servitude; or

- (iv) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land contrary to a Municipality's record of decision contemplated in section 52(4) or the Municipal Planning Appeal Authority's decision contemplated in section 99(4); or
- (v) failing to disclose that land is not registrable as contemplated in section 59;
- (c) an order to reduce or disconnect engineering services;
- (d) an order to demolish, remove or alter any building, structure or work illegally erected or constructed;
- (e) an order to rehabilitate the land concerned; or
- (f) any other appropriate preventative or remedial measure.

### **Relationship between remedies provided for in this By-law and other statutory and common law remedies**

120. The remedies provided for in this By-law are in addition to any other statutory or common law criminal or civil remedies that a Municipality or a person may have at their disposal.

### **Display of notice on land that activity is unlawful**

121. The Municipality must display a notice on the land, if it obtained a temporary or final interdict to prevent use of land or erection buildings contrary to this By-law, a land use scheme or a restrictive condition of title or servitude registered against the land, stating that—

- (a) the activity identified in the notice is unlawful;
- (b) a temporary or final interdict has been obtained to prevent the activity;
- (c) that any person who continues with the activity will be guilty of an offence; and
- (d) that any person who continues with the activity is liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

### **Persons who may approach High Court for enforcement of rights granted by Act, a land use scheme adopted in terms of this By-law or municipal planning approval in terms of this By-law**

122.(1) A person who alleges that a right granted by this By-law, a land use scheme adopted in terms of this Bylaw, or an approval in terms of this By-law has been infringed or is threatened by another person or an organ of state, may approach the High Court for relief, in the event that the person is acting—

- (a) in his or her own interest;
- (b) on behalf of another person who cannot act in his or her own name;
- (c) as a member of, or in the interest of, a group or category of persons;
- (d) on behalf of an association and in the interest of its members; or
- (e) in the public interest.

## **Part 3: Rectification of contravention and amnesty**

### **Rectification of contravention**

123. A person may make an application for municipal planning approval contemplated in section 45, despite—

- (a) the land being used or having been used without prior municipal planning approval for a purpose or in a manner that requires prior municipal planning approval;

- (b) having been convicted of an offence contemplated in section 107 (1) or (2); or
- (c) a court order contemplated in section 119(2).

**Part 4: Misconduct by official approving the use of land or erection buildings or contrary to the Act, a land use scheme or a restrictive condition of title or servitude registered against land**

**Misconduct by official employed by organ of state who approves the erection of buildings or use of land without prior approval in terms of the Act**

124.(1) An official is guilty of misconduct—

- (a) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land without municipal planning approval, if municipal planning approval is required in terms of this By-law;
  - (b) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land contrary to a provision of a land use scheme;
  - (c) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land contrary to a Municipality's decision for municipal planning approval as contemplated in section 52(4) or Municipal Planning Appeal Authority's decision contemplated in section 99(4);
  - (d) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land contrary to a restrictive condition of title or servitude; or
  - (e) if the official certified that a condition of approval for municipal planning approval has been complied with, when it has not.
- (2) An official is guilty of misconduct in terms of this section, irrespective of whether or not the official was aware that prior approval is required for the erection this of buildings in terms of this By-law.
- (3) An official who is guilty of misconduct under this section may be disciplined in accordance with the disciplinary code of the person's employer or the official's profession.
- (4) It is a defence for an official charged in terms of this section if it can be proven that the official acted in an emergency to save human life, property or the environment.

**Offence by owner for failure to lodge diagrams, plans and documents with the Surveyor-General after cancellation or partial cancellation of municipal planning approval for subdivision or consolidation of land or township establishment**

125.(1) An owner is guilty of an offence, if the owner fails to ensure that diagrams, plans and other documents that the Surveyor-General required for the cancellation or partial cancellation of an approved diagram or general plan for the subdivision or consolidation of

land or township establishment are lodged with the Surveyor-General, within six months after the Municipality cancelled or partial cancelled its municipal planning approval.

(2) An owner who is guilty of an offence in terms of this section is liable on conviction to a fine not exceeding R1 000 000 to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

**Offence by owner for failure to lodge deeds, plans and documents with Registrar of Deeds after cancellation or partial cancellation of municipal planning approval for subdivision or consolidation of land or township establishment**

126.(1) An owner is guilty of an offence, if the owner fails to ensure that all deeds, plans and other documents that the Registrar of Deeds required to update the records of the Registrar of Deeds that are affected by the cancellation or partial cancellation of a municipal planning approval for the subdivision or consolidation of land or township establishment are lodged with the Registrar of Deeds, within three months after the Surveyor-General updated the records of the Office of the Surveyor-General to reflect the partial cancellation or cancellation of municipal planning approval.

(2) An owner who is guilty of an offence in terms of this section is liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

## **CHAPTER 8 : COMPENSATION**

**Compensation arising from a proposal by a Municipality to zone a privately-owned land for a purpose which makes it impossible to develop any part thereof**

127.(1) If the Municipality zones land on its own accord for a purpose that makes it impossible for the land owner to develop any part thereof, the land owner may claim compensation from the Municipality—

- (a) within three years after the effective date of the Municipality's decision; and
- (b) to the extent to which the owner has not already received compensation for the loss of the use of the land.

(2) The Municipality may amend a provision of a land use scheme which prevents an owner from developing any part of his or her land, within six months after the owner has lodged a claim for compensation, in order to avoid being liable for payment of compensation.

(3) When the Municipality has compensated an owner of land under this section, it must take transfer of the land concerned.

**Compensation arising from removal, amendment or suspension of a condition of title**

128.(1) A person who has suffered any loss or damage, or whose land or real right in land has been adversely affected as a result of the removal, amendment or alteration of a condition of title in terms of this By-law, may claim compensation from the person who, at the time of the removal, amendment or suspension of the condition of title, was the owner of the other land that was burdened by the condition of title.

(2) A claim for compensation is limited to the extent to which the claimant has not already received compensation, and must be instituted within three years after the date of the alteration, suspension or deletion.

#### **Compensation arising from permanent closure of municipal road or public open space by Municipality**

129.(1) Any owner of land, who has suffered a loss or damage due to the closure of a municipal road or a public open space, may claim compensation from a Municipality.

(2) A claim for compensation—

(a) is limited to the extent to which the claimant has not already received compensation; and

(b) must be instituted within a period of three years after the date of the closure of the municipal road or public open space.

#### **No compensation for engineering services constructed before a municipal planning approval was obtained**

130. An applicant or external service provider does not have any claim against the Municipality for an engineering service that it constructed before a municipal planning approval was obtained.

#### **Amount of compensation**

131.(1) The amount of compensation must be agreed upon between—

(a) the claimant and the owner of the land for the benefit of which the restrictive condition of title or servitude was altered, suspended or deleted; or

(b) the claimant and the Municipality for any other claim in terms of this Chapter.

(2) In the event that the parties fail to conclude an agreement for compensation within one year, a court may determine the amount thereof.

### **CHAPTER 9 : PARTICIPATION OF TRADITIONAL LEADERS IN SPATIAL PLANNING AND LAND USE MANAGEMENT**

#### **Participation of participating traditional leaders in spatial planning and land use management**

132.(1) A municipality must co-opt participating traditional leaders to advise the Municipal Council on—

(a) the adoption and review of its spatial development framework;

(b) the amendment of its spatial development framework, if the amendment may affect a traditional community;

(c) the adoption and review of its land use scheme;

(2) Participating traditional leaders may advise the Municipal Council on the use of land, settlement patterns, land use, land tenure and customs in traditional communities.

(3) Participating traditional leaders may—

(a) attend and participate in any public meeting or hearing;

(b) make proposals, ask questions or address the Municipal Council, Municipal Planning Approval Authority or Municipal Planning Appeal Authority, on any matter referred to in subsection (1).



(4) The Municipal Council may invite any recognised traditional leader, in addition to participating traditional leaders, to address it on any matter on any matter referred to in subsection (1).

(5) The non-attendance or non-participation of a participating leader or other traditional leader that has been co-opted does not affect the validity any proceedings of the Municipal Council, Municipal Planning approval Authority or Municipal Planning Appeal authority.

### **Participation of traditional council in land development**

133.(1) A municipality must co-opt the traditional council, or if a traditional sub-council has been established for an area, the traditional sub-council—

(a) to advise the Municipal Council on the amendment of the land use scheme, if the amendment may affect a traditional community represented by the traditional council or traditional sub-council;

(b) to advise the Municipal Planning Approval Authority on an application for municipal planning approval, if the application may affect a traditional community represented by the traditional council or traditional sub-council; and

(c) to advise the Municipal Planning Appeal Authority on an appeal that may affect the traditional community represented by the traditional council or traditional sub-council.

(2) A traditional council or traditional sub-council may advise Municipal Planning Approval Authority or Municipal Planning Appeal Authority on the use of land, settlement patterns, land use, land tenure and the customs of the traditional community.

(3) A member of a traditional council or traditional sub-council may—

(a) attend and participate in any public meeting or hearing;

(b) make proposals, ask questions or address the Municipal Council, Municipal Planning Approval Authority or Municipal Planning Appeal Authority, on any matter referred to in subsection (1).

(5) The non-attendance or non-participation of a traditional council or traditional sub-council that has been co-opted does not affect the validity any proceedings of the Municipal Council, Municipal Planning Approval Authority or the Municipal Planning Appeal Authority

### **Proof of ownership in traditional area**

134. The traditional council, or if a traditional sub-council has been established for an area, the traditional sub-council, is responsible for providing proof of the allocation of land in terms of the customary law applicable in that traditional area to the applicant of an application for municipal planning.

## **CHAPTER 10 : SERVICE OF DOCUMENTS**

### **Service of documents**

135.(1) Any document that needs to be served, on any person or body, other than the Municipal Planning Registrar and Municipal Planning Appeal Authority Registrar, may be served—

(a) by delivering the document by hand to the person;

(b) by delivering the document by hand to a person who apparently is over the age of sixteen years and apparently resides or works at the physical address of the person;

(c) by electronic transmission of the document to the e-mail address or telefax number of the person;

- (d) by sending the document by registered post or signature on delivery mail to the person's postal address; or
  - (e) by affixing a copy of the document on the outer or principal door of the recipient's residence or place of business.
- (2) Service of a document is not invalid by virtue of an intended recipient not receiving a document, if—
- (a) the document was hand delivered to a person who apparently is over the age of sixteen years at a physical address of the intended recipient;
  - (b) the document was mailed to an e-mail address or transmitted to a telefax number of the intended recipient;
  - (c) the document was posted by registered mail or signature on delivery mail to a postal address of the intended recipient; or
  - (d) a copy of the document was affixed on the outer or principal door of at a residence or place of business of the recipient.
- (3) A notice to anyone who is a signatory to a joint petition or group representation, may be given to the—
- (a) authorised representative of the signatories if the petition or representation is lodged by a person claiming to be the authorised representative; or
  - (b) person whose name appears first on the document, if no person claims to be the authorised representative of the signatories.
- (4) A notice to a signatory to a joint petition or group representation constitutes notice to each person named in the joint petition or group representation.

### **Service of documents on Municipal Planning Registrar**

136. Any document that needs to be served on the Municipal Planning Registrar may be served—

- (a) by delivering the document by hand to the Municipal Planning Registrar or a Deputy Municipal Planning Registrar;
- (b) by successful electronic transmission of the document—
  - (i) to the e-mail address or telefax number of the Municipal Planning Registrar; or
  - (ii) to the e-mail address or telefax number of the Municipal Manager; or
- (c) by sending the document by registered post or signature on delivery mail—
  - (i) to the postal address of the Municipal Planning Registrar; or
  - (ii) to the postal address of the Municipal Manager.

### **Service of documents on Municipal Planning Appeal Authority Registrar**

137. Any document that needs to be served on the Municipal Planning Appeal Authority Registrar must be served—

- (a) by delivering the document by hand to the Municipal Planning Appeal Authority Registrar or a Deputy Municipal Planning Appeal Tribunal Registrar; or
- (b) by successful electronic transmission of the document—
  - (i) to the e-mail address or telefax number of the Municipal Planning Appeal Authority Registrar; or
  - (ii) to the e-mail address or telefax number of the Municipal Manager.

**Date of service of document**

138.(1) If a document has been served by delivering the document by hand to the addressee the date on which the document was delivered must be regarded as the date of service of the document.

**CHAPTER 11: INSTITUTIONAL****Part 1: Role of the executive authority of the municipality****Role of executive authority of municipality**

139.(1) The executive authority of a municipality must, in the compilation, approval and amendment of the municipality's municipal spatial development framework and land use scheme and determination of land development applications provide general policy and other guidance.

(2) The executive authority must, in providing policy and guidance as referred to in subsection (1) to the extent provided for in this By-law and other laws, monitor the implementation of its policies and guidance.

**Part 2: Function, establishment and constitution of Municipal Planning Approval Authority****The Municipal Planning Approval Authority**

140. The Municipal Planning Approval Authority comprises—

- (a) the Municipal Planning Authorised Officer
- (b) the Municipal Planning Tribunal; and
- (c) the Municipal Council.

**Function of Municipal Planning Authorised Officer**

141.(1) A Municipal Planning Authorised Officer must determine applications for municipal planning approval in terms of item 1 (1)(a) of Schedule 2.

**Appointment of Municipal Planning Authorised Officer**

142.(1) The Municipal Manager must in writing—

- (a) appoint a Municipal Planning Authorised Officer; or
- (b) determine that the incumbent of a particular post on the Municipality's post establishment shall be a Municipal Planning Authorised Officer.

(2) A Municipal Planning Authorised Officer—

- (a) must be a municipal official or a municipal official employed full time by another municipality; and
- (b) must be a Registered Planner.

(3) The Municipality may have as many Municipal Planning Authorised Officers as it requires.

**Function of Municipal Planning Tribunal or Joint Municipal Planning Tribunal**

143. A Municipal Planning Tribunal or a Joint Municipal Planning Tribunal must determine applications for municipal planning approval in terms of Item 1(1)(b) and (c) of schedule 2.

**Establishment of Municipal Planning Tribunal or Joint Municipal Planning Tribunal**

144.(1) The Municipal Council must establish—

- (a) a Municipal Planning Tribunal; or
- (b) a Joint Municipal Planning Tribunal.

(2) The Municipal Council may consider the following factors when deciding to establish a Municipal Planning Tribunal or to participate in the establishment of a Joint Municipal Planning Tribunal—

- (a) the impact of this By-law on its financial, administrative and professional capacity;
- (b) its ability to effectively implement the provisions of Chapter 4;
- (c) the average number of applications for municipal planning approval that it deals with annually; and
- (d) the development pressures in the Municipality.

(3) If the Municipality does not have capacity to implement the provisions of Chapter 4 of this By-law, it is an indication that it should be establishing a Joint Municipal Planning Tribunal.

(4) If the Municipal Council decided to establishment a Joint Municipal Planning Tribunal, it must enter into a written agreement with the other participating municipalities, including the District Municipality, in accordance with Chapter 3 of the Inter-governmental Relations Framework Act, 2005 (Act No 13 of 2005).

(5) An agreement to establish a Joint Municipal Planning Tribunal must at least address the matters set out in Schedule 1.

(6) An agreement to establish a Joint Municipal Planning Tribunal may provide for joint invitations in terms of sections 146(1) or joint notifications in terms of section 150.

(7) The provisions of sections 145 to 153 apply with the necessary changes to a Joint Municipal Planning Tribunal.

### **Appointment and composition of Municipal Planning Tribunal**

145.(1) The Municipal Planning Tribunal consists of five or more members, who, by reason of their integrity, qualifications, expertise and experience are suitable for membership.

(2) The Municipal Planning Tribunal must comprise of persons from the following categories—

- (a) officials in the full-time service of the Municipality; and
- (b) persons who are not municipal officials.

(3) A member of the Municipal Planning Tribunal members who is not a municipal official may be—

- (a) an official or employee of any national or provincial organ of state;
- (b) an official or employee of organised local government in KwaZulu-Natal; or
- (c) a person drawn from the private sector.

(4) A member of the Municipal Planning Tribunal who is drawn from the private sector must, subject to section 146(2), be—

- (a) a Registered Planner;
- (b) an attorney or advocate;
- (c) persons registered in a category in terms of section 20(3) of the Natural Scientific Professions Act, 2003 (Act No 27 of 2003) within the field of environmental science;
- (d) a person registered in a category in terms of section 18(1)(a) of the Engineering Profession Act, 2000, (Act No 46 of 2000);
- (e) a person registered in a category in terms of section 18(1)(a) of the Architectural Profession; and
- (f) a person registered in terms of section 13(1)(d) of the Geomatics Professions Act as a as a Land Surveyor.

(5) A person is not disqualified from serving on a Municipal Planning Tribunal by virtue of the fact that he or she—

- (a) does not reside or is not employed in the area of the Municipality concerned; or
- (b) serves on another Municipal Planning Tribunal.

(6) If the Municipality is of the opinion that it necessary to appoint additional or new members or a new Chairperson or a new Deputy-Chairperson, it may make additional or new appointments.

(7) The procedure for the appointment of Municipal Planning Tribunal members must be followed for the appointment of new or additional members or a new Chairperson or a new Deputy-Chairperson.

(8) New or additional members will serve for the unexpired period of office of the Municipal Planning Tribunal to which he or she is appointed.

### **Drawing persons from private sector to serve on the Municipal Planning Tribunal**

146.(1) If the Municipality intends to appoint persons drawn from the private sector to serve on the Municipal Planning Tribunal, the Municipal Manager —

- (a) must by notice in a newspaper call on interested persons who qualify to apply for appointment; or
- (b) may request the professions' controlling bodies to call on interested persons who qualify to apply for appointment.

(2) If there is no or insufficient response to the notices calling on interested persons who qualify to apply for appointment, the Municipality may by notice in a newspaper call on interested persons who do not meet the requirements of section 145(4), but who has extensive knowledge of land use planning and development to apply for appointment.

(3) The Municipality must establish an evaluation panel consisting of officials in the service of the Municipality to evaluate nominations received in response to the call for nominations.

(4) The Municipality must consider the evaluation panel's recommendations when it appoints members drawn from the private sector who to serve on the Municipal Planning Tribunal.

(5) The Municipality may only appoint members drawn from the private sector who have responded to the invitation to serve on the Municipal Planning Tribunal.

### **Disqualifications for Municipal Planning Tribunal membership**

147. A person is disqualified from appointment as a member if he or she—

- (a) is a member of the Municipal Planning Appeal Authority;
- (b) is an un-rehabilitated insolvent;
- (c) is declared incapable of managing his or her own affairs by a court of law or under curatorship;
- (d) is a member of Parliament, the provincial legislature, a Municipal Council or a House of Traditional Leaders, or if that person is nominated as a member of Parliament, the provincial legislature, a Municipal Council or a House of Traditional Leaders;
- (e) has at any time been removed from an office of trust on account of misconduct involving theft or fraud;
- (f) fails to disclose an interest in terms of section 50 (1),
- (g) attended or participated in the proceedings of the Tribunal while having such interest; or
- (h) is convicted by a court of law of—
  - (i) perjury, theft, fraud, bribery or corruption or any other offence involving dishonesty;

- (ii) any offence under this By-law; or
- (iii) any other offence for which he or she was sentenced to imprisonment without the option of a fine for a period longer than six months.

### **Chairperson and Deputy Chairperson of Municipal Planning Tribunal**

148.(1) The Municipality must designate a Chairperson and a Deputy Chairperson for a Municipal Planning Tribunal from the members who are Registered Planners, attorneys or advocates.

(2) A Deputy Chairperson of a Municipal Planning Tribunal must act in the place of the Chairperson of a Municipal Planning Tribunal whenever—

- (a) the office of the Chairperson is vacant; or
- (b) the Chairperson is absent or for any other reason temporarily unable to exercise his or her powers.

(3) If the office of a Deputy Chairperson of a Municipal Planning Tribunal is vacant, or if a Deputy Chairperson is unable to act as Chairperson, the Municipality must designate one of the remaining members who are Registered Planners, attorneys or advocates.

### **Terms and conditions of appointment of Municipal Planning Tribunal members**

149.(1) A member holds office for a period of five years, or such shorter period as the Municipal Council may determine in the member's letter of appointment.

(2) A member holds office on the terms and conditions determined by the Municipality in accordance with any national norms and standards determined by the Minister of Rural Development and Land Reform in terms of section 37(2) of the Spatial Planning and Land Use Management Act.

(3) A member who is drawn from the private sector must—

- (a) be remunerated and reimbursed from funds appropriated for that purpose by the Municipality;
- (b) be remunerated at a daily rate, as determined by the Municipality; and
- (c) be reimbursed for travelling and subsistence expenses reasonably incurred.

### **Notification of the appointment of a Municipal Planning Tribunal**

150. Notice of the appointment of members to a Municipal Planning Tribunal must be published in the Gazette and in a newspaper announcing—

- (a) that it has established a Municipal Planning Tribunal;
- (b) the names of the persons that it has appointed to a Municipal Planning Tribunal, including the Chairperson and Deputy Chairperson;
- (c) the date from which applications for municipal planning approval can be lodged for consideration by the Municipal Planning Tribunal; and
- (d) where and with whom applications for municipal planning approval can be lodged.
- (e) if the Municipality has established a Joint Municipal Planning Tribunal, also—
  - (i) the names of the participating municipalities;
  - (ii) where a copy of the written agreement between the participating municipalities may be obtained.

### **Resignation and removal from office and filling of vacancies**

151.(1) A member may resign from the Municipal Planning Tribunal in writing by giving not less than 30 days' written notice to the Municipal Manager.



- (2) The Municipality may remove a member from the Municipal Planning Tribunal—
- (a) if that person is unable to exercise or perform the powers associated with the office of a Municipal Planning Tribunal member due to physical disability or mental illness;
  - (b) for failing to exercise or perform the powers attached to the office of a Municipal Planning Tribunal member diligently and efficiently; or
  - (c) for misconduct.
- (3) Any member of the Municipal Planning Tribunal who, subsequent to his or her appointment, becomes disqualified in terms of section 147 ceases immediately upon such disqualification being established to be a member of the Municipal Planning Tribunal.
- (4) A member must vacate office if he or she is absent without a leave of absence having first been granted by the Chairperson of the Municipal Planning Tribunal from two consecutive meetings of the Tribunal for which reasonable notice was given to that member.

### **Constitution of Municipal Planning Tribunal for Decision Making**

152.(1) The Chairperson of a Municipal Planning Tribunal, in consultation with the Municipal Planning Registrar, must refer an application for municipal planning approval to at least three members of the Municipal Planning Tribunal designated by the Chairperson for the purposes of—

- (a) deciding an application; or
  - (b) making a recommendation on a an application to the Municipality.
- (2) At least one of the members to whom an application for municipal planning approval has been referred to must be a Registered Planner.
- (3) At least one of the members to whom an application for municipal planning approval has been referred to must be an official in the full-time service of the Municipality.
- (4) At least one of the members to whom an application for municipal planning approval has been referred to must be a person who is not a municipal official.
- (5) The Chairperson of the Municipal Planning Tribunal must designate one of the members to whom an application for municipal planning approval has been referred to, to be the Presiding Officer.
- (6) A member designated includes the Chairperson himself or herself for the purposes of designating members or designating a Presiding Officer.

### **Decision of Municipal Planning Tribunal**

- 153.(1) A recommendation or decision on an application for municipal planning approval is decided by a majority of the members designated by the Chairperson of a Municipal Planning Tribunal in terms of section 152 (1) to make a recommendation or decision on the application.
- (2) The Presiding Officer has a casting vote in the event of an equality of votes.
- (3) The Presiding Officer must sign the decision of the Municipal Planning Tribunal.



### **Part 3: Function, establishment and constitution of Municipal Planning Appeal Authority**

#### **Function of Municipal Planning Appeal Authority**

154. (1) The Municipal Planning Appeal Authority must decide appeals against decisions on applications for municipal planning approval that have been decided by a Municipal Planning Authorised Officer or a Municipal Planning Tribunal.

(2) Issue an order directing the municipality to perform an action within a period determined by it, if an appeal is before it as a result of a municipality's failure to observe a period in section 34 (2) and 34 (6).

#### **Establishment of Municipal Planning Appeal Authority**

155.(1) A Municipal Council must establish a Municipal Planning Appeal Authority.

(2) A Municipal Council may—

(a) appoint the executive authority of the municipality as the Municipal Planning Appeal Authority;

(b) appoint a Municipal Planning Appeal Tribunal consisting of—

(i) officials of the municipality,

(ii) officials from another municipality, including a district municipality;

(iii) officials from another organ of state, including national government, provincial government or a public enterprise;

(iv) persons from private sector; or

(v) any combination of persons referred to in subparagraph (i) to (v), who have knowledge and experience of spatial planning, land use management, land development, building control, engineering services, land surveying or the law related thereto as the municipal planning appeal

authority; or

(c) appoint one or more officials in the employ of the municipality as the Municipal Planning Appeal Authority.

(3) A Municipal Council may appoint more than one Municipal Planning Appeal Authority.

(4) If a Municipal Council has appointed more than one Municipal Planning Appeal Authority it must determine which categories of appeals must be determined by which Municipal Planning Appeal Authority.

(5) If a Municipal Council has not appointed a Municipal Planning Appeal Authority, the executive authority of the municipality shall be the Municipal Planning Appeal Authority.

(6) If a Municipal Council has—

(a) appointed the executive authority of the municipality as the Municipal Planning Appeal Authority; or

(b) appointed an official in the employ of the municipality who does not have knowledge and experience of spatial planning, land use management or land development as the Municipal Planning Appeal Authority, the Municipal Council must appoint an Adviser with knowledge and experience of spatial planning, land use management and land development to assist the Municipal Planning Appeal Authority to determine an appeal.

(7) A member of a Municipal Planning Tribunal, a Municipal Planning Officer or Adviser that determined or assisted with the determination of an application for municipal planning approval may not determine or assist with the determination of an appeal on the same application.

### **Presiding Officer for Municipal Planning Appeal Authority**

156. (1) If the Municipality has appointed its executive authority as the Municipal Planning Appeal Authority or has not appointed a Municipal Planning Appeal Authority, the presiding officer shall be—

- (a) the Executive Mayor of the Municipality;
- (b) the Chairperson of the Executive Committee of the Municipality; or
- (c) the Chairperson of the Committee of Councillors, if the Municipality does not have an Executive Committee or Executive Mayor.

(2) If the Municipality has appointed a Municipal Planning Appeal Authority—

- (a) the Chairperson of the Municipal Planning Appeal Tribunal; or
- (b) if the Chairperson is not available, a member of the Municipal Planning Appeal Tribunal designated by the Municipal Manager as the presiding officer, shall be the presiding officer of the Municipal Planning Appeal Tribunal.

(3) If the Municipality has appointed an official as the Municipal Planning Appeal Authority, the official shall be the presiding officer.

## **Part 4: Support for Municipal Planning Approval Authority and Municipal Planning Appeal Authority**

### **Function of Municipal Planning Registrar and Deputy Municipal Planning Registrar**

157.(1) The Municipal Planning Registrar must provide administrative support to the Municipality's municipal planning approval authorities.

(2) A Deputy Municipal Planning Registrar must—

- (a) assist the Municipal Planning Registrar; and
- (b) act as the Municipal Planning Registrar, whenever—
  - (i) the office of Municipal Planning Registrar is vacant; or
  - (ii) the Municipal Planning Registrar is absent or for any other reason temporarily unable to exercise his or her powers.

### **Appointment of the Municipal Planning Registrar and Deputy Municipal Planning Registrar**

158.(1) The Municipal Manager must—

- (a) appoint a Municipal Planning Registrar; or
- (b) determine that the incumbent of a particular post on the Municipality's establishment shall be a Municipal Planning Registrar.

(2) The Municipal Manager may—

- (a) appoint a Deputy Municipal Planning Registrar; or
- (b) determine that the incumbent of a particular post on the Municipality's establishment shall be a Deputy Municipal Planning Registrar.

(3) The Municipal Manager may appoint as many municipal planning registrars and deputy municipal planning registrars as the municipality may require and may appoint different

registrars for the Municipal Planning Approval Authority and the Municipal Planning Appeal Authority.

(4) A Municipal Planning Registrar or a Deputy Municipal Planning Registrar must be municipal employees.

(5) If the Municipal Manager has not appointed a Municipal Planning Registrar and Deputy Municipal Planning Registrar as contemplated in this section, he or she must perform the functions of a Municipal Planning Approval and Appeal Authority Registrar.

#### **Function of Adviser**

159. An Adviser must advise and assist the Municipal Planning Approval Authority or Municipal Planning Appeal Authority to make a decision on an application for municipal planning approval.

#### **Appointment of Adviser**

160.(1) A Municipal Planning Approval Authority or Municipal Planning Appeal Authority may co-opt the services of an Adviser.

(2) An Adviser may be appointed on an ad hoc basis or for such period as the Municipality may decide and upon such terms and conditions as may be agreed with the Adviser.

(3) An Adviser is not a member of the Municipal Planning Approval Authority or Municipal Planning Appeal Authority and has no voting rights.

(4) The Municipality may remunerate an Adviser who is not a national, provincial or municipal official.

### **Part 5: Independence, conflict of interest, liability and indemnity**

#### **Independence of Municipal Planning Approval Authority and Municipal Planning Appeal Authority**

161.(1) The Municipal Planning Approval Authority and Municipal Planning Appeal Authority must exercise their powers in an independent manner, free from governmental or any other outside interference or influence, and in accordance with the highest standards of integrity, impartiality, objectivity and professional ethics.

(2) No person, Municipality or organ of state may interfere with the functioning of the Municipal Planning Approval Authority and Municipal Planning Appeal Authority.

#### **Declaration of Interest**

162.(1) A Municipal Planning Authorised Officer, member of the Municipal Planning Tribunal, member of the Municipal Council, member of a Municipal Planning Appeal Tribunal, municipal official to whom the power to decide an appeal in terms of this By-law have been delegated, Municipal Planning Registrar, Deputy Municipal Planning Registrar, Municipal Planning Appeal Authority Registrar or Deputy Municipal Planning Appeal Authority Registrar must, within 10 days of being appointed, submit a written declaration to the Municipal Manager—

(a) declaring his or her financial or other interests in the planning sector or related sectors which may be in conflict with their appointment;

(b) declaring financial or other interests in development undertaken by family members and close associates in the Municipality; and

(c) declaring any conviction for a Schedule 1 offence in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

- (2) If a person's interest status changes, he or she must, within 10 days of the date the change of status, submit a written declaration of the change to the Municipal Manager.
- (3) The Municipal Manager must keep a register of the interests disclosed.

### **Holding more than one office simultaneously**

163.(1) The same person may simultaneously hold more than one of the following offices—

- (a) Municipal Planning Authorised Officer;
- (b) Municipal Planning Registrar;
- (c) Deputy Municipal Planning Registrar; and
- (d) member of the Municipal Planning Tribunal.

(2) It does not constitute a conflict of interest if a person serves as a Municipal Planning Authorised Officer and—

- (a) Municipal Planning Registrar or Deputy Municipal Planning Registrar; or
- (b) Municipal Planning Appeal Authority Registrar or Deputy Municipal Planning Appeal Authority Registrar, on the same application for municipal planning approval.

(3) It does not constitute a conflict of interest if a person serves as member of the Municipal Planning Tribunal and—

- (a) the Municipal Planning Registrar or Deputy Municipal Planning Registrar;
- (b) Municipal Planning Appeal Authority Registrar or Deputy Municipal Planning Appeal Authority Registrar, on the same application for municipal planning approval.

(4) It does not constitute a conflict of interest for a person to serve as member of the Municipal Planning Tribunal to decide or make a recommendation on an application for municipal planning approval in the capacity as both a Registered Planner and an official in the full-time service of the Municipality.

(5) It does not constitute a conflict of interest for a person to serve as member of the Municipal Planning Tribunal to decide or make a recommendation on an application for municipal planning approval in the capacity as both a Registered Planner and as a person who is not a municipal official.

(6) It constitutes a conflict of interest if a person serves as a member of the Municipal Planning Approval Authority and the Municipal Planning Appeal Authority.

(7) It constitutes a conflict of interest if a person serves as an Authorised Municipal Planning Official or a member of the Municipal Planning Tribunal and the Municipal Planning Registrar or Deputy Municipal Planning Registrar for the Municipal Planning Appeal Authority on the same application for municipal planning approval.

(8) It constitutes a conflict of interest if a person serves as an Authorised Municipal Planning Official or a member of the Municipal Planning Tribunal and an Adviser for the Municipal Planning Appeal Authority on the same application for municipal planning approval.

### **Recusal**

164.(1) A Municipal Planning Authorised Officer, member of the Municipal Planning Tribunal, member of the Municipal Council, municipal official to whom the power to decide an appeal in terms of this By-law have been delegated, Municipal Planning Registrar, Deputy Municipal Planning Registrar or Adviser may not be present or participate in a matter in which—

- (a) he or she; or
- (b) his or her spouse, immediate family, business associate, employer (other than the Municipality) or employee, has any interest, whether pecuniary or otherwise.

(2) A member of the Municipal Planning Tribunal who has been designated by the Chairperson of the Municipal Planning Tribunal to make a recommendation on or decide an application for municipal planning approval or member of the Municipal Council must fully disclose the nature of an interest and recuse him or herself from the proceedings, if the member becomes aware of the possibility of having a disqualifying interest in an application.

(3) The recusal of a member of the Municipal Planning Tribunal or Municipal Council does not affect the validity of the proceedings conducted before the Municipal Planning Tribunal, Municipal Council or Executive Authority of the Municipality before the recusal, and the remaining members of the Municipal Planning Tribunal designated by the Chairperson of the Municipal Planning Tribunal, Municipal Council or Executive Authority of the Municipality are competent to make the recommendation or to decide the application or appeal, as long as the recusal occurs before

the members of the Municipal Planning Tribunal, Municipal Council or Executive Authority of the Municipality adjourn to deliberate their decision.

(4) In the event that the Presiding Officer recuses him or herself, the Chairperson of a Municipal Planning Tribunal must designate another member who is a Registered Planner, attorney or advocate as Presiding Officer for the duration of the proceedings before the Tribunal

#### **Liability of Municipal Planning Approval Authority, Municipal Planning Appeal Authority and their support staff**

165. The Municipal Planning Approval Authority and Municipal Planning Appeal Authority, a member thereof and their support staff are not liable in respect of any legal proceedings in relation to an act performed in good faith in terms of this By-law.

#### **Legal indemnification**

166.(1) If a claim is made or legal proceedings are instituted against a member of the Municipal Planning Approval Authority or Municipal Planning Appeal Authority or their support staff arising out of any act or omission by the member or support staff in the performance of his or her duties or the exercise of his or her powers in terms of this By-law, the Municipality must, if it is of the opinion that the person acted in good faith and without negligence—

(a) if a civil claim or civil proceedings is instituted against the person—

(i) indemnify the person in respect of such claim or proceedings; and

(ii) provide legal representation for the person at the cost of the Municipality or pay taxed party and party costs of legal representation.

(b) if a criminal prosecution is instituted against the person, provide for legal representation for the person at the cost of the Municipality.

(2) A member of the Municipal Planning Approval Authority or Municipal Planning Appeal Authority or their support staff has no legal indemnification if he or she, with regard to the act or omission, is liable in law and—

(a) intentionally exceeded his or her powers;

(b) made use of alcohol or drugs;

(c) did not act in the course and scope of his or her employment, designation or appointment;

(d) acted recklessly or intentionally;

(e) made an admission that was detrimental to the Municipality; or

(f) failed to comply with or ignored standing instructions, of which he or she was aware of or could reasonably have been aware of, which led to the loss, damage or reason for the claim.

(3) The Municipality may determine by means of a policy or by other means—

(a) the terms and conditions of such indemnity and legal representation; and

(b) circumstances in addition to the circumstances contemplated in this section in which indemnity or legal representation may be withdrawn by the Municipality.

## **CHAPTER 12 : DELEGATIONS AND AGENCY AGREEMENTS**

### **Agency agreement between municipalities for performance of functions in terms of Act**

167.(1) The Municipality may, after it has applied the criteria contemplated in section 78 of the Municipal Systems Act, enter into an agreement with one or more other municipalities, including the District Municipality, in terms of which the latter is to exercise, as the agent of the Municipality, any of its powers in terms of this By-law.

(2) An agency agreement must clearly specify the powers assigned to the agent municipality and the terms and conditions subject to which the powers must be exercised.

(3) A power exercised by an agent municipality in terms of an agency agreement must be regarded as a power exercised by the Municipality.

(4) The Municipal Manager must keep copies of agency agreements between municipalities for performance of functions in terms of this By-law.

### **Agency agreement with traditional council**

168.(1) The Municipality may enter into an agreement with a traditional council in terms of which the latter is to exercise, as the agent of the Municipality, any of its powers in terms of this By-law, except—

(a) a power which requires the person exercising it to have a specific qualification and registration with a profession's controlling body; and

(b) the power to decide an application for municipal planning approval.

(2) An agency agreement must clearly specify the powers assigned to the traditional council and the terms and conditions subject to which the powers must be exercised.

(3) A power exercised by a traditional council in terms of an agency agreement must be regarded as a power exercised by the Municipality.

(4) The Municipal Manager must keep copies of agency agreements between the Municipality and a traditional council for performance of functions in terms of this By-law.

### **Delegations by Municipality**

169.(1) The Municipal Council may not delegate the following powers—

(a) the power to decide an application for municipal planning approval for—

(i) the adoption of a land use scheme;

(ii) an amendment to a land use scheme that requires an amendment to the land use scheme clauses;



- (iii) the repeal of a land use scheme; or
    - (iv) a material change to the Municipal Council's decision to adopt a land use scheme or to amend the land use scheme clauses.
  - (b) the appointment of members of the Municipal Planning Tribunal;
  - (c) the determination of the conditions subject to which a member of the Municipal Planning Tribunal holds office;
  - (d) the removal of a member of the Municipal Planning Tribunal;
  - (e) the designation of a Chairperson and Deputy Chairperson the Municipal Planning Tribunal; and
  - (f) the designation of a Chairperson, if the Chairperson and Deputy Chairperson of the Municipal Planning Tribunal are unable to act.
- (2) A power conferred on—
- (a) a Municipal Planning Tribunal;
  - (b) Chairperson of a Municipal Planning Tribunal;
  - (c) Presiding Officer appointed by the Chairperson of a Municipal Planning Tribunal;
  - (d) a member of a Municipal Planning Tribunal who is a Registered Planner member, attorney or advocate;
  - (f) Tribunal Registrar; or
  - (g) Municipal Planning Authorised Officer; may not be delegated, unless the Act provides expressly otherwise.
- (3) A Municipality may delegate any power conferred on it in terms this By-law, other than the powers contemplated in subsections (1) and (2)—
- (a) to a committee of the Municipality established in terms of sections 60(1)(a), 61(2), 71 or 79(1)(a) of the Municipal Structures Act; or
  - (b) to an official employed by the Municipality.
- (4) A power or duty may—
- (a) be delegated to more than one functionary;
  - (b) be delegated to a named person or the holder of a specific office or position;
  - (c) be delegated subject to any conditions or limitations that the Municipality considers necessary; and
  - (d) at any time be withdrawn or amended in writing by the Municipal Council.
- (5) A delegation does not—
- (a) prevent the Municipal Council from exercising that power or performing the duty; or
  - (b) relieve the Municipal Council from being accountable for the exercise of the power or the performance of the duty.
- (6) An act performed by a delegated authority has the same force as if it had been done by the Municipal Council.
- (7) An act performed by a delegated authority, which was done within the scope of the delegation, remains in force and is not invalidated by reason of—
- (a) the Municipal Council electing afterwards to exercise that power or performing the function or duty; or



- (b) a later amendment or withdrawal of a delegation.
- (8) A delegation in terms of this section—
- (a) must be in writing;
  - (b) must include the following details—
    - (i) the matter being delegated; and
    - (ii) the conditions subject to which the delegation is made.
- (9) The Municipal Council may at any time amend the terms of a delegation, or revoke a delegation made in terms of this section.
- (10) A Municipal Manager must keep an updated record of all delegations in terms of this By-law.
- (11) Any act done in terms of a power conferred on the Municipality in terms of this By-law that is exercised without the necessary authority is voidable.

## **CHAPTER 13 : KEEPING OF RECORDS AND ACCESS TO INFORMATION**

### **Record of a land use scheme**

170. The Municipality's land use scheme clauses and map must be updated on 1 January and 1 July each year to show amendments to the land use scheme that have been made during the preceding six months.

### **Record of applications for municipal planning approval**

171.(1) The Municipality must keep a register of all applications for municipal planning approval.  
(2) The Municipality must keep copies of all documents to which the public has a right of access contemplated section 174 to 176.

### **Notice of approval of sectional title plan, diagram and general plan**

172. The Surveyor-General must notify the Municipality in writing within 14 days of the approval by the Surveyor General of the following plans—

- (a) a sectional plan in terms of section 7(4) of the Sectional Titles Act;
- (b) a sectional plan for the subdivision of consolidation of a section in terms of section 21(3) of the Sectional Titles Act;
- (c) a sectional plan for the extension of a section in terms of section 24(4) of the Sectional Titles Act;
- (d) a sectional plan for the extension of a scheme by the addition of sections and exclusive areas in terms of section 25(8) of the Sectional Titles Act;
- (e) a diagram or general plan approved in terms of section 6(1)(b) of the Land Survey Act;
- (f) a correction of a registered diagram that affects the extent of land in terms of section 36 of the Land Survey Act; or
- (g) an alteration or amendment of a general plan that effects the extent land in terms of section 37 of the Land Survey Act.

### **Notice of allocation of land in terms of the customary law**

173.(1) A traditional council must notify a Municipality in writing within 14 days of—

- (a) any allocation of land in terms of customary law; and
- (b) any re-allocation of land in terms of customary law.

- (2) A traditional council must provide a Municipality with the contact details of the person to whom the land has been allocated or re-allocated.

### **Access to information held by Municipal Planning Registrar**

174. The following records that are held by the Municipal Planning Registrar must be regarded as records that are automatically available as contemplated in section 15 of the Promotion of Access to Information Act—

- (a) the land use scheme contemplated in section 15;
- (b) an application for municipal planning approval contemplated in section 45 or municipal planning proposal by a Municipality contemplated in section 68;
- (c) proof that an applicant did give notice of an application for municipal planning approval contemplated in section 32 (1);
- (d) comments received by the Municipality in response to an invitation to comment on an application for municipal planning approval contemplated in section 32 (1);
- (e) the Municipal Planning Registrar's assessment of compliance of an application for municipal planning approval with the application process contemplated in section 34 (3)
- (d)
- (f) the Registered Planner's assessment and recommendation on an application for municipal planning approval contemplated in section 39(1);
- (g) the Municipal Planning Tribunal's recommendation on an application for municipal planning approval, if the application is an application—
  - (i) for the adoption of a land use scheme;
  - (ii) for an amendment to a land use scheme that requires an amendment to the land use scheme clauses;
  - (iii) for the repeal of a land use scheme; or
  - (iv) for a material change to a Municipal Council's decision to adopt a land use scheme or to amend the land use scheme clauses, contemplated in section 41;
- (h) the Municipal Planning Approval Authority's Record of Decision on an application for municipal planning contemplated in section 52(4); and
- (i) an applicant's waiver of the right to appeal against the Municipal Planning Approval Authority's decision on an application for municipal planning contemplated in section 55
- (a)(iii).

### **Access to information held by Municipal Planning Appeal Authority Registrar**

175. The following records that are held by the Municipal Planning Appeal Authority Registrar must be regarded as records that are automatically available as contemplated in section 15 of the Promotion of Access to Information Act—

- (a) a memorandum of appeal contemplated in chapter 6;
- (b) a responding memorandum contemplated in chapter 6;
- (c) a withdrawal of an appeal contemplated in chapter 6;
- (d) a withdrawal of a opposition to an appeal contemplated in chapter 6;
- (e) a subpoena requesting a person to testify or produce a document at a site inspection or an appeal hearing contemplated in chapter 6;
- (f) a subpoena requesting a person to lodge a document with the Municipal Planning Appeal Authority Registrar contemplated in chapter 6;
- (g) the collated appeal documents contemplated in chapter 6;
- (h) a notice of a site inspection contemplated in item chapter 6;

- (i) a notice of an appeal hearing contemplated in item chapter 6;
- (j) an application for the late lodging of a memorandum of appeal contemplated in chapter 6;
- (k) opposition to a late appeal contemplated in chapter 6;
- (l) a decision on an application for the late lodging of a memorandum of appeal contemplated in chapter 6;
- (m) an urgent application to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval contemplated in chapter 6;
- (n) opposition to an urgent application to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval contemplated in chapter 6;
- (o) a decision on an urgent application to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval contemplated in chapter 6;
- (p) a decision of the Municipal Planning Appeal Authority contemplated in section 99(4);
- (q) written reasons for a decision of the Municipal Planning Appeal Authority contemplated in section 100(1); and
- (r) a register of appeals contemplated in section 106(2).

#### **Access to information held by Municipal Manager**

176. The following records that are held by a Municipal Manager must be regarded as records that are automatically available as contemplated in section 15 of the Promotion of Access to Information Act—

- (a) a register of the interests of members of the Municipal Planning Approval Authority, Municipal Planning Appeal Authority and the Municipal Planning Enforcement Authority contemplated in section 162(3);
- (b) an agency agreement for performance of functions in terms of this By-law in terms of section 167(4); and
- (c) an updated record of all delegations in terms of this By-law contemplated in section 169(10).

### **CHAPTER 14 : GENERAL PROVISIONS**

#### **Duties, powers and functions of traditional council**

177.(1) A traditional council must provide input—

- (a) on the compilation of the land use scheme contemplated in section 15(1);
- (b) on applications for municipal planning approval within its area of jurisdiction as contemplated in section 45; and
- (c) on a proposal by the Municipality contemplated in section 68.

(2) A traditional council must facilitate and ensure the involvement of its community when providing its input.

#### **Declaration of land as land for the settlement in an unstructured manner by a traditional community.**

178.(1) The Municipality may declare land as land for the settlement in an unstructured manner by a traditional community, if—

- (a) the land is occupied or earmarked for occupation by three or more households;
  - (b) the households are settled on the land or will be settled on it in an unstructured manner;
  - (c) the majority of the households that are settled on the land or will be settled on it will not be able to afford to comply with the application process contemplated in Schedule 4; and
  - (d) the Municipality has designated the land in its Spatial Development Framework as land to which shortened land use development procedures apply as contemplated in section 21(l)(ii) of the Spatial Planning and Land Use Management Act.
- (2) The Municipality must map land declared as land for the settlement in an unstructured manner by a traditional community.
- (3) The Municipality must publish on its website—
- (a) its decision declare land as land for the settlement in an unstructured manner by a traditional community; and
  - (b) mapping showing land that it has declared as land for the settlement in an unstructured manner by a traditional community.

### **Calculation of number of days**

- 179.(1) If this By-law prescribes a period for performing an action, the number of days must be calculated by excluding the first day, and by including the last day, unless the last day happens to fall on a Saturday, Sunday or public holiday, in which case the first work day immediately following the Saturday, Sunday or public must be regarded as the last day of the period.
- (2) Days that a Municipality is officially in recess must be excluded from the period in which a Municipality must perform an action in terms of this By-law, if—
- (a) a Municipality did not delegate the power to perform the action; and
  - (b) the action must be performed in 120 days or less.
- (3) Days falling within the festive season period as determined by the Municipal Manager must be excluded from the period in which an applicant must perform an action in terms of Item 1 of schedule 5 of this By-law.

### **Effect of change of ownership of land to which an application for municipal planning approval relates**

- 180.(1) If a land, which is the subject of an application for municipal planning approval, is transferred to a new owner, the new owner may continue with the application as the legal successor-in-title of the previous owner.
- (2) A new owner must inform the Municipality in writing that he or she wishes to continue with an application for municipal planning approval and provide the Municipality with his or her contact details.

### **Ceding of rights associated with a person who commented on an application for municipal planning approval to new land owner**

- 181.(1) An owner who commented on an application for municipal planning approval by the closing date stated in the invitation contemplated in item 2(f) of Schedule 5 may, in writing, cede the rights conferred on a person who commented on an application to the new owner of his or her land.
- (2) The new owner must provide the applicant and Municipality with a copy of the agreement to cede the rights and his or her contact details.

**Application for leave to intervene in application for municipal planning approval or appeal**

182.(1) An person may apply in writing for leave to intervene in an existing application for municipal planning approval before the Municipal Planning Approval Authority or the Municipal Planning Appeal Authority.

(2) The Municipal Planning Approval Authority or the Municipal Planning Appeal Authority must consider the following matters when it decides an application for leave to intervene—

- (a) whether public consultation was required for the application for municipal planning approval;
- (b) whether the applicant for intervention was given notice of the application for municipal planning approval;
- (c) the applicant for intervention's motivation for the request to intervene;
- (d) the written consent of all the other parties to the application for municipal planning approval or appeal to agree to the party intervening, if they did consent to the party intervening;
- (e) prejudice that may be suffered by the applicant or any other person, including the public;
- (f) the applicant for intervention's prospects of success;
- (g) avoidance of unnecessary delay in the administration of justice;
- (h) the convenience of the Municipal Planning Approval Authority or Municipal Planning Appeal Authority;
- (i) if a party applies to intervene in an application for municipal planning approval, whether the applicant for intervention is the only person who wishes to comment on the application, or if there are other persons who also made similar comments on the application;
- (j) if a party applies to intervene in an appeal—
  - (i) whether the applicant for intervention is the only person who wishes to appeal against the decision of the Municipal Planning Approval Authority, or if there are other appellants that also appealed against the decision on similar grounds;
  - (ii) the importance of the appeal;
  - (iii) the applicant for intervention's interest in the outcome of the appeal; and
- (k) any other relevant factor.

(3) The Municipal Planning Appeal Authority or Municipal Planning Appeal Authority must—

- (a) approve; or
- (b) refuse, an application for leave to intervene.

(4) The Municipal Planning Appeal Authority or the Municipal Planning Appeal Authority may limit a person who applied for intervention's participation to the issues in which the person's interest has been established in its decision to grant leave to intervene.

(5) If a person was granted leave to intervene in an application for municipal planning approval, the person must submit written comment on the application to the Municipal Planning Approval Authority in the manner and by the date determined by the Municipality in its decision to grant leave to intervene.

(6) If a person was granted leave to intervene in an appeal, the person must participate in the appeal proceedings in the manner determined by the Municipal Planning Appeal Authority in its decision to grant leave to intervene.

(7) A person who was granted leave to intervene in an application for municipal planning approval must be regarded as a person who commented on the application when the public was consulted, irrespective of whether or not public consultation was required for the application.

**Transitional arrangements and savings**

183. Schedule 9 applies to the transition from the old legislative order to the new legislative order.

**Short title**

184. This By-law is called the Msunduzi Municipality Spatial Planning and Land Use Management By-law, 2021.

**SCHEDULE 1****MATTERS THAT MUST BE ADDRESSED IN AN AGREEMENT TO ESTABLISH A JOINT MUNICIPAL PLANNING TRIBUNAL**

Matters that must be addressed in an agreement to establish a Joint Municipal Planning Tribunal

1. An agreement between the Municipal Council and any other municipalities to establish a Joint Municipal Planning Tribunal should at least provide for the following—

- (a) the names of the participating municipalities;
- (b) the rights, obligations and responsibilities of each of the participating municipalities;
- (c) how the Joint Municipal Planning Tribunal will be funded;
- (d) how Municipal Planning Registrars and Deputy Municipal Planning Registrars will be appointed and function;
- (e) how the following functionaries will be elected—
  - (i) the Municipal Planning Tribunal members;
  - (ii) the Chairperson of the Municipal Planning Tribunal;
  - (iii) the Deputy Chairperson of the Municipal Planning Tribunal;
- (f) how the participating municipalities will publish legal notices, including—
  - (i) the notice calling for the persons to serve on the Joint Municipal Planning Tribunal;
  - (ii) the notice confirming the appointment of the members of the Joint Municipal Planning Tribunal;
- (g) how and where records will be kept, including—
  - (i) a register of applications for municipal planning approval decided by the Joint Municipal Planning Tribunal in terms of section 171(1);
  - (ii) documents to which the public has a right of access in terms of sections 174 to 176; and
  - (iii) a register of interests disclosed by members of the Joint Municipal Planning Tribunal, Municipal Planning Registrars and Deputy Municipal Planning Registrars in terms of section 162(3);
- (h) how application fees will be determined and managed;
- (i) where applications for municipal planning approval must be lodged;
- (j) how a participating Municipality will be informed that an appeal against a decision for a development in its area has been lodged with the Municipal Planning Appeal Authority Registrar;
- (k) the administrative support and office accommodation for the Joint Municipal Planning Tribunal, if necessary; and
- (l) the legal implications of the withdrawal of a participating Municipality from the Joint Municipal Planning Tribunal.

## **SCHEDULE 2**

### **CATEGORISATION OF APPLICATIONS FOR DECISION BY THE MUNICIPAL PLANNING APPROVAL AUTHORITY**

Categorisation of applications for municipal planning approval

1.(1) Applications for municipal planning approval must be decided by—

- (a) a Municipal Planning Authorised Officer;
  - (b) the Chairperson of the Municipal Planning Tribunal or a member of the Tribunal authorised by the Chairperson to do so;
  - (c) the Municipal Planning Tribunal; or
  - (d) the Municipal Council,
- in accordance with this schedule.

(2) If a development requires both an application for municipal planning approval that must be decided by a Municipal Planning Authorised Officer and an application for municipal planning approval that must be decided by the Municipal Planning Tribunal, the Municipal Planning Tribunal must decide both applications.

(3) If a development requires both an application for municipal planning approval that may be decided by a Municipal Planning Authorised Officer and an application for municipal planning approval that must be decided by the Municipal Council, the Municipal Planning Tribunal must decide the application that could have been decided by the Municipal Planning Authorised Officer.

(4) If a development requires both an application for municipal planning approval that must be decided by a Municipal Planning Tribunal and an application for municipal planning approval that must be decided by the Municipal Council, then each must decide the application submitted to it separately, subject to section 50(2).

(5) A Municipal Planning Authorised Officer may, at any time, refer an application for municipal planning approval to a Municipal Planning Tribunal, if the Municipal Planning Authorised Officer is of the opinion that it warrants a decision by a Municipal Planning Tribunal—

- (a) due to the complexity of the application, or
- (b) due to the divisive nature of opinion on the application.

(6) The time frames in which an action must be completed are not affected by the referral of an application for municipal planning approval by a Municipal Planning Authorised Officer to the Municipal Planning Tribunal.

(7) An application for municipal planning approval that must be decided by a Municipal Council may not be decided by any other person or body.

(8) An application for—

- (a) a material change to the Municipality's decision on an application for municipal planning approval; or
- (b) the cancellation of the Municipality's decision on an application for municipal planning approval, except a decision to adopt or amend land use scheme, must be decided by the Municipal Planning Approval Authority that made the original decision for municipal planning approval.



Application Category	Type of Application	Approving Authority
1	the establishment of a township or the extension of the boundaries of a township	Municipal Planning Tribunal
1	the amendment of an existing scheme or land use scheme by the rezoning or reservation of land.	Municipal Planning Tribunal
1	The removal, amendment or suspension of a restrictive or obsolete condition, servitude or reservation registered against the title of the land.	Municipal Planning Tribunal
1	the amendment or cancellation in whole or in part of a general plan of a township	Municipal Planning Tribunal
1	the subdivision and consolidation of any land other than a subdivision and consolidation which is provided for as a Category 2 application	Municipal Planning Tribunal
1	permanent closure of a municipal road or a public place;	Municipal Planning Tribunal
1	any consent or approval provided for in a provincial law	Municipal Planning Tribunal
1	tying adjacent pieces of land by way of a notarial deed	Municipal Planning Tribunal
1	a material change to a Municipal Planning Approval Authority decision on an application for municipal planning approval	Municipal Planning Tribunal
1	Where applicable, the cancellation of a Municipal Planning Approval Authority decision on an application for municipal planning approval	Municipal Planning Tribunal
1	the phasing or cancellation of approved layout plans for subdivision or development of land	Municipal Planning Tribunal
1	Development applications located outside the land use scheme that require specialist studies.	Municipal Planning Tribunal
1	The establishment of a township or the extension of the boundaries of a	Municipal Planning Tribunal

	township	
1	Amendment, phasing or cancellation of subdivision plan approved in terms of other planning legislation;	Municipal Planning Tribunal
1	Amendment or cancellation in whole or in part of a general plan of a township;	Municipal Planning Tribunal
Category	Type of application	Approving Authority
2	A municipality's consent in terms of the land use scheme.	Authorised Official
2	the subdivision of any land where such subdivision is expressly provided for in a land use scheme.	Authorised Official
2	the consolidation of any land where such subdivision is expressly provided for in a land use scheme.	Authorised Official
2	the simultaneous subdivision and consolidation of land where such is expressly provided for in a land use scheme.	Authorised Official

2	Development applications located outside the land use scheme that will not require specialist studies.	Authorised Official
2	The extension of a sectional title scheme by the addition of land to the common property in terms of section 26 of the Sectional Titles Act.	Authorised Official
2	A material change to a Municipal Planning Approval Authority's decision on an application for municipal planning approval.	Authorised Official
2	Where applicable, the cancellation of a Municipal Planning Approval Authority's decision on an application for municipal planning approval.	Authorised Official
2	Development applications that do not require Public consultation as prescribed under item 7 to 10 of schedule 5 of this By-law.	Authorised Official
2	Temporary departure from the land use scheme	Authorised Official
2	Exemption of subdivisions and consolidations	Authorised Official
2	Application for a dwelling on land demarcated for the settlement in an unstructured manner by a traditional community.	Authorised Official
2	The extension or replacement of a non-residential building on land that is situated outside the area of a land use scheme, notwithstanding that municipal planning approval was not required at the time that the use of the original building for that purpose commenced;	Authorised Official
2	Application for a dwelling on land demarcated for the settlement in an unstructured manner by a traditional community.	Authorised Official
<b>Category</b>	<b>Type of application</b>	<b>Approving Authority</b>
3	Adoption of the land use scheme	Municipal Council
3	Amendment to the land use scheme	Municipal Council

3	Repeal of the land use scheme	Municipal Council
3	Review of the land use scheme	Municipal Council
3	Material change to a Municipal Council's decision to adopt the land use scheme or to amend the land use scheme clauses.	Municipal Council
3	a material change to a Municipal Planning Approval Authority's decision on an application for municipal planning approval	Municipal Council
3	Where applicable, the cancellation of a Municipal Planning Approval Authority's decision on an application for municipal planning approval	Municipal Council
3	An amendment to the land use scheme to correct a spelling error, update a property description, update a reference to a law, person, institution, place name or street name or correct an error that occurred when rights were recorded in the land use scheme;	Municipal Council

Category	Type of application	Approving Authority
N/A	An amendment to a Municipal Planning Approval authority's Record of Decision to correct an error in the wording of the decision, correct a spelling error, update a property description, or update a reference to a law, person, institution, place name or street name;	Relevant Municipal Approval Authority
N/A	A non-material amendment to a decision on an application for municipal planning approval;	Relevant Municipal Approval Authority
N/A	A material amendment to a decision on an application for municipal planning approval;	Relevant Municipal Approval Authority
N/A	The cancellation of a Municipality's decision on an application for municipal planning approval, except a decision to adopt or amend a land use scheme; and	Relevant Municipal Approval Authority
N/A	Amendment, phasing or cancellation of subdivision plan approved in terms of the SPLUMA Act;	Relevant Municipal Approval Authority

**\*Notes:**

1. Tribunal can be made as follows:

- (a) All category 1 applications and all opposed category 2 applications must be referred to the Municipal Planning Tribunal.
- (b) All category 2 applications that are not opposed must be considered and determined by the authorised official.

**SCHEDULE 3**

### **ACTIVITIES IN AREAS SITUATED OUTSIDE THE AREA OF A LAND USE SCHEME THAT REQUIRE MUNICIPAL PLANNING APPROVAL**

#### **Development of land situated outside the area of a land use scheme**

1.(1) Where no land use scheme applies to a piece of land, such land may only be used for the purpose for which it was lawfully used or could lawfully have been used immediately before the commencement of this By-law.

(2) A person who may make a land development application may apply to change the purpose for which land that is situated outside the area of a land use scheme may be used, subject to the provisions of Chapter 4.

#### **Activities that require municipal planning approval outside the area of a land use scheme**

2. Municipal planning approval for development outside the area of a land use scheme is required but not limited to the following activities—

- abattoir
- adult premises
- agricultural or forestry building
- airport
- betting shop
- bus depot
- caravan park
- car wash
- casino
- cemetery
- court room

crematorium  
dairy  
day care centre  
dormitory  
educational building  
escort agency  
factory  
fast food drive-through  
fire station  
funeral parlour  
government subsidised dwelling  
health facility  
kennels  
launderette  
mining operation  
mortuary  
multiple dwellings  
office  
overnight accommodation establishment  
paper mill  
parking lot  
petroleum production operation  
place of public entertainment  
place of public assembly  
place of safety  
police station  
power generation plant  
prison  
recreational building  
restaurant  
retirement home  
saw mill  
scrap-metal yard  
service industry  
service station  
shop  
shopping mall  
sugar mill  
tannery  
tavern  
taxi rank  
telecommunication mast  
train station  
vehicle repair workshop  
vehicle scrap-yard  
vehicle showroom  
veterinary clinic

warehouse  
water bottling plant

### Land use definitions

3. In this Schedule—

**"abattoir"** means a building used for the slaughtering of animals with a production of 50 or more units of poultry per day or 6 or more units of red meat and game per day;

**"adult premises"** means a building used for the distribution of adult films and publications contemplated in section 24 of the Films and Publications Act, 1996 (Act No. 65 of 1996);

**"agricultural or forestry building"** means—

(a) a building or buildings on the same land that is used for the concentration of animals for the purpose of commercial production or sale—

(i) that is 400m<sup>2</sup> or more in extent or that together are 400m<sup>2</sup> or more in extent;  
or

(ii) that is 8 metres or more in height;

(b) a building or buildings on the same land that is used for the cultivation, processing, packaging, storage or sale of crops, flowers or trees—

(i) that is 400m<sup>2</sup> or more in extent or that together are 400m<sup>2</sup> or more in extent;  
or

(ii) that is 8 metres or more in height; and

(c) a building or buildings on the same land that is used for the storage of farm and forestry vehicles and implements—

(i) that is 400m<sup>2</sup> or more in extent or that together are 400m<sup>2</sup> or more in extent;  
or

(ii) that is 8 metres or more in height;

**"airport"** means a tract of levelled land where aircraft can take off and land, equipped with a hard-surfaced landing strip and a control tower;

**"betting shop"** means a building used to handle bets on races and other events;

**"bus depot"** means a building or land where three or more buses load and unload passengers;

**"caravan park"** means land for the accommodation of more than one caravan or mobile homes;

**"car wash"** means a building or land used for the cleaning of vehicles for commercial gain;

**"casino"** means a casino as defined in section 1 of the KwaZulu-Natal Gaming and Betting Act, 2010 (Act No. 8 of 2010);

**"cemetery"** means an area of land that is 1000m<sup>2</sup> or more in extent, used for burying the dead;

**"child care centre"** means a building used for the daily accommodation and care of 6 or more children under 18 years of age in the absence of their parents or guardians;

**"court room"** means a building in which the proceedings of a court of law are held;

**"crematorium"** means a building or furnace used for burning human or animal bodies to ashes;

**"dairy"** means an area of a building that is 100m<sup>2</sup> or more in extent, used for the production and processing of milk;

**"day care centre"** means a building used for the care of 6 or more children under 18 years of age during the daytime absence of their parents or guardians;

**"dormitory"** means a building used in conjunction with an educational building for living quarters for seven or more students;

**"educational building"** means a building used as a university, college, technical institute, school, academy, research laboratory, lecture hall, convent, monastery, public library, public art gallery or museum;

**"escort agency"** means a building used to provide an escort service for sexual services;

**"factory"** means an area of a building that is 100m<sup>2</sup> or more in extent or an area of land that is 100m<sup>2</sup> or more in extent, used for the manufacturing of goods;

**"fast food drive-through"** means a building used for the sale of food and beverages to customers who remain in their vehicles;

**"fire station"** means a building that houses a fire brigade;

**"funeral parlour"** means a building used for the purpose of funeral management and the sale of coffins and tombstones;

**"government subsidised dwelling"** means a dwelling that is funded or partially funded with funds from the Integrated Residential Development Programme, the Upgrading of Informal Settlements Programme, the Rural Housing Subsidy: Communal Land Rights, or a similar programme of an organ of state, irrespective of where the dwelling is situated;

**"health facility"** means a building used by a health agency or a health establishment as defined in section 1 of the National Health Act for the care and treatment of human illness, including a hospital, clinic and doctor's consulting room;

**"kennels"** means the use of land for the keeping of four or more dogs, cats, or other small domestic animals for financial gain;

**"launderette"** means a building used for the purpose of washing and drying clothing and household fabrics for financial gain;

**"mining operation"** means the processing of any mineral as defined in section 1 of the Mineral and Petroleum Resources Development Act on, in or under the earth, water or residue deposit, whether by underground or open working or otherwise—

(a) if a mining right contemplated in section 22 of the Mineral and Petroleum Resources Development Act is required or has been granted for the operation, but processing has not commenced by 10 October 2008, or

(b) if a mining right has been granted in terms of a repealed law for the operation, but processing has not commenced by 10 October 2008;

**"mortuary"** means a building where dead bodies are kept and prepared before burial or cremation;

**"multiple dwellings"** means—

(a) a second dwelling on land—

(i) that is 80m<sup>2</sup> or more in extent, or

(ii) that is a distance of 20m or more away from the first dwelling on the same land;

(b) three or more dwellings on the same land;

(c) a block of flats or hostel,

unless the land has been declared by the Municipality as land for the settlement in an unstructured manner by a traditional community contemplated in section 135(1);

**"nursing home"** means a building used for the accommodation and care of persons with chronic illness or disability, including persons with mobility and eating problems;



**"office"** means an area of a building used for consultations with clients, administration, or clerical services that is 100m<sup>2</sup> or more in extent;

**"place for overnight accommodation"** means a building where three or more bedrooms are used for the overnight accommodation of guests for financial gain, including a bed and breakfast, a guesthouse, a lodge or a hotel;

**"paper mill"** means a building used for producing paper and cardboard from timber;

**"parking lot"** means a building or land used for the parking or storage of ten or more motorcars or bakkies, or two or more buses or trucks, excluding -

(a) the parking and storage of vehicles used for farming, forestry, game viewing or conservation on a farm or in an area that has been declared a protected in terms of the KwaZulu-Natal Nature Conservation Management Act, 1997 (Act No. 9 of 1997); or

(b) the parking of vehicles in designated parking areas that have been provided in accordance with requirements for a development approval in terms of any planning law;

**"petroleum production operation"** means a production operation as defined in section 1 of the Mineral and Petroleum Resources Development Act—

(a) for which a production right contemplated in section 84 of the Mineral and Petroleum Resources Development Act is required or has been granted, but production has not commenced by 10 October 2008; or

(b) for which a production right has been granted in terms of a repealed law, but production has not commenced by 10 October 2008;

**"place of public assembly"** means a building used for social gatherings, religious purposes or indoor

recreation by 50 or more persons;

**"place of public entertainment"** means a building used for public entertainment and includes a night club, theatre, cinema, music hall, amusement-arcade, skating-rink, race track, sports arena, exhibition hall, billiards room and fun fair;

**"police station"** means a building that houses the police force;

**"power generation plant"** means land, a building or equipment used for the generation of electric energy from an energy source like fossil fuel, gas, wind, water or solar energy—

(a) with an electricity output of more than 10 megawatts; or

(b) a total extent that covers an area in excess of 1 hectare;

**"prison"** means a building used for the confinement of detained persons;

**"recreational building"** means a building used for a gymnasium or clubhouse;

**"restaurant"** means a building used for the preparation and sale of food, confectionery and beverages for consumption on the premises;

**"retirement home"** means a building used for living quarters for more than seven persons who are 65 years or older;

**"saw mill"** means a building used for producing planks and boards from timber;

**"scrap-metal yard"** means a building or land used for the collection of metal objects for recycling purposes;

**"service industry"** means an area of a building that is 100m<sup>2</sup> or more in extent or an area of land that is 100m<sup>2</sup> or more in extent, used for the repair, recycling, cleaning or packaging of



goods that are not manufactured or produced on the land or the transport of goods that are not manufactured or produced on the land;

**"service station"** means a building used for the sale of fuel for vehicles;

**"shop"** means an area of a building that is 30m<sup>2</sup> or more in extent or an area of land that is 30m<sup>2</sup> or more in extent, used for the sale or hire of goods;

**"shopping mall"** means an enclosed building containing a variety of stores connected by common pedestrian passageways that is used for shopping, including the sale of groceries, food, clothes, cosmetics, jewellery, books, music, toys, sport equipment, camping equipment, cell phones, household appliances, décor and furniture and provision of services, including a bank, hairdresser, pharmacy, optometrist, laundrette, pet shop, movie house, video-hire, internet café and workshop for the repair of shoes or cell phones;

**"sugar mill"** means a building used for the production of sugar from sugar cane and the processing of sugar;

**"tannery"** means a building where skins and hides are tanned;

**"tavern"** means a building that is used for the sale of alcoholic beverages to be consumed on the premises and "bar" and "pub" have a corresponding meaning;

**"taxi rank"** means a building or land where three or more taxis load or unload passengers;

**"telecommunication mast"** means a mast that is 15 metres or taller that is used to support an antennae for communicating television radio, or telephone signals;

**"train station"** means a building or land operated by Transnet where trains load or unload passengers or goods;

**"vehicle repair workshop"** means a building used for the repair of vehicles;

**"vehicle scrap-yard"** means a building or land used for the dismantling of vehicles or the storage of wrecked vehicles;

**"vehicle showroom"** means a building used for the sale of vehicles;

**"veterinary clinic"** means a building where animals are given medication or surgical treatment and are cared for during the time of such treatment for financial gain;

**"warehouse"** means an area of a building that is 100m<sup>2</sup> or more in extent, used for the storage of goods, excluding the storage of farm implements on a farm;

**"water bottling plant"** means a building used for the bottling of natural water for financial gain.

#### **SCHEDULE 4**

#### **MATTERS RELATING TO MUNICIPAL PLANNING APPROVAL**

##### **Relationship between municipal planning approval and Integrated Development Plans**

1.(1) An Integrated Development Plan does not confer any rights on a person or exempt a person from the need to obtain municipal planning approval.

(2) The Municipal Planning Approval Authority must be guided and informed by the Integrated Development Plans applicable in the Municipality as contemplated in section 35(1) of the Municipal Systems Act when it decides an application for municipal planning approval.

(3) The Municipal Planning Approval Authority may refuse an application for municipal planning approval, even if the application conforms to the Integrated Development Plans applicable in the Municipality.

(4) The Municipal Planning Approval Authority may not approve an application for municipal planning approval that is inconsistent with an Integrated Development Plan applicable in the Municipality, except as provided in item 2(5).

(5) For the purposes of subsection (4) "inconsistent" means—

(a) that the Integrated Development Plan prohibits the use or development of the land for the purpose or in the manner proposed in the application for municipal planning approval;

(b) that the Integrated Development Plan proposes that the land should be used or developed for a purpose or in a manner that is irreconcilable with the application for municipal planning approval; or

(c) that the use or development of land is dependent on—

(i) an engineering service; or

(ii) a level of capacity of an engineering service, that, according to the Integrated Development Plan, the Municipality or another service provider will not be providing in the area in which the land is located.

(6) The municipality may amend its Integrated Development Plan in terms of section 34(b) of the Municipal Systems Act in order to reconcile it with an application for municipal planning approval.

(7) The municipality may approve an amendment to its Integrated Development Plan in order to reconcile it with an application for municipal planning approval subject to a condition—

(a) that the amendment will only take effect on the effective date of the approval for the application for municipal planning approval; and

(b) that the amendment will lapse, if the application for municipal planning approval is refused.

### **Relationship between municipal planning approval and spatial development frameworks**

2.(1) A spatial development framework does not confer any rights on a person or exempt a person from the need to obtain municipal planning approval.

(2) The Municipal Planning Approval Authority must be guided and informed by the spatial development frameworks applicable in the Municipality as contemplated in section 35(1) of the Municipal Systems Act and section 12(2)(b) of the Spatial Planning and land Use Management Act when it decides an application for municipal planning approval.

(3) The Municipal Planning Approval Authority may refuse an application for municipal planning approval, even if the application conforms to a spatial development framework applicable in the Municipality.

(4) The Municipal Planning Approval Authority may not approve an application for municipal planning approval that is inconsistent with a national, provincial or regional spatial development framework applicable in the Municipality.

(5) The Municipal Planning Approval Authority may not approve an application for municipal planning approval that is inconsistent with a municipal spatial development framework applicable in the Municipality, unless there are sitespecific circumstances that justifies a departure from it.

(6) For the purposes of subsections (4) and (5) "inconsistent" means—

- (a) that the spatial development framework prohibits the use or development of the land for the purpose or in the manner proposed in the application for municipal planning approval;
  - (b) that the spatial development framework proposes that the land should be used or developed for a purpose or in a manner that is irreconcilable with the application for municipal planning approval; or
  - (c) that the use or development of land is dependent on—
    - (i) an engineering service; or
    - (ii) a level of capacity of an engineering service, that, according to the spatial development framework, the Municipality or another service provider will not be providing in the area in which the land is located.
- (7) For the purposes of subsection (5) "site-specific circumstances" means—
- (a) unique access to engineering services or low or no impact on engineering services;
  - (b) unique access to public or private social facilities or low or no impact on public or private social facilities;
  - (c) unique low or no impact on the environment, including the natural environment, visual intrusion, noise levels and smell; or
  - (d) unique topography; which justifies a departure from the municipal spatial development framework.
- (8) A departure from a municipal spatial development framework must be recorded in the municipal spatial development framework when it is reviewed as contemplated in section 34 of the Systems Act.
- (9) A Municipal Council may amend its spatial development framework as contemplated in section 20(3) of the Spatial Planning and Land Use Management Act in order to reconcile it with an application for municipal planning approval.
- (10) The Municipal Council may approve an amendment to its spatial development framework in order to reconcile it with an application for municipal planning approval subject to a condition—
- (a) that the amendment will only take effect on the effective date of the approval for the application for municipal planning approval; and
  - (b) that the amendment will lapse, if the application for municipal planning approval is refused.

### **Relationship between land use scheme and other municipal planning approvals**

- 3.(1) If any part of a municipality is covered by a land use scheme, the Municipal Planning Approval Authority must zone the land that is the subject of an application to change the use of the land in order to incorporate the land into the land use scheme.
- (2) The Municipal Planning Approval Authority may zone land that situated outside the area of a land use scheme for the same purpose or a different purpose than the purpose for which it was lawfully used or could lawfully have been used immediately before the commencement of this By-law.

(3) If no part of the Municipality is covered by a land use scheme, the Municipal Planning Approval Authority may approve an application for the development of land situated outside the area of the land use scheme without zoning the land.

(4) The Municipal Planning Approval Authority may not approve the subdivision of land or consolidation of land in conflict with the provisions of the land use scheme.

(5) An approval for the subdivision or consolidation of land or establishment of a township in conflict with the provisions of the land use scheme is invalid.

### **Relationship between municipal planning approval and other approvals**

4.(1) Municipal planning approval does not absolve an applicant from the need to obtain any other statutory approval for the activity.

(2) A provision of a sectional plan in terms of section 1 of the Sectional Titles Act that is in conflict with the provisions of the land use scheme or an approval in terms of this By-law is inoperative for as long as the conflict remains.

(3) The Municipality or any other organ of state may not approve a building plan that is in conflict with—

- (a) the Municipality's land use scheme;
- (b) municipal planning approval for—
  - (i) consent in terms of a land use scheme;
  - (ii) the development of land that is situated outside the area of a land use scheme;
  - (iii) the subdivision of land;
  - (iv) the consolidation of land;
  - (v) the notarial tying of adjacent land;
  - (vi) township establishment;
  - (vii) the permanent closure of a municipal road or a public place; or
  - (viii) the removal, amendment or suspension of a condition of title relating to use or development of land.

(4) Building plan approval that is in conflict with—

- (a) the Municipality's land use scheme;
- (b) municipal planning approval for—
  - (i) consent in terms of a land use scheme;
  - (ii) the development of land that is situated outside the area of a land use scheme;
  - (iii) the subdivision of land;
  - (iv) the consolidation of land;
  - (v) the notarial tying of adjacent land;
  - (vi) township establishment;
  - (vii) the permanent closure of a municipal road or a public place; or
  - (viii) the removal, amendment or suspension of a condition of title relating to use or development of land;
- (c) a condition of title relating to use or development of land; or
- (d) a conservation servitude imposed by the KwaZulu-Natal Nature Conservation Board, is invalid.

(5) If an activity requires both municipal planning approval and building plan approval, municipal planning approval

must be obtained before building plan approval may be granted.

**Responsibility for and standard of engineering services**

5.(1) The applicant must satisfy the Municipal Planning Approval Authority that it has made adequate arrangements for the provision of engineering services.

(2) Engineering services must comply with the municipality's standards, guidelines, design manuals, engineering practices and approved policies.

(3) The Municipality may enter into a service agreement with the applicant, land owner or an external services

provider for the classification, construction, phasing, funding, design, standard and maintenance of an engineering service.

(4) The service agreement must determine who is responsible for the provision of the engineering service and the extent of every party's responsibility.

(5) An applicant may construct engineering services in phases provided that—

(a) it is phased in accordance with a phasing plan;

(b) the phasing plan is approved by the Municipal Planning Approval Authority and forms part of its Record of Decision.

**Engineering services in excess of the requirements of development**

6.(1) If necessary for the future growth of the Municipality's in accordance with its long-term plans, the Municipality may require an applicant to provide an engineering service in excess to the capacity required to serve the development that is the subject of an application for municipal planning approval.

(2) If the Municipality requires an applicant to provide an engineering service in excess to the capacity required to serve the development that is the subject of an application for municipal planning approval, the applicant shall only be liable for the costs of constructing the engineering services for which he or she is responsible and to the extent that the engineering service is required to serve the development that is the subject of the application for municipal planning approval.

**Guarantee for the construction and maintenance of engineering services**

7.(1) The Municipality may require a performance, defect liability or maintenance guarantee from an applicant in terms of a service agreement.

(2) A performance, defect liability or maintenance guarantee is irrevocable during its period of validity.

(3) An applicant may request the release of a defect liability or maintenance guarantee 12 months from the date upon which the Municipality certified that the services have been constructed to its satisfaction.

(4) The Municipality may release a performance, defect liability or maintenance guarantee if it is satisfied that the applicant has disposed of his or her obligations for the provision of an engineering service.

**Construction of engineering services**

8.(1) An applicant or external service provider may not commence with the construction of an engineering service in anticipation that an application for municipal planning approval will be approved.

(2) An applicant must obtain the Municipality's approval for the detail design of an engineering service before commencing with the construction thereof.

(3) An applicant or external service provider may not proceed with the construction of an engineering service if an approval for municipal planning approval has been cancelled or has lapsed.

(4) The owner of land that is traversed by an engineering service that must be provided in accordance with a condition of an application for municipal planning approval must—

(a) allow access to the land at any reasonable time for the purpose of constructing, altering, removing or inspecting the engineering service; and

(b) permit the deposit of material on the land or excavation of the land to create a safe slope between the level of the land and the level of the road, unless he or she elects to build a retaining wall at his or her own cost to the Municipality's satisfaction.

**Provision of land for social facilities, open spaces, conservation and other purposes for the benefit of the public or a community**

9. Public and private social facilities, open space, conservation areas or any other areas for the benefit of the public or a community must be included in the land that is the subject of an application for municipal planning approval but may be provided elsewhere within the municipal area, at the discretion of the organ of state or entity responsible for the administration of the facility or activity.

**Alignment of and co-ordination of processes and procedures of different organs of state**

10.(1) A Municipal Council must consult any organ of state responsible for administering legislation relating to any aspect of an activity that also requires approval in terms of this By-law in order to coordinate activities and give effect to the respective requirements of such legislation, and to avoid duplication.

(2) A Municipal Council, in giving effect to Chapter 3 of the Constitution, may, after consultation with the organ of state contemplated in subsection (1), enter into a written agreement with that organ of state to avoid duplication in the submission of information or the carrying out of a process relating to any aspect of an activity that also requires authorisation under this By-law.

(3) After a Municipal Council has concluded an agreement contemplated in subsection (2), the Municipal Planning Approval Authority may take account of any process authorised under the legislation covered by that agreement as adequate for meeting the requirements of this By-law.

**SCHEDULE 5 : PUBLIC NOTICE****Methods of public notice**

1. (1) An applicant must give notice of an application for municipal planning approval in a newspaper that the Municipality has determined as its newspaper of record contemplated in section 21(1)(b) of the Municipal Systems Act, on a day of the week that the Municipality has determined as its day of the week for the publication of notices in terms of this By-law, and in a



language which it has determined in terms of section 21(2) of the Municipal Systems Act as its official language.

(2) Convene a public meeting to inform the public of an application for municipal planning approval.

(3) Make a copy of the application available for inspection at a prominent place.

(4) Display a notice on the land or at another other conspicuous and easily accessible place, the number and location of which must be determined by the Municipal Planning Registrar.

(5) Serve a notice on—

(a) the owner of adjacent land, if it is not governed by a body corporate or a land owners association;

(b) the Chairperson of a body corporate that governs adjacent properties who must serve the notice on the members of the body corporate who may be affected by the application;

(c) the Chairperson of a land owners association of adjacent properties who must serve the notice on the members of the land owners association who may be affected by the application;

(d) the holder of a servitude registered against the land that may be affected by the application;

(e) a person in whose favour a condition of title is registered against the land that may be affected by the application;

(f) the Municipal Councillor of the ward in which the land is situated;

(g) traditional leaders or other community leaders; or

(h) any other person who may in the opinion of the Municipality have an interest in an application for municipal planning approval.

### **Contents of public notice**

2. A notice inviting the public or a person to comment on an application for municipal planning approval must—

(a) identify the land to which the application relates—

(i) by stating the physical address of the land, or, if the land has no physical address, by providing a description of its location; and

(ii) by giving the property description;

(b) state the purpose of the application;

(c) state that a copy of the application and its accompanying documents will be open for inspection by interested members of the public during the hours and at the place mentioned in the notice;

(d) invite members of the public to cause written comments to be lodged with the contact person stated in the notice;

(e) state how the comments may be lodged;

(f) state the date by when the comments must be lodged, which date may not be earlier than 30 days, excluding public holidays, after the date that the notice is published, served or displayed;

(g) state that a person's failure so to submit comments in response to the notice or to include contact details, disqualifies the person from the right to receive personal notice of any hearing and the right to appeal; and

- (h) state that persons who lodged comments before in response to the application do not have to do so again, if notice was given before of the same application.

**Joint public notice for an application for municipal planning approval and an application for environmental authorisation**

- 3.(1) An applicant may give notice of both an application for municipal planning approval and an application for environmental authorisation in the same notice.
- (2) A joint notice must state that it is a notice in terms of both section 32 (1) of this By-law and regulations 54 to 57 of the Environmental Impact Assessment Regulations.
- (3) A joint notice must comply with the provisions of item 2 of this Schedule and regulations 54 to 57 of the Environmental Impact Assessment Regulations.

**Joint public notice for an application for municipal planning approval and an application for a mining right**

- 4.(1) An applicant and a Regional Manager contemplated in section 8 or a designated agency contemplated in section 70 of the Mineral And Petroleum Resources Development Act may give notice of both an application for municipal planning approval and an application for a mining right in the same notice.
- (2) A joint notice must state that it is a notice in terms of both section 32(1) of this By-law and regulation 3(3) of the Mineral and Petroleum Resources Development Regulations.
- (3) A joint notice must comply with the provisions of item 2 of this Schedule and regulation 3 of the Mineral and Petroleum Resources Development Regulations.

**Joint public notice for an application for municipal planning approval and an application to register as a manufacturer or distributor of liquor**

- 5.(1) An applicant may give notice of both an application for municipal planning approval and an application to register as a manufacturer or distributor of liquor in the same notice.
- (2) A joint notice must state that it is a notice in terms of both section 32 (1) of this By-law and section 13(2)(b) of the Liquor Act.
- (3) A joint notice must comply with the provisions of item 2 of this Schedule and section 13(2)(b) of the Liquor Act.

**Joint public notice for an application for municipal planning approval and an application for the retail sale of liquor for consumption or licence for the micro-manufacture of liquor**

- 6.(1) An applicant may give notice of both an application for municipal planning approval and an application for—
  - (a) a licence for the retail sale of liquor for consumption; or
  - (b) to operate as a micro-manufacturer of liquor, in the same notice.
- (2) A joint notice must state that it is a notice in terms of both section 32 (1) of this By-law and section 42(1)(b) of the KwaZulu-Natal Liquor Licensing Act.
- (3) A joint notice must comply with the provisions of item 2 of this Schedule and section 42(1)(b) of the KwaZulu- Natal Liquor Licensing Act.

**Public consultation not required for certain applications to subdivide land, to establish a township, to consolidate land, to notarially tie land, to amend common boundaries or to extend a sectional title scheme by the addition of land to common property**

7. Public consultation is not required for an application -

- (a) for the subdivision of land that is situated inside the area of a land use scheme, where no change in land use is required;
- (b) for the subdivision of a property as a result of an encroachment or a boundary adjustment that has been resolved by way of an written agreement or an order of court; or
- (c) for the consolidation of land, notarial tying of adjacent properties or the extension of a sectional title scheme by the addition of land to common property in terms of section 26 of the Sectional Titles Act, unless it will affect an existing servitude or requires the registration of a new servitude.
- (d) If the subdivision or consolidation arises from an expropriation;
- (e) for the subdivision of land in order to transfer ownership to a municipality or other organ of state;
- (e) If the land to be consolidated all have the same zoning and do not contain conditions of title restricting the consolidation;
- (f) for a minor amendment of the common boundary between two or more land parcels if the resulting if the resultant subdivision complies with the land use scheme.

**Public consultation not required for certain applications to remove, amend or suspend a restrictive condition of title or servitude**

8.(1) Public consultation is not required for an application for the removal, amendment or suspension of a restrictive condition of title or servitude –

- (a) if the restrictive condition of title or servitude was imposed as a condition of approval for –
  - (i) an application for the subdivision of a property that is situated inside the area of a land use scheme and the land use land use scheme does not require public notice for the subdivision of properties in accordance with the land use land use scheme;
  - (ii) an application for the subdivision of a property as a result of an encroachment or a boundary adjustment that has been resolved by way of an order of court;
  - (iii) an application for the consolidation of properties that do not affect an existing servitude or required the registration of a new servitude; or
- (b) if the restrictive condition of title or servitude is in favour of a specified person or an entity and that person or entity has consented in writing to the removal, amendment or suspension of the restrictive condition of tile or servitude.

(2) If it is not clear from a Municipality's decision if the removal, amendment or suspension of a condition of approval or a condition of title requires public consultation, notice must be given of the application.

**Public consultation not required for application relating to public service infrastructure**

9. Public consultation is not required for an application –

- (a) to amend a land use scheme to provide for public service infrastructure or to zone land for public service infrastructure purposes, unless the land use scheme expressly provides otherwise; or
- (b) for the subdivision or consolidation of land situated outside the area of a land use scheme for the proposes of constructing public service infrastructure.
- (c) to create private roads, municipal roads, local roads or district roads when land is subdivided in accordance with the purpose for which it has been zoned in a land use scheme, unless the land use scheme expressly provides otherwise

**Public consultation not required for application for state owned social service infrastructure that existed prior to 1 May 2010**

10. Public consultation is not required for an application –

- (a) to amend a land use scheme to accommodate a hospital, clinic, nursing home, home for the aged, place of safety, university, technical institute, college, school, library, day care centre, place of public assembly, sports ground, public open space, office, police station, fire station, court room, prison, train station, bus depot, taxi rank, mortuary, cemetery, or crematorium, if the facility meets all of the following requirements –

- (i) the facility was in operation on the property before 1 May 2010;
- (ii) the facility is located on land which is owned by an organ of state;
- (iii) the operation of the facility is administered by an organ of state; and
- (iv) the purpose of the application is to record the existing facility in accordance with its existing foot print in the Municipality's scheme.

- (b) for the subdivision or consolidation of land situated outside the area of a land use scheme to accommodate a hospital, clinic, nursing home, home for the aged, place of safety, university, technical institute, college, school, library, day care centre, place of public assembly, sports ground, public open space, office, police station, fire station, court room, prison, train station, bus depot, taxi rank, mortuary, cemetery, or crematorium, if the facility

meets all of the following requirements –

- (i) the facility was in operation on the property before 1 May 2010;
- (ii) the facility is located on land which is owned by an organ of state;
- (iii) the operation of the facility is administered by an organ of state; and
- (iv) the purpose of the application is to record the existing facility in accordance with its existing foot print in the Municipality's scheme; or

- (c) for the development of land situated outside the area of a land use scheme for the extension of a school, if school meets all of the following requirements –

- (i) the school was in operation on the land before 1 May 2010;
- (ii) the school is located on land which is owned by an organ of state; and
- (iii) the school is administered by the KwaZulu-Natal Department of Education.

**Some forms of notice not required**

11. (1) A notice in a local newspaper is not required if an application for municipal planning approval is an application –

- (a) for the consent in terms of the land use scheme to relax a building line, provided that consent from all adjacent property owners has been obtained;
- (b) for a Municipality's consent in terms of a land use scheme to permit a home activity, provided that consent from all adjacent property owners has been obtained;
- (c) for the subdivision of land that is used for agricultural purposes, if the subdivided land will continue to be used for agricultural purposes;
- (d) for the consolidation of land that is situated outside the area of a land use scheme
- (e) for the removal, amendment or suspension of a restrictive condition of title or a servitude, unless the condition is in favour of the general public or reserves land for a public place or a public road;
- (f) for the removal, amendment or suspension of a condition of title that imposes a servitude in favour of an organ of state for the provision of storm-water drainage, water supply, sewerage, electricity, gas or fuel supply, telecommunications, or radio and television services, along any boundary of a property;
- (g) for the removal, amendment or suspension of a condition of title that imposes a servitude for the provision of storm-water drainage, water supply, sewerage, electricity, gas or fuel supply, telecommunications, or radio and television services, along any boundary of a property, that is not in favour of a specified person or entity;
- (h) for the cancellation of a Municipality's decision.
- (i) An amendment to the land use scheme to correct a spelling error, update a property description, update a reference to a law, person, institution, place name or street name or correct an error that occurred when rights were recorded in the land use scheme;

(2) The display of a notice on the land is not required if an application for municipal planning approval is an application –

- (a) for a general amendment of a land use scheme and it is impractical to display notices on all the affected properties;
- (b) for a Municipality's consent in terms of a land use scheme to relax a building line;
- (c) for the subdivision of land that is used for agricultural purposes, if the subdivided land continues to be used for agricultural purposes;
- (d) for the consolidation of land that is situated outside the area of a land use scheme;
- (e) for the removal, amendment or suspension of a restrictive condition of title or a servitude, unless the condition is in favour of the general public or reserves land for a public place or a public road;
- (f) for the removal, amendment or suspension of a condition of title that imposes a servitude; or
- (g) for the cancellation of a Municipality's decision.

(3) An applicant may request a Municipality to convene a public meeting to inform the public of an application for municipal planning approval instead of giving personal notice –

(a) if an application is an application for a general amendment of a land use scheme and it is impractical to serve notice on all the parties who in the opinion of a Municipality may have an interest in the matter; or

(b) if due to the size or shape of a property, or the nature of a condition of title registered against a property, personal notice must be given to all the adjoining property owners and any other person who may in the opinion of

the municipality have an interest in an application for municipal planning approval.

(4) Only personal notice to the owner of an affected property is required for –

(a) an application for the consolidation of land that affects an existing servitude or requires the registration of a new servitude;

(b) an application for the removal, amendment or suspension of a restrictive condition of title or servitude, if the condition of title was registered or the servitude was created as a result of an application for municipal planning approval, and the removal, amendment or suspension of the condition or servitude will affect an existing servitude or requires the registration of a new servitude; and

(c) an application for the cancellation of a Municipality's decision.

## **SCHEDULE 6**

### **PROCEDURE FOR AMENDING AN APPLICATION OR DECISION FOR MUNICIPAL PLANNING APPROVAL AND CANCELLATION OF MUNICIPAL PLANNING APPROVAL**

Application for an amendment to an application for municipal planning prior to notice of decision on the main application

1.(1) An applicant may apply to amend an application for municipal planning approval on his or her own initiative or at the request of the Municipal Planning Approval Authority.

(2) A Municipal Planning Approval Authority may instruct an applicant to—

(a) give written notice of an amendment to an application for municipal planning approval to a person who responded in writing to the invitation to comment on the application for municipal planning approval; or

(b) to repeat the giving of notice process, if, in the opinion of the Municipal Planning Approval Authority, the amendment to the application constitutes a material change to the application.

(3) Comments received by the Municipal Planning Registrar in response to the original invitation to comment on an application for municipal planning approval remain valid, if the giving of public notice process is repeated.

**Application for an amendment to a Municipal Planning Approval Authority's Record of Decision to correct an error in the wording of the decision, correct a spelling error, update a property description, or update a reference to a law, person, institution, place name or street name**



2.(1) A person contemplated in section 22 may apply for an amendment to the wording of a Municipal Planning Approval Authority's Record of Decision in order to—

- (a) correct an error in the wording of the decision;
- (b) rectify a spelling error;
- (c) reflect the correct designation of the land by the Surveyor General;
- (d) update a reference to a law, person, functionary, organ of state, or an institution; or
- (e) update a reference to a street or place name.

(2) The Municipal Planning Registrar must refer an application for a correction to a Municipal Planning Approval Authority's Record of Decision to the Municipal Planning Approval Authority within 14 days after the application was served on him or her.

(3) An application for a correction to a Municipal Planning Approval Authority's Record of Decision must be decided—

- (a) by a Municipal Planning Authorised Officer or the Chairperson of a Municipal Planning Tribunal, within 30 days after the application was referred to him or her;
- (b) by the Municipal Council, within 60 days after the application was referred to it.

(4) A Municipal Planning Approval Authority must—

- (a) approve, including partly approve; or
- (b) refuse,

an application for a correction to the Record of Decision.

(5) A Municipal Planning Approval Authority may not change its decision to approve or refuse an application for municipal planning approval when it approves an application to correct an error or update a reference.

**Application for an amendment to the land use scheme to correct an error in the wording of the decision, correct a spelling error, update a property description, or update a reference to a law, person, institution, place name or street name**

3.(1) A person contemplated in section 22 may apply for an amendment to the wording of a the land use scheme in order to—

- (a) correct an error in the wording of the decision;
- (b) rectify a spelling error;
- (c) reflect the correct designation of the land by the Surveyor General;
- (d) update a reference to a law, person, functionary, organ of state, or an institution; or
- (e) update a reference to a street or place name.

(2) The Municipal Planning Registrar must refer an application for a correction to the land use scheme to correct an error or update a reference to the Municipal Council within 14 days after the application was served on him or her.

(3) An application for a correction to a Municipal Planning Approval Authority's Record of Decision must be decided by the Municipal Council, within 60 days after the application was referred to it.

**Application for a non-material amendment to a decision on an application or cancellation of municipal planning approval**

4.(1) An application for a non-material amendment to a decision on an application for municipal planning approval or cancellation of municipal planning approval must follow the procedure contemplated in sections 22 to 29, 34 (excluding item 34(3)(b)), 35-37 and 39-41, except—

(a) The Municipal Planning Registrar must notify an applicant within 15 days instead of 30 days after receipt of an application that it is complete or that additional information is required as contemplated in section 27(2);

(b) the reference to Section 26-33 in section 34 must be regarded as a reference to section 26-29;

(c) a Municipal Planning Authorised Officer or Municipal Planning Tribunal must decide an application—

(i) within 30 days instead of 60 days as contemplated in Section 40 (1)(a);

(ii) within 15 days instead of 30 days as contemplated in Section 40(1)(b); or

(iii) within the period contemplated in Section 40(1)(c);

(d) a Municipal Planning Tribunal must make a recommendation on an application that must be decided by the Municipal Council—

(i) within 30 days instead of 60 days as contemplated in section 41(a);

(ii) within 15 days instead of 30 days as contemplated in section 41(b); or

(iii) within the period contemplated in Section 41(c);

(e) the references to a hearing in section 40(1)(b) and 41(b) should be ignored.

(2) A Municipal Planning Approval Authority may not change its decision to approve or refuse an application for municipal planning approval when it approves an application to correct an error or update a reference.

**Matters that a Municipal Planning Approval Authority must consider when deciding if an application qualifies as an application for a non-material amendment to a decision**

5.(1) A Municipal Planning Approval Authority must determine if an application constitutes an application for a nonmaterial amendment to a decision.

(2) A Municipal Planning Approval Authority must take the following matters into account when deciding if an application qualifies as an application for a non-material amendment to a decision on an application for municipal planning approval, if applicable—

(a) if the amendment will result in—

(i) a change in the area covered by a development, particularly the outside boundary;

(ii) a change in the area covered by buildings;

(iii) a significant increase in the density of a development;

(iv) a significant increase in the impact of a development on engineering services;

(v) a significant change to the location of buildings;

(vi) the location of buildings closer to buildings on adjacent properties;

- (vii) greater visual intrusion, audio intrusion, loss of light, feeling of enclosure or any other adverse effect on the living conditions of occupants of the development or occupants of adjacent properties;
  - (viii) a change in the overall design and appearance of a development, particularly if it is located in an environmentally sensitive area; or
  - (ix) conflict with a condition of approval imposed by the municipal planning approval authority;
- (b) if any relevant objections to the original application for municipal planning approval would be compromised by the proposed amendment;
  - (c) if the amendment would result in the introduction of new aspects or elements that warrant consultation with adjacent land owners, organs of state or the public;
  - (d) if the change would have been approved, had it formed part of the original application for municipal planning approval; and
  - (e) the volume and frequency of previous amendments to the same decision.
- (3) If, in the opinion of the municipal planning approval authority, a proposed amendment to a decision constitutes a material change to a decision, the Municipal Planning Approval Authority must instruct the applicant in writing to make a new application for municipal planning approval.

**Cancellation or partial cancellation by Municipality of rights that have not been fully exercised**

6.(1) A Municipality may unilaterally initiate the cancellation of –

- (a) a consent that it has granted in terms of a land use scheme;
- (b) municipal planning approval for the development of a land that is situated outside the area of a land use scheme;
- (c) municipal planning approval for the subdivision of land;
- (d) municipal planning approval for the consolidation of land; and
- (e) municipal planning approval for the notarial tying of land, if the rights have not been fully exercised.

(2) A Municipality may only initiate the unilateral cancellation or partial cancellation of –

- (a) a consent that it has granted in terms of a land use scheme;
- (b) municipal planning approval for the development of a land that is situated outside the area of a land use scheme, ten years after the date on which the Municipality's consent or approval became effective.

(3) A Municipality may only initiate the unilateral cancellation or partial cancellation of –

- (a) municipal planning approval for the subdivision of land;
- (b) municipal planning approval for the consolidation of land; and
- (c) municipal planning approval for the notarial tying of land, ten years after the date on which the Municipality's consent or approval became effective.

(4) A Municipality may not unilaterally initiate the cancellation or partial cancellation of –

- (a) municipal planning approval for the subdivision of land; or
- (b) municipal planning approval for the consolidation of land, of properties that have been registered in separate ownership by the Registrar of Deeds.

**Process for the cancellation or partial cancellation of rights by Municipality that have not been fully exercised**

7.(1) A Municipality must serve notice on the owner –

(a) warning the owner that it may cancel or partially cancel –

- (i) a consent granted in terms of a land use scheme;
- (ii) the right to development of land situated outside the area of a land use scheme;
- (iii) the right to subdivide land; or
- (iv) the right to consolidate land;
- (v) the right to notarial tie land, by unilaterally amending or cancelling its decision; and

(b) specifying the period in which the rights must be fully exercised.

(2) A Municipality may withdraw a notice warning the owner of its intention at any time before the expiry of the period stated in the notice.

(3) A notice warning the owner of its intention is of no force if a Municipality fails to act in terms of the notice within a period of six months after the expiry of the period in which the rights must be fully exercised.

(4) If an owner fails to fully exercise within the period specified –

- (a) a consent granted in terms of a land use scheme;
- (b) the right to development of land situated outside the area of a land use scheme;
- (c) the right to subdivide a land; or
- (d) the right to consolidate land;
- (e) the right to notarial tie land, the Municipality may unilaterally cancel or partially cancel the right by amending or cancelling its decision.

(5) A Municipality must notify the Surveyor General and Registrar of Deeds, if it unilaterally cancelled or partially cancelled rights relating to the subdivision, consolidation or notarial tying of properties.

**SCHEDULE 7****PHASING OR CANCELLATION OF APPROVED LAYOUT PLAN FOR SUBDIVISION OR DEVELOPMENT OF LAND****Phasing or cancellation of approved layout plan permissible only in accordance with this schedule.**

1.(1) An approved layout plan for the subdivision or development of land may be phased or cancelled only to the extent that it has been approved by a municipality in whose area the land is situated, whether the phasing or cancellation of the layout plan is aimed at

- (a) the phasing of the development or subdivision of land by dividing the approved layout plan into two or more layout plans;

- (b) the redesign of a part of the approved layout plan for the subdivision or development of land by dividing the layout plan into two or more layout plans and cancelling the layout for the area that will be redesigned;
- (c) the partial cancellation of rights to subdivide or develop land by dividing the approved layout plan into two or more layout plans and cancelling the layout plans for which the rights are cancelled;
- (d) the cancellation of rights to subdivide or develop land by cancelling the approved layout plan; or
- (e) the partial cancellation or cancellation of a general plan contemplated in section 37 of the Land Survey Act.

(2) A municipality may approve the phasing or cancellation of an approved layout plan for an approved subdivision or development of land only in accordance with this By-law.

### **Process for phasing or cancellation of approved layout plan**

2.(1) An application for the phasing or cancellation of an approved layout plan must be accompanied by as many copies of the layout plan, general plan and other documents as a municipality may require.

(2) The applicant must serve a notice of a proposed phasing or cancellation of an approved layout plan-

- (a) in accordance with schedule 5 of this By-law ;
- (a) on every member of the public who has lodged a written comment with regard to the subdivision, consolidation, or development of the land;
- (b) on any other person who, in the opinion of the municipality, is likely to be affected by the proposed phasing or cancellation of the layout plan, including organs of state and providers of engineering services;
- (c) on the Surveyor General, in the case of the subdivision or consolidation of the land; and
- (d) on the Registrar of Deeds.

### **Matters that a Municipal Planning Approval Authority must consider when deciding if an application qualifies as an application for a phasing or cancellation of approved layout plan**

3. A Municipal Planning Approval Authority must consider matters prescribed in By-law when it decides or makes a recommendation on an application for municipal planning approval.

### **Municipality's decision on proposed phasing or cancellation of approved layout plan**

4. A Municipal Planning Approval Authority must, after the closing date for the lodging of comments decide on the proposed phasing or cancellation of the layout plan as prescribed in By-law 40 and 41.

### **Effect of amendment or cancellation of general plan**

5. Upon the total or partial cancellation of the general plan of a township -

- (a) The township or part thereof ceases to exist as a township; and
- (b) The ownership of any public or street re-vests in the township owner.

## **SCHEDULE 8**

### **APPLICATION PROCESS FOR A DWELLING ON LAND DEMARCATED FOR THE SETTLEMENT IN AN UNSTRUCTURED MANNER BY A TRADITIONAL COMMUNITY**

Persons who may make an application

1. An application for municipal planning approval for the erection of a dwelling house on land demarcated for the settlement in an unstructured manner by a traditional community must be made in terms of Chapter 4.

#### **Lodging of application**

2.(1) An application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for the settlement in an unstructured manner by a traditional community must include—

- (a) the name and contact details of the applicant;
- (b) the name of the household which the applicant represents;
- (c) the name of the traditional area and of the isiGodi where the land is situated, if applicable;
- (d) the name of the Inkosi of such traditional area and of the isInduna of the such isiGodi, if applicable;
- (e) the approval of the Inkosi and isInduna or other community leaders;
- (f) the GPS co-ordinates for the site to which the application applies with sufficient details to indicate its approximate extent; and
- (g) photographic evidence of the site.

(2) An application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for the settlement in an unstructured manner by a traditional community must be lodged with—

- (a) the Municipal Planning Registrar;
- (b) another person designated by the Municipal Manager to receive applications for municipal planning approval; or
- (c) the Municipal Manager, if a Municipality has not appointed The Municipal Planning Registrar and the Municipal Manager has not appointed any other person to receive applications for municipal planning approval.

#### **Confirming availability of the site**

3.(1) If the information is complete, the Municipal Planning Registrar must –

- (a) verify that the land forms part of land declared by the Municipality as land for the settlement in an unstructured manner by a traditional community; and
- (b) compare the application to the Municipality's records of—

- (i) other applications and approvals for municipal planning approval in the same area; and
  - (ii) land reserved for engineering services an public or private facilities in the area, to determine if the land is available for settlement.
- (2) If another person has claimed the same site, the Municipal Planning Registrar must inform the applicant accordingly and request the applicant to—
  - (a) withdraw the application; or
  - (b) amend the application in consultation with the other person, and the Inkosi and isInduna or other community leaders.
- (3) The application is considered withdrawn, if no response to the Municipal Planning Registrar's request have been received within 90 days after the request was made.

### **Granting of municipal planning approval**

#### **4.(1) If –**

- (a) the application is complete;
  - (b) the land forms part of land declared by the Municipality as land for the settlement in an unstructured manner by a traditional community;
  - (c) the land has not been claimed by someone else;
  - (d) the land is not required for engineering services or public or private social facilities;
  - (e) land t is not prone to flooding of any other conditions that makes it unsafe for human habitation;
  - (f) the land has not been identified by the Minister responsible for Agriculture as high value agricultural land that is required for national food security; and
  - (g) the land is not land that is environmentally sensitive, the Municipal Planning Registrar must issue the applicant with a certificate permitting the erection of a dwelling house on the land.
- (2) The certificate must contain—
  - (a) the name, identity number and contact details of the applicant;
  - (b) the name of the household which the applicant represents;
  - (c) the name of the traditional area and of the isiGodi where the land is situated, if applicable;
  - (d) the name of the Inkosi of such traditional area and of the isInduna of the such isiGodi, if applicable;
  - (e) the GPS co-ordinates for the site to which the application applies with sufficient details to indicate its approximate extent; and
  - (f) photographic evidence of the site.
- (3) The Municipal Planning Registrar must record the information in subitem (2) in the register contemplated in section 171(1).
- (4) If the application is incomplete, the site is not available, or it is on land contemplated in subitem (1), the Municipal Planning Registrar may refuse the application.
- (5) The Municipal Planning Registrar may grant municipal planning approval subject to any conditions.



**Transfer of municipal planning approval**

5.(1) A certificate permitting the erection of a dwelling house on land declared by the Municipality as land for the settlement in an unstructured manner by a traditional community may be transferred to another person.

(2) An application for the transfer of a certificate permitting the erection of a dwelling house on land declared by the Municipality as land for the settlement in an unstructured manner by a traditional community must include—

- (a) the name, identity number and contact details of the applicant;
  - (b) the name of the household which the applicant represents;
  - (c) the name of the traditional area and of the isiGodi where the land is situated, if applicable;
  - (d) the name of the Inkosi of such traditional area and of the isInduna of the such isiGodi, if applicable;
  - (e) a copy of the certificate to be transferred;
  - (f) one of the following documents—
    - (i) approval of the holder of the certificate for the transfer of the land use right;
    - (ii) a death certificate confirming that the holder of the certificate is deceased; or
    - (iii) confirmation by the Inkosi and isInduna or other community leaders that the holder of the certificate is deceased or his or her whereabouts and contact details are unknown;
  - (g) the approval of the Inkosi and isInduna or other community leaders;
  - (h) the GPS co-ordinates for the site to which the application applies with sufficient details to indicate its approximate extent; and
  - (i) updated photographic evidence of the site.
- (3) If the application is complete, the Municipal Planning Registrar must—
- (a) issue the applicant with a certificate containing the information in item 5(1); and
  - (b) update the register contemplated in section 171(1).

**SCHEDULE 9****INFORMATION THAT MUST BE INCLUDED IN RECORD OF DECISION**

Information that must be included in a Record of Decision on an application for municipal planning approval

1. The following information must be recorded in a Record of Decision on an application for municipal planning approval—

- (a) the details of the application, including—
  - (i) the nature of the application;
  - (ii) the property descriptions of the properties involved, unless the application is an application for a general land use scheme amendment; and
  - (iii) the application number;
- (b) its decision;

- (c) the conditions subject to which the application was approved, if it was approved subject to conditions.
- (d) if the approval is subject to payment of a development charge contemplated in item 9 of schedule 4 —
  - (i) the amount of the development charge; and
  - (ii) who must pay the development charge, how it must be paid and by when;
- (e) if the Surveyor-General must—
  - (i) approve a general plan or a diagram for the subdivision or consolidation of the land;
  - (ii) if the Surveyor-General must approve a property—
    - (aa) as a farm, including a portion or a remainder of a farm;
    - (bb) as a subdivision of land that is not a farm; or
    - (cc) as an erf in a township;
- (f) the reasons for its decision;
- (g) the reasons for the changes, if changes were made to an application by an applicant or the Municipality;
- (h) the particulars of the public consultation process, including—
  - (i) if public consultation was required for the application;
  - (ii) if notice of the application in a newspaper was required, the name of the newspaper in which the notice was published and the date on which it was published;
  - (ii) if a public meeting was held to inform the public of an application, and the date of the meeting;
  - (iii) if a site inspection was held, and the date of the site inspection;
  - (v) if a hearing was held, and the date of the hearing;
  - (i) if any comments were received in response to an invitation to comment on the application—
    - (i) the closing date to lodge a memorandum of appeal;
    - (ii) that a summary of the rights and obligations of appellants can be obtained from the Municipal Planning Appeal Authority Registrar;
    - (iii) the name and contact details of—
      - (aa) the applicant;
      - (bb) the Municipal Planning Appeal Authority Registrar;
      - (cc) a person at the Municipality on whom a memorandum of appeal, request for the late lodging of an appeal or a responding memorandum of appeal may be served;
- (j) the approved layout plan, if applicable;
- (k) the approved service agreement, if applicable;
- (l) the approved phasing plan, if applicable;
- (m) the date of the Municipality's decision.

## **SCHEDULE 10 : TRANSITIONAL MEASURES**

### **Part 1: Town Planning Ordinance**

#### **Application for special consent approved in terms of the Town Planning Ordinance**

1.(1) An approval for special consent in terms of section 67bis of the Town Planning Ordinance must be regarded as consent by the Municipality in terms of the land use scheme.

(2) For the purposes of section 68(2) of this By-law, the effective date of a Municipality's special consent contemplated in section 67bis of the Town Planning Ordinance is—

- (a) the date of expiry of the 28 day period referred to section 67ter of the Town Planning Ordinance, if no appeal was lodged against the decision of the Municipality; or
- (b) the date that the appeal was decided, if an appeal was lodged against the decision of the Municipality in terms of section 67ter of the Town Planning Ordinance.

#### **Pending application for special consent in terms of the Town Planning Ordinance**

2.(1) A pending application for special consent in terms of section 67bis of the Town Planning Ordinance must be continued in terms of this By-law.

(2) The Municipal Planning Registrar must confirm the corresponding provision in the application process from which the application for municipal planning approval must be continued.

(3) An applicant does not have to comply with a requirement in terms of this By-law that are more onerous than the requirements of the Town Planning Ordinance in respect of a provision of this By-law that precedes the provision from which the application for municipal planning approval must be continued.

(4) An applicant does not have to comply with a requirement of the Town Planning Ordinance that is more onerous than the requirements of this By-law.

### **Part 2: Local Authorities Ordinance**

#### **Application for permanent closure of a municipal road approved in terms of the Local Authorities Ordinance**

3.(1) An approval for the permanent closure of a municipal road in terms of section 211(2) of the Local Authorities Ordinance must be regarded as an approval by the Municipality in terms of this By-law.

(2) For the purposes of section 60(2) of this By-law, the effective date of a Municipality's approval contemplated in section 211(2) of the Local Authorities Ordinance is the date upon which the Administrator approved the permanent closure of the municipal road as contemplated in section 211(2)(f) of the Local Authorities Ordinance.

#### **Application for permanent closure of a public place approved in terms of the Local Authorities Ordinance**

4.(1) An approval for the permanent closure of a public place in terms of section 212(1)(a) of the Local Authorities Ordinance must be regarded as an approval by the Municipality in terms of this By-law.

(2) For the purposes of section 60(2) of this By-law, the effective date of a Municipality's approval contemplated in section 212(1)(a) of the Local Authorities Ordinance is the date upon

which the Administrator approved the permanent closure of the public place as contemplated in section 212(1)(b) read with 211(2)(f) of the Local Authorities Ordinance.

### **Pending application for permanent closure of a municipal road in terms of the Local Authorities Ordinance**

5.(1) A pending application for the permanent closure of a public place in terms of section 211 of the Local Authorities Ordinance must be continued in terms of this By-law.

(2) The Municipal Planning Registrar must confirm the corresponding provision in the application process from which the application for municipal planning approval must be continued.

(3) An applicant does not have to comply with a requirement in terms of this By-law that are more onerous than the requirements of the Local Authorities Ordinance in respect of a provision of this By-law that precedes the provision from which the application for municipal planning approval must be continued.

(4) An applicant does not have to comply with a requirement of the Local Authorities Ordinance that is more onerous than the requirements of this By-law.

(5) The Municipality does not require the Administrator's consent as contemplated in section 211(2)(f) of the Local Authority's Ordinance.

### **Pending application for permanent closure of a public place in terms of the Local Authorities Ordinance**

6.(1) A pending application for the permanent closure of a public place in terms of section 212 of the Local Authorities Ordinance must be continued in terms of this By-law.

(2) The Municipal Planning Registrar must confirm the corresponding provision in the application process from which the application for municipal planning approval must be continued.

(3) An applicant does not have to comply with a requirement in terms of this By-law that are more onerous than the requirements of the Local Authorities Ordinance in respect of a provision of this By-law that precedes the provision from which the application for municipal planning approval must be continued.

(4) An applicant does not have to comply with a requirement of the Local Authorities Ordinance that is more onerous than the requirements of this By-law.

(5) The Municipality does not require the Administrator's consent as contemplated in section 212(1)(b) read with 211(2)(f) of the Local Authority's Ordinance.

## **Part 3: Less Formal Township Establishment Act**

### **Less formal settlement or township approved in terms of the Less Formal Township Establishment Act**

7.(1) An application for a settlement approved in terms of section 3(1) or a township approved in terms of section 14(1) of the Less Formal Township Establishment Act, that has been approved—

- (a) subject to a layout plan; and

(b) subject to conditions for the development thereof, must be regarded as a township approved in terms of this By-law.

(2) Despite –

(a) the provisions of section 3(5)(b), (e) and (g) of the Less Formal Township Establishment Act; or

(b) a decision to the contrary by the Administrator in terms of section 12(1) of the Less Formal Township Establishment Act, this By-law applies to land designated as a less formal settlement in terms of section 3(1) or a township approved in terms of section 14(1) of the Less Formal Township Establishment Act.

(3) An application is not required in terms of this By-law for –

(a) the development of a less formal settlement in accordance with an approved layout plan and conditions of approval contemplated in section 4(1) of the Less Formal Township Establishment Act; or

(b) the development of less formal township in accordance with an approved layout plan and conditions of approval contemplated in section 14(1)(a) of the Less Formal Township Establishment Act.

(4) An application is required in terms of this By-law for the subdivision of land or establishment of a township on land that has been designated as a less formal settlement in terms of section 3(1) of the Less Formal Township Establishment Act, if the land was not designated-

(a) subject to a layout plan; or

(b) subject to conditions for the development thereof.

## **Part 4: Development Facilitation Act**

### **Development approved in terms of the Development Facilitation Act**

8.(1) All applications, appeals or other matters pending before a Tribunal established in terms of section 15 of the Development Facilitation Act, 1995 (No 67 of 1995) at the commencement of the Spatial Planning and Land Use Management Act (1st July 2015) that have not been decided or otherwise disposed of, must be continued and disposed of in terms of the Spatial Planning Land Use Management Act.

(2) An application for development approved in terms of section 33(1) or 51(1) of the Development Facilitation Act must be regarded as an application for municipal planning approval approved in terms of this By-law.

### **Functions of designated officer may be performed by Municipality**

9.(1) Despite the repeal of the Development Facilitation Act, the Municipality must continue to perform the following functions conferred on a designated officer in terms of the Development Facilitation Act-

(a) to publish the conditions of establishment imposed by the Development Tribunal or the Development Municipal Planning Appeal Tribunal that must be published in the Gazette, as contemplated in sections 33(4) and 51(3) of the Development Facilitation, in the Gazette;

(b) to inform the Registrar of Deeds that the conditions of establishment which have to be complied with prior to the commencement of registration, have been complied with, contemplated in section 38(1)(c) of the Development Facilitation Act; and

(c) to inform the Registrar of Deeds that the applicant and the Municipality have fulfilled their obligations relating to the provision of services, contemplated in section 38(1)(d) of the Development Facilitation Act.

(2) The Municipality must appoint a municipal official to perform the functions conferred on a designated officer as contemplated in this item.

Power reserved by Development Tribunal or Development Appeal Tribunal in a decision on an application in terms of the Development Facilitation Act

10.(1) A power reserved by the Development Tribunal or Development Appeal Tribunal in a decision on an application in terms of the Development Facilitation Act must be regarded as a power that must be exercised by the Municipality.

(2) The Municipality must comply with the provisions of this By-law, including the procedure for the amendment of a notice of a decision on an application for municipal planning approval, when exercising a power contemplated in this item.

## **Part 5: KwaZulu-Natal Planning and Development Act**

### **Application approved in terms of KwaZulu-Natal Planning and Development Act**

11. A decision by the Municipality—

(a) to adopt a scheme contemplated in section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;

(b) to replace a scheme contemplated in section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;

(c) to approve an amendment to a Municipality's scheme contemplated in section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;

(d) to approve the subdivision of land contemplated in section 26(1)(a) of the KwaZulu-Natal Planning and Development Act;

(e) to approve the consolidation of land contemplated in section 26(1)(a) of the KwaZulu-Natal Planning and Development Act;

(f) to approve the development of land situated outside the area of a scheme contemplated in section 43(1)(a) of the KwaZulu-Natal Planning and Development Act;

(g) to approve the phasing or cancellation of an approved layout plan contemplated in section 55(1) of the KwaZulu-Natal Planning and Development Act; or

(h) to approve the alteration, suspension or deletion of a restriction relating to land contemplated in section 65(1) of the KwaZulu-Natal Planning and Development Act, must be regarded as approval for an application for municipal planning approval in terms of this By-law.

**Application in terms of a repealed planning law that must be regarded as an application approved in terms of KwaZulu-Natal Planning and Development Act**

12. An application in terms of a repealed planning law that must be regarded to be an application approved in terms of KwaZulu-Natal Planning and Development Act must be regarded as an application for municipal planning approval in terms of this By-law.

**Pending application in terms of KwaZulu-Natal Planning and Development Act**

13.(1) A pending application to the Municipality or a pending proposal by the Municipality in terms of the KwaZulu-Natal Planning and Development Act as contemplated in item 1 must be continued in terms of this By-law.

(2) The Municipal Planning Registrar must confirm the corresponding provision in the application process from which the application for municipal planning approval must be continued.

(3) An applicant does not have to comply with a requirement in terms of this By-law that are more onerous than the requirements of the KwaZulu-Natal Planning and Development Act in respect of a provision of this By-law that

precedes the provision from which the application for municipal planning approval must be continued.

(4) An applicant does not have to comply with a requirement of the KwaZulu-Natal Planning and Development Act that is more onerous than the requirements of this By-law.

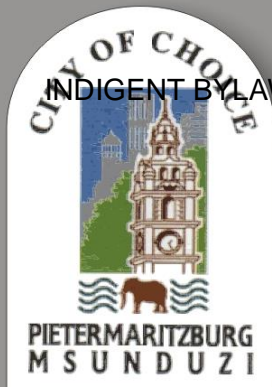
**Validation of decision made in terms of KwaZulu-Natal Planning and Development Act after 30 June 2015 but before the commencement of this By-law**

14. A decision by the Municipality to approve or refuse an application to it or a proposal by it in terms of the KwaZulu-Natal Planning and Development Act as contemplated in item 11 is not invalid by virtue of not complying with the provisions of the Spatial Planning and Land Use Management Act, if—

(a) the application to it or proposal by it was made before 1 July 2015; and

(b) the decision to approve or refuse the application or proposal was made after 30 June 2015 but before the commencement of this By-law.





INDIGENT BYLAWS

# The Msunduzi Municipality

## INDIGENT BYLAWS

	<p>KwAZULU-NATAL PROVINCE KwAZULU-NATAL PROVINSIE ISIFUNDAZWE SA KwAZULU-NATALI</p>	
<p><b>Provincial Gazette • Provinsiale Koerant • Igazethi Yesifundazwe</b> GAZETTE EXTRAORDINARY—BUITENGEWONE KOERANT—IGAZETHI EYISIPESHELI</p>		
<p><i>(Registered at the post office as a newspaper) • (As 'n nuusblad by die poskantoor geregistreer)</i> <i>(Irejistiwee njengaphaphandaba eposihhovisi)</i></p>		
<p><b>Vol. 9</b></p>	<p><b>PIETERMARITZBURG,</b> 25 JUNE 2015 25 JUNIE 2015 25 kuNHLANGULANA 2015</p>	<p><b>No. 1380</b></p>

The Msunduzi Municipality acting in terms of section 98 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), read with section 13 of the said Act, hereby publishes the By -laws set forth hereafter, as made by the Municipality, which Bylaws shall come into effect on the date of publication thereof.

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1. Definitions
2. Object of these bylaws
3. Determination by council of indigent threshold
4. Qualifying criteria for applied indigent status
5. Qualifying criteria
6. Property rates
7. Indigent households in retirement centres, Orphanages and Disability centres
8. Death of the indigent
9. Termination of indigent support
10. Appeal
11. Publication of names of qualifying applicants
12. Current amounts in arrears
13. Repeal of previous bylaws

### 1. Definitions

For the purpose of these bylaws, unless the context indicates otherwise, any word or expression to which a meaning has been attached in the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000) shall bear the same meaning.

**"Chief Financial Officer"** means the person defined as such in terms of Section 1 of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003) or any person duly authorized to act on behalf of such person;

**"Council" or "municipal council"** means a municipal council referred to in section 18 of the Local Government: Municipal Structures Act, 1998 (Act No 117 of 1998) and for purposes of this policy, the municipal council of the Municipality of Msunduzi.

**"Credit and Debt Collection Policy"** means the approved and applicable credit and debt collection policy of the council.

**"Customer"** means any occupier of any property to which the Municipality has agreed to supply services or already supplies services to, or where there is no occupier, the owner of the property shall be regarded as the occupier.

**"Child Headed Household"** means a household where both parents are deceased and where all occupants of the property are children of the deceased, are all under the legal age to contract for services, are considered as minors in law by the State and who receive water and/or electricity from one meter.

**"Gross Household Income"** means the total combined income from all sources, including any social grants of all those in occupation or resident on the property.

**"Indigent"** means a person who fulfills the criteria as outlined in bylaw 4.

**"Life Line Service"** means, subject to National norms and applicable legislation, the level of any municipal service that is necessary to ensure human dignity and a reasonable quality of life and which, if not provided, could endanger public health or safety of the environment and for the purpose of these bylaws are restricted to electricity, refuse, sewerage and water services.

**"Municipal account" or billing"** means the proper and formal notification by means of a statement of account to persons liable for monies levied and indicating the net accumulated

balance of the account, specifying charges levied by the Municipality, or any authorised and contracted service provider.

**"Municipality"** means the Msunduzi Municipality.

**"the Act"** means the Local Government: Municipal Systems Act No. 32 of 2000

**"the Property"** means the property to which the monthly consolidated municipal account relates.

## **2. Object of these bylaws**

To provide a framework within which the Municipality implements a lifeline service to indigent households in respect of their municipal accounts, to determine the criteria for qualification of indigent households and to ensure that the criteria referred to in bylaw 4 are applied correctly and fairly to all applicants.

## **3. Determination by Council of indigent income threshold**

The gross household income for qualification as a registered Indigent shall be determined each year by the Council of the Municipality.

## **4. Qualifying criteria for "Applied Indigent" Status**

(1) Save for the child headed households who are automatically considered indigent, and subject to bylaw 5 below, all other customers seeking indigent status, shall apply annually in writing on the prescribed application form as approved by the Chief Financial Officer and satisfy the Chief Financial Officer of all of the following:

- (a) The total household income shall not exceed the amount approved by Council from time to time in accordance with the provisions of section 3 of these bylaws.
- (b) The size of the circuit breaker on the property shall not be greater than 20 amperage.
- (c) The applicant must be a South African citizen or must have legally recognized refugee status.
- (d) The applicant must not be the registered owner of more than one property.
- (e) The applicant must be a resident of, and have a registered account with the Municipality, except where a household is situated in informal settlements or rural areas and no accounts are rendered to such a household.

(2) The granting of indigent status shall lapse at the end of each financial year and the indigent shall make a fresh application by no later than 31 March of every year in respect of each subsequent financial year.

(3) The Chief Financial Officer shall finalise each application by no later than 30 June of every year and if any current indigent's application is not finalised by this date, the status of the applicant shall remain as indigent until the notification to the consumer of the Chief Financial Officer's decision.

(4) The Chief Financial Officer may on good cause shown condone any late applications referred to in subsection (2).

(5) A tenant or occupier as described in Council Credit Control Policy may apply for Indigent status in respect of services and if successful, the landlord shall remain liable for all ownership related charges and taxes.

## **5. Benefits**

(1) The subsidies below will be funded from the "equitable share" contribution received from National Treasury, plus an amount from the Municipality's own income as budgeted for in the financial year in question. The subsidies will only be granted to qualifying households to the extent that the above mentioned funds are available for allocation.

(2) Where a municipal account exists, the subsidy amount allocated will be calculated and rounded off to the nearest lower R1, and will be credited into the consumer's municipal account every month and be indicated as such on the account.

(3) The successful applicants shall qualify for the following benefits in relation to service levels:

- (a) 100% of the basic charge and MCB Charge for electricity for one service point per month;
- (b) 100% of the basic charge for one water service point per month ;
- (c) 100% of the Scale 2 domestic charge for sewerage per month for one service point;
- (d) 100% of the domestic refuse removal tariff for one service point per month;
- (e) 60 kWh of free electricity;
- (f) 614 of free water to all registered indigent households.

## **6. Property rates**

Each registered indigent household may be subsidized for property rates as provided for in the annual budget as approved by the Council annually in accordance with its Rates Policy.

## **7. Indigent households in retirement centres, Orphanages and Disability centres**

Indigent customers living in retirement centres, orphanages, and disability centres may be eligible to qualify for assistance and support in terms of this policy, subject to the following rules and procedures:

- (1) The onus shall be upon the management body of the relevant centre to apply to the municipality for indigent status in respect of water consumption on behalf of the owners of those units who meet the criteria and conditions for qualification.
- (2) The onus shall be upon the unit owner to apply to the municipality for indigent status in respect of property rates and other service charges.

## **8. Death of the indigent**

(1) Where the indigent is deceased, the heirs of the indigent person must re -apply for indigent status within 2 months following the death of the registered indigent.

(2) After the death of the indigent, the status quo in respect of the indigent shall remain pending the outcome of the new application referred to in subsection( 1).

(3) Where the heirs are minors, the High Court in its capacity as the upper guardian of minors shall at the instance of any applicant appoint a curator or where practicable the Master as the applicant on behalf of the minors.

## **9. Termination of indigent support**

Indigent support shall be terminated under the following circumstances:

- (1) Death of the account holder.
- (2) Upon change of ownership of the property in respect of which the indigent status is granted.
- (3) When the financial circumstances in the indigent household improves in terms of the gross income threshold as prescribed by Council.
- (4) Where the applicant has lied about his /her personal circumstances or has furnished false information regarding indigent status, the following will apply:
  - (a) The amount owing to the Municipality shall be recalculated from the date of the granting of the Indigent Status on the basis of approved tariffs and shall apply retrospectively.
  - (b) All arrears will become payable immediately.
  - (c) Credit control measures in terms of the Council's Credit Control Policy will apply.
  - (d) The applicant will not be eligible to apply for indigent support for a period of two years.

## **10. Appeal**

Any aggrieved person who was not successful in the application for Indigent Status may lodge an appeal to the Municipality in accordance with the provisions of section 62 of the Municipal Systems Act No 32 of 2000.

## **11. Publication of names of qualifying applicants**

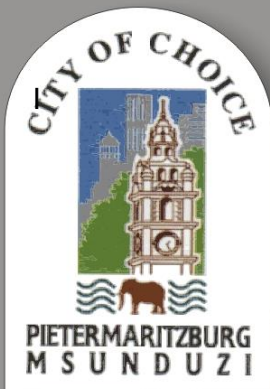
- (1) The Municipality shall, subject to the relevant provisions in the Protection of Personal Information Act No 4 of 2013 and other applicable legislation, be entitled to compile and publish a list of all registered approved indigents.
- (2) Subject to the relevant provisions in the Protection of Personal information Act and other applicable legislation any person shall have the right to inspect or scrutinize the register of approved Indigents.

## **12. Current amounts in arrears**

Applicants' whose municipal accounts are in arrears at the time of their application for Indigent Status, will be subjected to the provisions of Credit and Debt Collection policy of the Council.

## **13. Repeal of previous bylaws**

The Indigent Policy Bylaws published under notice number 90 of 20 September 2012, are hereby repealed.



# The Msunduzi Municipality

## MARKET BYLAWS

### MARKET BY-LAWS

[MUNICIPAL NOTICE NO. 56 OF 2014.]

[DATE OF COMMENCEMENT: 24 JUNE, 2014.]

These By-laws were published in *Provincial Gazette* No. 1163 dated 24 June, 2014.

The Msunduzi Municipality acting in terms of section 98 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), read with section 13 of the said Act, hereby publishes the By-laws set forth hereafter, as made by the Municipality, which By-laws shall come into effect on the date of publication thereof.

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- 36. Indemnification from liability
- 37. Offences and penalties
- 38. Repeal of the Pietermaritzburg Municipal Market By-laws

### INTERPRETATION AND FUNDAMENTAL PRINCIPLES

**1. Definitions.**—In this By-law, unless the context otherwise indicates, the following words will have the meanings as indicated below—

**“Act”** means the Agricultural Produce Agents Act (Act No. 12 of 1992), as amended or as replaced;

**“agricultural product”** means an article specified in Part A of Schedule 1 or any article added thereto in terms of section 1 (2) of the Act;

**“APAC”** means the Agricultural Produce Agents Council as defined in the Act or its Successor in Title;

**“appeal”** means an appeal in terms of section 62 of the Municipal Systems Act;

**“bank”** means a public company registered as a bank in terms of the Banks Act (Act No. 94 of 1990);

**“Bank Guaranteed facility”** means an account approved by the Market manager that enables the holder of the account to purchase an agricultural product against a Bank Guarantee held by the Market;



**“buyer”** means any person who is the holder of a buyer’s card issued by the market administration and who purchases an agricultural product at the market;

**“consigner”** means the principal or owner who, at the time of its delivery to the market agent, carried the risk of profit or loss of an agricultural product;

**“Constitution”** means the Constitution of the Republic of South Africa, 1996;

**“Council”** means the Council of the Msunduzi Municipality;

**“designated area”** means the control point as determined by the Market Manager from time to time where the consigner will declare an agricultural product for delivery at the Pietermaritzburg Market;

**“direct sale”** means a sale of an agricultural product taking place on the market premises between the consigner of the agricultural product and a wholesaler or retailer;

**“Fee”** means a fee, charge or tariff levied by the Msunduzi Municipality in terms of the Municipal Systems Act in respect of a city function or service;

**“fidelity fund certificate”** means a fidelity fund certificate issued in terms of section 16 of the Act;

**“floor sale”** means a sale concluded on the market floor between a market agent and any third party;

**“market”** means the Pietermaritzburg Market of the Msunduzi Municipality;

**“market administration”** means the duly appointed management team responsible for the management of the market on behalf of the of the Msunduzi Municipality;

**“market agent”** means an agent as defined in section 1 of the Act who is allowed by the Msunduzi Municipality to conduct business at the Pietermaritzburg Market on the market floor;

**“market agent’s licence”** means a market agent’s licence issued in terms of section 11 (3) of the By-law;

**“market floor”** means the floor area of a market hall situated on the market premises and reserved exclusively for trading by market agents;

**“market hall”** means an area on the market premises allocated for the purpose of displaying and selling an agricultural product;

**“Market Manager”** means the Municipal employee designated directly in charge of the Market;

**“market premises”** means the immovable property situated in Market Road, Mkondeni, Pietermaritzburg and includes any other property or premises designated by the Msunduzi Municipality for the propose of conducting the business of a fresh-produce market or any other business or businesses incidental thereto;

**“market product”** means—

(a) with regard to market agents, an agricultural product; and

(b) with regard to wholesalers and retailers, an agricultural product and any article or product approved in writing by the market manager which article or product is to be offered for sale on the market premises;

**“Municipal Manager”** means the person appointed as such by the Msunduzi Municipality as the Accounting Officer or his duly authorised nominee;

**“Msunduzi Municipality”** means the local authority established in terms of the Municipal Structures Act (Act No. 117 of 1998);

**“Municipal Structures Act”** means the Local Government: Municipal Structures Act (Act No. 117 of 1998), as amended;

**“Municipal Systems Act”** means the Local Government: Municipal Systems Act (Act No. 32 of 2000), as amended;

**“operational unit”** means a mechanical vehicle or device powered by battery, gas or fuel, and includes—

- (a) a forklift;
- (b) a cleaning or washer unit or device;
- (c) a maintenance unit or device;

**“person”** means a natural person and includes any legal entity recognised by law;

**“retailer”** means a person other than a market agent in respect of whom a service level agreement or any other agreement exists with the Msunduzi Municipality for such person to do business as a business on the market premises;

**“sales docket”** means a docket issued in terms of section 19 (4);

**“sales permit”** means a permit issued in terms of section 13 (3);

**“salesperson”** means a person who is the holder of a sales permit issued by the market manager and a fidelity fund certificate issued by the Agricultural Produce Agents Council in terms of the Act, and who does business on the market floor;

**“vehicle”** means any mechanical drivable unit or device, including but not limited to a pedal cycle, developed for the transportation of people and/or goods, and includes any other unit or device in use for operational purposes at the market but excludes an operational unit; and

**“wholesaler”** means a person other than a market agent in respect of whom a service level agreement or any other agreement exists with the Msunduzi Municipality which agreement allows the person to conduct a wholesale business on the market premises, provided that he does not conduct over-the-counter sales with the general public.

**2. Gender.**—Any reference in this By-law to one gender includes the opposite gender and any other legal person recognised by law.

## CHAPTER 1

### 3. Market days and hours.—

(1) The market must be open on the days and during the hours determined by the Municipal Manager from time to time.

(2) Subject to subsection (1), trading on the market floor may take place only during the hours determined by the Market Manager.

(3) A market agent may sell an agricultural product otherwise than on the market floor only with the prior approval of the Market Manager, provided that the agricultural product thus sold is first captured as stock on the market system, after which a proper sales docket is generated for the sale by the market agent concerned, and provided further that the Msunduzi Municipality is paid the fee determined in terms of section 20 below for the sale.

### 4. Risk of profit and loss.—

The risk of profit and loss of an agricultural product brought onto the market premises must at all times be solely that of the consigner of the agricultural product. Nothing stated in this section may be so interpreted as to absolve market agents from fulfilling their obligations under this By-law, provided that the Municipal Manager is authorised to acknowledge at his discretion any claim not exceeding R100 000,00 and to make payment for the claim;

provided further that any claim in excess of this amount will be referred to the Council for consideration.

**5. Control and risk of an agricultural product.—**

- (1) Any agricultural product offered for sale must, before it is brought onto the market floor, be registered with—
  - (a) the Msunduzi Municipality in the manner and format required by the Municipal Manager; and
  - (b) the market agent to whom the agricultural product is consigned in the manner prescribed in subparagraph (4) below.
- (2) An agricultural product that is brought onto the market premises and is not for sale on the market floor must be declared and registered as such in accordance with subsection (1), failing which the market administration may refuse the agricultural product and prohibit it from being brought onto the market premises.
- (3) Simultaneously with the registration referred to in subsection (1), further particulars on an agricultural product delivered by a consigner must be provided at the designated area as required from time to time by the market administration.
- (4) When an agricultural product is consigned to a market agent, the market agent must—
  - (a) upon delivery of the agricultural product to him, sign to acknowledge receipt of the agricultural product and specify the date and time of the delivery;
  - (b) allocate a consignment number, prepared in accordance with the information required in subsection (3), and hand proof of the receipt to the market administration;
  - (c) immediately make all the necessary arrangements to off-load and place the agricultural product in the space or enclosure provided to him for the agricultural product; and
  - (d) accept accountability to the consigner for the quantity of the agricultural product specified in the necessary documentation.
- (5) If any person fails or refuses to comply with the provisions of subsection (1) or subsection (3), the market manager may refuse the agricultural product and prohibit it from being brought onto the market premises.
- (6) The provisions of subsections (3) and (4) do not apply to the agricultural product referred to in subsection (2) of section 5.

## **CHAPTER 2**

**6. Packing, stacking and display of agricultural products.—**

A market agent must to the satisfaction of the Market Manager—

- (a) conspicuously display, place and stack all agricultural products received by him, other than those stored in the cold storage facilities referred to in section 7, on the market floor in such a manner that an orderly appearance and healthy and safe environment are created;
- (b) at the daily closing of sales, display and restack all unsold agricultural products in the manner referred to in paragraph (a) above;
- (c) ensure that all pallets and other items within the floor space are stored in an orderly and safe manner;
- (d) ensure that his floor space and fencing is kept clean and hygienic at all times.

**7. Cold storage and ripening.—**

- (1) The Msunduzi Municipality may at the discretion of the Municipal Manager—
  - (a) establish, equip and operate cold storage facilities and ripening chambers on the market premises; and
  - (b) levy fees, as determined by the Council from time to time, for the use of the cold storage facilities and ripening chambers.
- (2) Any person who makes use of any cold storage facility or ripening chamber referred to in subsection (1) or any other facility of the Msunduzi Municipality at the Pietermaritzburg Market premises, does so at his risk, and the Msunduzi Municipality is not liable for any loss or damage, whether direct or indirect, suffered by the person.

**8. Storage.—**

- (1) No person may, without the prior written approval of the Market Manager, store or leave any agricultural product, article, item or thing of whatever nature in or near the market premises.
- (2) No person may, without prior written approval of the Market Manager, store any agricultural product, article, item or thing of whatever nature in the storage or other facilities provided by the Msunduzi Municipality on the market premises.
- (3) Any person who fails to comply with the provisions of subsection (1) and (2) is, notwithstanding any other provisions of this By-law, liable to the City of Msunduzi Municipality for payment of the storage fees determined by the Council from time to time.

**9. Abandoned agricultural product.—**

- (1) If the Market Manager on reasonable grounds, suspects that any agricultural product left on the market premises has been abandoned, he may direct that the agricultural product be—
  - (a) sold if it is sound and fit for human consumption or use; or
  - (b) removed and destroyed if it is unsound and unfit for human consumption or use.
- (2) If an abandoned agricultural product—
  - (a) is sold, the Msunduzi Municipality will pay the proceeds of the sale, less the fee determined by the Council from time to time, to the person who is entitled to the proceeds, if his identity is known;
  - (b) is removed and destroyed, the Municipality will recover the fee, determined by the Council from time to time, from the person who abandoned the agricultural product, if his identity is known;
  - (c) is sold and the identity of the person entitled to the proceeds is not known, the proceeds will be paid into the trust account of the market agent who was in control of the product immediately before it was abandoned or, if it cannot be established with certainty which market agent exercised control over the product before it was abandoned, the proceeds will be paid into the separate account of the market.

**10. Agricultural product unfit for human consumption.—**

- (1) If the Market Manager on reasonable grounds believes that—
  - (a) any agricultural product offered for sale on the market floor is diseased or unsound or unfit for human consumption, or that a container is likely to contaminate the agricultural product, he will immediately direct that that the container and the produce be destroyed.

## CHAPTER 3

### 11. Market agents and their employees.—

- (1) No person may do business as a market agent at the market unless he has satisfied any requirements of the APAC and is the holder of—
  - (a) a fidelity fund certificate; and
  - (b) a market agent's licence.
- (2) An application for a market agent's licence must be made on the appropriate form available at the market administration offices situated on the market premises, which form must—
  - (a) be accompanied by the application fee determined by the Council from time to time and the other applicable particulars and documents requested on the form; and
  - (b) be sent by post or be delivered to the market administration at the address indicated on the form.
- (3) A market agent's licence may be issued by the Municipal Manager to an applicant if—
  - (a) in the opinion of the Municipal Manager, there is sufficient space available on the market floor to accommodate the applicant's business;
  - (b) the applicant has satisfied the Municipal Manager that—
    - (i) he is fit, competent and the proper person to conduct the business of a market agent and has complied with the provisions of the Act and all other legislation on market agents; andneither the applicant nor any of his directors, members or partners, as the case may be, have any direct or indirect interest in any other business of any person to whom a market agent's licence was issued.
- (4) If the Municipal Manager is of the opinion that an applicant does not comply with any one or more of the provisions of subsection (3), he will refuse the issuing of a market agent's licence to the applicant and will notify the applicant in writing of the refusal. Should the applicant request reasons for the refusal in writing, the Municipal Manager will furnish these within 30 days.
- (5) The Municipal Manager shall withdraw the market agent's licence if—
  - (a) his fidelity fund certificate has lapsed, been withdrawn or suspended in terms of section 16 of the Act;
- (6) The Municipal Manager may withdraw the market agents licence if—
  - (i) in the case of the market agent being a company, close corporation or partnership, a change occurred in the shareholding of the company or the membership of the close corporation or the partners of the partnership without the market agent having obtained the Municipal Manager's prior written approval for the change;
  - (ii) any one or more of the provisions of section 15 (2), section 24 (a) to (e), 24 (f) (ii) and 24 (g) and subsection (3) (b) (ii) are not complied with;
  - (iii) the market agent enters into a business relationship or obtains a business interest that, either directly or indirectly, could harm, prejudice, impair or compromise the interests of the market; or
  - (iv) the market agent is in rental arrears to the municipality in excess of 90 days.
- (7) The Municipal Manager decides to withdraw the market agent's licence of a market agent, in which case he will notify the market agent in writing of his decision. A market agent whose market agent's licence has been withdrawn must, subject to the provisions of section 36, immediately cease to do business as a market agent. He may lodge an internal appeal

as prescribed in section 62 of the Municipal Systems Act, 2000, but will remain suspended pending the outcome of the Appeal—

- (a) a Market Agent shall be entitled to lease at least one office on the Pietermaritzburg Market premises at a market related rental provided that such office space is available.

**12. Automatic lapse of a market agent's licence.—**

A market agent's licence is neither negotiable nor transferable and lapses automatically and is of no force and effect if—

- (a) in the event of a market agent being a natural person, he has died or his estate has become insolvent;
- (b) the market agent is a company or a close corporation that is placed under provisional or final liquidation.

## **CHAPTER 4**

**13. Salespersons.—**

(1) No person will conduct business on the market floor unless he is the holder of a sales permit issued by the Market Manager.

(2) An application for a sales permit must be made by the market agent on behalf of the salesperson on the prescribed form available at the market administration offices situated on the market premises, which form must—

- (a) be accompanied by the application fee determined by the Council from time to time and the other applicable particulars and documents indicated on the form; and
- (b) be sent by post or delivered to the Market Manager at the address indicated on the form.

(3) A sales permit may only be issued to an applicant if he has satisfied the Marketer that he—

- (a) is in the employ of a licensed market agent; and
- (b) is a fit, competent, proper and suitably qualified person to do business as a salesperson on the market floor;
- (c) has satisfied any requirements of the Agricultural Produce Agents Council and is registered with them.

(4) If the Market Manager is of the opinion that an applicant does not comply with any one or more of the provisions of subsection (3), he will refuse to issue a sales permit to the applicant and will notify the applicant in writing of his refusal and the reasons for it.

**14. Withdrawal of a sales permit.—**

(1) A sales permit is neither negotiable nor transferable. The Market Manager will withdraw the sales permit of a salesperson if—

- (a) the salesperson is no longer in the employ of a market agent who has been issued with a market agent's licence in terms of section 11 (3);
- (b) any one or more of the provisions of section 13 (3) (b) are not complied with;
- (c) the sales person contravenes any provision of section 15 (2), section 24 (a) to (e) or section 24 (f) (ii) or 24 (g) to (h).



If the Market Manager decides to withdraw the sales permit of a salesperson, he will notify the market agent in writing of his decision. A salesperson whose sales permit has been withdrawn must, subject to the provisions of section 36, immediately cease to do business as a salesperson unless he has lodged an internal appeal as prescribed in section 62 of the Municipal Systems Act, 2000, in which event he will, subject to the conditions determined by the Municipal Manager, remain suspended until the outcome of his appeal is made known to him.

**15. Market agents and floor sales.—**

(1) A market agent must conduct his business in accordance with the provisions, principles and rules made under the Act, the provisions of this By-law and any other policies, procedures and practices of the Msunduzi Municipality which may from time to time be amended and are contained in letters or circulars of the market administration.

(2) A market agent will conduct his business—

(a) on the market floor, subject to the provisions of section 3 (4), provided that at all times the agricultural product sold by the market agent is captured on the official system of the market administration; and

(b) on a commission basis only and he may not be involved in any direct sale otherwise than in his capacity as a market agent.

(3) In conducting his business, a market agent may allow only salespersons to sell on the market floor.

**16. Protective and corporate clothing.—**

(1) A market agent must—

(a) subject to the provisions of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), supply his employees with the necessary protective clothing; and

(b) ensure that the protective clothing complies with the relevant policy of the Msunduzi Municipality.

The market agent will not allow any of his employees to work at the Pietermaritzburg Market unless the employee is wearing the protective clothing referred to in subsection (1).

**17. Market agents' signage.—**

A market agent must at his expense—

(a) affix a signboard on the door of the offices occupied by him, which signboard must be approved by the Market Manager and must bear the name of the market agent's business;

(b) maintain the signboard in good repair; and

(c) display in the market hall the name of his business in a manner approved in writing by the Market Manager.

**18. Floor sales.—**

(1) The parties to a floor sale must be the buyer and the consigner of the market agent concerned; the Msunduzi Municipality will not be a party to a floor sale or in any manner be held liable for the due fulfilment of the terms and conditions of the floor sale.

(2) If an agricultural product on the market floor is sold—



- (a) by weight, it must be the net weight of the agricultural product, and it is the responsibility of the market agent concerned to ensure that, before the agricultural product is offered for sale, the correct net weight of the agricultural product is displayed—
    - (i) on the agricultural product; and
    - (ii) on the container if the agricultural product is in a container; and
  - (b) by sample, the bulk of the agricultural product must correspond in quality to the sample of the agricultural product exhibited, and the market agent concerned remains responsible for ensuring that any sample of the agricultural product exhibited corresponds in quality to that of the bulk of the agricultural product.
- (3) The Market Manager is entitled but not obliged—
  - (a) to take such measures as he may deem necessary to ensure that the provisions of this section or any other provisions of this By-law are complied with; and
  - (b) to prohibit an agricultural product from being offered for sale if any of the provisions of this By-law are not complied with.
- (4) An agricultural product on the market floor may only be sold to a buyer who holds a valid buyer's card issued by the market administration.
- (5) When conducting a floor sale the buyer must immediately present his buyer's card to the market agent concerned, who must record the details of the sale in the manner determined by the Market Manager from time to time.

## CHAPTER 5

### 19. Payment.—

- (1) The buyer of any agricultural product must, immediately after the sale, pay the purchase price in cash to the Msunduzi Municipality in the manner required by the Msunduzi Municipality, such purchase to then be in accordance with the financial regulations or other accounting policies or practices of the Msunduzi Municipality, payment of the purchase price to be effected by means of and on submission of the buyer's card referred to in section 18 (4) and (5).
- (2) (a) The Market Manager may grant a deferred payment facility to a buyer on condition that the buyer furnishes, at the buyer's cost, a bank or cash guarantee for an amount determined by the Market Manager and pays the purchase price—
  - (i) before 11:45 on the second trading day following the date of purchase;
  - (ii) before 11:45 on the following Tuesday if the purchase was made on a Saturday; or
  - (iii) before 11:45 on the next business day if the purchase was made on a day before a public holiday.
- (4) After payment of the purchase price of an agricultural product has been effected or credit for the payment of the purchase price has been granted, the Msunduzi Municipality must issue a sales docket to the buyer, which sales docket must contain the details and information determined by the Municipal Manager from time to time.
- (5) Should a bank guaranteed buyer fail to pay for the purchase of an agricultural product, the Msunduzi Municipality will, simultaneously with the payment referred to in section 20 (2) below, pay into the trust account of the market agent responsible for the sale an amount equal to the amount of the sale and the Msunduzi Municipality will be entitled forthwith to recover the amount paid from the security provided to the Municipal Manager in terms of subsection (3) of section 19.

(6) Buyers who deposit money into the Markets bank account via Electronic fund transfer will only receive credit on their buying card upon presenting proof of the electronic fund transfer and confirmation that the money has been received in the Markets bank account.

**20. Commission on sales.—**

(1) The consigner is liable for payment to the Msunduzi Municipality of the fee determined by the Council from time to time for every floor sale concluded by him.

(2) The Msunduzi Municipality will deduct the fee referred to in subsection (1) from the proceeds of the purchase price for every floor sale and will, not later than two business days following the day on which the floor sale took place, pay the balance of the proceeds of that floor sale to the market agent who was responsible for the floor sale or within such period as may be determined by the Act.

**21. Collection and removal of an agricultural product.—**

(1) Subject to the provisions of subsection (2), a buyer must, within the conclusion of the sale of an agricultural product, collect and remove or cause to be collected and removed all the agricultural products purchased by him, provided that the Market manager may at his discretion grant the buyer an extension of time for the collection and removal of the agricultural product.

(2) No buyer or his representative may remove any agricultural product from the market floor unless—

- (a) he is in possession of the valid sales docket referred to in section 19 (4) for the agricultural product; or
- (b) permission has been granted by the Market Manager for the removal of the agricultural product.

## **CHAPTER 6**

**22. Default of buyer.—**

(1) If a buyer fails to present a buyer's card or to effect payment of the purchase price for the agricultural product purchased, the Market Manager may direct that the agricultural product be resold in a manner he may deem fit and expedient.

(2) A buyer contemplated in subsection (1) is liable to the Msunduzi Municipality for payment of any loss of fees suffered by the Msunduzi Municipality as a result of the resale of the agricultural product, and the Market Manager is entitled to suspend the buyer's card of the buyer until the payment has been recovered from the buyer.

**23. Dispute between buyer and market agent.—**

If there is a dispute of whatever nature about a product, its sale or disposal between a buyer and a market agent, either of the parties to the dispute may refer the dispute to the Market Manager, who will endeavour to resolve it. If any one of the parties is not satisfied with the recommendation of the Market Manager, that party may enforce his rights against the other party in a court of law.

**24. Obligations of a market agent.—**

A market agent must fulfil the following obligations—

- (a) The market agent may not receive any cash or other form of payment from a buyer.
- (b) The market agent may not allow a buyer to remove any agricultural product purchased on the market floor unless the buyer is in possession of a sales docket for the agricultural product in accordance with section 19 (4). and such produce may only be removed through the designated exit gates to the loading areas.
- (c) The market agent may not sell any agricultural product in a container that does not comply with the specifications stipulated by the Market Manager or any other applicable legislation.
- (d) The market agent must provide for an agricultural product that is consistent with that purchased by the buyer in so far as the quantity, weight, quality, grade, variety and container of the agricultural product are concerned.
- (e) The market agent is liable towards a buyer if—
  - (i) the agricultural product provided by the market agent differs from that purchased by the buyer in so far as the quantity, weight, quality, grade, variety and container of the agricultural product are concerned; or
  - (ii) in respect of an agricultural product bought by sample, the agricultural product provided by the market agent differs materially from the sample.
- (f) The market agent may not purchase, or allow his employees to purchase, any agricultural product on the market floor for the purpose of reselling or trading that agricultural product for his account.
- (g) The market agent or any of his employees are allowed, for purposes of personal use or consumption, to purchase any agricultural product on the market floor at a price not lower than the price at which the agricultural product was sold on the market floor on the same day.
- (h) The market agent must ensure that his salespersons comply with the provisions of this section and those of section 15 (2).
- (i) The Market Agent must trade only from his demarcated floor pace.

The market floor shall be divided between the market agents on the basis of the previous 12 months tonnage floor space shall be adjusted annually on the 31 st July in proportion to tonnager to 30 June each year provided that such space shall not decline below a level to permit efficient and satisfactory trading as determined by the Market manager.

New agents shall be given such a minimum floor space as determined by the Market Manager.

## CHAPTER 7

### 25. Barrows.—

- (1) The Msunduzi Municipality may issue a barrow to a buyer only if he—
  - (a) has paid a fee to the market administration for the use of the barrow, of which a fee determined by the as determined by the Msunduzi Municipality.
  - (b) A buyer must at all times be in possession of his receipt for the deposit referred to in subsection (1) (c) and must make available the receipt at the request of the Market Manager.
  - (c) A buyer may only use a barrow issued by the Msunduzi Municipality.
  - (d) A buyer is liable for the safe use of a barrow issued to him.

- (e) A buyer must ensure that the barrow issued to him is used in such a manner as to avoid any wilful or negligent damage.
- (f) A buyer may not sublet a barrow to a third party.

**26. Forklifts.—**

All Drivers must be in possession of a valid hyster drivers' permit which must be carried and available for inspection at all times.

**27. Vehicles, motorcycles and pedal cycles.—**

No vehicles, motorcycles or pedal cycles are permitted on the market floor except for operational units, unless—

- (1) For reasons of health or disability an individual is unable to move around without mobility equipment.

**28. Market rules and regulations.—No person may—**

- (a) occupy or trade from any office, area, stand or other place on the market premises unless he has—
  - (i) obtained prior written permission of the Municipal Manager in terms of the approved policy of the Msunduzi Municipality; and
  - (ii) paid in advance any rent or fee lawfully due for the office, area, stand or other place on the market premises;
- (b) purchase or sell any agricultural product, save as provided for in this By-law;
- (c) light a fire on the market premises without the approval of the Market Manager;
- (d) stand or sit on or against any agricultural product on the market premises;
- (e) throw an object at any person or property on the market premises;
- (f) tamper with any agricultural product or container, or tamper with or remove any label on any agricultural product or container;
- (g) cause a blockage in or damage to the sewerage or storm water drainage system of the market premises;
- (h) wash, peel, pack, sort, grade or clean agricultural products other than in the designated area of the market premises without the prior approval of the Market Manager;
- (i) interfere with or molest any other person on the market premises;
- (j) interfere with the activities or business of, or be a nuisance to any other person on the market premises;
- (k) enter or remain on the market premises after hours without the approval of the Market Manager;
- (l) fail or refuse to comply with an instruction by the Market Manager to remove an article from the market premises or relocate an article to another area on the market premises;
- (m) spit, loiter or use threatening, obscene, abusive or offensive language or cause a disturbance on the market premises; or smoke any cigarettes, pipe or cigar in the market hall;
- (n) be under the influence of intoxicating liquor or a drug having a narcotic effect or consume liquor on the market premises;
- (o) damage, deface or foul any property or building on the market premises;

- (p) dispose of any peels, vegetable leaves, garbage or other refuse on the market premises other than in the appropriate bins provided;
- (q) interfere with or obstruct, or offer any payment or inducement to any employee of the Msunduzi Municipality in the execution of his duties;
- (r) hawk, peddle or beg on the market premises;
- (s) remove any refuse, waste or condemned agricultural product from the market premises without the prior written approval of the Market Manager;
- (t) cook food or make any beverage other than in the designated areas of the market premises; and
- (u) bring any animal onto the market premises without the prior written approval of the Market Manager – except for guide dogs for the blind;
- (v) enter the market Hall without shoes.

**29. Entry to the Market.—**

Entrance to the market is reserved.

The Market Manager may refuse to allow any person to enter the market and may instruct any person to leave the market or to remove any item from the market if in his opinion circumstances then existing justify such refusal or instruction.

**30. Retailers and wholesalers.—**

The Msunduzi Municipality is entitled to reserve any part of the market premises for the purpose of retail and wholesale business in market products and may, for that purpose, enter into agreements with a retailer or wholesaler in terms of which a table, stall or area is leased to the retailer or wholesaler, as the case may be, provided that the retailer or wholesaler and the employees of the retailer or wholesaler, as the case may be—

- (a) conduct business only in the part of the market premises allocated to them in terms of the lease;
- (b) deal only in the market products specified in the lease; and
- (c) are not entitled to trade on the market floor.

**31. Direct consignments to wholesalers.—**

(a) Subject to the provisions of section 5 (2), no wholesaler may sell an agricultural product on the market premises other than that purchased on the sales floor.

(b) A wholesaler may, with the prior written consent of the Market Manager, sell an agricultural product delivered directly to him from the consigner, provided that the fee specified in section 20 (1), may be levied, calculated on the average market price for that agricultural product on that specific day or as determined by the Market Manager from time to time.

## **CHAPTER 8**

**32. Powers of the Market Manager.—**The Market Manager is entitled to—

- (a) inspect any agricultural product, article, item, object or thing of whatever nature on the market premises;
- (b) prohibit any agricultural product from leaving the market premises if he reasonably believes that any person has failed to comply with the provisions of section 18 (4) or (5) or section 19;

- (c) if he reasonably suspects that any agricultural product offered for sale is stolen, prohibit the agricultural product from being sold until he is satisfied about the ownership of the agricultural product;
- (d) for statistical or other lawful purposes, request any documentation or information relating to any aspect whatever of the sale of an agricultural product on the market premises, in which event the person to whom the request was made must furnish him with documentation or information within a reasonable time;
- (e) instruct any person who has placed any agricultural product, article, item, object or thing on the market premises that causes an inconvenience or obstruction, to remove the agricultural product, article, item, object or thing;
- (f) prohibit the cleaning, stripping or peeling of an agricultural product on the market premises or in any part of the market premises; and
- (g) for the purpose of ensuring the effective, efficient and proper functioning of the market and the safety and well-being of all people on the market premises, issue such instructions as he may deem necessary, which instructions may be contained in a notice or notices affixed to a notice board or notice boards in prominent places on the market premises, and must be obeyed and complied with by every person entering the market premises.

## CHAPTER 9

**33. Sales to employees of the Msunduzi Municipality.**—No employee of the Msunduzi Municipality who is stationed at the market or is in some way involved in the market is entitled to purchase any agricultural product, except for purposes of personal use or consumption, provided that the purchase price of an agricultural product purchased for personal use or consumption is not lower than the price at which the agricultural product was sold on the market floor on the same day.

**34. Fees.**—The fees payable to the Msunduzi Municipality in terms of this By-law will be the fees determined by the Msunduzi Municipality from time to time.

**35. Appeals.**—(1) Any person aggrieved by a decision of the Market Manager or Municipal Manager made in terms of this By-law may appeal against that decision in accordance with the provisions of section 62 of the Local Government: Municipal Systems Act, 2000, which provisions apply *mutatis mutandis* in respect of the appeal.

**36. Indemnification from liability.**—Any person who enters the market premises does so at his risk, and neither the Msunduzi Municipality nor any of its employees are liable for any loss or damage to a person or his property arising from any act or omission of the Msunduzi Municipality or its employees in the execution of their duties unless they acted negligently.

**37. Offences and penalties.**—(1) Any person who—

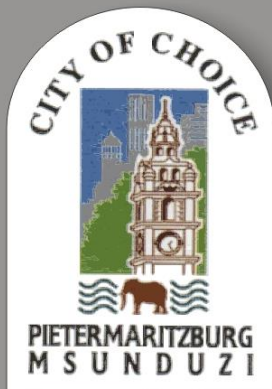
- (a) fails to comply with or performs any act contrary to the terms, conditions, restrictions or directions of a licence, permit, approval, consent or authority that has been issued or granted to him under this By-law;
- (b) contravenes or fails to comply with any provision of or direction issued or requirement imposed under this By-law; or

(c) contravenes or fails to comply with any provision of this By-law,  
is guilty of an offence.

(2) Any person convicted of an offence under this By-law is liable to a maximum period of imprisonment of three years or R60 000 or both as may be determined by a court of law in accordance with the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), or to both the imprisonment and the fine.

**38. Repeal of the Pietermaritzburg Municipal Market By-laws.**—The Msunduzi Municipality Market By-laws published under Municipal Notice No. 753 of 1971, is hereby repealed.





# The Msunduzi Municipality

## MOTOR VEHICLE & ROAD TRAFFIC REGULATION BYLAWS

Official Gazette of The Province of Natal  
Published by Authority No. 2826.  
FRIDAY, 7 FEBRUARY. 1958

### PROVINCIAL NOTICE.

The following. Notice is published for general information.  
Acting Provincial Secretary, Office of the Administrator, Natal,  
Pietermaritzburg, 7th February, 1958. \*No. 60, 1958.

THE ADMINISTRATOR, acting on the advice and with the consent of the Executive Committee, has been pleased, under the authority of Section 200 of the Local Government Ordinance, 1942 (Ordinance No. 21 of 1942) to approve of the repeal of the Motor and Traffic By-laws published under Provincial Notice No. 428 of 1938 as amended by Provincial Notice Nos. 238, 504 of 1939, 49, 408 of 1940, 169 of 1942, 16 of 1943, 95, 461 of 1946, 225, 549 of 1947, 30 of 1948, 331 of 1949, 540 of 1950, 550 of 1951, 304 of 1953 and 412 of 1954 and the substitution therefor of the subjoined new Motor Vehicle and Road Traffic Regulation By-laws, as made by the City Council of the City of Pietermaritzburg at its meeting held on the 24th January, 1957: -

### CITY OF PIETERMARITZBURG. MOTOR VEHICLE AND ROAD TRAFFIC REGULATION BY-LAWS.

1. The following words and expressions shall have the meanings hereinafter respectively assigned to them, unless the context requires otherwise :-

- (a) "City" means the City and Borough of Pietermaritzburg.
- (b) "Council" means the City Council of Pietermaritzburg.
- (c) "Footpath" or "Sidewalk" means that portion of a street between the kerb lines or outer limits of a roadway and the adjacent property lines or building lines and intended for the use of pedestrians.
- (d) "Intersection" means the area embraced within the prolongation of the lateral boundaries of the road ways of two roads which join one another at or approximately at right angles or the areas within which vehicles travelling upon different roads joining at any other angle may come in conflict.

- (e) "Loading Zone" means an area adjacent to the kerb line reserved exclusively for use by vehicles while loading or unloading passengers or property.
- (f) "The Ordinance" means the Road Traffic Ordinance 1956 (No. 26 of 1956) and any amendments thereof.
- (g) "Pedestrian" means any person afoot.
- (h) "Pedestrian Crossing" means
  - (i) that portion of a roadway ordinarily included within the prolongation or connection of the lateral lines of sidewalks at intersections ;
  - (ii) any portion of a road ray distinctly indicated for pedestrian crossing by lines or other markings in the surface.
- (i) "Public Service Motor Vehicle" means a motor vehicle used or intended to be used for carrying passengers or goods or both for hire or reward.
- (j) "The Regulations" means the Road Traffic Regulations made under the Ordinance and published under Provincial Notice No. 649 of 1956, and any amendments thereof.
- (k) "Road Traffic Signs" or "Traffic Signs" includes all signals, signs, warning signposts, direction posts or other devices or markings placed or erected by authority for the purpose of raising, regulating restricting, prohibiting or guiding traffic.
- (l) "Town Clerk" and other officials referred to in these By-laws, including the City Engineer, shall mean the persons from time to time holding the said appointments or acting in the said capacities in connection with the said Council or their authorized representatives.
- (m) "Traffic Inspector" or "Inspector of Licences" means any person appointed as such by the Council or any person for the time being acting in that capacity.

2. Any other words and phrases defined in the Ordinance and the Regulations shall, when used in these By-laws, bear the same meanings as those assigned to them in such Ordinance and Regulations, unless such meaning is repugnant to the context.

### **AUTOMATIC TRAFFIC SIGNALS OR ROBOTS.**

3. The meanings of the light indications shall be :

**Red.**—Vehicular traffic facing the signal shall stop at the stop line and not enter the intersection unless a green arrow lens is illuminated at the same time, when a driver may cautiously enter the intersection to make the movement permitted by the arrow, subject to prior rights of pedestrians and vehicles proceeding on a regular indication.

**Green.**—Vehicular traffic facing the signal shall proceed straight or to the left or right, subject to due pre caution being taken and also to any restricting traffic sign or signal given by an officer of the law engaged in the regulation of traffic.

**Amber.**—Vehicular traffic facing the signal shall stop at the stop line and not enter the intersection unless, when the amber first appears after the green driver is so close to the intersection that a stop cannot safely be made behind the stop line; in such a case the driver may proceed cautiously through the intersection.

**Green Arrow.**—Vehicular traffic facing the signal in their proper traffic lanes may proceed or turn in the direction permitted by the arrow, subject to prior rights of pedestrians and vehicles proceeding on a regular indication,

**REGULATION OF TRAFFIC.**

4. (a) Where pedestrian crossings are in existence and demarcated in terms of the Regulations within any intersection, no pedestrian shall cross or attempt to cross such intersection except within any such marked pedestrian crossing.  
(b) At any intersection controlled by automatic traffic signals or robots and where pedestrian crossing lines are demarcated in terms of the Regulations, no pedestrian shall cross or attempt to cross the roadway thereat against any red light or combination of red and amber lights displayed in his direction from such signal or robot.
5. No person shall loiter in the roadway
6. No person shall drive a vehicle upon any public road with one hand or arm so occupied or engaged as to be unable to help in the driving of the said vehicle.
7. No roadway or sidewalk shall be used by any person for skating on roller skates.
8. No person shall offer for barter, or sale goods or products of any description on or adjacent to a public road so as to interfere with the movement of traffic.
9. (a) No person driving or in charge of a vehicle shall fail to stop such vehicle before entering an intersection then bring a red light or a combination of red and amber lights is, displayed in his direction from any robot erected at such intersection  
(b) Where robots are not in place or in operation - the driver of a vehicle shall yield the right of way, slowing or stopping if necessary, to any pedestrian crossing, the roadway at an intersection.
10. Whenever any vehicle has stopped at a marked pedestrian crossing to permit a pedestrian to cross the road the driver of any other vehicle approaching from the rear shall not overtake and pass the stopped vehicle.
11. There marked pedestrian crossings are in existence between adjacent intersections, no pedestrian shall cross the as in the intersections at any place except in a
12. Vehicle shall pass round a rotary traffic island on the right-hand side of such island, but every vehicle shall  
kerb or from any parking permitted, in such a manner as to interfere with moving traffic approaching from either direction.  
(b) no driver of any vehicle which has been parked or stood at the side of a public road or roadway shall draw out therefrom unless lie can do so with safety to himself and others.
14. No person driving or in charge of any vehicle and any pedestrian shall disregard the instructions of the police, any traffic officer or traffic inspector or any other authorised person supervising a pedestrian crossing or engaged in regulating traffic in any part of the city.
15. No person driving or in charge of any vehicle within the City shall:  
(a) cause it to travel backwards for a greater distance or time than may be necessary for the safety or convenience of the occupants thereof and the pedestrian and other traffic on a public road or reverse it at any time and place where that operation would obstruct, inconvenience or endanger the traffic or allow it to remain stationary in any public road without first leaving the brakes effectively applied;  
(b) drive it or cause it to be driven at a greater speed than thirty-five miles per hour; provided always that when any traffic sign in any public road within the city directs that the speed at which a vehicle may be driven along the road or any portion thereof shall be less than thirty-five miles per hour, the driver shall, within the area so restricted, drive at a speed not exceeding that indicated upon the traffic sign;  
(i) permit or allow it to stand in any area marked "No Parking"; .

- (ii) stop, stand or park it in any loading zone, except that passenger vehicles may stand for not more than five consecutive minutes for the receiving or discharging of passengers and commercial vehicles may stand for not more than twenty consecutive minutes for the actual loading or unloading of merchandise;
- (d) allow the vehicle, if in his possession for the purpose of sale, repair or garaging, to stand in any public road unless the vehicle is being used at the time for demonstration or testing purposes;
- (e) if a public road has been marked out by parallel lines on the surface to indicate where vehicles may be angularly parked, park the vehicle in the road other than within the space formed by any two of the parallel lines which are immediately adjacent and so that the nearest point of the left front wheel is not more than six (6) inches from the kerb;
- (f) where parallel parking is indicated by a road traffic sign, park such vehicle at the parking place so indicated other than with the left-hand wheels of such vehicle parallel to and within eighteen inches of the left-hand kerb provided that, if such vehicle has only three wheels, the body or frame of such vehicle shall be parked parallel to and one wheel shall be within eighteen inches of such kerb, and provided further that where in a one-way street parallel parking is so indicated on the right-hand side of the road, the above provisions shall apply to the right-hand wheels or body of the vehicle as the case may be.
- (g) (i) park any such vehicle in any public road for a period beyond that prescribed by the Council for parking in such road and clearly indicated on a traffic sign duly erected in terms of the regulations published under the provisions of the Ordinance or any subsequent amending Ordinance or Law; the period prescribed 'for parking indicated on such traffic signs shall apply to the side of the road on which the traffic sign is erected, and such periods shall operate daily, but between the hours of 8 a.m. and 6 p.m. only; nothing in any of the foregoing shall affect or prejudice the provisions of Sub-section (c) of .this by-law;
  - (ii) park opposite another vehicle at places where the roadway is 22 feet or less in width;
  - (iii) park any vehicle on any footpath or sidewalk;
- (h) permit or allow it to stand in any public road in such a position or manner as to prevent or impede the free passing of other vehicles proceeding in either direction, except in the case of an emergency or of a mechanical breakdown or for the purpose of erecting, repairing or removing Municipal equipment:
- (i) between the hours of 10 p.m. and 6 a.m. sound any hooter, horn, bell or other audible warning device therein or thereon within 100. yards of any residential building or lighted electric street lamp, save where the sounding thereof is reasonably necessary for the safety of such person or any other person; provided that this sub-section will not apply to ambulances or fire brigade vehicles;
- (j) sound the hooter, horn, bell or other audible warning device therein or thereon at any time then the vehicle is stationary except to warn the driver of some other vehicle of his presence;
- (k) allow its engine to run while petrol or other inflammable spirit is being delivered into the fuel tank of the vehicle or start up the engine until delivery as aforesaid has been completed and the cover of the tank of the vehicle has been replaced;
- (l) fail to observe the following rules when about to turn and when turning at an intersection
  - (i) when a left-hand turn is intended, the driver shall keep well to the left of the road as he approaches the intersection; the turn shall be made as close as possible to the

- left edge of the roadway;
  - (ii) when a right-hand turn is intended, the driver shall keep well to the centre of the roadway, but to the left of the centre line thereof; the turn shall then be made with due regard to traffic at or near the intersection;
  - (iii) when it is desired to turn a vehicle in any public road so as to face in the opposite direction to that in which it was proceeding, the driver shall keep well to the left of the centre of the road and the turn shall then be made with due regard to other traffic;
- provided always that if bollards or other traffic signs, are used to indicate a particular course to be followed to the left or right at any intersection, the turn to the left or right shall be made in the manner indicated by the bollards or traffic signs;
- (m) fail to comply with any notices and road traffic signs placed by the Council in and upon any public road for the regulation and control of traffic.

16. No person shall clean, wash or repair any vehicle on, any public road, except that such emergency repairs may be effected as may be necessary to enable a vehicle to be removed after any mechanical breakdown or accident to such vehicle.
17. The provisions and requirements of the City traffic signs and By-laws relating to parking shall not apply to any registered medical practitioner who is using for immediate professional purposes a motor vehicle which exhibits or displays the prescribed metal token in a manner required by the regulations and in respect of which vehicle he has paid the fee and obtained the certificate required by the Regulation; provided nothing in this exemption shall permit the parking of any such motor vehicle
- (i) at culvert entrances to premises or parking places; or
  - (ii) elsewhere than to the left of the centre of the road way and as near to the left edge the left edge of the roadway as is reasonably possible or in a parking area; or within twenty feet of the corner of two public roads; **or**
  - (iv) within fifteen feet of any fire hydrant unless the medical practitioner can show that he had reasonable grounds to believe that the parking of such vehicle elsewhere would have caused delay prejudicial to the life or health of any person.

#### **MISCELLANEOUS TRAFFIC REGULATIONS.**

18. (a) All police officers and other duly authorised traffic officers or inspectors shall be authorised and empowered, in addition to any power or authority specifically delegated to them by the Ordinance, Regulations or any other Law, to regulate and control traffic in any public road and to take all reasonable and lawful action within the scope of their authority for the enforcement of the Ordinance, the Regulations and these Motor Traffic By-laws.
- (b) Any police officer or duly authorised traffic officer or inspector shall have special power and authority in cases where abnormal congestion of traffic occurs or is likely to occur
- (i) to take personal control of traffic at intersections ordinarily controlled by traffic signs and signals, and all traffic and persons shall comply with the reasonable requirements or directions of such officer or person while he is in such personal control, notwithstanding any indication of a traffic sign or signal to the contrary;
  - (ii) and persons only when in uniform; provided that any officer or inspector duly appointed by the Council as aforesaid shall be deemed to be in uniform for the

purpose of the Ordinance, the Regulations and these Motor and Traffic By-laws when bearing reasonably distinctive clothing of military or semi military pattern with a badge or armlet thereon stating his official capacity.

19. No person shall, by shouts, gestures or actions, willfully frighten any horse, mule, ox or other animal or any public road so as to endanger the safety of any person.
20. The driver of any animal-drawn vehicle shall be constantly attendant upon or shall provide for a responsible person being constantly attendant upon such vehicle then in any public road.
21. No person shall crack, flourish or extend the lash of any wagon whip on any street within the Township, and every Wagon whip shall be looped while being carried along any such road, street or thoroughfare.
22. No person shall ride upon any footpath, causeway or sidewalk set apart for the use of pedestrians or shall leave, drive or ride thereon any horse, mule, donkey, ox, sheep, swine or any other animal or any bicycle or vehicle of any description (but excluding perambulators and bath chairs) or any single wheel of any wagon, cart or vehicle whatsoever except when it is necessary to cross any such footpath, cause way or sidewalk for the purpose of entering any property abutting thereon and no person shall fasten any horse or any other animal so that it shall stand upon or across any foot path, causeway or sidewalk.
23. (a) No procession of persons and/or vehicles for any purpose other than in connection with weddings or funerals or for military or police purposes or of school children or inmates of orphan homes or of Boy Scouts, Girl Guides or other similar institutions shall be permitted in any public road without the previous consent of the Mayor in writing.

The Mayor shall only refuse such consent upon one or more of the following grounds

- (i) that the procession will or is likely to cause damage to the surface of the roadway;
  - (ii) that the procession will or is likely to endanger, obstruct or seriously interfere with pedestrian or vehicular traffic;
  - (iii) that the procession will or is likely to interfere with or cause damage to any wires, structures or fixtures overhanging or across the roadway;
  - (iv) that the procession will or is likely to be a danger to the safety of the public.
- (b) No driver of any vehicle shall drive or attempt to drive his vehicle through or across the path of any procession authorised under this By-law while such procession is proceeding along or across any public road.
24. No person shall cause any obstruction on any foot - path, road, street, thoroughfare or public place within the city by any means whatsoever.
  25. No person carrying bundles of wood, baskets, planks, or other packages likely to cause an obstruction on the foot path, shall walk on the footpaths anywhere within the city.
  26. No person shall deposit or throw upon any public footpath or public road in the city any orange peel, banana or other refuse, nor shall any person spit upon any public footpath or public road or in any public building or public vehicle or conveyance.
  27. No person shall allow goods or other articles, whether they be his own property or in his charge or custody, to remain in any street, road or footpath, so as to cause obstruction or inconvenience to the passage of the public or any person for a longer time than may be necessary for loading or unloading and in no case after notice to remove same shall have been given by the Police or any officer of the Borough.
  28. No person shall roll any hoop or wheel or fly any, kite or throw stones or use any bows and



arrows or play at any games whatsoever in any street or thoroughfare of the - city tending to the annoyance or danger of the inhabitants or users of the road or the destruction or injury of property.

29. No person shall drag any block, plough, harrow, tree or bush or roll any cask, barrel or other thing dangerous to the public safety in any street or road within the city
30. No person in whose charge or property it may be a, shall permit or suffer any wagon, cart, handcart, barrow or other vehicle or thing or animal or animals to obstruct any street or road within the city nor shall leave or unharness or to be left or unharnessed any wagon, cart, handcart, barrow or other vehicle or thing on any street or road or other unauthorised place within the city.
31. No person or persons shall sit or lie on any footpath or public street nor shall any persons stand, congregate or walk so as to obstruct free traffic or to the annoyance of the public after being requested by any competent officer to move
32. No person shall dig or cause to be dug any excavation, pit, trench or hole for any purpose whatsoever in or close to any city street, road or thoroughfare without the consent in writing of the City Engineer or other duly authorised officer first had and obtained and no person who has obtained such permission shall leave any hole, excavation, trench or other dangerous formation in or near any street or thoroughfare without fencing or enclosing the obstruction and keeping a red light burning upon the enclosure from sunset to sunrise.
33. No person shall leave any disabled vehicle, building materials, machinery, excavations or other objects on any public road between the period from sunset to sunrise without indicating clearly the presence of such vehicle, materials, machinery, excavations or other objects on the road by means of red lights spaced not more than five feet apart around it; provided that nothing in this By-law contained shall effect the parking of vehicles in duly authorised parking places,
34. No person shall open, unpack or pack any cases, furniture, goods, materials or merchandise in or upon any city street or road or footpath.
35. No person shall hold any auction or similar sale in any street or thoroughfare without the permission of the Council in writing first had and obtained and subject to any conditions the permit may impose.
36. No person shall place or deposit any slops, trimmings of hedges, fences or trees or rubbish of any kind on any path, road, vacant land or street within the city; provided that this By-law shall not apply to rubbish deposited in boxes or other receptacles approved by the Council under this or any other by-law, for the purpose of removal by the Council or persons contracting with the Council.
37. (a) For the purposes of this By-law, the words "rank" or "stand" shall mean a special parking place duly established, appointed or set apart by the City Council for the parking of that class of public service motor cars commonly known as taxis and indicated as such by the prescribed traffic sign.  
(b) No driver of a taxi shall stand such vehicle for a period exceeding five minutes in any demarcated parking place other than a rank, except upon the express request of the bona fide passenger by whom such taxi is hired.  
(c) No owner or driver of a taxi and no person employed in connection therewith shall ply for hire or accept a passenger for hire while such vehicle is within any demarcated parking place other than a rank; provided that the stopping of a taxi in any such parking place to pick up a fare who has ordered the attendance of such taxi shall not be a contravention of this sub-section.



- (d) No taxi driver shall leave his vehicle unattended on any rank for a period longer than twenty minutes at a time unless he remains within a distance of 25 feet from such rank,
38. A driver of a taxi, when engaged, shall drive to his destination by the shortest route, unless otherwise directed by the hirer.

### **RICKSHAS.**

39. (a) No person in charge of a ricksha plying for hire shall park or allow the same to be parked in any public road or place other than at a stand appointed by the Council as a parking place for rickshas and indicated as such by notice boards or other prescribed traffic signs. A numeral included in any such notice board or traffic sign shall indicate the maximum number of rickshas authorised to occupy such parking place.
- (b) No person in charge of a ricksha plying for hire shall leave such ricksha unattended in any stand aforesaid for a period of time exceeding ten minutes in duration.

### **PUBLIC SERVICE MOTOR OMNIBUSES.**

40. (a) The driver of any omnibus operating on any of the services specified in Schedule A of these By-laws, for the purpose of conveying passengers for reward shall enter and leave the City by and proceed along the route or routes set out in the said Schedule A, and no such driver shall use any route other than those specified in the said Schedule A.
- (b) The driver of any such omnibus shall not stop such vehicle for the purpose of picking up or setting down any passenger at any points other than the Bus Stops specified in the said Schedule A in respect of the particular service and route upon which he is operating.
- (c) The Bus Stops referred to in Sub-section (6) above shall be demarcated by the Council by the erection at the places specified in the said Schedule of road traffic signs as prescribed by "The Regulations" and bearing the following legend:

### **BUS STOP (BUSHALTE) Out of City Service**

41. In any proceedings under these By-laws any person has conveyed or has permitted the conveyance by means of a public service motor omnibus, of any person in addition to the driver and conductor of the vehicle shall be presumed to have done so for reward unless and until the contrary is proved.
42. (a) The driver of any omnibus shall, when stopping such Vehicle for the purpose of picking up or setting down any passenger bring his vehicle to a standstill as near to his left side of the roadway as is reasonably possible in the circumstances,
- (b) to driver of any omnibus shall allow such vehicle to stand at any bus stop demarcated as such by a road traffic sign erected in terms of the Ordinance and the Regulations for a longer period than is necessary for the picking up or setting down of passengers at such bus stop.
43. The driver or conductor of any omnibus shall not permit any passenger to mount, enter or leave such vehicle, and no passenger shall mount, enter or leave such vehicle at any place other than at a bus stop demarcated as such by a road traffic sign erected in terms of the Ordinance and the Regulations or at the ranks and stands established for omnibuses in

terms of these By-laws, provided that the provisions of this By-law shall not apply in the case of such vehicle being involved in an accident or of a mechanical breakdown or other similar emergency or happening.

- 44 (1) Ranks or stands (hereinafter also referred to as terminal stands) for the parking of passenger-carrying public service motor omnibuses are hereby established along the whole of those portions of the north-eastern side of East Street, situated between the intersections therewith of the specified below, except where the stopping or parking of vehicles is prohibited under Sections 89 and 90 (1) of the Ordinance:
- (i) Boom Street to Berg Street.
  - (ii) Berg Street to unnamed road immediately north-east of the Native hostel. (
  - (iii) Unnamed road aforesaid to Calcutta Road (extension of Pietermaritz Street); and Road Traffic Signs No. 69 as prescribed by the Regulations - shall be displayed to indicate such portions as ranks as afore said.
- (2) No person shall park any vehicle in any such stand other than an omnibus in respect of which a permit has been issued under this By-law authorising it to be parked upon such stand or stands for the then current **year**.
- (3) Applications for such permits shall be made in writing to the City Electrical Engineer and Transport **Manager upon forms obtained from him and each** application shall disclose the details of the omnibus and its authorised route required in such form. The current motor carrier certificate shall be produced with each application for a permit and any renewal thereof.
- (4) The annual charge for each such permit or renewal thereof shall be £3 per vehicle per annum, which charge shall be payable in advance in respect of the period of twelve months to which such permit or renewal thereof relates.
- (5) No refund of charges in respect of the non-use of an omnibus on a terminal stand shall be granted in respect of a period less than three months and then only when three months' prior notice in writing of such intended non-use has been given by the permit holder to the City Electrical Engineer and Transport Manager. Subject to this sub-section, pro rata refunds may be made for such non-use.
- (6) Permits shall not be transferable from one to another or from one permit holder to another except upon the written authority of the City Electrical Engineer and Transport Manager and upon payment of a transfer of £1 in respect of each such transfer. .
- (7) No persons shall park any omnibus in any terminal stand for a continuous period exceeding four hours.
- (8) No person shall wash or repair an omnibus in any stand, except that such minor adjustments and tyre changes may be effected as are necessary to enable the omnibus to be removed from such stand.
- (9) No person shall park any omnibus in any public road or place other than in a terminal stand established under Sub-section (1) of this By-law.
- (10) The City Electrical Engineer and Transport Manager may in his discretion cancel upon one month's notice to the permit holder, any permit issued under this By-law upon the failure of such holder to comply with these By-laws or the conditions of the relevant motor carrier certificate or upon the failure of such holder to rectify any abuse or misuse of any stand by him or his servants after reasonable notice.
- (11) Subject to due compliance by the holder with the provisions of these By-laws and payment of the prescribed permit, a permit shall be valid for a period of twelve months from the first day of the month in which it was issued and may be rendered (subject to

the good conduct of the applicant) and to the provisions of the Motor Carrier Transportation Act) for further period of twelve months upon application in to the City Electrical Engineer and Transport Manager,

(12) Any refusal of the City Electrical Engineer and Transport Manager to issue or renew any permit and any cancellation of a permit shall be subject to a right of appeal to the Transportation Committee of the City Council.

45. (a.) For the purposes of the preceding By-laws Nos. 40, 41, 42, 43 and 44, the words "Public Service Motor Omnibus", "Omnibus" and "bus" shall mean a public service motor omnibus used for the carrying of passengers for reward and in respect of which a motor carrier certificate has been issued by the Local Road Transportation Board, Pietermaritzburg.

(b) The words "Stand - City terminus" in Schedule A of these By-laws shall refer to and mean the ranks and stands established by the Council in terms of these By-laws for public service motor omnibuses.

46. (a) Ranks and stands for the parking of passenger carrying public service motor omnibuses owned and/or operated by the City Council over routes extending beyond the borough boundary are hereby established in the following portions of the streets and places stated :

(i) Along the whole of that portion of the north-eastern side of Retief Street situated between its intersections with Boom and Berg Streets.

(ii) Along the whole of that portion of the north-eastern side of the Market Square, adjacent to the gardens extending from a point 30 feet from the Church Street entrance to the Market Square to a point 30 feet from the Longmarket Street entrance thereto. Road Traffic Signs No. 69 as prescribed by the Regulations are hereby authorised to be erected and displayed to indicate such portions as ranks.

(b) No person shall park any vehicle in any stand established under this By-law other than a passenger-carrying public service omnibus owned and/or operated by the City Council.

#### **SCHEDULE A.**

The following shall be the routes and bus stops to be used by the driver of any public service motor omnibus operating on the undermentioned services while travelling within the City boundaries,

(a) Table Mountain area service: (Buses operating to and from the City, from and to the Table Mountain area).

IN Route: To the Stand – City terminus along Wartburg Road into Ortman Road; along Ortman Road right into Echo Road; along Echo Road into East Street.

Bus Stops :

1. On the Wartburg Road midway between the two road entrances to the Non-European Infectious Diseases Hospital.
2. On the Wartburg Road, 150ft. before its intersection with Royston Road.
3. In Ortman Road, 20 feet before its junction with Fitzsimmons Road on the opposite side of the road.
4. In Echo Road, 150 feet after its intersection with Ortman Road.
5. In East Street, 100 feet before its intersection with Church Street.

OUT Route : Return trip to follow the above route but in the opposite direction.

Bus Stops :

The same stops as prescribed above for inward route but on the opposite side of the road.

(b) Streewaters Service (Buses to and from the City, from and to the Streewaters area and direction).

IN: Route: To the Stand - City terminus along Morcom Road into Zwartkop Road; along Zwartkop Road into Mayor's Walk; along Mayor's Walk left into Winston Road; along Winston Road into Victoria Road; along Victoria Road right into Retief Street; along Retief Street left into Boom Street; along Boom Street into East Street in the direction of the Stand – City terminus.

Bus Stops :

1. In Mayor's Talk, 60 feet after its function

OUT: Route: From the Stand - City terminus along East Street in the direction of and into Berg Street; along Berg Street into Mayor's Walk; along Mayor's Walk into Zwartkop Road, along Zwartkop Road into and along Morcom Road.

Bus Stops :

1. In Berg Street, 170 feet before its intersection with Retief Street.
2. In Berg Street, 80 feet before its junction with Levy Street.
3. In Berg Street, 150 feet after its intersection with Pine Street.
4. In Mayor's Walk, 60 feet before its junction with Winston Road.

(c) Greytown Road Service (Buses operating to and from the City, from and to the Greytown Road outside the City).

IN: Route: To the Stand - City terminus along Greytown Road into Church Street; along Church Street right into East Street; along East Street in the direction of the Stand - City terminus.

Bus Stops :

1. In Greytown Road after its junction with the unnamed road leading to the Municipal crematorium and opposite the Municipal cemetery offices.
2. In Greytown Road opposite the island at the junction of Woodlands and Greytown Road.

OUT: Route: Return trip to follow the above route but in the opposite direction.

Bus Stops :

The same stops as prescribed above for the inward route but on the opposite side of the road.

(d) Edendale Service (Buses operating to and from the City, from and to Edendale or that direction).

IN: Route: To the Stand – City terminus along Edendale Road into Burger Street; along Burger Street left into Pine Street (South); along Pine Street (South) right into Long market Street; along Longmarket Street left into West Street; along West Street right into Boom Street; along Boom Street into East Street in the direction of the Stand - City terminus.

Bus Stops :

1. In Edendale Road, 150 feet before its junction with Willowfountain Road on the opposite side of the road.
2. In Edendale Road, 15 feet before the road entrance to South African Railway's work shops.
3. In Edendale Road, 200 feet after the Edendale Road bridge at the Mason's Mill Signal Cabin.
4. In Edendale Road, 20 feet before the factory road entrance to the Aluminum Factory.
5. In Edendale Road, opposite its junction with Woods Drive.
6. In Edendale Road, 400 feet after the entrance to the South African Railway Compound on the opposite side of the road.
7. Opposite Her Majesty's Gaol at the island formed by the junctions of Edendale Road and Devonshire Avenue.
8. In Longmarket Street, 200 feet before its junction with Scott Street.
9. In West Street midway between its intersections with Church Street and Pietermaritz Street.
10. In West Street midway between its intersections with Berg Street and Boom Street. il. In Boom Street, 150 feet before its intersection Fith Chapel Street..

OUT: Route: From the Stand-City terminus along East Street in the direction of Berg Street; along Berg Street left into Retief Street; along Retief Street right into Pietermaritz Street; along Pietermaritz Street left into West Street; Vest Street right into Longmarket Street; along Longmarket Street left into Pine Street (South); along Pine Street (South) right into Burger Street; along Burger Street into and along Edendale Road.

Bus Stops :

1. In Berg Street, 170 feet before its intersection with Retief Street.
2. In Pietermaritz Street mid way between its junctions with Bourke and Slatter Streets.
3. In Pietermaritz Street, 100 feet after its junction with Gallwey Lane.
4. In Pietermaritz Street, 20 feet before its junction with Lambert Street.
5. In West Street, midway between its intersections with Pietermaritz Street and Church Street.
6. In Edendale Road after Her Majesty's Gaol but 100 feet before the latrines constructed at the side of the road.
7. In Edendale Road, 300 feet before the entrance to the South African Railway Compound.
8. In Edendale Road, 200 feet before its junction with Woods Drive.
9. In Edendale Road, 20 feet after the factory road entrance to the Aluminium Factory on the opposite side of the road.
10. In Edendale Road, 200 feet before the Edendale Road bridge at the Mason's Mill signal cabin.
11. In Edendale Road, 15 feet after the road entrance to the South African Railway's Work

shops on the opposite side of the road.

12. In Edendale Road, 150 feet before its junction with Willowfountain Road.

- (e) Kanyavu Service (via Ethelvale) (Buses operating to and from the City from and to the Kanyavu area or entering or leaving the City from the Durban Road direction).

IN: Routes: The two routes prescribed hereunder are for the purpose of this schedule referred to as the First and Second routes. The Second route is an alternate route and shall not be used except in wet weather when the Umzindusi River is in flood and there is a likelihood of the causeway near the sewerage farm referred to in the first route being under water.

First Route: To the Stand - City terminus along Durban Road right into Ridge Road; along Ridge Road into Harwin Road; along Harwin Road past St. Charles' College, past the Sewerage farm and turning left at the Sewerage farm over the causeway across the Umzindusi River to Ortman Road; along Ortman Road right into Echo Road; along Echo Road into East Street in the direction of the Stand - City terminus.

Bus Stops :

1. In Durban Road, 300 feet within the City Boundary.
2. In Durban Road, 150 feet before its intersection with Ridge Road.
3. In Harwin Road, 150 feet after its intersection with New England and Ridge Roads.
4. In the Unnamed road leading from the cause way across Umzindusi River, 100 feet before its junction: with Bishopstowe Road.
5. In Ortman Road, 20 feet before its junction with Fitzsimmons Road on the opposite side of the road.
6. In Echo Road, 150 feet after its intersection with Ortman Road.
7. In East Street, 100 feet before its intersection with Church Street.
2. In Durban Road, 150 feet before its intersection with Ridge Road.
3. In Commercial Road, 450 feet before its intersection with Prince Alfred Street.
4. In East Street, 100 feet before its intersection with Church Street.

OUT: First Route: Return trip to follow the corresponding inward route but in the opposite direction.

Bus Stops:

The same stops as prescribed above for this route but on the opposite side of the road.

Second Route: Return trip to follow the corresponding inward route but in the opposite direction.

Bus Stops :

The same stops as prescribed above for this route but on the opposite side of the road.

#### PENALTY.

Any person who shall contravene any of these By-laws shall be guilty of an offence and liable, upon conviction, to a fine not exceeding Ten Pounds in the case of a first conviction, or, in the case of a second or subsequent conviction for the same offence, a fine not exceeding Twenty

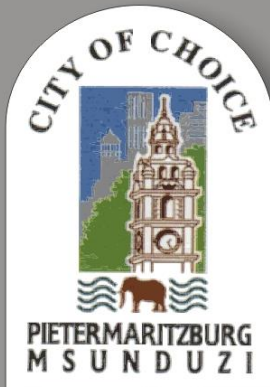
Pounds, or, in default of payment of any fine imposed in either case, to imprisonment, with or without hard labour, for any period not exceeding three months; provided that in the case of a continuing offence a fine not exceeding Two Pounds for each day upon which the contravention continued may be imposed, but no such fine shall in any one prosecution or within any one month exceed Twenty Pounds.

**DESCRIPTION OF OFFENCE**  
**AMOUNT PUBLISHED UNDER PROVINCIAL NOTICE 60 OF 1937 AS AMENDED**

<b>BYLAW</b>	<b>DESCRIPTION OF OFFENCE</b>	<b>AMOUNT (R)</b>
4 (a)	Pedestrian fail to cross within demarcated crossing	
4(b)	Pedestrian cross intersection against red light	
4(c)	Driver fail to yield to pedestrian crossing on green light	
4(d)	Pedestrian loiter in crossing	
4(e)	Pedestrian disobeying pedestrian crossing light	
4(f)	Driver disobeying pedestrian crossing light	
4(g)	Pedestrian fail to keep left when crossing at Pedestrian crossing	
5	Loiter in Roadway	
7	Skate on road or sidewalk	
9(a)	Driver disobey robot - going across or turning Right/left	
9(b)	Motorist turning left, fail to yield to pedestrian at other than robot controlled intersection.	
11	Pedestrian cross at other than demarcated crossing between adjacent intersections	
15	Pedestrian disregard instructions of Traffic officer regulating traffic Vehicles - See Section 107 of Ordinance	
15(c)(i)	Park in no parking area	
15(c)(i)	Park in loading zone	
15(d)	Garage park vehicles which are for sale or repair in public road	
15(e)	Fail to park diagonally where demarcated	
15(f)	Fail to park parallel where demarcated	
15(g)(i)	Exceed parking time	
15(g)(iv)	Park vehicle in excess of 3500kg on public road between 19h00 - 05h00	
15(i)	Use hooter between 22000 - 06h00	
15	Drive in a manner to create excessive noise	
15	Permit a heavy vehicle to be in a prohibited area	
16	Wash or repair vehicle in street	
24	Cause obstruction on road or sidewalk	
33	Fail to display lights on building material on road between sunset and sunrise	
34	Pack or unpack goods on sidewalk	
37(3)	Cause or permit vehicle other than a taxi to be stopped or parked upon a special taxi holding area or taxi stand	
37(4)	Park vehicle other than taxi on taxi stopping place	



37(5)	Taxi standing upon a taxi holding area or taxi stand when temporarily closed and prohibited by a road taxi stand	
37(6)(a)	Park taxi on other than a taxi stand	
37(6)(b)	Stop taxi in place other than on a taxi stopping place or on a taxi stand within area bounded by East Street, Loop Street, Pine Seret, Victoria Road, Retief Street and Greyling street	
37(7)	Driver of taxi permit taxi to stand for period exceeding 5 minutes on any public road except on a taxi stand	
37	Fail to carry permit in or upon taxi or fail to display permit token as prescribed	
37(7)	Fail to product and exhibit permit to police officer or authorized officer of Council	
37(18)	Fail to keep permit token displayed during period of validity	
37(19)	Display false permit token Display expired permit token	
38(1)	Ply for hire or accept passenger for hire other than on taxi stand	
38(2)	Owner/driver of taxi leave taxi unattended on taxi stand for period longer than 15 minutes unless 20 meters from such stand	
38(3)	Refuse to accept engagement of fare	
38(4)	Ply for hire while no tariff card displayed on taxi	
38(5)	Driver of taxi fail to take property left in taxi to police station	
38(6)	Tout or solicit persons to hire taxi in public place or street, except in special taxi holding spot or on a taxi stand	
40(a)	Use unauthorised routes – Schedule A	
40(b)	Use unauthorised bus-stop	
42(a)	Fail to stop as near to left as possible	
42(b)	Stop longer than necessarily at bus-stop	
43	Driver/conductor permits person to enter or leave at other than bus-stop or person leave or enter at other than bus-stop	
44(d)	Park omnibus at other than terminal stand	
44(e)	Leave bus for more than one hour unattended	



# The Msunduzi Municipality

## PROBLEM BUILDING BYLAWS

No. 1721 PROVINCIAL GAZETTE, EXTRAORDINARY, 25 AUGUST 2016

### MUNICIPAL NOTICE 116 OF 2016

#### MSUNDUZI MUNICIPALITY PROBLEM BUILDINGS BYLAWS

**To provide for the identification, control and rehabilitation of problem buildings; to create offences and penalties; and to provide for matters incidental thereto.**

#### PREAMBLE

**WHEREAS** the Msunduzi Municipality recognises the need to identify, control and rehabilitate problem buildings;

**WHEREAS** the Msunduzi Municipality recognises the right to housing, as well as the need to address the infrastructural, social and economic disparities of the past;

**WHEREAS** the Msunduzi Municipality has the competence in terms of Part B of Schedule 4 of the Constitution of the Republic of South Africa, relating to such matters as building regulations, municipal planning and municipal health, and competence in terms of Part B of Schedule 5 of the Constitution of the Republic of South Africa, relating to such matters as the control of public nuisances;

**AND WHEREAS** the Msunduzi Municipality has competence, in terms of the section 156(2) of the Constitution of the Republic of South Africa, to make and administer By-laws for the effective administration of the matters which it has the right to administer;

**NOW THEREFORE** the Msunduzi Municipal Council, acting in terms of section 156 read with Parts B of Schedules 4 and 5 of the Constitution of the Republic of South Africa, 1996 and read with section 11 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), hereby makes the following By-laws:

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### CHAPTER 1 : INTERPRETATION

#### Definitions

1. In these By-laws, unless the context indicates otherwise –
  - “**authorised official**” means a person authorised to implement the provisions of these By-laws, including but not limited to–
    - (a) peace officers as contemplated in section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
    - (b) such employees, agents, delegated nominees, representatives and service providers of the Municipality as are specifically authorised by the Municipality in this regard: Provided that for the purposes of search and seizure, where such person is not a peace officer, such person must be accompanied by a peace officer;

**“building”** has the meaning assigned to it in section 1 of the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977);

**“competent person”** means a competent person as contemplated in the National Building Regulations, Government Notice No. R. 2378 of 12 October 1990;

**“compliance notice”** means a notice issued to the owner of a problem building in terms of section 10 of these Bylaws;

**“Constitution”** means the Constitution of the Republic of South Africa, 1996;

**“Council”** means the Msunduzi Municipal Council, a municipal council referred to in section 157(1) of the Constitution;

**“hijack”** in relation to a building means to unlawfully take over the management and control of a building, including but not limited to the collection of rentals from the owner, occupier or managing agent;

**“managing agent”** means a person who is appointed by –

- (a) an owner of a building to maintain and manage a building on the owner’s behalf; or
- (b) a tenant of the owner who has the power or obligation to sub-let, maintain and manage the building;

**“Municipality”** means the Msunduzi Municipality, a category B Municipality as envisaged in terms of section 155(1) of the Constitution and established in terms of Provincial Notice No. 43 of 2000 (KZN);

**“occupier”** includes any person in actual occupation of a building or part of a building regardless of the title under which he or she occupies such building;

**“owner”** means the person in whose name the land on which a building is situated is registered in the relevant deeds office or –

- (a) in the case of a trust, the trustees of that trust;
- (b) the registered owner of a sectional title unit, where the interior of a sectional title unit is at issue;
- (c) the trustees of a body corporate, where the common property of a sectional title scheme is at issue;
- (d) the administrator of the body corporate of the sectional title scheme where the common property of a sectional title scheme is at issue and there are no elected trustees of the body corporate;
- (e) the executor, where the—
  - (i) owner of the building is deceased and the building has not yet been transferred out of the deceased’s estate; or
  - (ii) estate of the owner has been sequestrated;
- (f) the curator, where the owner of the building has been declared by any court to be incapable of managing his or her own affairs or a prodigal;
- (g) the administrator, where the owner of the building is a mental health care user as defined in section 1 of the Mental Health Act, 2002 (Act No. 17 of 2002); (h) the liquidator, where the owner of the building is a judicial person or a trust and has been liquidated;
  - (i) the former members of a close corporation which has been deregistered and in respect of which they have a continuing liability as contemplated in section 26 of the Close Corporations Act, 1984 (Act No. 69 of 1984), read with sections 83(2) and (3) of the Companies Act, 2008 (Act No. 71 of 2008);
- (j) the business rescue practitioner, where the owner of the building has been placed under business rescue;
- (k) the managing agent, where the owner of the building is absent from the Republic of

South Africa or where the Municipality has, after reasonable attempts, not been able to determine his or her whereabouts; or

(l) every person who is entitled to occupy or use a building, or who does occupy or use a building, where –

(i) the owner of the building is absent from the Republic of South Africa;

(ii) the Municipality has, after reasonable attempts, not been able to determine the whereabouts of the owner of the building; and

(iii) there is no managing agent;

**“problem building”** means a building or portion of a building which—

(a) is derelict in appearance or is showing signs of becoming unhealthy, unsanitary, unsightly, or objectionable;

(b) has been abandoned by the owner, or appears to have been abandoned by the owner, regardless of whether or not rates or service charges are being paid; (c) is overcrowded;

(d) has been hijacked;

(e) has been the subject of one or more written complaints, charges or convictions regarding criminal activities being conducted in the building, as confirmed in writing by the South African Police Service;

(f) is illegally occupied;

(g) has refuse or waste material unlawfully accumulated, dumped, stored or deposited;

(h) has been unlawfully erected or has a part which has been unlawfully erected; (i) has been changed and its subsequent usage is unauthorised;

(j) is partially completed, or structurally unsound or showing signs thereof, and is or may be a threat or danger to life and property; or

(k) is in contravention of one or more of the Municipality’s by-laws.

### **Interpretation of By-laws**

2. If there is a conflict of interpretation between the English version of these By-laws and a translated version, the English version prevails.

### **Objects of By-law**

3. The objects of these By-laws are to –

(a) provide a mechanism for the co-ordinated identification, control and rehabilitation of problem buildings;

(b) set minimum standards for consultation with owner, and people who occupy or reside in problem buildings; and

(c) ensure the health and safety of people occupying problem buildings and of the public in general.

### **Application of By-laws**

4. These By-laws apply to all areas which fall under the jurisdiction of the Msunduzi Municipality and is binding on all persons to the extent applicable.

## **CHAPTER 2 : IDENTIFICATION OF PROBLEM BUILDINGS**

### **Notice of intention to declare building a problem building**

5. In the event that the Municipality is of the opinion that a building should be declared a problem building, it must serve a written notice on the owner –

- (a) informing the owner that the Municipality intends to declare the building to be a problem building;
- (b) giving reasons why the Municipality intends to declare the building to be a problem building;
- (c) inviting the owner to make written representations, within 14 days of the notice, on why the building should not be declared a problem building; and
- (d) providing an address, fax number or email address to which representations may be submitted.

### **Declaration of a problem building**

6.(1) The Municipality must, after considering any representations received from the owner, as contemplated in section 5, either –

- (a) decide not to declare the building to be a problem building for the time being; or
- (b) declare the building to be a problem building.

(2) In the event that the Municipality decides to declare a building to be a problem building, the Municipality must give written notice to the owner, together with reasons.

## **CHAPTER 3 : CONTROL OF PROBLEM BUILDINGS**

### **Profiling of problem buildings**

7.(1) The Municipality must, as soon as is reasonably possible after a building has been declared to be a problem building, undertake an investigation to identify –

- (a) those aspects of the building which are in contravention of these Bylaws or any other applicable law;
- (b) any risks to the safety of the occupiers of the problem building or the public; and (c) the occupiers of the problem building and, if the occupiers reside at the building, also profile the occupants to determine the following characteristics of the occupiers:
  - (i) the number of children;
  - (ii) the number of women;
  - (iii) the number of disabled people;
  - (iv) the number of elderly people;
  - (v) the number of people residing per room and the area of each room occupied as a residence; and
  - (vi) the total number of people residing in the building.

(2) The owner or the managing agent of the problem building is entitled to be present while the investigation is being undertaken and, if so present, must be given the opportunity to make representations during such investigation.

(3) Where verbal representations have been made in terms of subsection (2) the authorised official must write down such representations and ensure that the owner or the managing agent is given an opportunity to sign such representations.

### **Ban on new occupants**

8. The Municipality may, once a problem building has been profiled, apply to court for an interdict restraining the owner and any managing agent from –

- (a) allowing any other people, in addition to those identified in the profile of occupants, from occupying or residing at the building; and
- (b) filling any vacancy which may arise as a result of any person identified in the profile

of occupants vacating the building.

## **CHAPTER 4 : REHABILITATION OF PROBLEM BUILDINGS**

### **Engagement with owners**

**9.(1)** The Municipality must once a problem building has been profiled as contemplated in section 7, serve a further notice on the owner -

- (a) identifying those aspects of the building which are in contravention of these Bylaws or any other applicable law;
- (b) identifying any risks to the safety of the occupiers of the problem building or the public; and
- (c) specifying steps which the owner is obliged to take, within a reasonable period of time specified in the notice, in order to rectify those contraventions or remove those risks.

**(2)** The steps referred to in paragraph (1)(c) may include, but are not limited to—

- (a) repairs;
- (b) repainting;
- (c) renovations;
- (d) alterations;
- (e) installing proper ablutions;
- (f) demolition;
- (g) enclosing, fencing or otherwise securing the problem building;
- (h) closing the problem building;
- (i) removing all refuse;
- (j) submitting a building plan;
- (k) removing any source of danger or potential danger;
- (l) completing the construction of the problem building or any part of that building;
- (m) appointing and instructing, at the cost of such owner, a competent person to –
  - (i) examine any condition that gave rise to the declaration of a building as a problem building; and
  - (ii) report to the authorised official on the nature and extent of the steps to be taken, which in the opinion of the competent person, need to be taken in order to make the problem building safe;
- (n) giving notice to occupiers to vacate the problem building within a specified time period; and
- (o) complying with any provision of these By-laws or any other law.

### **Engagement with occupiers**

**10.(1)** If a problem building is occupied, the Municipality must serve a compliance notice on the occupiers and affix a copy of the compliance notice at the main entrance to the building, advising that—

- (a) the building has been declared a problem building;
- (b) the owner has been instructed to take specified steps within a specified period of time;
- (c) where applicable, that the continued occupation of the problem building is unsafe; and
- (d) the Municipality may seek the eviction of the occupiers if the owner fails to comply



with the compliance notice.

(2) In the event that the owner of a problem building which is occupied by residents fails to comply with the compliance notice, the Municipality must serve a further notice on the occupiers and affix a copy of the notice at the main entrance to the building–

- (a) advising that the owner of the problem building has failed to comply with the notice;
- (b) where applicable, warning that continued occupation of the problem building is not safe;
- (c) advising that the Municipality intends seeking the eviction of the occupiers;
- (d) listing the details of possible alternative accommodation; and
- (e) providing the contact details of a municipal official available to assist the occupiers in finding alternative accommodation.

### **Eviction**

11. Where the owner of a problem building fails to comply with a compliance notice, the Municipality may, after having complied with the engagement process contemplated in terms of section 10, apply to court for the eviction of the occupiers.

### **Unsafe problem buildings**

12.(1) In the event that the authorised official has reason to believe that the condition of any problem building is such that steps should immediately be taken to protect life or property, he or she may take such steps as may be necessary in the circumstances without having to comply with any other provision of these By-laws and may recover the costs incurred from the owner.

(2) In the event that the authorised official deems it necessary to act in terms of subsection (1) he or she may for the purposes of ensuring the safety of any person, by notice in writing order–

- (a) the owner of a problem building to –
  - (i) remove, within a period specified in the notice, any person residing in or otherwise occupying such problem building; and
  - (ii) take reasonable steps to ensure that no person who is not authorised by the Municipality enters such problem building; and
- (b) any person residing in or otherwise occupying a problem building, to vacate such problem building.

(3) A person may not enter or continue to occupy, use or permit the occupation or use of any problem building in respect of which a notice was served in accordance with subsection (2), unless he or she has been given written permission to do so by the Municipality.

## **CHAPTER 5 : ENFORCEMENT**

### **Entry by authorised official**

13.(1) An authorised official may enter any building at any reasonable time with a view to–

- (a) determine whether the building should be declared a problem building in terms of these By-laws;
- (b) serve any notice required in terms of these By-laws;
- (c) determine whether the owner has complied with any compliance notice issued in terms of these By-laws; or
- (d) enforce any provision of these by-laws.

(2) A person may not hinder or obstruct an authorised official in the exercise of his or her powers

or duties in terms of these By-laws.

(3) An authorised official must, when entering the building as contemplated in subsection (1), produce a valid identification document issued to him or her by the Municipality, to the owner and, if applicable, the managing agent, as well as to any occupier who asks to see the identification document.

### **Powers of authorised officials**

**14.** An authorised official may, when entering a building –

- (a) inspect, monitor and investigate the building;
- (b) question the owner, the managing agent or any occupier of the building;
- (c) take photos of the building, whether of the outside of the building or any internal aspect of the building, including any residence;
- (d) remove evidence;
- (e) take samples; and
- (f) do anything necessary to implement the provisions of these By-laws.

### **Service of notices**

**15.(1)** Whenever a compliance notice is required to be served on a person in terms of this By-law, it is deemed to have been effectively and sufficiently served on such person –

- (a) when it has been delivered to him or her personally;
- (b) when it has been left at his or her place of residence or business in the Republic of South Africa with a person apparently over the age of 16 years;
- (c) when it has been posted by registered or certified mail to his or her last known residential or business address in the Republic of South Africa and an acknowledgement of the posting thereof is produced;
- (d) if his or her address in the Republic of South Africa is unknown, when it has been served on his or her agent or representative in the Republic of South Africa in the manner contemplated in paragraphs (a), (b) or (c); or
- (e) if his or her address and agent in the Republic of South Africa are unknown, when it has been affixed to a conspicuous place on the building.

### **Combined notices**

**16.** The Municipality is not restricted, when issuing a notice in terms of these By-laws for –

- (a) multiple contraventions of the provisions of these By-laws or of any other By-law in respect of a problem building; or
- (b) multiple failures or refusals to comply with a compliance notice in terms of these By laws, to serve a combined notice dealing with all of those contraventions, failures or refusals, as the case may be.

### **Indemnity**

**17.** The Municipality and any authorised official is not liable for any damage caused by anything lawfully done or omitted by the Municipality or authorised official in carrying out any function or duty in terms of these By-laws.

### **Lawful instructions**

**18.** Failure to comply with a lawful instruction of an authorised official constitutes a contravention of these By-laws.

**Recovery of costs**

**19.(1)** In the event that a person –

- (a) contravenes the provisions of these By-lawS or of any other applicable law in respect of a problem building; or
- (b) fails or refuses to comply with a compliance notice issued in terms of these By-laws, such person is guilty of an offence and the Municipality may take any steps required to remedy the contravention and recover the costs that were incurred by the municipality to remedy such contravention.

(2) The costs incurred by the Municipality to remedy the contravention may be charged to the owner's municipal account.

**Vicarious liability**

**20.(1)** The owner of a problem building whose managing agent or tenant, in the case of a tenant who has the power or obligation to sub-let, maintain and manage the building or portion of the building–

- (a) contravenes the provisions of these By-laws or of any other By-law in respect of a problem building; or
- (b) fails or refuses to comply with a compliance notice issued in terms of these By-laws, is deemed to have committed such contravention himself or herself, unless the owner can show that he or she took reasonable steps to prevent such contravention: Provided that the fact that–

- (i) the owner issued instructions to the managing agent or tenant, prohibiting such contravention; or
- (ii) a written agreement making the managing agent, tenant or another third party responsible for compliance,

does not in itself constitute sufficient proof of such reasonable steps.

(2) The managing agent of a problem building or a tenant in a problem building, in the case of a tenant who has the power or obligation to sub-let, maintain and manage the building or portion of the building, is jointly and severally liable with the owner of such building if the owner –

- (a) contravenes the provisions of these Bylaws or of any other applicable law in respect of a problem building; or
- (b) fails or refuses to comply with a compliance notice issued in terms of these By-laws, unless the agent or tenant can show that he or she took reasonable steps to prevent such contravention.

**Offences**

**21.** Any person who –

- (a) contravenes any provision of these By-laws;
- (b) fails or refuses to comply with a compliance notice;
- (c) fails to comply with any lawful instruction given in terms of these By-laws; (d) threatens, resists, interferes with or obstructs any authorised official in the performance of his or her duties or functions in terms of or under these By-laws; or (e) deliberately furnishes false or misleading information to an authorised official, is guilty of an offence.

**Penalties**

**22. (1)** Any person who is convicted of an offence under these By-laws is liable to –

- (a) a fine of an amount not exceeding R1 000 000;

- (b) imprisonment for a period not exceeding three years;
  - (c) both such fine and imprisonment contemplated in paragraphs (a) and (b).
- (2) In the case of a continuing offence –
- (a) an additional fine of an amount not exceeding R5 000; or
  - (b) imprisonment for a period not exceeding 10 days,
- for each day on which such offence continues, or both such fine and imprisonment, will be imposed.

### **Presumptions**

**23.** A person charged with an offence in terms of these By-laws who is –

- (a) letting a problem building; or
  - (b) acting as a managing agent in respect of a problem building,
- is deemed, until the contrary is proved, to have knowingly let or managed a problem building.

(2) If in any prosecution for an offence in terms of these bylaws it is necessary, in order to establish the charge against the accused, to prove that he failed to comply with the requirements of these bylaws Act relating to standard or quality of materials, design or workmanship, an allegation in the charge sheet that such accused so failed, shall be sufficient proof thereof unless the contrary is proved.

## **CHAPTER 6 : MISCELLANEOUS PROVISIONS**

### **Delegations**

**24.**(1) Subject to the Constitution and applicable national and provincial laws, any –

- (a) power, excluding a power referred to in section 160(2) of the Constitution;
- (b) function; or
- (c) duty,

conferred in terms of these By-laws, upon the Council, or on any of the Municipality's other political structures, political office bearers, councillors or staff members, may be delegated or sub-delegated by such political structure, political office bearer, councillor, or staff member, to an entity within, or a staff member employed by, the Municipality.

(2) A delegation in terms of subsection (1) must be effected in accordance with the system of delegations adopted by the Council in accordance with section 59(1) of the Local Government: Municipal Systems Act, 2000 (Act No.32 of 2000), subject to the criteria set out in section 59(2) of said Act.

(3) Any delegation contemplated in this section must be recorded in the Register of Delegations, which must contain information on the –

- (a) entity or person issuing the delegation or sub-delegation;
- (b) recipient of the delegation or sub-delegation; and
- (c) conditions attached to the delegation or sub-delegation.

### **Appeals**

**25.**(1) A person whose rights are affected by a decision taken by the Municipality in terms of these Bylaws may appeal against that decision in terms of the Appeals provision contained in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) by giving written notice of the appeal and reasons to the Municipal Manager within 21 days of the date of the notification of the decision.

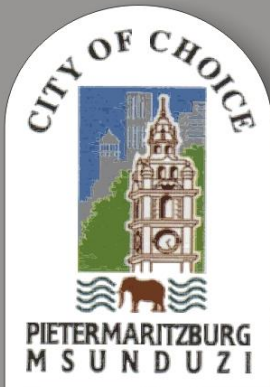
- (2) The Municipal Manager must promptly submit the appeal to the appropriate appeal authority.
- (3) The appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable period.
- (4) The appeal authority must confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights which may have accrued as a result of the decision.
- (5) The appeal authority must furnish written reasons for its decision on all appeal matters.
- (6) All appeals lodged are done so in terms of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) and not in terms of these Bylaws.
- (7) Where a conviction has been affirmed by a court of law and the accused wishes to appeal such conviction, the appeal must take place in terms of the court's appeal process and not in terms of subsections (1) to (5).

## **26. Owner's and occupier's duties not affected**

These bylaws shall not be interpreted to detract from any duty imposed by any other law on the owner or an occupier of problem buildings.

## **Short title and commencement**

**27.** These By-laws may be referred to as the Msunduzi Municipality Problem Buildings By-laws, 2016 and take effect on the date on which it is published in the *Provincial Gazette* of KwaZulu-Natal.



# The Msunduzi Municipality

## TELECOMMUNICATION MAST INFRASTRUCTURE BYLAWS

### MSUNDUZI MUNICIPALITY TELECOMMUNICATION MAST INFRASTRUCTURE BYLAWS

The Msunduzi Municipality, acting in terms of section 156 read with schedule 4B of the Constitution and further read with section 12 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), hereby publishes By-laws set forth hereafter which bylaws shall come into effect on the date of publication.

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#### 1. DEFINITIONS

In these bylaws:

**Antennae** means any system of wires, poles, rods or devices, used for the transmission or reception of electromagnetic waves and includes satellite dishes with a diameter exceeding 1.5m but shall exclude domestic TV antennae less than 2m in diameter or height and where the associated antennae mounting structure is less than 3m in length.

**Areas of Environmental and Heritage Significance** shall include environmental and heritage resources, as contemplated in section 1 of the National Heritage Resources Act, 25 of 1999 and in section 1 of the KwaZulu Natal Heritage Act 4 of 2008.

**Base telecommunication station (BTS) (Freestanding):** means a freestanding support structure on land or anchored to land and used to accommodate Telecommunication Mast Infrastructure for the transmitting or receiving of electronic communication signals, and may include an access road to such facility.

**Base telecommunication station (BTS) (Rooftop):** means a support structure attached to a roof, side or any other part of a building and used to accommodate site Telecommunication Mast Infrastructure for the transmitting or receiving of electronic communication signals.

**Council** means the Council of the Msunduzi Municipality and includes any body or persons empowered by it to assess and resolve on Telecommunication Mast Infrastructure applications.

**Environmental Control Officer (ECO)** means an independent environmental assessment practitioner appointed by the applicant to monitor compliance with the Environmental Management Plan.

**Environmental Management Plan (EMP)** means a contractually binding guideline document for use with the implementation of the construction on a site to manage and mitigate environmental impacts associated with that construction as contemplated in the National Environmental Management Act 107 of 1998.

**Equipment Room** means a structure to house communication equipment associated with Telecommunication Mast Infrastructure whether or not such structure is a separate building or container used exclusively for the equipment or a room within a building.

**Habitable structure** means any structure where people may reside.

**Modification of Telecommunication Mast Infrastructure** means the modification to the physical structure or radio frequency emissions of telecommunication infrastructure.

**Satellite Dish** means any device incorporating a reflective surface that is solid, open mesh, or bar configured that is shaped as a shallow dish, cone, horn or other and is used to transmit and/or receive electromagnetic signals.

**Support Structure** means any pole, monopole, guyed tower, lattice tower, freestanding tower or any other structure that is designed to accommodate antennae.

**Telecommunication Mast Infrastructure (TI)** means any part of the infrastructure of a telecommunication network for radio / wireless communication including voice, data and video telecommunications that is used in the transmission or reception of electromagnetic waves and shall include:

- a) any base telecommunication station (BTS), whether freestanding or on a rooftop;
- b) any antenna;
- c) any support structure;
- d) any equipment room;
- e) any radio equipment, irrespective of spectrum used; and
- f) any optical communications equipment (laser and infra-red) provided by cellular network TPs and any other telecommunication provider, as well as all ancillary structures and the associated feeder cables between the communication equipment and the antennae, needed for the operation of Telecommunications Infrastructure, provided that any Optic Fibre installations and Point to Point copper (cable) installations shall be excluded from these bylaws.



**Telecommunication Network** means a system, or series of systems, that carries, or is capable of carrying, communications by means of guided and/or unguided electromagnetic energy.

**Telecommunication Provider (TP)** means the holder of a telecommunications licence in terms of the Electronic Communications Act (2005) and shall include any private, commercial or public entity and organ of state.

**The Act** means the Electronic Communications Act, 36 of 2005.

**Unauthorized Person** means any person who is not employed by the operator of the Telecommunication Mast Infrastructure and who is not trained or conversant with the occupational exposure hazards and precautionary measures required to be taken so as to prevent exposure to Radio Frequency levels that could be harmful to health.

## 2. SITE SELECTION AND CO-LOCATION

2.1 An application shall be made to Council for every installation of TI whether on a new site or for co-location on existing TI and no person shall erect, use or operate such a TI without the prior written approval of the Council, provided that any TP who wishes to install a TI, whether on a new site or for co-location on an existing TI, shall in the event and to the extent that the Act may apply, submit an application to the Council at least thirty (30) days prior to the intended exercise of such rights.

2.2 The Council may approve such application with or without conditions or may refuse such application, provided that in the event of a refusal, the Council shall provide written reasons for such refusal, and provided further that in the event and to the extent that the Act may apply to the installation of the TI these bylaws shall, notwithstanding anything to the contrary herein, not be interpreted or applied to require the TP to obtain the consent of the Council to exercise any of its rights it may have in terms of Sections 22 and 24 of the Act, but the Council shall in such event issue the necessary conditions to regulate the manner in which a TP could validly exercise its powers.

2.3 The Council shall decide on the application within 30 days of receipt of the application provided that such application has been submitted in accordance with these bylaws, is complete and all additional information required by the Council has been submitted to the Council.

2.4 Any applicant may lodge an appeal against the decision by the Council and any conditions imposed by the Council in terms of these bylaws. Such appeal shall be dealt with in accordance with the provisions of section 62 of the Local Government: Municipal Systems Act, 32 of 2000.

2.5 An application for the erection use or operation of any TI shall be submitted to the Council in the format approved by the Council for such purpose from time to time and shall include:

- a) The Site Analysis Plan referred to below;
- b) The report detailing the motivation for the selected site referred to below;
- c) The Zoning and Land Use Map as referred to below;
- d) A Report and Map that demonstrates how the proposed site relates to the existing and proposed network telecommunications infrastructure as referred to below;
- e) Any other information that may be required by the Council in terms of these bylaws, including but not limited to additional documents, maps, photographs, assessments, measurements, other statutory approvals and licenses including the Act, the

Hazardous Substances Act, 15 of 1973, the National Environment Management Act 107 of 1998 and the National Building Regulations and Building Standards Act, 103 of 1977.

2.6 Such application form may also require:

- a) Proof of payment of the premiums of public liability insurance cover in an amount determined by the Council for the planned duration of the work,
- b) Proof of the TP's contractor being possessed of indemnity insurance,
- c) Proof that the TP has engaged with all other TP's and obtained assurances therefrom that they or any one of them will not be engaged in work at the same vicinity at the same time.
- d) The provision of the contact numbers and names of all responsible officials who will be managing the work, including the TP's officials delegated project managers and contractors and sub-contractors,
- e) A safety plan for the work, including the nomination of Safety Representatives and the provision of their personal contact details,
- f) A detailed planning programme for the work showing the commencement and completion dates for each section of the work provided that once approved, any changes to this programme will require to be approved by the Council;
- g) Advertising of the work in a newspaper circulating in the municipality giving the public warning and detailed notice of the extent of the project and its precise location.
- h) A physical plan of the work including the intended placement of any wires, cables, pipes, tubes or the like.
- i) The giving of notice specifically to all residents, businesses and other concerns in the path of or adjacent to the work.

2.6 To avoid proliferation of separately located TIs the benefits of co-location shall be assessed by the applicant against any possible negative effects as contemplated below. The Council may refer such assessment for further investigation by the applicant, or where it deems necessary, a person appointed by the Council and at the cost of the applicant.

2.7 Antennae shall be located and positioned so that no habitable structures of the same height are within a zone of 50m from the front of the antennae.

2.8 Where any proposed TI impacts on the biophysical environment and/or an area of environmental and heritage significance, all possible site location alternatives shall be explored early in the planning process in order to minimize the impact of the TI, rather than relying only on camouflage to reduce the impact.

2.9 Subject to these bylaws, and other relevant legislation, the possibility of utilising existing structures to accommodate TI shall be considered in all cases. For the purpose of these bylaws such structures shall include buildings, utility poles, light masts, billboards and other existing structures.

2.10 The design and siting of TI and ancillary facilities shall be integrated with existing buildings and structures provided that where it is impractical to do so, they shall be sited and designed so as to minimise any adverse impact on the amenity of the surrounding area.

2.11 In any application for co-location the council shall have regard to the following considerations:

- a) any possible increase of support structure height needed to accommodate the other providers that may be visually unacceptable;

- b) any possible increase of power output from one location;
- c) the physical and technical limits to the loads that a support structure is able to support; d) whether or not the planned Radio frequency (RF) coverage may be achieved by at a location.

2.12 All applications for TI shall be accompanied by a Site Analysis Plan which clearly illustrates the proposal in the context of the existing landscape and receiving environment, drawn to an appropriate scale.

2.13 The Site Analysis Plan shall be accompanied by a report detailing the motivation for the selected site, how the siting and design of the facility has responded to the site analysis and shall, to the satisfaction of the Council, demonstrate that all alternatives on the site itself have been explored in order to address the above requirements.

2.14 The details referred to in Schedule 1 shall be included in such a Site Analysis Plan.

2.15 In addition to the Site Analysis Plan, a Zoning and Land Use Map to a scale of 1:2000 (A4) indicating the zoning and land use shall be submitted and shall indicate all areas of environmental and heritage significance, if applicable.

2.16 A Report and Map that demonstrates how the proposed site relates to the existing and proposed network telecommunications infrastructure and confirming that the applicant has looked at all possible existing options for co-location shall also be submitted containing the following information:

- a) Any existing or proposed TI and other possible support structures within a radius of 1 kilometer around the site;
- b) Where, in the view of the applicant no other available alternative location is possible, the applicant shall indicate accordingly and provide motivation for this view;
- c) Details of possible sharing opportunities with other TP's shall be motivated to the satisfaction of Council, which for the purpose of these bylaws shall include making provision in the design of the TI for accommodating infrastructure of all other TP's and / or the accommodation additional TP containers in any equipment room.

2.17 The applicant shall demonstrate in the Report that all efforts available to assimilate the structure with its surrounding environment have been made.

2.18 Where possible, TI lines or cables shall be located within existing underground conduits or ducts.

2.19 On termination of use or decommissioning of TI, the TP shall remove all equipment from the site including any access road that is no longer required, and the area shall be rehabilitated to the satisfaction of Council.

2.20 Council shall be competent to evaluate, monitor and approve the post-decommissioning rehabilitation of the site.

### **3. VISUAL IMPACT & LANDSCAPING, PUBLIC AMENITY AND RESIDENTIAL AMENITY**

3.1 TI shall be designed and sited to minimise any potential adverse visual impact on the character and amenity of the local environment, in particular, impacts on prominent landscape features, general views in the locality and individual significant views.

3.2 The design and siting of TI shall be integrated it as far as possible with the building or support structure to which it relates.

3.3 No antenna shall be hung off the side of a building in an unsightly manner, or be attached so as to protrude above the top of the roof / apex of a roof, but shall form an integral part of the building as a design element.

3.4 For heritage areas, buildings older than 60 years and other heritage sites, the integrity of the heritage shall prevail in the design and siting of TI.

3.5 Techniques which may be used to minimise adverse visual impacts for rooftop BTS shall include:

- a) adjustment to the overall size;
- b) colour or cladding to match adjacent walls, e.g. complementing facade treatment so as to maintain visual balance;
- c) creating an architectural feature such as a spire, column or finial and screening to minimise visibility of the facility from adjacent area.

3.6 In the case of BTS (free-standing), design measures to mitigate visual impact may include:

- a) adjustment to the overall size;
- b) colour coding to match the predominant background;
- c) designing the infrastructure as a work of urban art or as another structure; d) picking up on a fencing style or type of roof pitch and repeating this for the equipment room;
- e) if there are boulders on site, using stone cladding for the equipment room.

3.7 The equipment room or container shall either be walled or fenced as appropriate in the context in metal, stone, wood or brick shall be housed in a specially designed building to match other buildings on the site.

3.8 In the event that a container is used as an equipment room on a rooftop, such container shall be set back as far as possible from the edges of the roof so as not to be visible from street level.

3.9 Cables shall be placed underground, unless it is impractical to do so and subject to there being no significant effect on visual amenity.

3.10 TI shall not be located on ridgelines.

3.11 TI support structures shall be located where vegetation, landforms or other features of a site will adequately screen or reduce the impact of the TI from public areas and reduce the visual impact.

3.12 Landscaping or tree planting may be requested by the Council as a measure to reduce the visual impact of TI, even if only to screen at least the base of towers and ancillary structures, and to draw attention away from the structure.

3.13 Measures such as concealment, colour, appropriate finishes and camouflage shall be used to minimise the visual impact in accordance with Schedule 2.

3.14 New tree group plantings and rows away from the base of the support structure may be required to protect views from more distant areas.

3.15 Plant species shall be chosen based on the size of the facility and in sympathy with the existing landscape theme (if any) in the locality.

3.16 The obstruction of views of significant vistas, significant landmarks or elements of the cultural landscape shall be avoided.

3.17 TP's shall motivate their choice of support structure, which shall, as a general rule for new BTS Freestanding site, be a slimline monopole in an urban context and a lattice mast in a rural context.

3.18 Newly constructed access roads or other parts of the BTS (freestanding) site, shall be landscaped with plants/trees and/or ground covers to Council's satisfaction, and may be required at areas in and around the site that is not within the BTS (freestanding) itself.

3.19 Where power to a base station site is required and excavation works are undertaken, no mature trees or vegetation may be affected, and the required excavation shall be undertaken as required by Council.

3.20 Advertising signs of any type, including logos shall not be permitted on TI, except in accordance with a separate application for approval in terms of the Msunduzi Municipality Advertising Signage Bylaws.

3.21 Lighting shall be energy efficient, fully shielded and tilted downwards and screens shall be placed around these lights to prevent vandalism. Any such measures shall be indicated on the TI Plan that is submitted on application.

3.22 If so required by the Council, the applicant shall supply at least one alternative design option in respect of one or more of the following aspects, namely, height, type, colour and locality.

3.23 A photo montage and a schedule of colours and finishes for the proposed TI may be requested by Council.

3.24 A visual impact assessment prepared by a suitably qualified independent professional, to Council's satisfaction, may be required by Council. The assessment shall include the visual sensitivity (low, medium, high, very high) at each scale of visibility (local, distant, skyline) and include recommendations on mitigation.

3.25 For every new or upgraded BTS (freestanding) site, Council shall consider whether landscaping or the provision of public amenities is appropriate in the context of both enhancing the local environment and benefiting the public amenity.

3.26 The Council may also, in its discretion require the submission of a landscape plan which will include the following information:

- (a) The costs of the proposed landscaping;
- (b) Details of how the landscaping will be implemented and maintained on the subject site.

3.27 The Council may request a financial guarantee to the cost of the landscaping to be held by Council until implementation of all approved works.

#### **4. IMPACT ON AREAS OF ENVIRONMENTAL AND HERITAGE SIGNIFICANCE**

4.1 No TI shall be erected in an area of environmental or heritage significance such that it can be viewed to or from the site, with adverse impacts on the environmental or heritage resource.

If this is unavoidable for network or technical reasons, the requirements below must be met, to the satisfaction of Council.

4.2 Environmentally sensitive construction methods shall be employed in the construction of a BTS (freestanding) site so that the natural habitat is not disturbed. Any disturbance to the natural habitat shall be rehabilitated as a matter of course and to the satisfaction of the Council.

4.3 Surrounding vegetation shall be retained as far as possible and any proposed removal of trees or vegetation shall be shown on the submission of the site plans and is to be approved by Council prior to removal.

4.4 If TI is situated within or abutting an area of environmental or heritage significance, a Statement of Environmental Effects shall be submitted to Council and shall indicate the environmental impact of the proposal and the measures to be taken to mitigate any likely adverse impacts of the proposal.

4.5 A Construction and Operational phase Environmental Management Plan (EMP) may be requested by Council, to Council's satisfaction, prior to approval. Such EMP may require the appointment of an Environmental Control Officer (ECO) and the construction of any associated works or access roads.

4.6 The applicant shall have regard to the following, and the Council may impose appropriate conditions in the approval, where necessary:

- a) Where the proposal impacts on the biophysical environment, all possible location alternatives consistent with minimizing proliferation of antenna shall be explored early in the planning process in order to minimize the impact of antenna support structures, rather than relying only on camouflage to reduce the impact.
- b) Sites with high erosion potential due to, steep slopes, dispersive soils, unstructured, sandy or gravelly soil and poor vegetation cover shall have specific erosion control measures put in place to the satisfaction of the Council, including erosion control gabions and contouring.
- c) Any access road to a property where cellular communication infrastructure is located, shall not in any way increase the potential for soil erosion. The network provider shall plant indigenous plants and ground covers at the side of such access road. Should the road no longer be required, the area shall be planted with indigenous plants.
- d) Environmentally sensitive construction methods shall be employed in the construction of base station sites so that the surrounding vegetation is not disturbed.
- e) Any disturbance to soil/vegetation caused shall be rehabilitated.
- f) Any un-vegetated areas around any fenced area shall be re-vegetated with appropriate local indigenous plants, or shall be stabilized with suitable ground cover. In urban areas, planning can be complimentary to local planting patterns.
- g) Areas disturbed during construction shall be rehabilitated and planted with indigenous water-wise plants.
- h) On-going maintenance of the area shall take place by the applicant.
- i) Waste generated during construction shall be disposed of in accordance with the council's waste Management Bylaws.
- j) The location and design of all access roads shall be included in the EIA and or the EMP. Alignments that are too steep, cut across contour lines require multiple stream crossing or which may cut across important ecosystems/microhabitats shall be avoided.



## **5. IMPACT ON EXISTING SERVICES AND UTILITIES**

5.1 Electricity supply to TI shall, where practically possible, make use of underground cables. All electrical installations shall be as per ESKOM or Msunduzi Municipality Electrical Department requirements and standards. BTS (rooftop) sites shall have cabling placed in a properly sealed metal channelling.

5.2 Power supply to TI sites shall not interfere with existing radio equipment installed in the vicinity. If existing electricity supply to the site is not sufficient, the use of solar energy may be considered.

5.3 any interference that cellular Telecommunication Mast Infrastructure may have on satellite or television reception, shall be investigated by the applicant, owner and any network provider, and in the event where such interference is caused by the cellular communication infrastructure, the network provider shall rectify the matter at its own cost.

5.4 Public access to TI installations shall be restricted in an appropriate manner and the necessary warning signage shall be erected to the satisfaction of Council. Such security measures shall not inhibit emergency exit procedures.

5.5 In all cases, advisory and warning signage including a pictogram approved by council will be required on cellular telecommunication infrastructure. Such signage shall identify the property and the network provider and shall warn the general public of such infrastructure. Such shall be to council's satisfaction and may not be larger than 400mm x500mm.

5.6 The TP, the land owner and any other person in charge of the land shall indemnify Council against all claims of whatsoever nature, howsoever arising from third parties relating to the approval of and the erection, use, operation and the decommissioning of the TI, as may be approved.

## **6. PUBLIC HEALTH AND SAFETY**

6.1 Antennae shall be located and positioned so that no habitable structures of the same height are within a zone of 50m from the front of the antennae.

6.2 No TI or combination of such infrastructure may at any time cause the public to be exposed to RF levels that exceed the International Commission on Non-Ionizing Radiation Protection (ICNIRP) public exposure guideline in any occupied space or location to which the public reasonably has access.

6.3 No unauthorized person shall be within 5m in front of the antennae and the TP shall accordingly erect clearly marked warning signs, defining this no go zone and take all necessary steps to prevent a contravention of this bylaw.

6.4 If the proposed TI elicits community or Council concern, numerical simulations of predicted Radio Frequency and Electromagnetic Energy levels shall be submitted to the Council for verification or assessment, prior to approval.

6.5 The Council may request further information or verification from the applicant, which may include numerical simulations of predicted Radio Frequency and Electromagnetic Energy levels done by an independent certified institution with reference to compliance with the latest public exposure limits in terms of the ICNIRP guidelines.

6.7 Once a site is operational, Council may request a test report to be carried out by an independent certified institution providing the results of measurements showing the actual RF



6.8 EME levels from that site, with necessary detail as determined at that time. The cost of carrying out such tests shall be borne by the applicant.

## **7. OPERATIONAL CONTROLS**

7.1 The Council may request a Network Plan for each respective TP which enables the Council to establish all existing and planned sites for the Msunduzi Municipality and how the different networks' sites relate to each other.

7.2 The Council may at any time, request monitoring by an independent certified expert in the field, to verify any issue, including whether RF EMF levels are within the levels for public exposure limits, and relating to the siting and operation of TI, at the expense of the TP. Alternatively, Council may take its own readings.

7.3 In the event of measurements showing that either the RF EME levels exceeds the ICNIRP public exposure guidelines, the NDOH shall be notified and Council or the NDOH may take any appropriate action required at such time in order to further investigate and close or discontinue the TI site, if so required.

## **8. GENERAL REQUIREMENTS**

8.1 If the TI is in an area of environmental significance an Environmental Management Plan (EMP) shall be submitted to Council for approval prior to final approval.

8.2 If the site is decommissioned or any approval granted in terms of these bylaws is revoked, the applicant shall remove all site infrastructure and the site shall be rehabilitated to its former state or to a condition that is in line with the land use and character of the area at the time, as required by Council and at the cost of the TP.

8.3 Ongoing maintenance of the entire installation shall be carried out to the Council's satisfaction by the TP.

8.4 Conditions of approval shall be made known to any new owner or lessee of the site and shall be binding on the successor in title.

8.5 Without detracting from any other bylaw, the TP shall certify that the anticipated combined or weighted RF Exposure of a person will not exceed the public exposure guideline as set by the ICNIRP, prior to the approval of the building plans in respect of the TI.

8.6 The land owner, TP or any other person in charge of the land shall grant Council access at all reasonable times to the installation, for the purpose of monitoring, inspection and compliance certification.

8.7 Should the ICNIRP review the public exposure guidelines in respect of the link between electromagnetic radiation and health issues, the Council may, subject to relevant legislation, review any approval and any conditions imposed in terms of these bylaws.

8.8 No approval granted in terms of these bylaws shall exempt the applicant from any other Bylaws or Legislation that may be applicable.

8.9 All applicants shall accept in writing within 30 days of notification thereof, any conditions imposed by the Council.

## **9. MONITORING, CONDITIONS AND COMPLIANCE**

9.1 The Council shall have the right to monitor all cellular Telecommunication Mast Infrastructure in the area of jurisdiction of Council to ensure compliance with these bylaws, the conditions of approval, and to verify sharing and co-location considerations as put forward by applicant and any network provider.

9.2 Council shall have the right to enter any property and installation at all reasonable times and to carry out such inspections, measurements and testing as may be necessary. Any person who interferes with or obstructs such entry shall be guilty of an offence.

9.3 The holder of any approval in terms of these bylaws, any owner and network TP shall, where so required by the Council, provide the Council with such reports and in the format required by the Council to establish compliance with these bylaws or any conditions of approval. Any person who fails to provide such a report shall be guilty of an offence.

9.4 The Council may attach conditions to the approval aforesaid including the following :-

9.4.1 the manner of doing the work;

9.4.2 the provision of health and safety requirements of the Municipality;

9.4.3 the provision of signage stating the name of the licensee and its contractor; 9.4.4 the provision of warning signs, barriers and sheeting around the work; 9.4.5 the provision of rubble, sand or soil storage during the work;

9.4.6 the prohibition of any work on Public holidays, Saturdays and / or Sundays and outside of the hours of 07h00 to 16h00 on any day;

9.4.7 the presence of a Project Manager on the site of the work;

9.4.8 the provision of inspections of the work in progress and the results of compaction tests at intervals during the work;

9.4.9 the provisions of measures to ensure that roads are not obstructed and the access of motor vehicles and pedestrians are not unnecessarily impeded;

9.4.10 the conditions relating to re-instatement of municipal property.

9.5 In the event of non-compliance with the conditions for approval and imposed in terms of these bylaws, the Council may, after having afforded any person affected by such intended withdrawal an opportunity to make representations to the Council, withdraw such approval and cause the cellular Telecommunication Mast Infrastructure to be decommissioned and demolished at cost of the network provider, or at its option to approach the High Court for an interdict for an appropriate order prohibiting the continued use thereof and requiring its demolition.

9.6 Section 9.5 shall be embodied in the conditions of the land use approvals granted in terms of KZNPDA and building plan approvals granted in terms of NBR for the erection of cellular telecommunication infrastructure.

9.7 Any person who contravenes or fails to comply with any provision of these bylaws shall be guilty of an offence and shall, upon conviction by a competent Court, be sentenced to a fine imposed by such competent Court.

## **10. COMMENCEMENT OF THESE BYLAWS**

10.1 These bylaws shall come into force on the date of promulgation thereof in the Provincial Gazette.

**SCHEDULE 1**  
**INFORMATION TO BE SUBMITTED WITH APPLICATIONS FOR**  
**TELECOMMUNICATION INFRASTRUCTURE**

Applicants shall ensure that all relevant information is provided with their submission otherwise the application may not be accepted or the process may be delayed.

- i. Site Analysis Plan (scale 1:2000) with accompanying Report A Site Analysis must include a Map and Report that provides sufficient information relating to the site, all structures within a radius of 200m of the site, and its surroundings to assist in the assessment of TI proposals, including providing GPS coordinates of the proposed site, and of all radio sites which connect to any proposed installation. This is to ensure that they are designed and located in the best possible manner so as to minimise visual impact and any concerns over Radio Frequency and Electromagnetic Energy exposure levels.
- ii. An application for a BTS (freestanding) shall include the following, to the satisfaction of Council: zoning, site boundaries and dimensions location and height of the TI, natural landforms and waterflow through the site, surrounding land uses (to a radius of 200m) surrounding areas of environmental & heritage significance, existing vegetation details of any significant environmental constraints and, where relevant, commitments stating how these constraints will be managed to prevent a negative impact on the environment views and vistas to and from the site location of areas of environmental significance, within the exposure area proximity to adjacent or nearby buildings or other tall structures proximity of TI to other existing TI sites (show 1km radius around application site for urban areas) and other information as required by Council.
- iii. An application for a BTS (Rooftop) shall include the following, to the satisfaction of Council: site boundaries and dimensions, location and height of the TI, proximity to adjacent or nearby buildings and use of such buildings, views to and from the site, use of the building and position of such use relative to TI, proximity of TI to other TI and other possible support structures, photographic illustrations of the proposal within its setting and other information as required by Council;
- iv. A certified copy of the full Title Deed of the property with all the conditions; v. A certificate by the owner of the property that the proposal, as applied for, does not conflict in any way with the Title Deeds;
- vi. A certified copy of any relevant Town Planning Approval;
- vii. A certified copy of the relevant Surveyor General Diagram;
- viii. Where applicable a certified copy of the lease agreement between property owner and service provider;
- ix. The original of the owner's consent;
- x. Telecommunication Mast Infrastructure Plan (scale 1:1000 as well as a reduced A4). xi. An application for TI shall also include the following, to the satisfaction of Council:
  - a) dimensioned plans showing detail of the TI;
  - b) graphic illustrations (including photographs of similar facilities and/or computer generated simulations) showing the type of facility and its relationship with adjacent development;
  - c) elevations showing the extent, height and appearance of the proposed facility as viewed from any adjacent street, public place and adjacent property;

- d) proposed materials and colour of the facility, and proposed arrangements for maintenance and/or future modifications in response to changes to any adjacent buildings or structure; any screening or fencing proposed in conjunction with the facility, including arrangements for maintenance;
- e) any external lighting of the proposed facility and/or the facility site; details of any existing vegetation to be removed and any proposals for landscaping and/or restoration of any disturbed land;
- f) details of the timing of works involved in establishing the facility and any arrangements for temporary access and/or changes to existing access facilities during the course of construction; how the proposed facility relates to the existing and proposed network of telecommunications infrastructure, and what (if any) additional facilities are known by the proponent to be under consideration to meet projected future increases in demand;
- g) how the proposed TI facility addresses the requirements as contained in these bylaws;
- h) Compliance certificate that the site is compliant with the current public exposure guidelines as determined by the National department of Health.

xii. If the site is leased from Council, a letter of consent / the lease agreement is required. xiii. Information that may be required by the Council specifying what radio spectrum or frequency is to be used.

xiv. Specification and details of the radio equipment that is to be used.

xv. Specification and details of the number of antennae to be attached to this equipment (gain in dB, polarisation, and coverage i.e. azimuth or elevation). xvi. Specification and details of the power levels to be radiated by the antennae (DBM or Watts)

xvii. If operating in the ISM band, a certified copy of the ICASA license. If not operating in the ISM band, then a certified copy of the applicable and specific spectrum license shall be provided.

xviii. The maximum power output of the facility and radio frequency electromagnetic energy levels in accordance with ICASA. This statement is to demonstrate that the carrier accepts full responsibility for compliance with the Telecommunications Act.

xix. Environmental Management Plan (EMP)

An Environmental Management Plan (EMP) shall be included in the submission if the site is within an area of environmental & heritage significance. The Council may request an Environmental Control Officer (ECO) and financial guarantee to ensure compliance with the EMP. Separate guidelines on a Generic full EMP and a Site EMP are available from Conservation and Environmental Management Branch. Such EMP shall be submitted to the Council's satisfaction prior to final building plan approval.

xx. Basic Assessment and Environmental Authorisation in terms of NEMA Regulations If the TI is a listed activity in terms of the NEMA Regulations as amended, the Environmental Authorisation from Department of Economic Development, Tourism and Environmental Affairs (DEDTEA) shall be forwarded to Council.

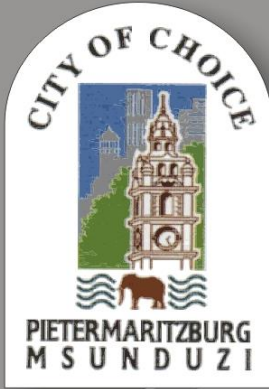
xxi. Comments and Council Approvals

- (a) The written comments, in original form, of the adjacent land owner, or any other land owner who in the opinion of the Council might be affected by the application;
- (b) The comments from the relevant ward councilor who shall provide such comments within 14 (fourteen) days of the applicant's request;

(c) Where applicable, the written permission of the Council as contemplated in section 14 of the Local Government: Municipal Finance Management Act, 2003 and the Municipal Asset Transfer Regulations, 2008 in cases where the proposed Cellular Telecommunications Infrastructure will be erected any on Municipal property including, road reserves, parks, municipal depots and any conditions imposed pursuant to such written permission.

## SCHEDULE 2: MEASURES TO MINIMISE VISUAL IMPACT

Site/Property Characteristics	Mitigation Measures
Existing fences with a common style/ predominant colour (that are a positive feature in the environment).	Fence around the base station site shall match the style and colour of the other fences on the property.
Mostly brick walls instead of fences (that are a positive feature in the environment).	Brick wall around the base station site shall match the style of the other walls on the property.
Existing buildings have a single architectural theme	The base station shall carry this theme through.
Open exposed locations where the background is mostly sky.	Structure shall be left unpainted in a galvanized finish.
Existing building with one or two predominant colours/ design elements, e.g. brick building with pitched roof.	Structure shall be painted the same colour as the building. House the base station equipment in a similar building with similar roof.
All antenna support structures.	The requirements of the Civil Aviation Authority shall be determined and met.
An open space or natural area dominated by large rocks.	Equipment container may be camouflaged physically e.g. Flintstone containers. Otherwise the equipment room, fence and antenna support structure shall be suitably painted.
Natural, semi-natural or suburban area or an open space area.	Antenna support structure and equipment room shall be suitably painted (dark matt green is visually appropriate).
Trees are an important feature of the residential landscape.	Camouflage antenna support structure as a tree (this shall not include pine trees or palm trees where they are not part of the local landscape). Otherwise the antenna support structure shall be painted a suitable colour (dark matt green is usually visually appropriate).
Sites that have mature trees that could screen the antenna support structure from view.	The antenna support structure shall be placed in between the trees in such a way that it will not cause any long term damage to the trees.
Sites in visually exposed positions with poor screening.	A mixture of fast and slow growing indigenous trees that are suitable for the area shall be planted around the base station site to lessen its long term visual impact.
Industrial area or high-rise areas or where the existing structures have a predominant colour.	Antenna support structure and base station site shall be painted to blend in with the predominant colour.



# The Msunduzi Municipality

## WAYLEAVE BYLAWS



KwAZULU-NATAL PROVINCE  
KwAZULU-NATAL PROVINSIE  
ISIFUNDAZWE sAKwAZULU-NATALI

***Provincial Gazette • Provinsiale Koerant • Igazethi Yesifundazwe***

**GAZETTE EXTRAORDINARY — BUITENGEWONE KOERANT — IGAZETHI EYISIPESHELI**

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**No. 2052**

**MUNICIPAL NOTICE 16 OF 2019  
MSUNDUZI MUNICIPALITY**

### **WAYLEAVE BYLAWS**

The Msunduzi Municipality, acting in terms of section 98 of the Local Government: Municipal Systems Act, 32 of 2000, read with section 13 of the said Act, hereby publishes the Wayleave Bylaws.



These by-laws regulate the exercise of the rights of Electronic Communications Network Service Licensees in terms of Section 22 and 24 of the Electronic Communications Act 36 of 2005 and the carrying out of work on municipal property by persons other than the aforesaid licensees.

## 1. Definitions

1) In these by-laws the following words shall carry the following meanings: -

“Act” refers to the Electronic Communications Act 36 of 2005.

“Council” refers to the Council of the Msunduzi Municipality or any other duly delegated committee or official.

“Municipality” refers to the Msunduzi Municipality.

“Municipal property” includes all public roads, road reserves, sidewalks, verges and land owned by the Municipality.

“licensee” refers to an Electronic Communications Network Service Licensee as described in the Act.

“Wayleaves Unit” means the municipal department established to administer the applications by licensees under these by-laws and to regulate the work done thereunder under the direction of the Service Co-ordinator.

“Service Co-ordinator” means the official appointed or otherwise delegated by the Council with the responsibility to carry out the administrative functions of receiving and processing applications for wayleaves, obtaining comments from the various internal and external service agencies, and following the decision by the Council, conveying this decision in writing to the applicant, namely to approve with conditions, or reject with reasons, any application, and to provide record-keeping of each application and installation, provided that this bylaw shall not be interpreted to prohibit the Council to delegate to the Service Co-ordinator the authority to decide on applications submitted by licensees in terms of these bylaws.

2. These by-laws regulate the exercise of the power of licensees contained in Sections 22 and 24 of the Act and the carrying out of work by persons other than licensees on municipal property.

## PART A: LICENSEES

3. Any licensee who wishes to exercise its rights in terms of Sections 22 and 24 of the Act and carry out work in relation thereto on municipal property must submit an application to the Service Co-ordinator at least thirty (30) days prior to the intended exercise of such rights.

4. Such application shall be made in a form approved and determined by the Council provided that such application shall not require the licensee to obtain the consent of the municipality to the licensee's rights in terms of Sections 22 and 24 of the Act.

5. The application may require the following from a licensee: -

a) Proof of payment of the premiums of public liability insurance cover in an amount determined by the Service Co-ordinator for the planned duration of the work,

b) Proof of the licensee and its contractor being possessed of indemnity insurance,

c) Proof that the licensee has engaged with all other licensees, internal and external



agencies regarding the location and extent of any existing services and the proposed location, timing, duration and scope of the proposed work, to ensure the proper planning, coordination and execution of work by licensees,

d) The provision of the contact numbers and names of all responsible officials who will be managing the work, including the licensees' officials, delegated project managers and contractors and sub contractors,

e) A safety plan for the work, including the nomination of Safety Representatives and the provision of their personal contact details,

(e) A detailed planning programme for the work, including the commencement and completion dates for each section of the work and the matters referred to in bylaw 7 below, provided that any

changes to this programme shall be approved by the Service Co ordinator in writing,

(f) Proof of advertising of the work in a newspaper circulating in the municipality giving the public warning and detailed notice of the extent, duration and precise location of any project, provided that the Service Coordinator, may in his or her discretion, exempt the licensee from this requirement where the proposed work will have minimal impact on other persons, including other licensees,

(g) A physical plan of the work including the intended placement of any wires, cables, pipes, tubes or the like, and the coordinates of the beginning, end, and all bend points in between, in Shape File or other format required by the Council from time to time,

(h) The giving of notice specifically to all residents, businesses and other concerns in the path of or adjacent to the work.

6. The Council may approve the application in respect of conditions, time and manner of the exercise of the rights of the licensee or may in consultation with the licensee determine a different programme than that applied for, in order to avoid duplication or coincidence of work programmes submitted by other licensees.

7. The Service Co-ordinator may attach conditions to the approval aforesaid including the following: -

a) the manner and method of doing the sub-surface work;

b) the provision of access crossings for vehicles and pedestrians;

c) the provision of health and safety requirements of the Municipality;

d) the prohibition on the use of mechanical trenching equipment;

e) the provision of signage stating the name of the licensee and its contractor;

(f) the phasing of the work programme;

(g) the provision of warning signs, barriers, and hoarding around the work;

(h) the execution of any preliminary works and cross-cuts to establish the precise position of existing services when information on such services is unclear; the provision of storage for rubble, sand or soil during the work; (i) the days and times during which any work or certain work may or may not take place;

(j) the presence of a Project Manager, or where necessary, a Professional Engineer, on the site of the work;

(k) the provision of inspections of the work in progress and the results of compaction tests at intervals during the work;

(l) the provision of a completion certificate at the completion of the work;

(m) the maximum width, length and depth of open trench;

(n) the maximum duration of work in any given area or locality;

(o) the provisions of measures to ensure that roads are not obstructed and the access of

motor vehicles and pedestrians are not unnecessarily impeded;

(p) conditions relating to re-instatement of municipal property.

(q) the conclusion of any agreements with the Municipality or the provision of undertakings;

(r) the payment of refundable and non-refundable deposits prior to commencement of work;

(s) the payment of a tariff charge in respect of and for the use of the Municipality's land.

8. The Service Co-ordinator shall be empowered to stop work being done without his authority or in contravention of the conditions attached to the approval.

9. The Municipality shall be entitled to impose a tariff charge, determined in terms of s75A of the Local Government: Municipal Systems Act, 32 of 2000 in respect of the use of its land for the installation of telecommunication infrastructure.

10. The Municipality shall be entitled, but not obliged, to undertake remedial works to work done where the quality of the work is below the standards imposed by the municipality or any other applicable legislation, provided that notice shall be given to the licensee before commencing with such remedial works, and provided further that if the Municipality is of the opinion that steps should forthwith be taken to protect life or property, it may undertake such remedial work without giving such notice to the licensee. The cost of such remedial works may be recovered from any security deposit paid to the municipality, or in the event that such security deposit is insufficient, from the licensee on the basis of the reasonable and necessary costs of such remedial works.

## **11. Penalties**

11.1 Any licensee, or any other person, including the licensees' officials, agents or contractors who:

(a) fail to comply with the provisions of any condition imposed in terms of bylaw 7,

(b) fail to stop work when so instructed by the Service Coordinator; or

(c) otherwise fail to comply with any provisions of these bylaws,

shall be guilty of an offence.

11.2 Any person who is convicted of an offence under these By-laws is liable to –

(a) a fine of an amount not exceeding R1 000 000;

(b) imprisonment for a period not exceeding three years;

(c) both such fine and imprisonment contemplated in paragraphs (a) and (b).

11.3 In the case of a continuing offence, such person shall be liable to –

(a) an additional fine of an amount not exceeding R5 000; or

(b) imprisonment for a period not exceeding 10 days, for each day on which such offence continues, or both such fine and imprisonment, will be imposed.

## **PART B: PERSONS OTHER THAN LICENSEES**

12.1 These bylaws apply *mutatis mutandis* to persons other than licensees, provided that:

(a) such persons shall submit a written application to and obtain the prior written consent from the Municipality to carry out any work on Municipal property;

(b) the Municipality shall, upon written prior application, be entitled to exempt, with or without conditions, and partly or in full, any particular person from submitting a written application and obtaining its prior written consent,

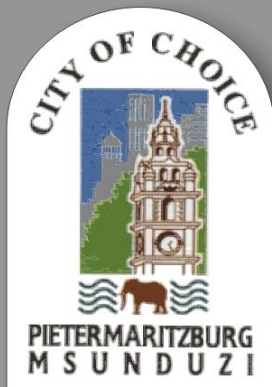
(c) the Municipality shall be competent to exempt, with or without conditions, and partly or in full, by publication in the Provincial Gazette, categories of persons or works that shall

not require its prior written consent;

(d) the Municipality shall be entitled to refuse, or approve, subject to such conditions it may deem fit, any application by such a person.

### **13.Short title and commencement**

These By-laws may be referred to as the Msunduzi Municipality Wayleaves By laws, 2019 and take effect on the date on which it is published in the Provincial Gazette of KwaZulu-Natal.



# The Msunduzi Municipality

## MUNICIPAL PROPERTY RATES BY-LAWS

No. 87 18 June 2015

### MSUNDUZI MUNICIPALITY MUNICIPAL PROPERTY RATES BYLAWS

The Msunduzi Municipality, acting in terms of section 156 of the Constitution of the Republic of South Africa, Act 108 of 1996 read with section 3 of the Local Government: Municipal Property Rates Act 6 of 2004, has made the following bylaws.

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**1. DEFINITIONS:**

In these bylaws, and in addition to the definitions in the Act, unless the context indicates otherwise

1.1. **"agricultural property"** means a property that is used for gain and also for agricultural purposes, including but not limited to the cultivation of soils, forestry, the rearing of livestock and game, the breeding of fish and other animals but excludes a property used for the purpose of ecotourism, the trading in or hunting of game, the hospitality of guests for gain, provided that in respect of any property on which game is reared, traded or hunted, any portion that is used for the hospitality of guests for gain shall not be regarded as an agricultural property;

1.2. **"business" or "commercial property"** means any property used for the buying, selling or trading in commodities, goods or services and includes any office, accommodation or facility on the same property, the use of which is incidental to such activity or property;

1.3. **"category"**

1.3.1. in relation to property, means a category of properties determined in terms of section 8 of the Act; and

1.3.2. In relation to owners of properties, means a category of owners determined in terms of section 15(2) of the Act;

1.4. **"child headed household"** means a household where both parents are deceased and where all occupants of the property are children of the deceased and are all under the legal age to contract for services and are considered as minors in law by the state

1.5. **"developer"** means an owner who purchases raw land and installs the necessary Infrastructure for the purposes of providing services for development of the land for residential, industrial or commercial purposes;

1.6. **"dwelling, shops, flats"** (DSF) means any property where a commercial component exists together with a block of residential units provided that two thirds or more of the total floor area of all buildings is used for residential purposes;

1.7. **"effective date"**

1.7.1. in relation to a valuation roll, means the date on which the valuation roll takes effect in terms of section 32(1) of the Act; or

1.7.2. in relation to a supplementary valuation roll, means the date on which a supplementary valuation roll takes effect in terms of section 78(2)(b) of the Act;

1.8. **"financial year"** means the period starting from 1 July in a particular year to 30 June the next year;

1.9. **"impermissible rates properties"** means all properties contained in the valuation roll that are not permitted to be rated in terms of Section 17 of the Act;

1.10. **"industrial property"** means property used for the trading in, the manufacturing and production of goods and products or the assembly or processing of finished products and goods from raw materials or fabricated parts in respect of which capital and labour are utilised, and includes any office, accommodation or other facility on the same property, the use of which is incidental to such industrial activity;

1.11. **"land reform beneficiary"**, in relation to a property, means a person who

1.11.1. Acquired the property through

1.11.1.1. The Provision of Land and Assistance Act, 1993 (Act 126 of 1993); or

1.11.1.2. The Restitution of Land Rights Act, 1994 (Act No. 22 of 1994)

- 1.11.2. Holds the property subject to the Communal Property Associations Act, 1996 (Act. No. 28 of 1996); or 1.11.3. Holds or acquires the property in terms of such other land tenure reform legislation as may pursuant to section 25(6) and (7) of the Constitution be enacted after the Act has taken effect;
- 1.12. **"market value"** in relation to a property, means the value of such property determined in accordance with section 46 of the Act;
- 1.13. **"Minister"** means the Cabinet member responsible for local government;
- 1.14. **"multiple purposes"** means a property used for more than one purpose.
- 1.15. **"municipal property"** means a property registered in the name of and occupied by the Msunduzi Municipality.
- 1.16. **"newly rateable property"** means any rateable property on which property rates were not levied before the end of the financial year preceding the date on which this Act took effect, excluding
- 1.16.1. A property which was incorrectly omitted from a valuation roll and for that reason was not rated before that date; and
- 1.16.2. A property identified by the Minister by notice in the Gazette where the phasing in of a rate is not justified;
- 1.17. **"mining property"** means a property used for mining operations as defined in the Minerals and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002)
- 1.18. **"occupier"** means any person who occupies any property or part thereof, without regard to the title under which he/she occupies the property.
- 1.19. **"other property"** means all properties that are not allocated as yet to the rates property categories in respect of section 14.1 14.15 of the Msunduzi Municipality Rates Policy
- 1.20. **"owner"**
- 1.20.1. in relation to a property referred to in bylaw 1.24.1, means a person in whose name ownership of the property is registered;
- 1.20.2. in relation to a right referred to in bylaw 1.24.2, means a person in whose name the right is registered;
- 1.20.3. in relation to a land tenure right referred to in bylaw 1.24.3, means a person in whose name the right is registered or to whom it was granted in terms of legislation; or
- 1.20.4. in relation to public service infrastructure referred to in bylaw 1.24.4, means the organ of state which owns or controls that public service infrastructure as envisaged in the definition of "publicly controlled" provided for in the Act, provided that a person mentioned below may for the purposes of this Act be regarded by the municipality as the owner of a property in the following cases:
- 1.20.4.1. a trustee, in the case of a property in a trust excluding state trust land;
- 1.20.4.2. an executor or administrator, in the case of a property in a deceased estate;
- 1.20.4.3. a trustee or liquidator, in the case of a property in an insolvent estate or in liquidation;
- 1.20.4.4. a judicial manager, in the case of a property in the estate of a person under judicial management;
- 1.20.4.5. a curator, in the case of a property in the estate of a person under curatorship;
- 1.20.4.6. a person in whose name a usufruct or other personal servitude is registered, in



the case of a property that is subject to a usufruct or other personal servitude;

1.20.4.7. a lessee, in the case of a property that is registered in the name of a municipality and is leased by it; or

1.20.4.8. a buyer, in the case of a property that was sold by a municipality and of which possession was given to the buyer pending registration of ownership in the name of the buyer;

1.20.4.9. a lessee, in the case of property to which a land tenure right as defined in the Act applies and which is leased to the holder of such right.

1.21. **"permitted use"** in relation to a property, means the limited purposes for which the property may be used in terms of

1.21.1., Any restrictions imposed by

1.21.1.1., A condition of title;

1.21.1.2. A provision of a town planning or land use scheme; or

1.21.1.3. Any legislation applicable to any specific property or properties; or

1.21.1.4. Any alleviation of any such restrictions;

1.22. **"person"** includes any organ of state

1.23. **"place of worship"** means a property registered in the name of and used primarily as a place of public worship by a religious community, including one official residence registered in the name of that community which is occupied by an office bearer of that community who officiates at services at such a place of worship,

1.24. **"property"** means

1.24.1. Immovable property registered in the name of a person, including, in the case of a sectional title scheme, a sectional title unit registered in the name of a person;

1.24.2. a right registered against immovable property in the name of a person, excluding a mortgage bond registered against the property;

1.24.3. a land tenure right registered in the name of a person or granted to a person in terms of legislation; or

1.24.4. public service infrastructure;

1.25. **"protected area"** means an area that is or has to be listed in the register referred to in 10 of the National Environmental Management; Protected Areas Act, 2003.

1.26. **"public benefit organisation property"** means any property owned by a public benefit organisation and used for any specified public benefit activity listed in part 1 of the ninth Schedule to the Income Tax Act excluding Item 3 and 5 being land and housing, places of worship already where rebates, reductions and exemptions have already been considered under impermissible rates.

1.27. **"public service infrastructure"** means publicly controlled infrastructure of the following kinds:

1.27.1. national, provincial or other public roads on which goods, services or labour move across a municipal boundary;

1.27.2. water or sewer pipes, ducts or other conduits, dams, water supply reservoirs, water treatment plants or water pumps forming part of a water or sewer scheme serving the public;

1.27.3. power stations, power substations or power lines forming part of an electricity scheme serving the public;

1.27.4. gas or liquid fuel plants or refineries or pipelines for gas or liquid fuels, forming part of a scheme for transporting such fuels;

1.27.5. railway lines forming part of a national railway system;



- 1.27.6. communication towers, masts, exchanges or lines forming part of a communications system serving the public;
- 1.27.7. runways or aprons at national or provincial airports;
- 1.27.8. any other publicly controlled infrastructure as may be prescribed; or
- 1.27.9. a right registered against immovable property in connection with infrastructure mentioned in bylaws 1.27.1 to 1.27.8;
- 1.28. **"rate randage"** means the randages determined in terms of bylaw 8.2;
- 1.29. **"residential property"** means a property included in the valuation roll as residential;
- 1.30. **"rural communal property"** means any agricultural or township property where there is a single cadastral holding developed predominantly for residential purposes and/or traditional rural homesteads, and which may also have a variety of nonresidential structures which collectively constitute the minority in terms of measured building area, including property belonging to the Ingonyama Trust Board and property belonging to a land reform beneficiary, where the dominant use is residential rather than commercial agricultural.
- 1.31. **"sectional title garages"** means any garage within a residential sectional title scheme that has been registered as a separate sectional title unit.
- 1.32. **"small home business"** means a property previously categorised as residential, being utilised for financial gain to conduct business operations in terms an approved Planning scheme consent, provided that such use of the property is in accordance with conditions imposed under such consent; where any consent has been obtained in terms of the Town Planning scheme to run this business on the premises. All conditions in respect of the Special Consent will apply.
- 1.33. **"the Act"** means the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004).
- 1.34. **"unauthorized use property"** means any property or part thereof used in conflict with the permitted use of such property as provided for in any applicable Town Planning Scheme or other relevant legislation and any property or part thereof developed or improved contrary to the provisions of National Building Regulations and Building Standards Act 103 of 1977, the Planning and Development Act (Kwazulu Natal) 6 of 2008 or any other relevant legislation
- 1.35. **"vacant land"** means any undeveloped property as listed in the valuation roll

## PART 2: LEVYING OF RATES

### 2. LEVYING OF RATES

- 2.1. The Municipality shall levy rates on all rateable property within its area, provided that it may, by resolution, grant exemptions from, rebates on or reductions in, rates levied in terms of this bylaw or in terms of a national framework prescribed under the Act.
- 2.2. In levying rates on property the Municipality shall not be obliged to levy rates on properties of which it is the owner, or public service infrastructure, or on properties in respect of which it is impossible or unreasonably difficult to establish a market value because of legally insecure tenure resulting from past racially discriminatory laws or practices.

### 3. DIFFERENTIAL RATES

- 3.1. The Municipality shall be entitled to levy different rates for different categories of properties in accordance with the criteria set out in the bylaw below.
- 3.2. The criteria for levying different rates for different categories of properties are as follows:
- 3.2.1. the use of the property, and
  - 3.2.2. the permitted use of the property.

#### **4. IMPERMISSIBLE DIFFERENTIATION**

##### **4.1. The Municipality shall not levy**

- 4.1.1. different rates on residential properties, except as provided for in the Act;
  - 4.1.2. a rate on a category of nonresidential properties that exceeds a prescribed ratio to the rate on residential properties determined in terms of section 11(1) (a) of the Act: Provided that different ratios may be set in respect of different categories of nonresidential properties;
  - 4.1.3. rates which unreasonably discriminate between categories of nonresidential properties;
  - 4.1.4. additional rates except as provided for in section 22 [Special Rating Areas] of the Act.
- 4.2. The ratio referred to in bylaw 4.1.2 may only be prescribed with the concurrence of the Minister of Finance.

#### **5. PROPERTIES USED FOR MULTIPLE PURPOSES**

A property used for multiple purposes must, for rating purposes, be assigned to a category determined by the Municipality in accordance with s9 of the Act.

#### **6. LEVYING OF PROPERTY RATES ON SECTIONAL TITLE SCHEMES**

6.1. A rate on property which is subject to a sectional title scheme shall be levied on the individual sectional title units in the scheme and not on the property as a whole.

#### **7. AMOUNT DUE FOR RATES**

7.1. The rate levied by the Municipality shall be an amount in the Rand on the market value of the property or as otherwise provided by the Act.

#### **8. PERIOD FOR WHICH RATES MAY BE LEVIED**

- 8.1. The Municipality shall levy rates for one financial year at a time. At the end of each financial year the rate levied for that financial year shall lapse.
- 8.2. The Municipality shall, annually, at the time of its budget, set the amount in the Rand payable for rates.
- 8.3. The levying of rates shall form part of the Municipality's annual budget process as set out in Chapter 4 of the Local Government: Municipal Finance Management Act, (Act No. 56 of 2003).

#### **9. COMMENCEMENT OF RATES**

9.1. Rates levied by the Municipality shall become due and payable as from the start of the financial year.

#### **10. PROMULGATION OF RESOLUTIONS LEVYING RATES**

- 10.1. A rate is levied by the municipality by resolution passed by the municipal council with a supporting vote of a majority of its members.
- 10.2. (a) A resolution levying rates in the Municipality must be annually promulgated, within 60 days of the date of the resolution, by publishing the resolution in the Provincial Gazette
  - (b) The resolution must
    - (i) contain the date on which the resolution levying rates was passed
    - (ii) differentiate between categories of properties, and

(iii) reflect the cent amount in the Rand rate for each category of property

10.3. Whenever the municipality passes a resolution in terms of subsection (1), the municipal manager must, without delay

- (a) conspicuously display the resolution for a period of at least 30 days( i) at the municipality's head and satellite offices and libraries; and
  - (ii) if the municipality has an official website or a website available to it as envisaged in section 21B of the Municipal Systems Act, on that website; and
- (b) advertise in the media a notice stating that
  - (i) a resolution levying a rate on property has been passed by the council; and
  - (ii) the resolution is available at the municipality's head and satellite offices and libraries for public inspection during office hours and, if the municipality has an official website or a website available to it, that the resolution is also available on that website.

## **11. EXEMPTIONS, REDUCTIONS AND REBATES**

11.1. The Municipality shall not grant relief in respect of the payment of rates other than by way of exemption, rebate or reduction, nor shall it grant such relief to the owner of a property on an individual basis.

11.2. The municipal manager must annually table in the council of the municipality a

- (a) list of all exemptions, rebates and reductions granted by the municipality in terms of subsection during the previous financial year; and
- (b) statement reflecting the income for the municipality foregone during the previous financial year by way of
  - (i) such exemptions, rebates and reductions;
  - (ii) exclusions referred to in section 17(1)(a), (e), (g), (h) and (i) of the Act; and
  - (iii) the phasing in discount granted in terms of section 21 of the Act.

11.3. The Council shall identify, and provide reasons for, exemptions, rebates and reductions when the annual budget is tabled in terms of section 16(2) of the Local Government: Municipal Finance Management Act, 2003.

## **12. CATEGORIES OF PROPERTIES**

12.1. The Municipality may, by resolution, grant exemptions, reductions and rebates in respect of the following categories of properties:

- 12.1.1. agricultural properties;
- 12.1.2. commercial properties
- 12.1.3. DSF properties
- 12.1.4. impermissible rates property;
- 12.1.5. industrial properties
- 12.1.6. mining property;
- 12.1.7. public benefit organisation property;
- 12.1.8. public service infrastructure;
- 12.1.9. residential property;
- 12.1.10. rural communal property;
- 12.1.11. sectional title garages (separately registered)
- 12.1.12. small home business;
- 12.1.13. unauthorized use property;

- 12.1.14. vacant land;
- 12.1.15. other property

### **PART 3: LIMITATIONS OF LEVYING OF RATES**

#### **13. IMPERMISSIBLE RATES**

13.1. The Municipality shall not levy rates on property in a way that would materially and unreasonably prejudice national economic policies, economic activities across its boundary or the national mobility of goods, services, capital or labour as provided for in section 229(2)(a) of the Constitution.

#### **13.2. Other impermissible rates**

##### **13.2.1. The municipality may not levy a rate**

- (a) on the first 30% of the market value of public service infrastructure
- (b) on those parts of a special nature reserve, national park or nature reserve within the meaning of the National Environmental Management: Protected Areas Act, 2003 (Act No, 57 of 2003), or of a national botanical garden within the meaning of the National Environmental Management: Biodiversity Act, 2004 (Act agricultural or residential purposes;
- (c) On mineral rights within the meaning of paragraph (b) of the definition of "property" in section 1 of the Act;
- (d) on a property belonging to a land reform beneficiary or his or her heirs, provided that this exclusion lapses ten years from the date on which such beneficiary's title was registered in the office of the Registrar of Deeds;
- (e) on the first R15 000 of the market value of a property assigned in the valuation roll or supplementary valuation roll of a municipality to a category determined by the municipality
  - (i) for residential properties; or
  - (ii) for properties used for multiple purposes, provided one or more components of the property are used for residential purposes; or
- (f) on a property registered in the name of and used primarily as a place of public worship by a religious community, or one official residence registered in the name of that community which is occupied by an officebearer of that community who officiates at services at that place of worship.

##### **13.2.2. (a) The exclusion from rates of a property referred to in bylaw 13.2.1**

(b) lapses if the declaration of that property as a special nature reserve, national park, nature reserve or national botanical garden, or as part of such a reserve, park or botanical garden, is withdrawn in terms of the applicable Act mentioned in that subsection.

(b) If the property in respect of which the declaration is withdrawn is privately owned, the owner, upon withdrawal of the declaration, becomes liable to the municipality concerned for any rates that, had it not been for subsection bylaw

- 1 3.2.1 ( b ) would have been payable on the property during the period commencing from the effective date of the current valuation roll of the municipality. If the property was declared as a protected area after the effective date of the current valuation roll, rates are payable only from the date of declaration of the property.

(c) The amount for which an owner becomes liable in terms of bylaw 13.2.2.(b) must be regarded as rates in arrears, and the applicable interest on that amount is payable to the municipality.

(d) Bylaws 13.2.2. (b) and 13.2.2(c) apply only if the declaration of the property was withdrawn because of a decision by the private owner for any reason to withdraw from the agreement concluded between the private owner and the state in terms of the Protected Areas Act, and in terms of which the private owner initially consented to the property being declared as a protected area; or a decision by the state to withdraw from such agreement because of a breach of the agreement by the private owner.

13.2.3. The Minister, acting with the concurrence of the Minister of Finance, may from time to time notice in the Gazette, increase the monetary threshold referred to in bylaw 13.2.1(e) to reflect inflation.

13.2.4. The Minister may, by notice in the Gazette, lower the percentage referred to in bylaw 13.2.1(a) but only after consultation with

- (a) relevant Cabinet members responsible for the various aspects of public service infrastructure;
- (b) organised local government; and
- (c) relevant public service infrastructure entities.

13.2.5. (a) The exclusion from rates of a property referred to in bylaw 13.2.1 (f) lapses if the property is disposed of by the religious community owning it; or is no longer used primarily as a place of public worship by a religious community or, in the case of an official residence contemplated in that subsection, is no longer used as such an official residence.

(b) If the exclusion from rates of a property used as such an official residence lapses, the religious community owning the property becomes liable to the municipality concerned for any rates that, had it not been for subsection bylaw 13.2.1 (f) would have been payable on the property during the period of one year preceding the date on which the exclusion lapsed.

(c) The amount for which the religious community becomes liable in terms of bylaw 13.2.5 (b) must be regarded as rates in arrears, and the applicable interest on that amount is payable to the municipality.

#### **14. PRIMARY REBATES PER CATEGORY OF PROPERTY**

14.1. The Municipality may by resolution grant a rebate on the rate payable on the following categories of rateable properties

- a) agricultural property;
- b) commercial property;
- c) Dwelling, shops and flats (DSF) properties;
- d) industrial properties;
- e) mining property;
- f) public benefit organisation property;
- g) public service infrastructure; h) residential properties;
- i) rural communal properties;
- j) sectional title garages (separately registered)
- k) small home business; and l) other property.

14.2. The Municipality shall in each financial year determine the amount of the rebate to be granted to each of the categories specified in bylaw 14.1.

## **15. REBATES PER CATEGORY OF OWNER**

15.1. The Municipality may grant a rebate on a property owned and occupied by the Msunduzi Municipality.

15.2. The Municipality may grant a rebate on a property whose owner is in receipt of an old age pension or disability grant, provided that the applicant satisfies all the criteria for such rebate.

15.3. The Municipality may grant a rebate to child headed households provided that all the criteria for a rebate are met.

15.4. The Municipality may grant a rebate on a rateable property which has been listed in terms of clause 7.2 of the Pietermaritzburg Town Planning Scheme, or any other property which it considers having sufficient historic or architectural interest or merit to justify the preservation thereof, provided that the owner of such property qualifies in terms of the criteria for this rebate.

15.5. The Municipality may grant a rebate to developers who own property and install the necessary infrastructure for the development of the raw land and which results in an enhanced market value of the land, provided that the owner of such property satisfies the criteria for such rebate.

15.6. A rebate granted on the rate payable on any property referred to in bylaw 15.2 to bylaw 15.5, inclusive, is conditional upon there being no outstanding rates or service charges owing and payable on such property except to an owner who is in receipt of an old age pension, disability grant or child headed household, provided that an arrangement in terms of the credit control policy for any arrears is in place, and is being maintained.

15.7. No rebate will be granted to any developer as envisaged in 15.5 above, who has previously received a business concession or development incentive from Municipality for any part of the development.

## **PART 4: ADDITIONAL RATES**

### **16. ADDITIONAL RATES FOR SPECIAL RATING AREAS**

16.1. The Municipal Council may by resolution of its council 16.1.1. determine an area within the Municipality as a special rating area;

16.1.2. levy an additional rate on the property in that area for the purpose of raising funds for improving or upgrading that area; and

16.1.3. Differentiate between categories of properties when levying an additional rate referred to in bylaw 16.1.2

16.2. Before determining a special rating area the Municipality must

16.2.1. Consult the affected community on the proposed boundaries on the following matters

16.2.1.1. The proposed boundaries of the area; and

16.2.1.2. The proposed improvement or upgrading of the area; and

16.2.2. Obtain the consent of the majority of the members of the affected community in the proposed special rating area who will be liable for paying the additional rate.

16.3. When a municipality determines a special rating area, the Municipality

16.3.1. must determine the boundaries of the area;

16.3.2. must indicate how the area is to be improved or upgraded by funds derived from the



additional rate;

16.3.3. must establish separate accounting and other recordkeeping systems regarding

16.3.3.1. the revenue generated by the additional rate; and

16.3.3.2. the improvement and upgrading of the area; and

16.3.4. may establish a committee composed of persons representing the community in the area to act as consultative and advisory forum for the municipality on the improvement and upgrading of the area, provided representivity, including gender representivity, is taken into account.

16.4. This section may not be used to reinforce existing inequities in the development of a municipality, and any determination of a special rating area must be consistent with the objectives of the municipality's integrated development plan

16.5. This section must be read with section 85 of the Municipal Systems Act if this section is applied to provide funding for an internal municipal services district established in terms of that section of the Municipal Systems Act.

16.6. The municipality may enact bylaws to further regulate special rating areas. In the event of any conflict between bylaw 16 and any other bylaws, bylaw 16 shall prevail to the extent necessary.

## **17. REGISTER OF PROPERTIES**

17.1. A municipality must draw up and maintain a register in respect of properties situated within that municipality, consisting of a Part A and a Part B.

17.1.1. Part A of the register consists of the current valuation roll of the municipality, including any supplementary valuation rolls of the municipality prepared in terms of section 78.

17.1.2. Part B of the register must specify which properties on the valuation roll or any supplementary valuation rolls are subject to

(a) an exemption from the rate in terms of section 15 of the Act;

(b) a rebate on or a reduction in the rate in terms of section 15 of the Act;

(c) a phasing in of the rate in terms of section 21 of the Act; or

(d) an exclusion referred to in section 17(1)(a), (e), (g), (h) and (i) of the Act.

17.1.3. The register must be open for inspection by the public during office hours. If the municipality has an official website or another website available to it, the register must be displayed on that website.

17.1.4. A municipality must at regular intervals, but at least annually, update Part B of the register.

Part A of the register must be updated in accordance with the provisions of this Act relating to the updating and supplementing of valuation rolls.

## **PART 5: LIABILITY FOR RATES**

### **18. PROPERTY RATES PAYABLE BY OWNERS**

18.1. A rate levied on a property shall be paid by the owner of that property.

18.2. Where a property is owned jointly the owners shall be jointly and severally liable for the payment of the rates on such property.

18.3. In respect of agricultural property that is owned by more than one owner in undivided shares where the holding of such undivided shares was allowed before the commencement of



the Subdivision of Agricultural Land Act, 1970, the Municipality shall hold owners jointly and severally liable for all rates levied in respect of the property concerned.

18.4. Properties owned by the Municipality and occupied by persons other than the Municipality shall be shown separately in the valuation roll and valued at market value.

18.5. In respect of a Municipal property where multiple tenancies occur, the entire building shall be valued at market value, and the rates will be based on a pro rata portion of the market value, calculated by lettable area and the rates levied shall be included in the rentals.

18.6. Alternatively where bylaw 18.5 is not possible, the lettable areas will be valued as units of the building calculated by the lettable area, and shown separately in the roll and rated separately in addition to the rentals.

## **19. METHOD AND TIME OF PAYMENT**

19.1. The Municipality shall recover rates respect of a financial year in twelve equal monthly instalments payable.

19.2. Rates shall be paid in each month on or before a date determined by the Municipality.

19.3. The final date for the payment of rates, as determined by the Municipality in terms of bylaw 19.2 above, shall not be affected by reason of any objection in terms of section 52, or an appeal in terms of section 55, of the Act.

19.4. If the result of any objection or appeal is that the valuation is

19.4.1. unchanged, the Municipality may collect any penalty that may have accrued

19.4.2. adjusted downwards, the Municipality shall only collect such penalties on the rates due on such reduced valuation and any overpayment that may have been made shall be refunded

19.5. Any adjustments or additions made to a valuation roll in terms of section 51 c, 52 (3), or 69 of the Act, take effect on the effective date of the valuation

19.6. If an adjustment in the valuation of a property affects the amount due for rates payable on that property, the Municipal Manager must

(a) Calculate

(i) The amount actually paid on the property; and

(ii) The amount payable in terms of the adjustment on the property since the effective date; and

(b) Recover from or repay to, the person liable for the payment of the rate the difference determined in paragraph a, plus interest at a prescribed rate roll.

19.7. When an addition has been made to a valuation roll as envisaged above the Municipal Manager must recover from the person liable for the payment of the rate the amount due for rates payable plus interest and a prescribed rate.

## **20. ACCOUNTS TO BE FURNISHED**

20.1. The Municipality shall furnish each person liable for payment of a rate with a written account which shall contain the following information

20.1.1. the amount due for rates payable;

20.1.2. the date on or before which the amount is payable;

20.1.3. how the amount was calculated;

20.1.4. the market value of the property;

20.1.5. if the property is subject to any compulsory phasing in discount in terms of section 21 of the Act, the amount of the discount;

- 20.1.6. if the property is subject to any additional rate in terms of section 22 of the Act, the amount due for additional rates.
- 20.2. A person is liable for payment of a rate whether or not that person has received a written account in terms of bylaw 20.1. If a person has not received a written account, that person must make the necessary enquiries from the municipality.
- 20.3. The furnishing of accounts for rates in terms of this section is subject to section 102 of the Municipal Systems Act.
- 20.4. Any person liable for the payment of a rate in respect of rateable property shall notify the municipality of any address within the Republic to which notices in respect of such property shall be sent.
- 20.5. Any notice which the municipality is required to give in terms of section 20.1 of these bylaws shall be deemed to have been properly given
- 20.5.1. if it has been sent by prepaid post
    - 20.5.1.1. to an address notified in terms of subsection 20.4 of these bylaws;
    - 20.5.1.2. if bylaw 20.5.1.1 does not apply and the property is not vacant land, to the address of the property shown in the valuation roll; or
    - 20.5.1.3. to an address which appears to be the residential or business address of the person liable for the payment of the rate, according to the records of the municipality, which method of posting shall be utilized if subparagraphs 20.5.1.1 and 20.5.1.2 of these bylaws do not apply or if any notice posted in terms of the said subparagraphs has been returned as undelivered;
  - 20.5.2. if it has in fact come to the notice of the person to whom it is required to be given;
  - 20.5.3. if bylaws 20.5.1. and 20.5.2. of these bylaws do not apply, by fixing on the notice board of the municipality for a period of at least thirty days, a schedule containing the name of the person who is liable for the payment of the rate as shown in the valuation roll and the particulars required by section 28(1) of the Act;
- 20.6. Where a property in respect of which a rate is payable, is owned by more than one person and either or both of whom are liable for the payment of a rate on such property, the notices required to be given in terms of this section shall be deemed to have been properly given if posted or delivered to the address of one of such persons; provided that such persons may agree amongst themselves to which address such notices shall be posted or delivered and may notify the municipality accordingly in the manner provided for in bylaw 21.3.
- 20.7. Any person who is liable for payment of a rate but who has not received an account shall not be absolved from paying the amount owing by due date and any amount outstanding after such date shall attract penalty charges as provided for in the rates policy;
- 20.7.1. If any person who is liable for payment of a rate does not receive an account, such person shall obtain a copy of such account from the offices of the Municipality, before the due date for payment of the account.
  - 20.7.2. If any person who is liable for the payment of a rate shall notify the Municipality of any change of address including any email address or other contact details;
  - 20.7.3. A change of address referred to in bylaw 20.7.2. above shall take effect on receipt thereof by the Municipality;
  - 20.7.4. If any person who is liable for the payment of a rate does not receive an account as a result of such person's failure to notify the municipality of a change of address, such person shall nevertheless be required to pay the amount owing by due date.

**21. RECOVERY OF ARREAR RATES**

21.1. The Municipality shall take all necessary measures to recover all rates due and payable to the municipality as provided for in the Local Government: Municipal Finance Management Act, 56 of 2003 and the Local Government: Municipal Systems Act, 32 of 2000.

21.2. A letter of demand shall be sent to the owner if the account is 60 days or more in arrears.

21.3. The municipality shall terminate the services to the property if the owner fails to respond to the letter of demand, regardless of whether the owner is the occupier on the property.

21.4. The municipality may publish in a local newspaper, a list of all rates defaulters, who have failed to pay within 60 days after the final instalment of the rates assessment, calling on the ratepayer to settle the arrears within a specified time frame, failing which, Council's credit control and debt collection procedures will be followed and an application will be made to a court of competent jurisdiction for an order for the sale of the property by public auction.

21.5. If the rates remain unpaid in terms of bylaw 21.4 above, the municipality may make application to a court of competent jurisdiction showing the amount of rates, penalties and surcharges then in arrear, and that all notices have been given and requesting the court to order any such rateable property be sold by public auction and the proceeds thereof to be paid in to court, and to direct payment to the Municipality of all rates and penalties accrued in respect of the date of such sale together with the costs of obtaining the said order.

21.6. If before the sale of any rateable property in terms of an order made under bylaw 21.5 there is produced to the Deputy Sheriff or other person charged with the sale thereof, a certificate by the Municipality that all amounts owing in terms of outstanding and arrear rates and penalty charges have been paid, the said property shall be withdrawn from the sale.

21.7. Notwithstanding that all outstanding and arrear rates penalty charges may have been paid before the said sale, the Municipality shall not be liable to any person for any loss or damage suffered by such person by reason of the sale of any such property in respect of which no such certificate has been produced to the said Deputy Sheriff or other person.

**22. INTEREST AND COLLECTION CHARGES**

22.1. Interest will be charged on all rates arrears in terms of the Municipal Finance Management Act and the Municipal Systems Act as prescribed in terms of the Municipal Finance Management Act, 56 of 2003.

22.2. In addition to interest charged in respect of any property, collection charges shall accrue as follows:

22.2.1. As from the last working day referred to in bylaw 19.2, an amount representing ten per cent (10%) of the capital amount of the rates then in arrears;

22.2.2. On the granting of a court order in terms of bylaw 21.5 of these bylaws, a further amount representing ten per cent (10%) of the capital amount of the rates then in arrears.

22.3. The said charges shall be payable to the Municipality and the said amounts or such of them as may be applicable may be recovered by it in any proceedings for the recovery of rates.

**23. RESTRAINT ON THE TRANSFER OF PROPERTY AND REVENUE CLEARANCE CERTIFICATES**

23.1. Section 118 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) provides as follows:

*"118(1) A registrar of deeds may not register the transfer of property except on production of a prescribed certificate*

- (a) issued by the municipality or municipalities in which that property is situated; and*
- (b) which certifies that all amounts that became due in connection with that property for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties during the two years preceding the date of application for the certificate have been fully paid.*

*(1) A prescribed certificate issued by a municipality in terms of subsection (1) is valid for a period of 60 days from the date it has been issued.*

*(2) In the case of the transfer of property by a trustee of an insolvent estate, the provisions of this section are subject to section 89 of the Insolvency Act, 1936 (Act No. 24 of 1936).*

*(3) An amount due for municipal services, surcharges on fees, property rates and other municipal taxes, levies and duties is a charge upon the property in connection with which the amount is owing and enjoys preference over any mortgage bond registered against the property.*

*(4) Subsection (1) does not apply to (*

- a) a transfer from the national government, a provincial government or a municipality of a residential property which was financed with funds or loans made available by the national government, a provincial government or a municipality; and*
- (b) the vesting of ownership as a result of a conversion of land tenure rights into ownership in terms of Chapter 1 of the Upgrading of Land Tenure Rights Act, 1991 (Act No. 112 of 1991); Provided that nothing in this subsection precludes the subsequent collection by a municipality of any amounts owed to it in respect of such a property at the time of such transfer or conversion.*

*(5) Subsection (3) does not apply to any amount referred to in that subsection that became due before a transfer of a residential property or a conversion of land tenure rights into ownership contemplated in subsection (4) took place."*

23.2. The provisions of section 118 of the Systems Act shall be strictly adhered to at all times.

23.3. Only applications completed in full on the prescribed form, and accompanied by the prescribed fee as recorded in the tariff register will be processed.

23.4. Where the monthly consumption of services to a property has been estimated for a period of more than 60 days and a clearance certificate is required in terms of section 118 of the Systems Act, the owner, shall supply readings of the relevant meters as required by the Municipality so as to ensure that all amounts due in terms of section 118 are paid.

23.5. Where any amendments to the value or use on the property are awaiting adjustments in an open supplementary roll any rates due must be paid for clearance purposes in terms of the defective dates prescribed in section 78 of the Rates Act

## **24. SUPPLEMENTARY VALUATIONS AND INTERIM RATES ADJUSTMENTS**

24.1. In terms of Section 78 of the Act;

*(1) A municipality must, whenever necessary, cause a supplementary valuation to be made in respect of any rateable property*

- (a) incorrectly omitted from the valuation roll;*
- (b) included in a municipality after the last general valuation;*
- (c) subdivided or consolidated after the last general valuation;*
- (d) of which the market value has substantially increased or decreased for any reason after the last general valuation;*

- (e) substantially incorrectly valued during the last general valuation;*
  - (f) that must be revalued for any other exceptional reason or*
  - (g) of which the category has changed.*
- (2) For the purposes of subsection (1), the provisions of Part 2 of Chapter 4 and, Chapters 5, 6 and 7, read with the necessary changes as the context may require, are applicable, except that*
  - a) a municipal valuer who prepared the valuation roll may be designated for the preparation and completion of the supplementary valuation roll; and*
  - (b) the supplementary valuation roll takes effect on the first day of the month following the completion of the public inspection period required for the supplementary valuation roll in terms of section 49 (as read with this section), and remains valid for the duration of the municipality's current valuation roll.*
- (3) Supplementary valuations must reflect the market value of properties determined in accordance with*
  - a) market conditions that applied as at the date of valuation determined for purposes of the municipality's last general valuation; and*
  - (b) any other applicable provisions of this Act.*
- (4) Rates on a property based on the valuation of that property in a supplementary valuation roll become payable with effect from*
  - (a) the effective date of the supplementary roll, in the case of a property referred to in subsection (1) (a), (e) or (f);*
  - (b) the date on which the property was included in the municipality, in the case of a property referred to in subsection (1) (h);*
  - (c) the date on which the subdivision or consolidation of the property was registered in the Deeds Office, in the case of a property referred to in subsection (1)(c);*
  - (d) the date on which the event referred to in subsection (1)(d) has occurred or*
  - (e) the date on which the change of category referred to in subsection (1)(g) occurred.*

## **25. ENFORCEMENT OF OTHER LEGISLATION**

In addition to the provisions contained in these bylaws relating thereto, the Council may enforce any other rights or exercise any power conferred upon it by the Municipal Systems Act, 2000 (No. 32 of 2000), the Property Rates Act, 2004 (Act No. 6 of 2004) and the Municipal Finance Management Act, 2003 (Act No. 56 of 2003) and any other applicable legislation.

## **26. REPEAL OF PREVIOUS BYLAWS**

26.1. The Rates Bylaws published under Notice No. 97 on 25 June 2009 are hereby repealed.

## **27. APPLICATION OF THE MUNICIPAL PROPERTY RATES ACT 6 OF 2004 AND THE MUNICIPAL PROPERTY RATES AMENDMENT ACT 29 OF 2014**

27.1. Nothing herein shall be interpreted to detract from the provisions of the Municipal Property Rates Act, 6 of 2004, and any amendments thereto.

27.2. The Municipality shall, with effect from 1 July 2015 comply with and apply the provisions of the Municipal Property Rates Amendment Act, 29 of 2014, which, among others, include the provisions referred to in bylaws

27.3. Sections 17 to 20 of the Municipal Property Rates Act, 6 of 2004, will read as follows with effect from 1 July 2015:



**17. Other impermissible rates (1) A municipality may not levy a rate**

(a) subject to paragraph (aA) on the first 30% of the market value of public service infrastructure;(aA) on any property referred to in paragraphs (a), (b), (e), (g) and (h) of the definition of "public service infrastructure;

(b) on any part of the seashore as defined in the National Environmental Management: Integrated Coastal Management Act, 2007 (Act No. 24 of 2008);

(c) on any part of the territorial waters of the Republic as determined in terms of the Maritime Zones Act, 1994 (Act No. 15 of 1994);

(d) on any islands of which the state is the owner, including the Prince Edward Islands referred to in the Prince Edward Islands Act, 1948 (Act No. 43 of 1948);

(e) on those parts of a special nature reserve, national park or nature reserve within the meaning of the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003), or of a national botanical garden within the meaning of the National Environmental Biodiversity Act, 2004 (Act No. 10 of 2004), which are not developed or used for commercial, business,

agricultural or residential purposes;

(f) on mining rights or a mining permit within the meaning of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), excluding any building, other immovable structures and Infrastructure above the surface of the mining property required for purposes of mining;

(g) on a property belonging to a land reform beneficiary or his or her heirs, dependants or spouse

provided that this exclusion lapses(

i) 10 years from the date on which such beneficiary's title was registered in the office of the Registrar of Deeds; or

(ii) upon alienation of the property by the land reform beneficiary or his or her heirs, dependants or spouse;

(h) on the first R15 000 of the market value of a property assigned in the valuation roll or supplementary valuation roll of a municipality to a category determined by the municipality

(i) for residential properties; or

(ii) for properties used for multiple purposes, provided one or more components of the property are used for residential purposes; or

(i) on a property registered in the name of and used primarily as a place of public worship by a religious community, including the official residence registered in the name of that community which is occupied by the officebearer of that community who officiates at services at that place of worship.

(1A) The exclusion from rates of a property referred to in subsection (1) (b) lapses

(a) if the property is alienated or let: or

(b) if the exclusion from rates of a property lapses in terms of paragraph (a), if the new owner or lessee becomes liable to the municipality concerned for the rates that, had it not been for subsection (1)(b), would have been payable on the property, notwithstanding section 78, with effect from the date of alienation or lease.";

(2) (a) The exclusion from rates of a property referred to in subsection (1)(e) lapses if the declaration of that property as a special nature reserve, national park, nature reserve or national botanical garden, or as part of such a reserve, park or botanical garden, is withdrawn in terms of the applicable Act mentioned in that subsection.



- (b) (i) *If the property in respect of which the declaration is withdrawn is privately owned, the owner, upon withdrawal of the declaration, becomes liable to the municipality concerned for any rates that, had it not been for subsection (1)(e), would have been payable on the property, notwithstanding section 78, during the period commencing from the effective date of the current valuation roll of the municipality;*
- (ii) *If the property was declared as a protected area after the effective date of the current valuation roll, rates are payable only from the date of declaration of the property.*
- (c) *The amount for which an owner becomes liable in terms of paragraph (b) must be regarded as rates in arrears, and the applicable interest on that amount is payable to the municipality.*
- (d) *Paragraphs (b) and (c) apply only if the declaration of the property was withdrawn because of*
- i) a decision by the private owner for any reason to withdraw from the agreement concluded between the private owner and the state in terms of the Protected Areas Act, and in terms of which the private owner initially consented to the property being declared as a protected area; or*
  - (ii) a decision by the state to withdraw from such agreement because of a breach of the agreement by the private owner*
- (3) *The Minister, acting with the concurrence of the Minister of Finance, may from time to time by notice in the Gazette, increase the monetary threshold referred to in subsection (1)(h) to reflect inflation.*
- (4) *The Minister may, by notice in the Gazette, lower the percentage referred to in subsection (1) (a), but only after consultation with*
- (a) relevant Cabinet members responsible for the various aspects of public service infrastructure;*
  - (b) organised local government; and*
  - (c) relevant public service infrastructure entities.*
- (5) (a) *The exclusion from rates of a property referred to in subsection (1)*
- (i) lapses if the property*
  - (ii) is disposed of by the religious community owning it; or*
  - (iii) is no longer used primarily as a place of public worship by a religious community or, in the case of an official residence contemplated in that subsection, is no longer used as such an official residence.*
- (b) *If the exclusion from rates of a property used as such an official residence lapses, the religious community owning the property becomes liable to the municipality concerned for any rates that, had it not been for subsection (1) (i), would have been payable on the property, notwithstanding section 78, during the period of one year preceding the date on which the exclusion lapsed.*
- (c) *The amount for which the religious community becomes liable in terms of paragraph (b) must be regarded as rates in arrears, and the applicable interest on that amount is payable to the municipality.*

## **18. Exemption of municipalities from provisions of section 17**

- (1) *A municipality may apply, in writing, to the Minister to be exempted from paragraph (a), (e), (g) or (h) of section 17(1) if it can demonstrate that an exclusion in terms of the relevant*

paragraph is compromising or impeding its ability or right to exercise its powers or to perform its functions within the meaning of section 151(4) of the Constitution.

(2) Any exemption granted by the Minister in terms of subsection (1)

(a) must be in writing; and

(b) is subject to such limitations and conditions as the Minister may determine.

## **19. Impermissible differentiation**

(1) A municipality may not levy

(a) different rates on residential properties, except as provided for in sections 11(2), 21 and 89A: Provided that this paragraph does not apply to residential property which is vacant;

(b) a rate on a category of nonresidential properties that exceeds a prescribed ratio to the rate on residential properties determined in terms of section 11(1) (a): Provided that different ratios may be set in respect of different categories of nonresidential properties;

(c) rates which unreasonably discriminate between categories of nonresidential properties; or

(d) additional rates except as provided for in section 22.

(2) The ratio referred to in subsection (1) (b) may be subject to prescribed norms and standards, and may only be prescribed with the concurrence of the Minister of Finance.

## **20. Limits on annual increases of rates**

(1) The Minister may, with the concurrence of the Minister of Finance and by notice in the Gazette, set an upper limit on the percentage by which

(a) rates on property categories or a rate on a specific category of properties may be increased; or

(b) the total revenue derived from rates on all property categories or a rate on a specific category of properties may be increased.

(2) Different limits may be set in terms of subsection (1) for

(a) different kinds of municipalities which may, for the purposes of this section, be defined in the notice either in relation to categories types, or budgetary size of municipalities or in any other way; or

(b) different categories of properties, subject to section 19.(2A) The Minister may, with the concurrence of the Minister of Finance, and by the notice referred to in subsection (1), delay the implementation of a limit, for a period determined in that notice and in respect of the different kinds of municipalities defined in terms of subsection (2)(a).

(3) The Minister may, on written application by a municipality, and on good cause, exempt a municipality from a limit set in terms of subsection (1).

(4) This section must be read with section 43 of the Municipal Finance Management Act. 27.4. Section 25 of the Municipal Property Rates Amendment Act, 29 of 2014 reads as follows:

*Payment of rates on property in sectional title schemes*

(1) A rate levied by a municipality on a sectional title unit is payable by the owner of the unit or the holder of a right contemplated in section 25 or 27 of the Sectional Titles Act.

(2) A municipality may not recover the rate on a sectional title unit, or on a right contemplated in section 25 or 27 of the Sectional Titles Act registered against the sectional title unit, or any part of such rate, from the body corporate controlling a sectional title scheme, except when the body corporate is the owner of any specific sectional title unit, or the holder of such right.

(3) A body corporate controlling a sectional title scheme may not apportion and collect rates from the owners of the sectional title units in the scheme.

(4) This section must be read subject to section 92.

27.5. Section 26 of the Municipal Property Rates Amendment Act, 29 of 2014 reads as follows:

(1) A municipality must, whenever necessary, cause a supplementary valuation to be made in respect of any rateable property

- (a) incorrectly omitted from the valuation roll;
- (b) included in a municipality after the last general valuation;
- (c) subdivided or consolidated after the last general valuation;
- (d) of which the market value has substantially increased or decreased for any reason after the last general valuation;
- (e) substantially incorrectly valued during the last general valuation;
- (f) that must be revalued for any other exceptional reason;
- (g) of which the category has changed; or
- (h) the value of which was incorrectly recorded in the valuation roll as a result of a clerical or typing error.

(2) For the purposes of subsection (1), the provisions of Part 2 of Chapter 4 and, Chapters 5, 6, 7, read with the necessary changes as the context may require, are applicable, except that

- (a) a municipal valuer who prepared the valuation roll may be designated for the preparation and completion of the supplementary valuation roll; and
- (b) the supplementary valuation remains valid for the duration of the municipality's current valuation roll.

(3) Supplementary valuations must reflect the market value of properties determined in accordance with

- (a) market conditions that applied as at the date of valuation determined for purposes of the municipality's last general valuation; and
- (b) any other applicable provisions of this Act.

(4) Rates on a property based on the valuation of that property in a supplementary valuation become payable with effect from

- (a) the first day of the month following the posting of the notice contemplated in subsection (5) in the case of a property referred to in subsection (1) (a) or (f); (aA) the first day of the month following the posting of the notice contemplated in subsection (5) in the case of property referred to in subsection 1 (a), (e), (f) or (h): Provided that in the case of a decrease in value in respect of a property referred to in subsection 1(e), the rates become payable on the date the property was incorrectly valued or the clerical or typing error was made;
- (b) the date on which the property was included in the municipality, in the case of a property referred to in subsection (1) (b);
- (c) the date on which the subdivision or consolidation of the property was registered in the Deeds Office, in the case of a property referred to in subsection (1) (c);
- (d) the date on which the event referred to in subsection (1) (d) has occurred;
- (e) the date on which the change of category referred to in subsection (1) (g) occurred.

(5) (a) A municipal valuer must on completion of the supplementary valuation contemplated in subsection (1) (a) to (g), and following a correction contemplated in subsection 1(h), serve the results of the supplementary valuations or corrections contemplated in subsections (1)(g) and (h), by ordinary mail, or if appropriate, in accordance with section 115 of the Municipal Systems Act, on every owner of property who has been affected by

*a supplementary valuation contemplated in subsection (1)(a) to (g) and a correction contemplated in subsection (1)(h), a notice reflecting the supplementary valuation or correction of the property, as well as the particulars listed in section 48(2);*

*(b) The notice referred to in paragraph (a) must inform the property owner that he or she may lodge a request for review with the municipal manager in writing, within 30 days after the posting of the notice in respect of any matter reflected in the supplementary valuation;*

*(c) The municipal valuer may adjust the valuation on consideration of the request for review contemplated in paragraph (b).*

*(6) The municipality must, at least once a year, compile and publish a supplementary valuation roll of all properties on which a supplementary valuation, as contemplated in subsection (1) was made, including review decisions referred to in subsection (5)(b), and make it public and available for inspection in the manner provided for in section 49.*

27.6. Section 35 of the Municipal Property Rates Amendment Act, 29 of 2014 reads as follows:

*(1) The prohibition on the levying of rates on public service infrastructure referred in section 17 (1) (aA) must be phased in over a period of five municipal financial years, with effect from the date of commencement of this Act.*

*(2) The rates levied on property referred to in subsection (1) must*

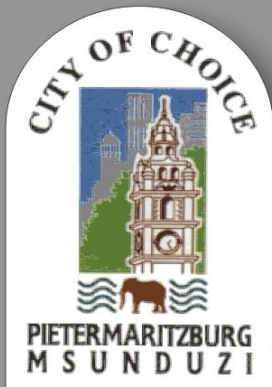
*(a) in the first year, be no more than 80 per cent of the rate for that year otherwise applicable to that property;*

*(b) in the second year, be no more than 60 per cent of the rate for that year otherwise applicable to that property;*

*(c) in the third year, be no more than 40 per cent of the rate for that year otherwise applicable to that property;*

*(d) in the fourth year be no more than 20 percent of the rate for that year otherwise applicable to that property; and*

*(e) in the fifth year, be no more than 10 percent of the rate for that year otherwise applicable to that property.*



# The Msunduzi Municipality

## NOISE ABATEMENT BY-LAWS

### NOISE ABATEMENT BY-LAWS

[Notice No. 514 of 1984.][Date of Commencement: 4 October, 1984.]

These By-laws were published in *Provincial Gazette Extraordinary* dated 4 October, 1984.

### CITY OF PIETERMARITZBURG LOCAL MUNICIPALITY

### NOISE ABATEMENT BY-LAWS

The Administrator has been pleased in terms of section 270 of the Local Authorities Ordinance, 1974 (Ordinance No. 25 of 1974), to approve of the subjoined by-laws as made by the City Council of the City of Pietermaritzburg.

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**1. Definitions.**—In these By-laws, unless the context otherwise indicates, the following words shall have the respective meanings assigned to them hereunder—

**“Ambient Sound Level”** The reading on an integrating sound level meter measured at the measuring point at the end of a total period of at least 10 minutes after such integrating sound level meter has been put into operation, during which period a noise alleged to be a disturbing noise is absent.

**“Council”** The City Council of Pietermaritzburg.

**“Disturbing Noise”** A noise level which exceeds the ambient sound level by 7 Db (A) or more, and “disturbing” in relation to a noise shall have a corresponding meaning.



**“Integrating Sound Level Meter”** A device integrating a function of sound pressure over a period of time and indicating the result in dB (A), which dB (A) indication is a function of both the sound level and the duration of exposure to the sound during the period of measurement.

**“Measuring Point”**—

- (a) In relation to a piece of land from which an offending noise is emitted, a point outside the property projection plane where in the opinion of the Medical Officer of Health, a disturbing noise should be measured in accordance with the provisions of section 3; or
- (b) In relation to a multi-occupancy building, a point in such building where, in the opinion of the Medical Officer of Health, a disturbing noise should be measured in accordance with the provisions of section 3.

**“Medical Officer of Health”** The person appointed by the Council to be the Medical Officer of Health or any person acting in his place.

**“Noise Level”** The reading on an integrating sound level meter taken at the measuring point at the end of a reasonable period after the integrating sound meter has been put into operation during which period the noise alleged to be a disturbing noise is present, to which reading 5dB (A) is added if the disturbing noise contains a pure tone component or is of an impulsive nature.

**“Premises”** Shall include any land or building whether occupied or not or any road, street or thoroughfare.

**“Property Projection Plane”** A vertical plane on and including the boundary line of a piece of land which determines the boundaries in space of such piece of land.

**2. Offences.**—(1) No person shall on any premises or land make, produce, cause or permit to be made or produced by any person, machine, animal, device or apparatus or combination of these, a noise which is a disturbing noise.

(2) Any person who contravenes subsection (1) shall be guilty of an offence.

(3) Where a disturbing noise is made in terms of (1) hereof, it shall be presumed, unless the contrary is proved, that the person in effective control of the premises from which the disturbing noise emanates is causing or producing such noise or permitting such noise to be made or produced.

**3. Measuring of Ambient Sound Level and Noise Level.**—(1) When the ambient sound level or noise level is read in terms of these bylaws, such measurement or reading shall be done in the case of—

- (a) outdoor measurements on a piece of land with the microphone of the integrating sound level meter at least 1,2 metres but not more than 1,4 metres above the ground and at least 3,5 metres distant from walls, buildings or other sound-reflecting surfaces;
  - (b) indoor measurements in a room or a closed space with a microphone of the integrating sound level meter at least 1,2 metres but not more than 1,4 metres above the floor and at least 1,2 metres distant from any wall, with all the windows and outside doors of such room or enclosed space completely open.
- (2) The microphone of an integrating sound level meter shall at all times be equipped with a windshield.



**4. Powers of the Medical Officer of Health.**—(1) If the Medical Officer of Health, as a result of a complaint lodged with him is satisfied that a noise emanating from any building, premises or street is a disturbing noise, he may, in a written notice, instruct the person causing or responsible for the disturbing noise or the owner of such building or premises on which the disturbing noise is caused or both of them, within a period specified in such notice immediately to stop such noise or have it stopped or take the necessary steps to reduce the disturbing noise level to a level which complies with the provisions of the By-laws: provided that if the Medical Officer of Health is satisfied that the disturbing noise is due to or caused by—

(a) the working of—

- (i) a machines or apparatus which is necessary for the maintenance or repair of property, or the protection of life, property or public services;
- (ii) garden equipment;
- (iii) a machine or device, the noise level of which has in the opinion of the Medical Officer of Health, been reduced or muffled according to the best practicable methods and which continues to be disturbing;

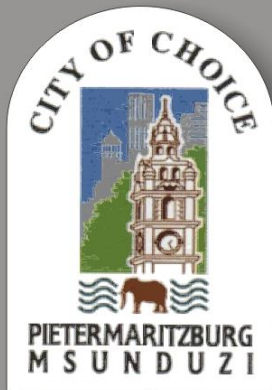
(b) a sports meeting; or

(c) circumstances or activities beyond the control of the person responsible for causing the disturbing noise, he may, whether generally or specifically, after written representation to the Medical Officer of Health by the person who caused or who was responsible for the disturbing noise, permit the working of such machine or apparatus, or such sports meeting or circumstances or activities to continue, subject to such conditions as he deems fit.

(2) Any person who fails to comply with an instruction in terms of such subsection (1) shall be guilty of an offence.

**5. Right of Entry.**—Any duly authorised officer of the Council may, for any purpose connected with the enforcement of these By-laws and without previous notice, enter any premises and make such examination, enquiry and inspection thereon as he deems fit, and he or any person instructed by him may take such steps as may be necessary to silence any noises for the purposes of determining the ambient sound level.

**6. Penalties.**—Any person convicted of an offence in terms of the provisions of these bylaws shall be liable, upon conviction, to the penalties described in section 266 (7) (a) of the Local Authorities Ordinance, No. 25 of 1974.



# The Msunduzi Municipality

## PARKING METER BYLAW

### PARKING METER BY-LAW

[Municipal Notice No. 22 of 2013.][Date of Commencement: 22 March, 2013.]

This By-law was published in *Provincial Gazette Extraordinary* No. 917  
Dated 22 March, 2013.

### MSUNDUZI LOCAL MUNICIPALITY PARKING METER BY-LAW

#### INDEX

1. Definitions
2. Parking Meters
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4. Unlawful Parking
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6. Method of Parking
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9. Tariffs
10. Prohibitions
11. Offences
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**1. Definitions.**—(1) For the purpose of these By-laws, unless the context otherwise indicates—

**“Business Hours”** means the hours means the hours of 08h00 to 17h00 on Mondays to Fridays, and 08h00 to 13h00 on Saturdays, but excluding Sundays and public Holidays, or such other times as determined by the Council from time to time;

**“car guard”** means a person who is a member of an approved regulatory body who watches over and protects vehicles within a demarcated area/areas;

**“Council”** means the Council of the Msunduzi Municipality and includes the management committee of that Council or any officer employed by the Council, acting by virtue of any power vested in the Council in connection with these By-laws or under Council’s delegated authority;

**“demarcated parking place”** means a demarcated parking place as contemplated in the National Road Traffic Act, 1996, in conjunction wherewith a parking-meter device exists;

**“Indicator”** means a visible device found within the parking metre which indicates the motor vehicle registration number and the parking bay number the vehicle is parked;

**“parking bay”** means a clearly demarcated area within the demarcated parking place;

**“parking-meter attendant”** means a person possessing a valid appointment card, employed by a service provider who for or on behalf of the Municipality or the Service provider collects parking fees under a contract with the Municipality or service provider;

**“parking-meter”** means a hand held device for the registration, recording and display of the passage of the parking time period, including the display thereof in a mechanical or electronic format on a display panel and/or indicator and which is operated by a parking-meter attendant;

**“parking period”** means that period of time of parking in a demarcated parking place which is determined by a parking-meter device upon insertion into it of the registration number of a vehicle;

**“service provider”** means a person or legally constituted entity who for, or on behalf of the Municipality, collects parking fees under a contract with the Municipality;

**“the Municipality”** means the Msunduzi Municipality established in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

**“traffic officer”** means a traffic officer appointed in terms of section 3 (1) (c) of the Road Traffic Act, 1989 and includes a member of the South African Police Service and a traffic warden;

**“vehicle”** means a vehicle as defined in the National Road Traffic Act, 1996, and any other word or expression has the meaning assigned thereto in the National Road Traffic Act, 1996.

(Editorial Note: Numbering as per original *Provincial Gazette Extraordinary*.)

## **2. Parking Meters.—**

(1) The Municipality shall install or cause to be installed, or operate or cause to be operated, parking meters for demarcated places in a public road or place in its area of jurisdiction.

(2) Every such parking meter shall—

- (a) indicate the time for parking in such demarcated parking place;
- (b) indicate the outstanding monetary value to be paid in respect of parking for the parking period;
- (c) be fitted with an indicator.

## **3. Control of Parking within Demarcated Parking Places.—**

(1) The driver or the person in charge of a vehicle shall cause the vehicle’s registration number to be recorded by the parking meter after parking a vehicle within a parking bay of a demarcated parking place.

- (2) No person shall park any vehicle or cause any vehicle to be parked in any demarcated parking place during Business hours unless that person has paid the parking fees or tariffs set by the Municipality from time to time.
- (3) Any person parking any vehicle or causing any vehicle to be parked in any demarcated parking place during Business Hours shall immediately—
  - (a) at the commencement of the parking period, make payment to the parking meter attendant responsible for that demarcated parking place of an amount equal to the amount indicated on the parking meter device operated by the parking meter attendant which corresponds to the print out or display for that vehicle's registration number;
  - (b) cause the voucher issued by the parking meter proving payment to be prominently displayed throughout the period whilst the vehicle is so parked.
- (4) The driver of the vehicle shall effect payment of fees accrued to the vehicle in respect of parking within a demarcated parking place.
- (5) Payment shall be made in South African coinage/currency.
- (6) Payment may also be made by means of an electronic transfer should the parking-meter device be able to accept such payment.
- (7) The period during which a vehicle may be parked in any demarcated parking place and the amount payable in respect of that period to the parking attendant allocated to such place, shall be such as the Council may from time to time by resolution prescribe, in terms of section 80A of the National Road Traffic Act, 1996.

#### **4. Unlawful Parking.—**

- (1) The payment for parking as contemplated in subsection 3 shall however, not entitle any person to contravene any road traffic sign prohibiting the parking of—
  - (a) vehicles between specified hours;
  - (b) specific categories of vehicles;
  - (c) vehicles for periods in excess of specified time periods; and
  - (d) any vehicle, where the parking and/or stopping of such vehicle contravenes any provision as determined by the National Road Traffic Act, 1996, relating to the parking and/or stopping of a vehicle.
- (2) It shall be unlawful to park any vehicle, not being a vehicle as defined in section 1, in a demarcated parking place.

(Editorial Note: Wording as per original *Provincial Gazette*. It is suggested that the phrase “subsection 3” is intended to be “section 3”.)

#### **5. Forbidden Activities.—**

- (1) It shall be unlawful—
  - (a) to offer any money other than South African currency *in lieu* of payment of parking fees;
  - (b) to offer to a parking-meter attendant any false or counterfeit money;
  - (c) in any way whatsoever to cause or attempt to cause a parking-meter to record the passage of time incorrectly;
  - (d) to misuse, tamper with, damage or in any way interfere with a parking-meter which is not in proper working order, in order to make it do so, or for any other purpose;

- (e) to deface, soil, obliterate or otherwise render less visible or interfere with any mark painted on the roadway, or any legend, sign, or notice affixed or erected for the purposes of these By-laws;
- (f) to remove or attempt to remove the mechanism or any other part of a parking-meter or to attempt to physically interfere with the working of said parking-meter, or by word or deed hinder the parking-meter attendant in his duty; and
- (g) to fail to key in a vehicle's details into the parking-meter by means of the correctly displayed motor vehicle registration number and specific bay number that the vehicle occupies, directly upon arrival of that specific vehicle.

## **6. Method of Parking.—**

- (1) No driver or person in charge of a vehicle, shall park such vehicle or cause it to be parked—
  - (a) in a demarcated parking place across any painted line marking the confines of the parking bay or in such a position that the said vehicle is not entirely within the area demarcated;
  - (b) in a demarcated parking bay which is already occupied by another vehicle;
  - (c) in an area demarcated for commercial loading purposes.
- (2) The person or driver in charge of a vehicle shall park such vehicle in a demarcated parking place—
  - (a) if the demarcated parking place is parallel to the curb or sidewalk of the public road in such a way that it shall be headed in the general direction of the movement of traffic on the side of the road on which the vehicle is parked and so that the left-hand wheels of the vehicle are substantially parallel to and within 450 mm of the left-hand curb: provided that where in a one-way street such demarcated parking place is in existence on the right-hand side of the road of a vehicle in such demarcated parking place, apply to the right-hand wheels and the right-hand curb respectively;
  - (b) if the demarcated parking place is at an angle to the curb or sidewalk of a public road in such manner that it is headed substantially in the general direction of the movement of traffic on the side of the road on which such vehicle is parked.
- (3) Where by reason of the length of any vehicle, such vehicle cannot be parked wholly within a demarcated parking place, it shall be lawful to park such vehicle by encroaching upon a demarcated parking place adjoining the first-mentioned parking place, if such be the case, and any person so parking shall be liable for payment of parking fees in respect of the parking bays encroached upon.
- (4) The Traffic Officer may, whenever he deems it necessary or expedient to do so in the interest of the movement or control of traffic, place or erect a road traffic sign or signs indicating that there shall be no parking at any demarcated parking place or places, and it shall be unlawful for any person to park or cause or permit to be parked a vehicle in such demarcated parking place or places while such sign is so displayed.
- (5) It shall be unlawful for any driver of a vehicle to cause, allow or permit any vehicle to be parked in any demarcated parking place, except as permitted by the provisions of these By-laws.
- (6) Where any vehicle is found to have been parked in contravention of these By-laws, it shall be deemed to have been caused, allowed or permitted to have been so parked by the person in whose name such vehicle is registered in terms of the Road Traffic Act, 1996, unless and until he shall have proved the contrary.

**7. Exemptions.—**

(1) Notwithstanding anything contained in these By-laws—

- (a) the driver of a fire-fighting vehicle;
  - (b) the driver of a rescue vehicle;
  - (c) the driver of an ambulance;
  - (d) a traffic officer;
  - (e) the driver of a vehicle engaged in civil protection; and
  - (f) the driver of a vehicle engaged in essential services;
  - (g) a driver of a vehicle that is the property of the Council or a vehicle used by an official or member of the Council in his official capacity, provided that the official badge, designed and approved of by the Council, is displayed in a prominent place and in accordance with paragraph 24 (3);
- who drives such vehicle in the performance of his or her duties, whilst parking in a demarcated parking place, shall be exempt from payment of the prescribed fees.

(Editorial Note: Numbering as per original *Provincial Gazette Extraordinary*.)

**8. Burden of Proof.—**

(1) The passage of time as recorded by a parking-meter shall for the purposes of these By-laws and in any proceedings arising out of the enforcement thereof, be deemed to be correct unless and until the contrary be proved, and the burden of so proving to the contrary shall be on the person alleging that the parking-meter has recorded such passage of time inaccurately.

(Editorial Note: Numbering as per original *Provincial Gazette Extraordinary*.)

**9. Tariffs.—**

- (1) Parking fees shall be payable by a person parking any vehicle or causing any vehicle to be parked in any demarcated parking place.
- (2) The parking fees payable in terms of by-law 9 (1) shall be in accordance with the tariff determined by the Council in accordance with the provisions of section 75A of the Local Government: Municipal Systems Act, No. 32 of 2000.

**10. Prohibitions.—**

- (1) No person shall operate as a car guard within the demarcated parking place unless such person is registered with an approved regulatory body.
- (2) The car guard shall not interfere with or obstruct the parking meter attendant and traffic officer in the execution of their duties.

(Editorial Note: Wording as per original *Provincial Gazette*. It is suggested that the words “interfere” and “attendant” is intended to be “interfere” and “attendant”.)

**11. Offences.—**

- (1) Any person who contravenes or cause or permits a contravention of any provision of these By-laws, shall be guilty of an offence and liable on conviction to a fine not exceeding R750 or, in default of payment, imprisonment for a period not exceeding six months.



(Editorial Note: Numbering as per original *Provincial Gazette Extraordinary*.)

**12. Repeal of By-laws.—**

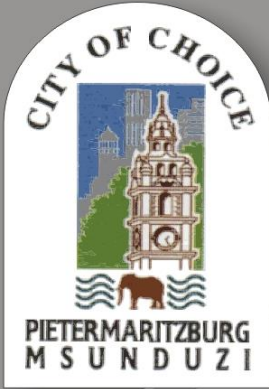
(1) The Council's existing Parking Meter By-laws are hereby repealed.

(Editorial Note: Numbering as per original *Provincial Gazette Extraordinary*.)

**13. Short Title and Commencement.—**

(1) These By-laws shall be called the Parking Meter By-laws, 2012 and shall come into operation on the date of final publication.

(Editorial Note: Numbering as per original *Provincial Gazette Extraordinary*.)



# The Msunduzi Municipality

## CREDIT CONTROL AND DEBT COLLECTION BY-LAWS

### CREDIT CONTROL AND DEBT COLLECTION BY-LAWS

[MUNICIPAL NOTICE NO. 10 OF 2015.][DATE OF COMMENCEMENT: 15 JANUARY 2015.]

These By-laws were published in *Provincial Gazette* No. 1297  
dated 15 January, 2015.

### MSUNDUZI MUNICIPALITY CREDIT CONTROL AND DEBT COLLECTION BY-LAWS

The Msunduzi Municipality acting in terms of section 98 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), read with section 13 of the said Act, hereby publishes the By-laws set forth hereafter, as made by the Municipality, which By-laws shall come into effect on the date of publication thereof.

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**1. Definitions.**—In these By-laws, unless the context indicates otherwise, the word or expression has the following meaning:

- 1.1. **“Accounting Officer”** means the Municipal Manager appointed in terms of section 82 (1) (a) or (b) of the Municipal Structures Act, 1998 (Act No. 117 of 1998); of the Msunduzi Municipality.
- 1.2. **“Account Holder”** includes a customer/consumer and refers to any occupier of any premises to which Council has agreed to supply or is actually supplying services, or if there is no occupier, then the owner of the premises and includes any debtor of the municipality.
- 1.3. **“Actual consumption”** means the measured consumption of a consumer of a municipal service during a specified period.
- 1.4. **“Advance Warning”** means a warning communicated by the consumer to the Chief Financial Officer in the form of an e-mail, fax or telephone call and advising the Chief Financial Officer of the consumers inability to provide a reading at least ten (10) working days before the seventh (7) day of the month following the most recent month during which services were rendered to the consumer, provided that the Chief Financial Officer may, on written motivation by the consumer exempt the consumer from failing to give such advance warning where the consumer submits evidence of exceptional circumstances that prevented the consumer from having communicated such advance warning timeously to the Chief Financial Officer.
- 1.5. **“Arrangements”** means a formal written agreement entered into between the Council and a debtor where specific repayment parameters are agreed to.
- 1.6. **“Arrears”** means any amount due, owing and payable by a customer in respect of a municipal account not paid on the due date.
- 1.7. **“Average consumption”** means the deemed consumption of a customer of a municipal service during a specific period, which consumption is calculated by adding the recorded monthly average consumption and the current actual consumption and dividing the total by 2.
- 1.8. **“Bank guarantee”** refers to an undertaking by a registered financial institution whereby it guarantees a specified maximum amount to be paid if the principal debtor (“the consumer”) fails to pay.
- 1.9. **“Calculated amounts”** refers to the amounts calculated by the Chief Financial Officer, in consultation with the relevant technical departments, to be due to the Council by a consumer in respect of the supply of the applicable municipal services for any period during which the exact quantity of the supply cannot be determined accurately for reasons beyond the control of the Chief Financial Officer. This shall normally be based on the average consumption figures, if available, for the service rendered to the customer or, failing the availability of such data, on the average consumption figures applicable to one or more properties of similar size and nature in the area in which the customer resides or carries on business.
- 1.10. **“Chief Financial Officer”** refers to the person so designated in terms of section 80 (2) (a) of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003) or any person duly authorised to act on behalf of such person.
- 1.11. **“Consolidated account”** refers to one combined account for all municipal services, housing rents and installments, rates and basic charges payable, and “consolidated bill” has a corresponding meaning.

- 1.12. **“C D U”** shall mean the central distribution unit that distributes electricity from a central point to an account holder.
- 1.13. **“Consumption”** means the ordinary use of municipal services, including water, sanitation, refuse removal, and electricity services for all categories of consumers.
- 1.14. **“Credit Control and Debt Collection Policy”** shall mean the policy adopted by the Municipality in accordance with the provisions of s. 96 of the Local Government Municipal Systems Act, 2000 (Act No. 32 of 2000).
- 1.15. **“Electricity and water meters”** means electricity and/or water meters, (including prepaid meters), which are used to determine the supply of electricity and water and which are normally read on a monthly or other basis.
- 1.16. **“Electricity Supply By-laws”** shall mean the Electricity Supply By-laws to be promulgated in 2014, provided that in the event that such by-laws have not been promulgated at the time of promulgation of these by-laws, the Electricity Supply By-laws that are in existence at the time of promulgation of these by-laws.
- 1.17. **“Council”** refers to the Msunduzi Municipality and its successors in law and includes the Council of the municipality or any other body acting by virtue of any power delegated to it in terms of legislation, as well as any official to whom Council has delegated any powers and duties with regard to these by-laws.
- 1.18. **“Councilor”** refers to any member of a Municipal Council.
- 1.19. **“Deposit”** refers to a minimum sum of money specified by the Chief Financial Officer and payable by the consumer to the Municipality prior to occupation of the property or prior to the date on which services to the property are required.
- 1.20. **“Final date”** in the absence of any express agreement in relation thereto between the Council and the customer, refers to the date stipulated on the account and determined from time to time as the last date on which the account must be paid.
- 1.21. **“Final Demand”** means a notice sent to an account holder calling for settlement of any municipal debt that has not been paid by due date and where legal action may be taken after giving due consideration to the notice period specified in the notice.
- 1.22. **“Estimated consumption”** arises when no actual reading can be taken and is equivalent to the average consumption providing that this is done in accordance with the relevant provisions of the water and electricity by-laws.
- 1.23. **“Financial year”** refers to the period starting from 1 July in a year to 30 June the next year.
- 1.24. **“Interest”** is a charge levied on arrears, and calculated by the Chief Financial Officer in accordance with relevant legislation.
- 1.25. **“MCB”** means Mini Circuit Breaker.
- 1.26. **“Meter audits”** refers to a verification by the municipality of the correctness of the consumption and supply of electricity and water.
- 1.27. **“Municipality”** shall mean the Msunduzi Municipality established in terms of the provisions of s. 12 of the Local Government Municipal Structures Act, 1998 (Act No. 117 of 1998).
- 1.28. **“Municipal Manager”** shall mean the Accounting Officer.
- 1.29. **“Municipal Offices”** shall mean municipal offices located within the area of jurisdiction of the Municipality.
- 1.30. **“Municipal services”** means a municipal service as defined in section 1 of the Local Government Municipal Systems Act, 2000 (Act No. 32 of 2000).

- 1.31. **“New Service Connection”** means an installation of service connections to a property in respect of which municipal services have never been provided before.
- 1.32. **“Official”**, in relation to the Msunduzi Municipality, and for the purposes of these by-laws, means—
- (a) An employee of the Msunduzi Municipality;
  - (b) A person seconded to the Msunduzi Municipality to work as a member of the staff of the Msunduzi Municipality; or
  - (c) A person contracted by the Msunduzi Municipality to work as a member of the staff of the Msunduzi Municipality otherwise than as an employee.
- 1.33. **“Occupier”** in relation to a property, means a person in actual occupation of a property, whether or not that person has a right to occupy the property.
- 1.34. **“Owner”** means—
- (a) In relation to property referred to in paragraph (a) of the definition of **“property”**, means a person in whose name ownership of the property is registered;
  - (b) In relation to a right referred to in paragraph (b) of the definition of **“property”**, means a person in whose name the right is registered;
  - (c) In relation to a land tenure right referred to in paragraph (c) of the definition of **“property”**, means a person in whose name the right is registered or to whom it was granted in terms of legislation or;
  - (d) In relation to public service infrastructure referred to in paragraph (d) of the definition of **“property”**, means the organ of state which owns or controls that public service infrastructure as envisaged in the definition of “publicly controlled”, provided that a person mentioned below may for the purposes of this Act be regarded by a municipality as the owner of a property in the following cases—
    - (i) a trustee in the case of a property in a trust excluding state trust land;
    - (ii) an executor or administrator, in the case of a property in a deceased estate;
    - (iii) a trustee or liquidator, in the case of a property in an insolvent estate or in liquidation;
    - (iv) a judicial manager, in the case of a property in the estate of a person under judicial management;
    - (v) a curator, in the case of a property in the estate of a person under curatorship;
    - (vi) a person in whose name a usufruct or other personal servitude is registered, in the case of a property that is subject to a usufruct or other personal servitude;
    - (vii) a lessee, in the case of a property that is registered in the name of a municipality and is leased by it; or
    - (viii) a buyer, in the case of a property that was sold by a municipality and of which possession was given to the buyer pending registration of ownership in the name of the buyer;
    - (ix) legal occupiers of State Trust Land.

1.35. **“Property”** means—

- (a) Immovable property registered in the name of a person, including, in the case of a sectional title scheme, a sectional title unit registered in the name of a person;
- (b) A right registered against immovable property in the name of a person, excluding a mortgage bond registered against a property;
- (c) A land tenure right registered in the name of a person or granted to a person in terms of legislation; or
- (d) Public service infrastructure.

1.36. **“Rate”** means a municipal rate on property envisaged in section 229 (1) (a) of the Constitution.

1.37. **“Service agreement”** refers to a written agreement for the consumption of electricity and/or water and other services.

1.38. **“Technical department”** shall mean any department located within the Msunduzi Municipality which renders a municipal service.

1.39. **“Variable flow-restricting device”** refers to a device that restricts or closes water supply to the account holder.

1.40. **“Visitation fee”** refers to the fee charged for attendance and/or disconnection/reconnection of an electricity/water supply when the supply is been disconnected/reconnected due to non-payment and/or tampering, or where access to disconnect/restrict has not been gained, which fee shall be determined from time to time by the Council.

1.40. **“Garnishee order/emoluments order”** refers to a court order for the deduction of an amount of money from the salary or other income of an account holder.

1.41. **“Municipal Pay-Point”** shall mean all Municipal Cash Offices and third party vendors who are authorised to collect monies on behalf of Municipality.

1.42. **“Water Services By-laws”** means the Water Services By-laws published under Notice No. 58 of 24 June 2014.

**2. Area of application.—**

- 2.1. These By-laws shall apply through the entire area of jurisdiction of the Msunduzi Municipality and to account holders residing outside the jurisdiction of the Msunduzi Municipality.

**3. Application for services and service agreements.—**

- 3.1. Only the owner shall enter into a service agreement for the provision of services, provided that the Chief Financial Officer may accept the power of attorney where the owner is not resident within the jurisdictional area of the Msunduzi Municipality, provided further that the purchaser of an immovable property in whose name registration of ownership has not yet taken place and in respect of which the necessary documents for the transfer of the property in question to the purchaser have been lodged in the Deeds Office, shall for the purpose of this by-law be authorised to apply for services and be empowered to conclude such a service agreement.
- 3.2. Directors of companies, members of Close Corporations and Trustees of Trusts shall sign personal deeds of surety with the Municipality when opening services accounts.



- 3.3. A new Service Agreement shall only be entered into in respect of a property, once all outstanding amounts owed in respect of the property are settled in full.
- 3.4. The owner of the property shall be responsible for the payment of rates and all municipal service charges applicable to the property notwithstanding the owner not having concluded a service agreement with the Msunduzi Municipality.
- 3.5. The Municipality shall make application forms available for the rendering of services at its municipal offices and such completed application forms shall be submitted to the Municipality at least 10 days prior to the intended occupation of the property failing which the applicant for services shall not be entitled to supply and provided further that this by-law shall not be interpreted to apply for new service connections.
- 3.6. The Municipality shall render the first account after the first meter reading cycle following the date of signing the service agreement or as soon as is reasonably possible.
- 3.7. Any occupier who illegally consumes services without a valid service agreement shall be subject to disconnection and/or removal of the service and may be prosecuted in terms of these By-laws or any other relevant legislation.
- 3.8. The service agreement shall set out the conditions under which the services are provided and shall require the signatories thereto to agree to abide by the provisions of the Municipalities Credit Control Policy and these By-laws.
- 3.9. The owner of the property shall be jointly and severally liable with the consumer in respect of all amounts due for the municipal services provided to the property notwithstanding any other provisions of these By-laws.

#### **4. Deposits and guarantees.—**

- 4.1. Deposits shall be payable on all new applications for municipal services at the time of application and prior to the rendering any services.
- 4.2. No interest shall accrue to the benefit of the applicant on any deposit.
- 4.3. The Council shall, subject to the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), have the power to increase the deposit payable by the account holder based on the consumption and payment patterns of the account holder and in the event of any contraventions of these By-laws, including but not limited to the theft, tampering or interference with any services.

#### **5. Access to property to read meters.—**

- 5.1. The municipality shall estimate the consumption of the service and thereafter bill the account holder for the monetary value of such estimated consumption, where the meter is in accessible or unreadable. Such estimation shall be in accordance with the provisions of the Water Services By-laws and the Electricity Supply By-laws of the Municipality.
- 5.2. Where the Council is unsuccessful in obtaining access to the property or meter for a period of 3 months, the Chief Financial Officer may disconnect the supply of services.
- 5.3. The consumer may supply readings of consumption on the Electricity and Watermeters to the Municipality, subject to the following conditions—
  - 5.3.1. The Municipality is timeously provided with a final reading should the consumer move to another supply address;
  - 5.3.2. Should the consumer not provide the Municipality with advance warning of their fee determined in terms of s. 75 (A) of the Local Government:

Municipal Systems Act, 2000 (Act No. 32 of 2000) to cover the costs of obtaining a reading;

- 5.3.3. The Municipality shall undertake audit of the readings supplied at least once every six months provided that where additional readings are required during the six month period, the costs thereof shall be borne by the consumer;
- 5.3.4. Where the consumer fails to render readings on two or more consecutive occasions, the Chief Financial Officer may terminate this arrangement to supply voluntary readings subject to compliance with this policy and By-laws.
- 5.4. The account holder shall notify the municipality of a final reading prior to moving premises and should the account holder fail to do so, the account holder shall be liable for the extra costs accrued as determined by the Chief Financial Officer.
- 5.5. The municipality shall audit all readings supplied by the account holder at least once in six months.

## **6. Accounts, billing and payment.—**

- 6.1. The Council shall provide the account holder with a consolidated monthly bill for rates and service charges.
- 6.2. The Municipality shall furnish the consolidated account to the consumer address, in South Africa, as specified by each consumer in the services agreement. Non-receipt of an account shall not negate the responsibility of the customer to pay the amount owing by final date nor prevent interest charges and debt collection procedures. In the event of non-receipt of an account, the onus shall be on the account holder to obtain a free copy of the most recent account, before the final date.
- 6.3. The account holder shall notify the Municipality in writing of any change of address, including an e-mail address, and contact details.
- 6.4. Accounts must be paid in full on or the final date as indicated on the account, failure to comply with this section shall result in credit control measures being instituted against the account holder. Interest on capital arrears will accrue after the final date if the account remains unpaid.
- 6.5. The Chief Financial Officer shall determine the manner and place of payment of any accounts, provided that only bank guaranteed or attorneys' trust cheques shall be acceptable and be paid at the Ground Floor, 333 Church Street, Pietermaritzburg and provided further that where payment is made through or at third party agencies payment by cheque shall not be accepted.

## **7. Interest on arrears and other penalty charges.—**

- 7.1. Interest shall be charged on all arrear capital amounts for full month irrespective of when payment is made.
- 7.2. The Municipality shall be entitled to raise the following charges in addition to the interest charge contemplated in By-law 7.1—
  - 7.2.1. A collection charge equal to 10% shall be raised sixty (60) days after the date of the final installment on the capital rates amount in arrears.
  - 7.2.2. Charges for disconnection or reconnection of electrical services.
  - 7.2.3. Charges for restriction or removal of Water Services.
  - 7.2.4. Charges for reconnection or reinstatement of Water Services.

- 7.2.5. Charges for notices of default and other correspondence.
- 7.2.6. Surcharges and charges for contraventions of these by-laws, the Water Services By-laws and Electricity By-laws including but not limited to illegal connections and tampering.
- 7.2.7. Penalty charges for dishonored cheques.

**8. Agreements and arrangements for payment of arrear accounts.—**

- 8.1. The Municipality may enter into agreements with account holders in arrears and to grant account holders extensions of time for settlement of any amount due in accordance with its Credit Control and Debt Collection policy any. Any breach of the aforesaid agreement shall be dealt with in accordance with the aforesaid policy.
- 8.2. Any arrangement entered into between the account holder and municipality as contemplated above shall have no force and effect unless the owner of the property consents to such arrangement in writing. In such instances, the owner shall acknowledge that the municipality does not waive its rights as contemplated in section 118 (i) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).
- 8.3. Where consumers using prepaid meters have arrear amounts in respect of other rates and/or services rendered by the municipality the Council shall be entitled to allocate an amount up to a maximum of 40% of every purchase of prepaid electricity to arrear amounts until such time as the arrears have been brought up to date.

**9. Allocation of payments and part-payments.—**

- 9.1. Where an account holder pays only part of any amount due, the Municipality shall allocate such payment in the order as provided for in the Credit Control and Debt Collection Policy of the Msunduzi Municipality:

**10. Queries in respect of accounts.—**

- 10.1. An account holder who has lodged an enquiry on an account is not relieved of the responsibility to maintain regular payment on the account. Where an account holder provides reasonable grounds as a basis for a query on any item or items on the monthly municipal account, no action shall be taken against the account holder provided the account holder has paid, by due date, an amount equal to the monthly average of the three most recent undisputed accounts in respect of the service in dispute, as well as all undisputed balances on such account. When an enquiry has been investigated and finalised, the amount due determined by the Chief Financial Officer shall immediately become payable in full.

**11. Disconnections/restrictions of services.—**

- 11.1. The municipality shall disconnect and restrict the services of account holders who are in arrears in accordance with the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) and in terms of its Credit Control and Debt Collection Policy.

**12. Reconnection/reinstatement of terminated/restricted services.—**

- 12.1. Services which have been terminated or restricted shall only be reconnected or reinstated by the municipality when all the conditions that are outlined in the Credit Control and Debt Collection Policy for such reconnection and reinstatement have been met.

**13. Period for reconnection or reinstatement.—**

13.1. Where it is practically and reasonably possible, the municipality shall to reconnect or reinstate terminated or restricted services within 3 (three) working days after the date on which the conditions set out in the Credit Control and Debt Collection Policy relating to reconnection have been complied with or met.

**14. Procedures for debt collection.—**

14.1. Where accounts are in arrears, the municipality may institute any action available in law for the purposes of recovering such debt in accordance with the procedure outlined in the Credit Control and Debt Collection Policy.

**15. Recovery of overdue rates.—**

15.1. Where accounts are in arrears, the municipality may institute any action available in law for the purposes of recovering such debt in accordance with the procedure outlined in the Credit Control and Debt Collection Policy.

**16. Tampering with and/or theft of services.—**

16.1. With regard to electricity and water services, if tampering of any nature or theft of such services is identified, the electricity supply to the property may be discontinued by the removal of the meter and the cable and the water supply may be restricted and/or discontinued subject to the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

16.2. Water and electricity metering and connection equipment remain the property of the municipality and anyone involved in instances of tampering, damaging or theft thereof will be liable for criminal prosecution shall be guilty of an offence and upon conviction be liable to a fine or imprisonment in accordance with the penalties as provided for in the Water Services and Electricity Supply By-laws.

16.3. No person shall connect to the Municipality's Services without the consent of the Municipality, or in any way tamper or interfere with its services.

16.4. Where there is evidence of an illegal connection or services are found to have been tampered with, the owner or occupier of the property, on or in which such illegal connection or tampering has taken place, shall be presumed to have tampered with or illegally connected the services unless such owner or occupier proves otherwise.

16.5. Where the restricted water supply or any variable flow-restricting device is tampered with the water supply shall be discontinued and the meter shall be removed.

**17. Audit of services on properties.—**

17.1. The municipality may audit all services on properties in accordance with the provisions of the Credit Control and Debt Collection Policy.

**18. Water leaks.—**

18.1. Any water leak will be dealt with in terms of the relevant water supply by-laws.

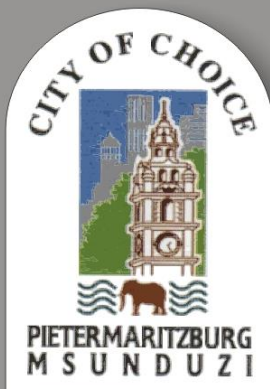
**19. Enforcement of other legislation.—**

19.1. These by-laws shall not detract from the provisions of any other relevant legislation.

19.2. The provisions of these by-laws shall prevail in the event of any conflict between these by-laws and other by-laws of the Municipality.

**20. Repeals.—**

- 20.1. All Credit Control and Debt Collection By-laws previously published in terms of section 98 of the Local Government Municipal Systems Act, 2000 (Act No. 32 of 2000), are hereby repealed.



# The Msunduzi Municipality

## PUBLIC HEALTH BY-LAWS

### PUBLIC HEALTH BY-LAWS

[MUNICIPAL NOTICE NO. 100 OF 2015.][DATE OF COMMENCEMENT: 25 JUNE 2015.]

These By-laws were published in *Provincial Gazette* No. 1394  
dated 25 June, 2015.

MSUNDUZI MUNICIPALITY  
PUBLIC HEALTH-BY-LAWS

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### **CHAPTER 1 : INTEPRETATION AND FUNDAMENTAL PRINCIPLES**

**1. Definitions and interpretation.**—(1) In these By-laws, unless the context otherwise indicates.—

“**adequate**” when used to describe a standard or manner in which anything required by these By-laws shall be done, means the standard or manner that, in the opinion of an environmental health practioner, is sufficient to safeguard public health, and to achieve the purpose and apply the principles of these By-laws and “adequately” has a corresponding meaning;

“**approved**” when used to describe a particular object, measure or material, means an object, measure or material which has been approved in terms of section 12 as being adequate in

specified circumstances to prevent, or reduce to a level acceptable to the Municipality, the risk of any public health hazard or public health nuisance occurring, continuing or recurring;

**“authorised official”** means any official of the Municipality who has been authorised by the Municipality to administer, implement and enforce the provisions of these by-laws;

**“communicable diseases”** means any disease which can be communicated directly or indirectly from any animal or through any agent to any person or from any person suffering there from or who is a carrier thereof, to any other person;

**“dwelling”** means any house, room, shed, hut, tent, cave, container, shelter, vehicle, boat or any other structure or place whatsoever, any part of which is used or appears intended for use by any human being for sleeping or in which any human being dwells or sleeps and “room” has a corresponding meaning;

**“environmental health practitioner”** means an official appointed by the Municipality, and who is duly registered as an environmental health practitioner with the Health Professions Council of South Africa in terms of section 33 (1) of the Medical Dental and Supplementary Health Services Professions Act, 1974 (Act No. 56 of 1974);

**“exemption certificate”** means a certificate issued in terms of section 10;

**“hot water”** means water which has a minimum temperature of 55° C at the point of discharge;

**“municipal area”** means the area under the jurisdiction of the Municipality;

**“municipal manager”** means a person appointed as such by the Municipality in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

**“Municipality”** means the Msunduzi Municipality or its successors in law and includes its Executive Committee or any other body acting by virtue of any power delegated to it in terms of legislation or any officer to whom the Executive Committee has delegated any powers and duties with regard to these by-laws or a service provider fulfilling a responsibility under these by-laws, assigned to it in terms of section 81 (2) of the Local Government: Municipal Systems Act, or any other law, as the case may be;

**“National Building Regulations and Building Standard Act”** means the National Buildings Regulations Standards Act, 1977 (Act No. 103 of 1977);

**“occupier”**, in relation to any premises, means any person—

- (a) occupying the premises;
- (b) leasing the premises;
- (c) who is not occupying the premises or a business on the premises on behalf of;
- (d) a person referred to in paragraph (a), (b) or (c);

**“organ of state”** means an organ of state as defined in section 239 of the Constitution of the Republic of South Africa Act, 1996 (Act No. 108 of 1996);

**“owner”**, in relation to any premises, means—

- (a) the person in whose name the title to the premise is registered, and includes the holder of a stand license; or
- (b) if the person referred to in paragraph (a) is dead, insolvent, mentally ill, a minor or under any legal disability, the executor, guardian or other person who is legally responsible for administering that person’s estate;

**“peace officer”** means a peace officer as defined in terms of the Justice of the Peace and Commissioners of Oath Act;

**“permit”** means a public health permit issued by the Municipality in terms of the section 11;

**“person”** means a natural person or a juristic person, and includes an organ of state;

**“pest”** means any animal or mammal which may create a public health hazard or public health nuisance if it is present in significant numbers and without limitation, includes rats, mice, flies, mosquitoes, bed bugs, fleas, lice, termites and cockroaches;

**“potable water”** means water that complies with the requirements set out in SANS 241: Water for Domestic Supplies;

**“premises”** means—

- (a) any land without any buildings or other structures on it;
- (b) any building or other structure and the land on which it is situated;
- (c) any land which adjoins land referred to in paragraph (a) or (b) and any building or other structure on the adjoining land, if that land, building or structure is occupied or used in connection with any activity carried out on the premises referred to in paragraph (a) or (b); or
- (d) any vessel, vehicle or movable structure which is used for a scheduled use;

**“prescribed fee”** means a fees determined by the Municipality by resolution in terms of section 75A of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), or any other applicable legislation;

**“public health”** means the mental and physical health and well-being of people in the municipal area;

**“public health hazard”** means any actual threat to public health, and without limitation, includes—

- (a) the circumstances referred to in section 5 (3);
- (b) unsanitary conditions;
- (c) circumstances which make it easier for a communicable disease to spread;
- (d) circumstances which make food or drink, including water for domestic consumption, unhygienic or unsafe to eat or drink; and
- (e) circumstances which allow pests to infest any place where they may affect public health;

**“public health nuisance”** means the use of any premises or place in a manner which creates conditions that significantly increase the risk of a public health hazard occurring or which compromises any aspect of public health to an extent that is more than trivial or insignificant, and without limitation, includes those circumstances in which a public health nuisance is considered to exist in terms of Schedule 1;

**“public place”** means any road, street thoroughfare, bridge, overhead bridge, subway, foot pavement, footpath, sidewalk, lane square, open space, garden park, path, bus or taxi rank, servitude or enclosed space vested in the Municipality and includes any road, place or thoroughfare which is in the undisturbed use of the public or which the public have the right to use;

**“schedule use”** means a use listed in Schedule 2.

(2) Unless the context otherwise indicates, any word or expression which is defined in any Chapter, has the same meaning wherever it is used in these By-laws.

(3) If any provision in these by-laws vests or imposes any power, function or duty of the Municipality in or on an employee of the Municipality and such power, function or duty has in terms of section 81 (2) of the Local Government: Municipal Systems Act, 2000, or any other law, been assigned to a service provider, the reference to such employee shall be read as a reference to the service provider or, where applicable, an employee of the service provider authorised by it.



**2. Purpose.—**

- (1) The purpose of these by-laws is to enable the Municipality to protect and promote the long term health and well-being of people in the municipal area by—
- (a) providing, in conjunction with any other applicable law, an effective legal and administrative framework within which the Municipality can—
    - (i) manage and regulate activities that have the potential to impact adversely on public health; and
    - (ii) require premises to be properly maintained and managed; and
  - (b) defining the rights and obligations of the Municipality and the public in relation to this purpose.

**CHAPTER 2 : PUBLIC HEALTH***Part 1: Public health principles***3. Principles.—**

- (1) Every person has a constitutional right to an environment that is not harmful to his or her health or well-being and to have access to sufficient water and the Municipality has a constitutional duty to strive, within its financial and administrative capacity, to promote a safe and healthy environment.
- (2) The risk of a public health hazard occurring, continuing or recurring shall be eliminated wherever reasonably possible, and if it is not reasonably possible to do so, it shall reduce to a level acceptable to the Municipality ensuring that it is used for and maintained in a manner that ensures that no public health hazard or public health nuisance occurs on the premises.
- (3) Any person who owns or occupies premises in the municipal area shall ensure that it is used for and maintained in a manner that ensures that no public health hazard or public health nuisance occurs on the premises.
- (4) Any person who wishes to undertake an activity which creates a risk to public health that is more than trivial or insignificant shall—
- (a) take all reasonable measures to eliminate that risk, and if that is not reasonably possible, to reduce the risk to a level acceptable to the Municipality; and
  - (b) bear the costs of taking those measures and of any reasonable costs incurred by the Municipality in ensuring that the risk is eliminated or reduced to an acceptable level.
- (5) The Municipality shall regulate all activities and administer all matters for which it is legally responsible in a manner that—
- (a) avoids creating a public health hazard or a public health nuisance;
  - (b) does not make it easier for any human or animal disease to spread;
  - (c) does not give rise to unsanitary or unhygienic conditions;
  - (d) prevents unsafe food or drink from being eaten or drunk;
  - (e) avoids creating conditions favorable for infestation by pests; or
  - (f) wherever reasonably possible, improves public health in the municipal area.
- (6) In dealing with matters affecting public health the Municipality shall—
- (a) adopt a cautious approach;
  - (b) priorities the collective interests of the people of the municipal area, and of South Africa, over the interests of any specific interest group or sector of society;

- (c) take account of historic inequalities in the management and regulation of activities that may have an adverse impact on public health and redress these inequalities in an equitable and non-discriminatory manner;
- (d) adopt a long-term perspective that takes account of the interests of future generations; and
- (e) take account of, and wherever possible without compromising public health, minimise any adverse effects on other living organisms and ecosystems.

#### **4. Applications of principles.—**

(1) The public health principles set out in section 3 shall be considered and applied by any person—

- (a) exercising a power or function or performing a duty under these By-laws;
- (b) formulating or implementing any policy that is likely to have a significant effect on, or which concerns the carrying on of activities likely to impact on, public health in the municipal area; or
- (c) exercising a public power or function or performing a public duty in the municipal area which is likely to have a significant effect on public health in that area.

### ***Part 2: Public health hazards and public health nuisances***

#### **5. Prohibition on causing public health hazards.—**

- (1) No person may create a public health hazard in the municipal area.
- (2) Every owner or occupier of premises shall ensure that a public health hazard does not occur on those premises.
- (3) An owner or occupier of premises creates a public health hazard if—
  - (a) the premises are infested with pests or pests are breeding in large numbers on the premises;
  - (b) there are conditions on the premises which are conducive to the spread of a communicable disease or which may cause a non-communicable disease;
  - (c) there is any unsanitary condition in any part of the premises; or
  - (d) any water supply for domestic consumption on the premises is unsafe for human consumption.

#### **6. Duty to report public health hazards.—**

- (1) The owner or occupier of premises who knows of a public health hazard on those premises, shall within 24 hours of becoming aware of its existence—
  - (a) eliminate the public health hazard; or
  - (b) if the owner or occupier is unable to comply with paragraph (a), take reasonable steps to reduce the risk to public health and forthwith report the existence of the public health hazard to the Municipality in writing.

#### **7. Prohibition on causing public health nuisances.—**

- (1) No person may cause a public health nuisance anywhere in the municipal area.
- (2) Every owner or occupier of premises shall ensure that a public health nuisance does not arise on their premises.

#### **8. Consumption of liquor at public places.—**

- (1) No person/s shall consume liquor at a public place unless authorised to do so by the relevant authority.

### **CHAPTER 3 : POTENTIALLY HAZARDOUS USES OF PREMISES AND ENFORCEMENT**

#### ***Part 1: Potentially hazardous uses***

**9. Duty to list potentially hazardous uses.**—If the Municipality reasonably believes that any premises have been, or are likely to be, used for a purpose or in a manner that has caused, or is likely to cause, a public health hazard or to create a public health nuisance unless reasonable measures are taken to avoid the risk or to reduce it to an acceptable level, the Municipality shall list the activity concerned in Schedule 2 and shall prescribe measures that shall be taken to avoid the risk or reduce it to a level acceptable to the Municipality.

**10. Scheduled uses.**—

(1) Any person who uses premises in a manner or for a purpose listed in Schedule 2 shall comply with every provision specified in the Chapter of these by-laws relating to that use, unless that person has been granted an exemption in terms of section 10 from complying with any such provision.

(2) Any person who uses premises in a manner or for a purpose that is listed in Part A of Schedule 2, shall obtain a permit in terms of section 11 before commencing that use and shall comply with the terms and conditions of that permit.

**11. Exemption certificates.**—

(1) Any person who wants to undertake a scheduled use on any premises but wishes to be exempted from complying with any requirement of these by-laws relating to the use concerned, may apply to the Municipality in accordance with section 13 for an exemption certificate.

(2) The Municipality may grant an exemption certificate, subject to such conditions as it may impose, if an environmental health practitioner is satisfied that—

- (a) the measures taken to avoid or reduce the risk to public health arising from the scheduled use are equivalent to or better than the measures required by the relevant requirement of these by-laws; and
- (b) the scheduled use in respect of which the exemption is required, is not likely to cause a public health hazard or a public nuisance.

**12. Public health permits.**—

(1) Any person who wants to undertake a scheduled use that is listed in Part A of Schedule 2, shall apply to the Municipality in accordance with section 13 for a public health permit.

(2) The Municipality may issue a public health permit to the owner or occupier of any premises, if an environmental health practitioner is satisfied that the use for which the permit is required is not likely to cause a public health hazard or a public health nuisance.

(3) A public health permit—

- (a) shall be issued subject to conditions aimed at reducing the risk to public health created by the scheduled use, to a level acceptable to the Municipality;
- (b) may exempt the permit holder from complying with any relevant provision of these by-laws, if the Municipality reasonably believes that the permit requires the permit holder to take measures to avoid or reduce the risk to public health arising from the

activity that are equivalent to, or better than, the measures required by the relevant provision of these by-laws; and

- (c) may approve any measure or material in connection with the activity authorised by the permit that shall be approved in terms of these by-laws.

**13. Approval of measures, objects and materials.—**

(1) The Municipality may approve any object or material used, or any measure taken, in specified circumstances as being adequate to eliminate the risk of any public health hazard or public health nuisance occurring, continuing or recurring, or to reduce that risk to a level acceptable to the Municipality.

(2) An object, material or measure referred to in subsection (1) may be approved by the Municipality in—

- (a) a public health permit; or
- (b) guidelines prescribed by the Municipality in terms of subsection (3).

(3) The Municipality may publish guidelines in the *Provincial Gazette* which describe—

- (a) appropriate measures that can be taken and objects and materials that can be used, to eliminate the risk of any public health hazard or public health nuisance occurring, continuing or recurring, or to reduce that risk to a level acceptable to the Municipality; and
- (b) the circumstances in which taking these measures or using these objects or materials are acceptable to the Municipality.

**14. Application procedure.—**

(1) Any person who wants to obtain an exemption certificate or a permit shall apply to the Municipality in writing in a form prescribed by the Municipality, prior to undertaking the scheduled use concerned.

(2) When the Municipality receives an application contemplated in subsection (1), it shall ensure that the relevant premises concerned are inspected by an environmental health practitioner as soon as reasonably possible.

(3) Before deciding whether or not to approve an application contemplated in subsection (1), the Municipality—

- (a) shall ensure that any persons in the vicinity of the premises whose health or well-being may be affected if the premises are used for the scheduled use concerned, have been consulted and had an opportunity to make representations; and
- (b) may require the applicant to provide any further information which the Municipality considers relevant to enable it to make an informed decision.

(4) In deciding whether or not to issue an exemption certificate or a permit, and what terms and conditions, if any, to include in it, the Municipality shall apply the public health principles set out in section 3.

**15. General terms applicable to certificates and permits.—**

(1) An exemption certificate or permit—

- (a) is not transferable from one person to another; and
- (b) applies only to the premises specified in that certificate or permit.

(2) Every exemption certificate or permit shall—

- (a) specify the address and other relevant details regarding the location of the premises concerned;

- (b) describe the premises concerned;
  - (c) describe the activity concerned;
  - (d) specify terms and conditions imposed, if any; and
  - (e) indicate when it expires.
- (3) An applicant shall pay a prescribed fee, if determined by the Municipality, in respect of an application for a permit or exemption certificate and such fee shall accompany the application.
- (4) The Municipality may refuse to consider an application until it has been provided with the information that it reasonably requires to make an informed decision and until the prescribed fee has been paid.

**16. Suspension, cancellation and amendment of exemption certificates and permits.—**

- (1) An environmental health practitioner may by written notice to the holder of an exemption certificate or permit, suspend, amend or cancel that certificate or permit.
- (2) An environmental health practitioner may suspend or cancel an exemption certificate or permit with immediate effect if the environmental health practitioner reasonably believes that it is urgently necessary to do so to eliminate or to reduce a significant risk to public health posed by a public health hazard or a public health nuisance.
- (3) An environmental health practitioner may suspend or cancel an exemption certificate or permit after having given the holder thereof a reasonable opportunity of making representations as to why the permit or exemption certificate should not be suspended or cancelled if—
- (a) the environmental health practitioner reasonably believes that it is urgently necessary to do so to eliminate or to reduce a significant risk to public health posed by a public health hazard or a public health nuisance; or
  - (b) the holder of such certificate or permit contravenes or fails to comply with any relevant provision of these by-laws.
- (4) An environmental health practitioner may amend an exemption certificate or permit by endorsing such certificate or permit or by written notice to the holder thereof, if the environmental health practitioner reasonably believes that it is necessary to do so to protect public health or to take account of changed circumstances since the exemption certificate or permit concerned was issued.

***Part 2: Enforcement, remedial work and costs***

**17. Demolition orders.—**

- (1) If the Municipality believes that a public health hazard would be eliminated or a public health nuisance would be significantly reduced by demolishing a building or other structure, it may, subject to the provisions of any other law, apply to any court having jurisdiction for an order directing any person to demolish the building or structure or authorising the Municipality to do so and to recover the costs of doing so from the owner or the occupier of the premises concerned, or from both.
- (2) The Municipality may not apply to court in terms of subsection (1) unless it has given the owner and the occupier of the premises not less than 14 days' notice in writing of its intention to make the application and has considered any representations made within that period.

**18. Municipal remedial work.—**

(1) The Municipality may, subject to the provisions of any other law, enter any premises and do anything on the premises that it reasonably considers necessary—

- (a) to ensure compliance with these By-laws or with any compliance notice issued in terms of section 32 of the Rationalisation of Local Government Affairs Act;
- (b) to reduce, remove or minimise any significant public health hazard; or
- (c) to reduce, remove or minimise any public health nuisance.

**19. Cost orders.—**

(1) The Municipality may recover any costs reasonably incurred by it in taking measures contemplated in section 16 from any person who was under a legal obligation to take those measures, including—

- (a) a person on whom a compliance notice referred to in section 17 (a) that required those steps to be taken, was served;
- (b) the owner or occupier of the premises concerned; or
- (c) any person responsible for creating a public health hazard or a public health nuisance.

(2) The municipal manager may issue a cost order requiring a person who is liable to pay costs incurred by the Municipality in terms of subsection (1), to pay those costs by a date specified in the order and such order constitutes prima facie evidence of the amount due.

## **CHAPTER 4 : SANITARY SERVICES**

**20. Compulsory connection to municipal sewage system.—**Every owner of premises to which a municipal sewage service is available, shall ensure that all waste water drainage pipes from any bath, wash-hand basin, toilet, shower or kitchen sink is connected to the municipal sewer in an approved manner.

**21. Prohibition against obstruction of sanitary services.—**No person may prevent, obstruct or interfere with any sanitary service provided by the Municipality.

**22. Requirements in respect of toilet facilities.—**Every owner of premises shall ensure that the number of toilets provided on their premises comply with the provisions of the National Building Regulations and Building Standard Act.

**23. Toilet for workers.—**Every contractor shall provide his or her workers with toilet facilities as prescribed by the National Building Regulations and Building Standards Act.

**24. Prohibition against use of a bucket toilet under the same roof as a dwelling.—**No person may provide, erect, retain or use any bucket toilet inside, or under the same roof, as a dwelling.

**25. Conditions of toilets, urinals, backyards and refuse areas.—**Every owner or occupier of any premises shall keep every backyard; refuse area, toilet, and urinal in a sanitary condition and good state of repair.



**26. Separate storage of urine.—**

(1) Any owner or occupier required by the Municipality to provide for the separate storage of urine, due to the size, extent of occupation or use of any premises, shall comply with any notice issued by the Municipality calling on him or her to provide an adequate urine tank or an adequate number of urine buckets on the premises.

(2) Every owner or occupier referred to in subsection (1) shall use the urine tank or urine bucket exclusively for the reception of urine.

**27. Provision of tank for waste liquids in areas without sewers.—**

(1) Any owner of premises not connected to a public sewer or not provided with other adequate measures for the disposal of waste liquid, shall provide the premises with a tank big enough to contain the slops, bath water or other waste water produced on the premises during a period of 48 hours.

(2) Subject to the provisions of subsection (3), premises referred to in subsection (1), shall be equipped either with—

(a) an overhead tank placed in a way that its contents can be gravity fed into the Municipality's waste removal vehicles; or

(b) an adequate filter, pump and indicator, with outlet pipes constructed and placed in way that the tank may be easily emptied and cleansed.

(3) The provisions of subsection (2) do not apply if—

(a) adequate arrangements have been made for dispersing waste water produced on the premises, other than urine, over land associated with the premises concerned; and

(b) the waste water is dispersed in a way that will not create a public health nuisance.

**28. Pumping of contents of underground tank to surface tank.—**

Any occupier of premises on which both underground and overhead tanks are provided for the storage of waste water, shall pump the contents of the underground tank to the overhead tank immediately prior to the overhead tank being emptied by the Municipality.

**29. Blocked or defective outlet pipes.—**Every owner or occupier of premises shall keep any drainage system free from obstruction and in a good condition.

**30. Prohibition against urine in slops tanks.—**No person may discharge or allow any urine or excrement to be discharged into a slops tank situated on any premises.

**CHAPTER 5 : PRIVATE SEWAGE WORKS**

**31. Permit for provision of service for the removal of human excrement or urine.—**No person may provide any service for the removal or disposal of human excrement and urine on any premises except in terms of a permit authorising that service.

**32. Permit for installation of sewage works.—**No person may, on any private premises, install, alter, re-site, operate or maintain any septic tank, filter installation or other works for the disposal of sewage, except in terms of a permit authorising that activity.

**33. Maintenance of sewage works.—**Any person operating a sewage works shall ensure that it is maintained in a sanitary condition and good state of repair at all times.

**34. Disposal of sewage, sewage effluent and wastewater without causing a public health nuisance and/or hazard.**—No person may dispose of sewage or waste water from any bath, wash-hand basin, toilet, shower or kitchen sink in a way or in a location that may—

- (a) cause dampness in or on any premises;
- (b) endanger the quality of any water supply, surface water, stream or river; or
- (c) create a public health nuisance and/or hazard.

**35. Compulsory use of Municipality's sewage removal service.**—Every occupier of premises shall use the sewage removal service prescribed by the Municipality for those premises.

## CHAPTER 6 : WATER

**36. Definitions.**—In this Chapter, unless the context otherwise indicates—

**“domestic consumption”** in relation to water, means the use of water for—

- (a) human consumption;
- (b) preparing or manufacturing food or drink for human consumption;
- (c) cleaning vessels or utensils used in the preparation or manufacture of food or drink for human consumption; or
- (d) any other domestic purpose.

**“effluent”** means any waste water which may be generated as a result of undertaking any scheduled use or an activity which is likely to cause a public health nuisance.

**37. Pollution of sources of water supply.**—No person may pollute or contaminate any catchment area, river, canal, well, reservoir, filter bed, water purification or pumping works, tank, cistern or other source of water supply or storage in a way that creates a public health nuisance or a public health hazard.

**38. Dangerous wells, boreholes and excavations.**—Every owner or occupier of premises shall ensure that any well, borehole or other excavation located on his or her premises—

- (a) is fenced in or covered over in a way that safeguards it from creating a public health hazard; and
- (b) does not contain any material or substance that may cause any adjacent well, borehole or underground water source to be polluted or contaminated to an extent that may create a public health nuisance or public health hazard.

**39. Provision of adequate water supply.**—Every owner of premises shall provide every resident on the premises with an adequate and readily available potable water supply at all times.

**40. Use of water from sources other than the municipal supply.**—No person may use, or permit to be used, any water obtained from a source other than the municipal water supply for domestic consumption, unless the water concerned has been approved for that purpose.

**41. Furnishing of particulars of the source of water.**—

- (1) Any owner or occupier of premises on which a well, borehole, spring, dam, river or other water source is located, the water of which is used for domestic consumption, shall within

14 days of receiving a notice from the Municipality calling on him or her to do so, provide the Municipality with all particulars of the water source reasonably available to the owner or occupier.

(2) An owner or occupier of premises contemplated in subsection (1), shall, if requested to do so by the Municipality, and at his or her own cost, furnish to the Municipality a certificate of analysis and bacteriological investigation issued by an analyst, as defined in the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972), in respect of any water supply on that premises used for domestic consumption.

(3) If water from a borehole is used for domestic consumption, a certificate of analysis as contemplated in subsection (2) shall be submitted to Municipality annually or at any time on request of an environmental health practitioner.

**42. Notice of the sinking or digging of boreholes or wells.—**

(1) No person may sink or dig, or cause or permit to be sunk or dug, a well or borehole, to obtain water, unless—

- (a) it is done so in accordance with any relevant law; and
- (b) he or she has given the Municipality at least 14 days written notice of his or her intention to do so.

(2) The notice referred to in subsection (1) (b), shall state the proposed location and the purpose for which the water is to be used.

**43. Storm water runoff from premises which may impact on public health.—**

(1) Every owner or occupier of premises shall erect adequately designed, constructed and maintained hydraulic and hydrological structures on their premises—

- (a) to divert the maximum storm water runoff, which could be expected within a period of 24 hours with an average frequency of recurrence of once in 100 years, from any part of the premises on which any waste, likely to create a public health nuisance, is or was handled, produced, stored, dumped or spilled;
- (b) to collect all polluted runoff water from any part of the premises on which waste is handled, produced, stored, dumped or spilled, for reuse, treatment or purification;
- (c) to separate all effluent from storm water systems;
- (d) to prevent the erosion or leaching of material from any slimes dam, ash dam and any dump or stock-pile on the premises, and to contain any eroded or leached material in the area where it originated;
- (e) to prevent any waste or waste water from entering any borehole, well, spring, vlei or water course; and
- (f) to prevent any adverse impact on the quality of surface and ground water occurring, due to the location of any dump, stock-pile, dam, drain, canal, conduit, sewer or any other structure on the premises.

(2) An owner or occupier of premises—

- (a) shall keep all water passages open and free of obstruction from matter which may impede the flow of water or effluent;
- (b) may not locate any dump within the one hundred year flood line of any water resource;
- (c) may not use coal, coal discard, carbonaceous material or any other material for the construction of any slurry, evaporation or catchment dam, or any embankment, road or railway in a way likely to create a public health nuisance;

- (d) shall construct bund walls around any tank, or group of tanks containing any substance that can create public health nuisance, of a size that is capable of containing the volume of the largest tank in the event of any unlawful or accidental discharge from the tank or group of tanks; and
- (e) shall clean any industrial surface area so as to prevent the pollution of storm water which may result in an adverse impact on the quality of any surface or ground water.

**44. Containment of waste water.**—Any dam, conduit or channel used for the containment of waste water shall have a free board of at least 0.5 metres above the highest level of precipitation which could be expected within a period of 24 hours with an average frequency of recurrence of once in 100 years.

## CHAPTER 7 : OFFENSIVE TRADES

**45. Definitions.**—In this Chapter, unless the context otherwise indicates—

**“effluent”** means any waste water which may be generated as a result of undertaking any scheduled use or an activity which is likely to cause a public health nuisance;

**“offensive trade”** means any business listed below or business which involves an activity listed below—

- (a) panel beating or spray painting;
- (b) operating a waste recycling plant including oil and petroleum product recycling;
- (c) scrap yard or scrap metal dealing;
- (d) blood boiling, bone boiling, tallow melting, fat melting or fat extracting, soap boiling, tripe boiling or cleaning, skin storing, bone storing, hide boiling, skin curing, blood drying, gut scraping, leather dressing, tanning or glue or size making;
- (e) charcoal burning, brick burning, lime burning;
- (f) manure making or storing or compost making;
- (g) parchment making;
- (h) manufacturing malt or yeast, edible oils;
- (i) cement works, coke-ovens or salt glazing works;
- (j) sintering of sulphurous materials;
- (k) viscose works;
- (l) ore or mineral smelting, calcining, puddling or rolling of iron or other metal, conversion of pig iron into cast iron, reheating, tempering, hardening, forging, conversion or compounding or carbon with iron or other metals;
- (m) works for the production of carbon bisulphide, cellulose lacquer, cyanide or its compounds, hot pitch or bitumen, pulverised fuel, peridine, liquid or gaseous sulphur dioxide or sulphur chlorides;
- (n) works for the production of amyl acetate, aromatic ethers, butyric acid, caramel, enamel wire, glass, hexamine, lampblack, B-naphthol, resin products, salicylic acid, sulphated organic compounds, sulphurous paints, ultramarine, zinc chloride or zinc oxide; or
- (o) the refining or processing of petrol, oil or their products;
- (p) sandblasting;
- (q) sawmill, wood, timber manufacture.

**“offensive trader”** means any person who owns, conducts or carries on an offensive trade.

**46. Permit requirement.**—No person may conduct an offensive trade in or on any premises, except in terms of a permit authorising such trade.

**47. Requirements for premises.**—No person may conduct an offensive trade in or on any premises unless—

- (a) the floors of the premises are constructed of cement concrete or a similar impervious material, brought to a smooth finish;
- (b) the floors of the premises are adequately graded and drained for the disposal of effluent to an approved disposal system;
- (c) the inside walls, except where glazed or glass brick or glazed tiles are used, are plastered, brought to a smooth finish and painted with a light-coloured, washable paint;
- (d) the surface of any backyard or open space is paved with concrete or similar impervious material, brought to a smooth finish;
- (e) the premises are provided with adequate light and ventilation as prescribed in the National Building Regulations and Building Standard Act;
- (f) an adequate supply of running potable water is provided;
- (g) an adequate number of portable containers constructed of iron or another non-absorbent material, equipped with closely fitting lids, are provided for the removal of all waste and waste water from the premises;
- (h) adequate means are provided for the disposal of all effluent arising from the manufacturing or other process performed on the premises;
- (i) adequate accommodation is provided for the storage of all finished products; articles or materials which are used in the manufacturing or other process and which may—
  - (i) discharge offensive injurious effluent or liquid; or
  - (ii) decompose in the course of the work or trade;
- (j) adequate means are provided to control the discharge in the open air of any noxious, injurious or offensive gas, fume, vapour or dust produced during any handling, preparation, drying, melting, rendering, boiling or grinding process or storage of material;
- (k) adequate sanitary fixtures are provided as prescribed in the National Building Regulations and Building Standards Act;
- (l) a perimeter wall made of brick or some other impervious material, with a minimum height of 2 metres, is constructed around the premises;
- (m) all gates to the premises are of solid construction with a minimum height of 2 metres;
- (n) all perimeter walls and gates adequately screen activities on the premises from public view and
- (o) all materials are stacked or stored on the premises below the height of the perimeter screening;
- (p) adequate separate change-rooms for males and females, where five or more persons of the same sex are employed, shall be provided containing—
  - (i) an adequate metal locker for every employee;
  - (ii) a wash-hand basin provided with a supply of running hot and cold potable water; and
  - (iii) an adequate supply of soap and disposable towels at every wash hand basin;
- (q) if no change-room has been provided in terms of paragraph (p)—

- (i) a wash hand basin with a supply of running hot and cold potable water, shall be provided in an accessible position; and
- (ii) an adequate metal locker shall be provided for every employee in the work area.

**48. Duties of offensive traders.**—Every offensive trader shall—

- (a) maintain the premises in a clean, hygienic and good condition at all times;
- (b) maintain all walls and floors of the premises in a manner and condition that prevents the absorption of any waste or waste water;
- (c) maintain all machinery, plant apparatus, furniture, fittings, tools, implements, vessels, containers, receptacles and vehicles in a clean, hygienic and good condition at all times;
- (d) prevent any waste accumulating on the premises; and
- (e) prevent the emission of noxious, injurious or offensive gases, fumes, vapours or dust generated during any handling, preparation, drying, melting, rendering, boiling or grinding process or storage of any material on the premises.

**49. Liquid refuse from bone and tripe boiling.**—

- (1) Every bone boiler and every tripe boiler shall adequately cool all waste water before it is discharged into any sewer or other receptacle.
- (2) The cooling process referred to in subsection (1), shall take place in a manner that prevents the generation of any noxious and injurious effluent.

**50. Liquids, tanks and tubs in leather making.**—Every fellmonger, leather dresser or tanner shall—

- (a) renew and dispose of the liquid from every tank or other receptacle used on the premises to wash or soak any skin or hide, other than a lime pit, at adequate intervals and in an adequate manner;
- (b) clean every tub or other receptacle every time it is emptied;
- (c) clean every tub or other receptacle used to contain a solution of the material known as “puer”.

## **CHAPTER 8 : HAIRDRESSING BEAUTY AND COSMETOLOGY SERVICES**

**51. Definitions.**—In this chapter, unless the context otherwise indicates—

“**body piercing**” means the piercing of the skin for the purpose of inserting any foreign object;

“**cosmetology or beauty service**” includes, but is not limited to, anyone or more of the following services—

- (a) manicure, pedicure, nail technology, or the application of artificial nails or nail extensions, whatever the substance used;
- (b) eyebrow shaping and plucking including the application of false or artificial eyebrows or eye lashed and tinting of eyelashes;
- (c) cosmetic and camouflage makeup of the face and its features, whether by permanent, semi-permanent or temporary means;
- (d) facial skin care;
- (e) removal of unwanted or superfluous hair from any part of the body by any means, other than shaving, including by means of waxing, chemical depilatories, electrical or



mechanical means, whether or not any apparatus, appliance, heat, preparation or substance is used in any of these operations;

- (f) body piercing and tattooing for cosmetic purposes;
- (g) massaging;
- (h) body bronzing by means of ultraviolet radiation or any similar method; or
- (i) body contouring including all forms of slimming;

**“hairstyling”** includes, but is not limited to, anyone or more of the following services—

- (a) Shampooing and cleansing, conditioning and treating hair;
- (b) chemical reformation of the hair including permanent waving, relaxing and straightening of the hair;
- (c) hair colouring, including tinting, dyeing and colouring by means of permanent, semi-permanent or temporary means, including the use of colour rinses, shampoos, gels or mousses and lightening by means of tints, bleaches highlights or high lifting tints or toners;
- (d) hair cutting and shaping;
- (e) barbering services including shaving and singeing of hair; or
- (f) the adding to hair of natural and artificial hair and hair extensions, board work, pastiche, wig-making or the performing of any operation specified in paragraphs (a) to (e) on a wig or hairpiece to be worn by any person; or
- (g) trichology and trichological treatment of the hair including the treatment of abnormalities and disorders of the hair;

**“salon”** means any place where any or more of the following services are performed for again—

- (a) Hairstyling or beauty service;
- (b) cosmetology or beauty service;
- (c) body piercing and tattooing; or
- (d) massaging services;

**“salon service”** means anyone or more or a combination of the practices or services generally and usually performed by a person rendering service in the hairstyling, cosmetology or beauty service industry including any massage, body piercing and tattooing service.

**52. Permit requirement.**—No person may operate a salon on any premises which do not comply with the following requirements.

**53. Requirements for premises.**—No person may operate a salon on any premises which do not comply with the following requirements—

- (a) adequate lighting and ventilation, as prescribed in the National Building Regulations and Buildings Standard Act, shall be provided;
- (b) all shelves, fixtures and table tops on which instruments are placed shall be constructed of an approved material that is durable, non-absorbent, and easy to clean;
- (c) water and toilet facilities shall be provided as prescribed in the National Building Regulations and Building Standards Act;
- (d) adequate facilities, with a supply of running potable water, shall be available for the washing of hair and hands;
- (e) an approved system for the disposal of waste water shall be provided;
- (f) adequate storage facilities shall be provided;

- (g) the walls and floors shall be constructed of a material that is easy to clean and which prevents cut hair from being dispersed; and
- (h) the premises may not be used for the storage and preparation of food or for sleeping unless any area for that purpose is clearly separated by an impervious wall;
- (i) adequate separate change-rooms for males and females, where five or more persons of the same sex shall be provided containing—
  - (i) an adequate metal locker for every employee;
  - (ii) a wash-hand basin provided with a supply of running hot and cold potable water; and
  - (iii) an adequate supply of soap and disposable towels at every wash-hand basin;
- (j) if no change-room has been provided in terms of paragraph (i)—
  - (i) a wash hand basin with a supply of running hot and cold potable water, shall be provided in an accessible position; and
  - (ii) an adequate metal locker shall be provided for every employee in the work area.

**54. Duties of salon operators.**—Any person operating a salon shall—

- (a) maintain the premises, tools, equipment and clothing in a hygienic and good condition at all times;
- (b) equip the premises with an adequate means to disinfect and sterilise instruments and equipment that may come into direct contact with any customer's hair or skin.
- (c) provide employees on the premises with approved protective clothing and equipment;
- (d) collect all hair clippings and other waste in an approved container after every service;
- (e) store or dispose of waste in an approved manner;
- (f) adequately train any person working on the premises;
- (g) not permit any animal on the premises unless it is a guide dog accompanying a blind person; and
- (h) ensure that every person working in the salon complies with the requirements of this section and sections 55 and 56.

**55. Requirement minimum health standards for the operation of a salon.**—Any person operating or employed in, a salon shall take the following measures—

- (a) Adequately disinfect the following instruments after each use—
  - (i) razors;
  - (ii) blades;
  - (iii) nail files;
  - (iv) scissors;
  - (v) clippers;
  - (vi) hairbrushes;
  - (vii) combs;
  - (viii) bristle brushes;
  - (ix) metal clips; and
  - (x) rollers;
- (b) adequately sterilise the following instruments after each use—
  - (i) any instrument used for body piercing or tattooing;
  - (ii) any instrument which has come in contact with blood or any other body fluid;
- (c) wash and clean all plastic and cloth towels after each use;
- (d) dispose of all disposable gloves or other disposable material after each use;

- (e) wash all aprons and caps daily;
- (f) wash his or her hands with soap and water or disinfectant before and after rendering each service to a client;
- (g) wear disposable gloves when providing one of the following salon services—
  - (i) any chemical services;
  - (ii) any hair implant;
  - (iii) body piercing; and
  - (iv) tattooing;
- (h) wash all walls, floors, chairs and other surfaces in the premises at least once a day with a disinfectant or household detergent;
- (i) dispose of all waste water, sharp instruments, bloodied and otherwise contaminated towels and toweling paper in an approved manner;
- (j) store razors, blades, needles and other sharp instruments separately in a “sharp instrument box”;
- (k) adequately treat any injury or wound which may occur on the premises;
- (l) clean and disinfect all surfaces that have been contaminated by blood after each service; and
- (m) keep an approved first aid kit on the premises at all times.

**56. Prohibition against the use of salon premises for other purposes.—**

- (1) Any person operating a salon shall ensure that the premises are used exclusively for that purpose.
- (2) Any person who wants to prepare any beverage for customers on the premises of a salon, shall provide a separate area, equipped with a facility for cleaning crockery and utensils, for that purpose.

## **CHAPTER 9 : SECOND-HAND GOODS**

**57. Definitions.—**In this chapter, unless the context otherwise indicates—

**“second-hand goods business”** means any business in which used goods and materials are sold, including, without limitation—

- (a) clothing, furniture, scrapped motor vehicles, footwear, timber, building bricks or blocks, building material or fittings, machinery, drums, tins, bottles, packaging cases, boxes, crates or other containers, metal rags, plastic bags paper or any other material, which has previously been used.

**58. Requirements for premises.—**No person may operate a second-hand goods business in any premises which do not comply with the following requirements—

- (a) any section of the premises where second-hand goods are stored and handled shall be enclosed by walls constructed of brick, rock or concrete, with a minimum height of two metres;
- (b) all gates to the premises shall be of solid construction with a minimum height of two metres;
- (c) all materials shall be stacked or stored below the height of the perimeter screening;
- (d) adequate lighting and ventilation, as prescribed in the National Building Regulations and Building Regulations and Standards act shall be provided;

- (e) all storage areas shall be paved with cement, concrete or other approved impervious material;
- (f) all backyard surfaces and open spaces of the premises shall be graded and drained to allow for the effective run-off of all precipitation;
- (g) adequate sanitary fixtures for both sexes employed on the premises shall be provided, as prescribed in the National Regulations and Building Standards Act;
- (h) an adequate number of refuse containers shall be provided;
- (i) adequate separate change-rooms for males and females, where five or more persons of the same sex are employed, shall be provided containing—
  - (i) an adequate metal locker for every employee;
  - (ii) a wash-hand basin provided with a supply of running hot and cold potable water; and
  - (iii) an adequate supply of soap and disposable towels at every wash-hand basin;
- (j) if no change-room has been provided in terms of paragraph (i)—
  - (i) a wash hand basin with a supply of running hot and cold potable water, shall be provided in an accessible position; and
  - (ii) an adequate metal locker shall be provided for every employee in the work area.

**59. Duties of second-hand goods traders.**—Any person who conducts a second-hand business shall—

- (a) store second -hand goods in a backyard, building or open space that is constructed of an approved material in such a manner as to prevent the harborage of rodents or other vermin and pests;
- (b) ensure that no water accumulates in any article stored on premises;
- (c) keep the premises in a clean, neat and sanitary condition at all times;
- (d) immediately on receipt, disinfect all furniture, soft furnishings, clothing, bedding or other fabrics in an adequate manner;
- (e) keep any other articles separate from articles which have been disinfected; and
- (f) label all articles which have been disinfected in a conspicuous place on each article.

## CHAPTER 10 : ACCOMMODATION ESTABLISHMENTS

**60. Definitions.**—In this Chapter, unless the context otherwise indicates—

**“accommodation establishment”** means any place in which accommodation is provided for gain to four or more people, with or without meals;

**“dormitory”** means a sleeping room in which sleeping accommodation is provided for four or more persons.

**61. Permit requirements.**—No person may operate an accommodation establishment except in terms of a permit authorising that activity.

**62. Requirements for premises of accommodation establishments.**—No person may operate an accommodation establishment on premises which do not comply with the following requirements—

- (a) no room wholly or partly used by persons for sleeping in may be occupied by a greater number of persons than will allow—

- (i) less than 12 m<sup>3</sup> of free air space and 4 m<sup>2</sup> of floor space for each person over the age of 10 years; and
  - (ii) less than 6 m<sup>3</sup> of free air space and 2 m<sup>2</sup> of floor space for each person under the age of 10 years;
- (b) no latrine, passage, staircase, landing, bathroom, cupboard, outbuilding, garage, stable, tent, storeroom, lean-to, shed, kitchen, dining room, food preparation area, cellar or loft may be used as sleeping accommodation;
- (c) if a dormitory is provided on the premises—
  - (i) a single bed, manufactured of metal or some other durable material and equipped with a mattress, shall be provided for every person housed in the dormitory;
  - (ii) a separate locker shall be provided for every person making use of the dormitory for safeguarding the person's clothing and other possessions;
  - (iii) every bed in a dormitory shall be so placed that its sides are at least one meter away from any part of any other bed;
- (d) an accommodation establishment shall be provided with—
  - (i) an area for the preparation and cooking of food, adequate for the use of and easily accessible to any occupier residing in the accommodation establishment;
  - (ii) adequate separate wash-up facilities; and
  - (iii) where meals are provided to persons housed in the accommodation establishment, a dining-room or adequate dining area, including the area occupied by tables, chairs and benches, of at least 1.2 m<sup>2</sup> for every seat provided for dining purposes;
- (e)
  - (i) an accommodation establishment shall be provided with one or more showers, each suitably placed in a separate compartment, easily accessible to every occupier, and fitted with waste pipes which comply with the provisions of the National Building Regulations and Building Standards Act;
  - (ii) a bath fitted with a waste pipe may be substituted for each shower referred to in subparagraph (i);
  - (iv) the facilities referred to in subparagraphs (i) and (ii) shall be designated for the different sexes;

(Editorial Note: Numbering as per original *Provincial Gazette*.)
- (f) an accommodation establishment shall be provided with sanitary fixtures as prescribed in the National Building Regulations and Building Standards Act and such fixtures shall be designated for the different sexes;
- (g) an accommodation establishment shall be provided with an adequate supply of hot and cold running potable water;
- (h) all rooms and passages shall be provided with an adequate ventilation and lighting as prescribed in the National Building Regulations and Buildings Standards Act;
- (i) openings such as doors, windows or fanlights may not be obstructed in a manner that interferes with the lighting or cross ventilation they provide;
- (j)
  - (i) a separate room with metal bins or canvas laundry bags shall be provided for the storage of dirty articles used in connection with an accommodation establishment, pending removal to be laundered; and
  - (ii) if articles used in connection with an accommodation establishment are laundered on the premises, a separate approved washing, drying and ironing area equipped with the necessary facilities for this purpose shall be provided.

- (k) a store-room for the storage of furniture and equipment and a separate linen room with cupboards or shelves for the storage of clean bed and other linen, towels, blankets, pillows and other articles used in connection with an accommodation establishment, shall be provided;
- (l)
  - (i) all walls and ceilings shall have a smooth finish and be painted with a light-coloured washable paint, or have some other approved finish;
  - (ii) the floor surface of every kitchen, scullery, laundry, bathroom, shower, ablution room, toilet and sluice room shall be constructed of concrete or some other durable, impervious material brought to a smooth finish; and
  - (iii) the floor surface of every habitable room shall be constructed of an approved material;
- (m) the following facilities shall be provided for people who are employed and also reside on the premises—
  - (i) sleeping quarters equipped with a bed, mattress and locker which comply with the provisions of paragraphs (a), (b) and (c) for each employee; and
  - (ii) if employees are not provided with meals in the accommodation establishment, food preparation and dining facilities that comply with the provisions of paragraph (d);
- (n) adequate changing facilities shall be provided for non-resident employees;
- (o) adequate ablution and sanitary facilities, which comply with the provisions of paragraphs (e) and (f), shall be provided for residents and non-resident employees;
- (p) an adequate refuse holding area shall be provided and an approved refuse removal system shall be maintained;
- (q) all walls, floors and roofs shall be constructed in a manner which prevents wind or rain entering an accommodation establishment or dampness entering the interior surfaces of any wall or floor;
- (r) all accesses to an accommodation establishment shall have a door which when closed, prevents the wind or rain entering the premises; and
- (s) all windows shall be constructed in a manner that prevents rain entering the accommodation establishment when the windows are closed.

**63. Duties of operators of accommodation establishments.**—Every person who conducts an accommodation establishment shall—

- (a) keep the premises and all furniture, fittings, appliances, equipment, containers, curtains, covers, hangings and other soft furnishings, table linen, bed linen, and other bedding, towels and cloths of whatever nature used in connection with the accommodation establishment, in a clean, hygienic and good condition at all times;
- (b) clean and wash any bed linen, towels, bath mat or face cloth after each use by a different person;
- (c) take adequate measures to eradicate pests on the premises;
- (d) provide a container made of durable and impervious material, equipped with a close-fitting lid, in every toilet used by females;
- (e) provide towel rails or hooks in every bathroom and in every room in which there is a wash-hand basin or shower;
- (f) store all dirty linen, blankets clothing, curtains and other articles used in connection with an accommodation establishment in the manner provided in section 62 (j);



- (g) store all clean linen, towels blankets, pillows and other articles used in connection with the accommodation establishment in the manner provided in section 62 (k);
- (h) keep all sanitary, ablution and water supply fittings in good working order;
- (i) keep every wall, surface and ceiling, unless constructed of materials not intended to be painted, painted at the intervals to ensure that the area painted, remains clean and in a good state of repair; and
- (j) handle refuse in the manner provided in section 62 (p).

## CHAPTER 11 : DRY-CLEANING AND LAUNDRY ESTABLISHMENTS

**64. Definitions.**—In this chapter, unless the context otherwise indicates—

**“dry-cleaning or laundry business”** means any business in which clothes or other fabrics are cleaned with water or other solvents, or clothes or fabrics are ironed;

**“dry-cleaning or laundry receiving depot”** means premises used for the receipt, storage and dispatch of clothes or other fabrics in connection with a dry-cleaning or laundry business.

**65. Premises for dry-cleaning or laundry businesses.**—No person may conduct a dry-cleaning or laundry business on premises which do not comply with the following requirements—

- (a) a work-room or area used for housing dry-cleaning machines, washing machines, ironing boards, presses and other fixed or movable equipment, with a minimum unobstructed floor area of 2,5 m<sup>2</sup> per person employed on the premises, shall be provided;
- (b) adequate separate areas for making clean and dirty articles shall be provided with—
  - (i) tables with an impervious surface;
  - (ii) adequate washable containers for dirty articles; and
  - (iii) hanging rails and shelves constructed of an impervious material in the area for making clean articles;
- (c) a separate room or area with separate designated counters, with impervious surfaces, shall be provided for the receipt and dispatch of articles;
- (d) a store-room or facility for the storage of packaging material and other articles shall be provided and equipped with adequate packaging shelves of which the lowest shelf shall be at least 250mm above floor level;
- (e) adequate separate change-rooms for males and females, where five or more persons of the same sex are employed, shall be provided containing—
  - (i) an adequate metal locker for every employee;
  - (ii) a wash-hand basin provided with a supply of running hot and cold potable water; and
  - (iii) an adequate supply of soap and disposable towels at every wash hand basin;
- (f) if no change-room has been provided in terms of paragraph (e)—
  - (i) a wash hand basin with a supply of running hot and cold potable water shall be provided in an accessible position; and
  - (ii) an adequate metal locker shall be provided for every employee in the work area;
- (g) a tea kitchen with a single-basin stainless steel sink, with a supply of running hot and cold potable water, shall be provided;

- (h) separate toilets for males and females shall be provided which comply with the provisions of the National Building Regulations and Building Standards Act;
- (i) every toilet and change-room shall be clearly gender designated;
- (j) all internal walls shall be constructed of cement or some other adequate impervious material, brought to a smooth finish and painted with a light-coloured washable paint;
- (k) all ceilings shall be dust-proof, smoothly finished, and painted with a light coloured washable paint;
- (l) all floor surfaces shall be constructed of cement or some other adequate impervious material, brought to a smooth finish and properly drained;
- (m) the minimum height from floor to ceiling of any room or area shall be 2,4 meters;
- (n) adequate lighting and ventilation, as prescribed by the National Building Regulations and Building Standards Act shall be provided;
- (o) all machinery and equipment shall be equipped with adequate suction fans to remove any noxious gas, steam and hot air from any room and to release it in the open air in an adequate manner;
- (p) all machinery and equipment shall be placed so that there is free access to all areas around and underneath each machine or item of equipment, to enable those areas to be adequately cleansed; and
- (q) a separate pre-rinsing area shall be provided on any premises where napkins are laundered.

**66. Premises for dry-cleaning or laundry receiving depots.**—No person may operate a dry-cleaning or laundry receiving depot on premises which do not comply with the following requirements—

- (a) a separate room or area with a minimum width of two meters shall be provided for the receipt and dispatch of articles;
- (b) fifty percent of the floor space of the room referred to in paragraph (a) shall be unobstructed;
- (c) a wash-hand basin with a supply of running potable water shall be provided;
- (d) an adequate supply of soap and disposable towels shall be provided at every wash-hand basin;
- (e) all internal wall and ceiling surfaces shall be constructed of an impervious material, brought to a smooth finish and painted with a light-coloured washable paint;
- (f) all floor surfaces shall be constructed of cement or other impervious material, brought to a smooth finish;
- (g) lighting and cross-ventilation, as prescribed by the National Building Regulations and Building Standards Act, shall be provided;
- (h) adequate washable containers for sorting dirty articles shall be provided;
- (i) adequate quantities of hanging rails or impervious shelves for the storage of clean articles shall be provided;
- (j) adequate designated counters, with impervious surfaces, shall be provided separately for the receipt and dispatch of dirty and clean articles; and
- (k) an adequate metal locker shall be provided for every person employed in the receiving depot.

**67. Premises for coin-operated laundries.**—No person may operate a coin-operated laundry on premises which do not comply with the following requirements—

- (a) separate toilet and hand washing facilities for the different sexes, as prescribed in the National Building Regulations and Building Standards Act, shall be provided;
- (b) an adequate area shall be provided where ironing is done on the premises; and
- (c) any machine on the premises shall be installed in accordance with any applicable law.

**68. General requirements for dry-cleaning and laundry businesses.**—Any person conducting a dry-cleaning or laundry business or in charge of premises on which a dry-cleaning, laundry or receiving depot exists, shall—

- (a) keep the premises, all fittings, equipment, appliances, machinery, containers and business vehicles in a clean, hygienic and good condition at all times;
- (b) separate dirty articles from clean articles at all times, including when in transit;
- (c) use a change-room solely for changing;
- (d) ensure that every person who handles clean or dirty articles wears adequate protective clothing at all times;
- (e) keep protective clothing in a clean and sound condition at all times;
- (f) store protective clothing in a locker when it is not being worn;
- (g) affix the name and business address, in clear lettering, to the outside of any business vehicle;
- (h) ensure that the premises are not directly connected to any food premises, new clothing shop, hairdresser or any other area from which contamination might occur;
- (i) comply with the requirements of the following legislation times—
  - (i) The Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);
  - (ii) The National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004);
- (j) place all piping in the building, not chased in to walls, at least 100mm away from all walls or floors and comply with the provisions of the National Building Regulations and Building Standards Act;
- (k) insulate all steam piping with an adequate material; and
- (l) dispose of all waste water in an approved manner.

## CHAPTER 12 : SWIMMING BATHS

**69. Definitions.**—In this chapter, unless the content otherwise indicates—

**“bath”** means any swimming bath established or operated by the Municipality and shall include all buildings, structures, gardens and enclosures used in connection therewith;

**“manager: parks”** means the person appointed to that position or such closely matched position by the municipality;

**“municipality”** means the Msunduzi Municipality;

**“professional swimming coach”** means any person who for gain, instructs any other person in the at or practice of swimming;

**“superintendent”** means the officer appointed by the municipality as a bath superintendent;

**70. General Provision.**—These by-laws shall apply to all baths owned or operated by the Municipality.

**71. Admission.**—Before admission to a bath every person shall obtain a ticket from the attendant on duty by payment of the prescribed fee or shall present a valid monthly ticket to such attendant and such ticket must be retained for inspection by any authorised official of council. Provided that—

- (a) Parties of scholars accompanied by teachers may be admitted without purchasing tickets if the teacher in charge is authorised to incur liability on behalf of the school for the cost of the fees prescribed for admission.

(Editorial Note: Numbering as per original *Provincial Gazette*.)

**72. Hours of bathing.**—The Manager: Parks shall from time to time fix the days and hours the baths shall be open to the public and such days and times may vary from bath to bath.

**73. Order and behavior.**—(1) No person at any bath shall—

- (a) enter or use any building or enclosure reserved for members of the opposite sex provided that this by-laws shall not apply to children under six years old;
- (b) expectorate or commit a nuisance of any description;
- (c) at any time willfully or negligently break, injure or improperly interfere with the due and efficient action of any equipment or machinery used in connection with the bath or willfully or negligently injure any furniture, fittings or conveniences;
- (d) through any disorderly and improper conduct disturb any other person, or any municipal official in the proper execution of his/her duty;
- (e) cause or allow any animal under the control of such person or otherwise to enter the bath;
- (f) use any indecent or offensive language or behave in an indecent or offensive manner;
- (g) use any soap or other substances whereby the water in such swimming bath may be rendered turbid or unfit for the proper use of bathers;
- (h) willfully foul or pollute the water;
- (i) write, sketch or draw upon any portion of the bath or in any way disfigure or damage the bath;
- (j) make wasteful use of water when using a shower;
- (k) dress or undress except in such place as shall have been provided for that purpose;
- (l) be in a state of intoxication;
- (m) pluck any flower or destroy any plant tree or shrub;
- (n) cause any damage to the terraces or cut up or destroy the grass by walking across such grass in disregard to any prohibition notice and avoid keeping to the paths as laid out unless otherwise directed to do so by the superintendent or any duly authorised official of the municipality;
- (o) be allowed to smoke any tobacco products during the hours of bathing and unless permitted to do so after hours;
- (p) discard fruit skins or any refuse or litter except in receptacles provided;
- (q) enter the change rooms designated for the opposite gender unless authorised do so for maintenance , repairs or security and safety purposes.

(2) No person shall enter or attempt to enter any bath—

- (a) whilst under the influence of liquor or drugs;
- (b) whilst unclean in his/her person or dress;
- (c) whilst in possession of glass bottles or similar such breakable containers.

(3) No person shall enter the swimming pool within the bath with any wound that may contaminate the water or cause a spread of infection to the other bathers.

(4) No child under the age of 10 shall be admitted to any bath unless accompanied by an adult.

**74. Superintendent.—**

(1) The superintendent shall have the right to refuse admission to any person to the bath who may be—

- (a) unclean in person, dress or habit;
- (b) under the influence of liquor or drugs.

(2) The superintendent may require any person offending against any of the provisions of these by-laws to leave the bath forthwith and if necessary may remove such person or cause such person to be removed from the bath.

**75. Dress.—**

(1) No person shall swim or otherwise bath in the swimming bath at the baths without wearing a proper bathing costume. Every bathing costume worn at the baths shall be of a type which does not indecently expose the body of the wearer thereof and for this purpose the Superintendent may disapprove any type of bathing costume which is scanty, transparent or loose, having regard to the age and sex of the wearer.

(2) When the Superintendent disapproves of any bathing costume he/she may order the person wearing the offending costume to change into an appropriate costume, to adjust the said costume or to change into non-bathing apparel.

**76. Indecent exposure.—**No person shall, save when within a dressing or change room, cubicle, compartment, closet, shower or similar room, appear in a nude state at the baths.

**77. Competitive swimming.—**No person shall instruct any person in the practice of competitive swimming at any bath except on prior application to the municipality.

**78. Professional swimming.—**No professional swimming coach shall instruct any person in the practice of competitive swimming at any bath unless the fees which may be laid down in tariffs have been paid.

**79. Liability.—**

(1) Persons using a bath or any equipment thereat provided by the council do so at their own risk and neither the municipality nor its employees shall be liable for any injury or damage sustained by any person as a result of the use or misuse of such bath or equipment.

(2) Neither the municipality nor its officials shall be liable to any person for any death, injury or damage suffered either as a result of any person at a bath or during the administration of first aid or other medical treatment to any person at a bath.

(3) Persons bringing property into any bath do so at their own risk and neither the Municipal Council nor its employees shall be liable for any loss of property which occurs at any bath.

(4) The municipality and its employees shall not be liable for any loss of or damage to any property handed by any person to employees of the municipality for the purpose of being kept whilst such person is at any bath.

**80. Reservation of baths.**—The Manager: Parks may reserve any bath for any sport, gala, competition or for any other purpose, and may close any such bath to the public and hire the same for any period not to exceed one week to clubs, associations or educational bodies at an inclusive fee. Notices of closure of any bath for the above purpose shall be displayed at the baths for 48 hours prior to the closure.

### CHAPTER 13 : NURSING HOMES

**81. Definitions.**—In this chapter, unless the context otherwise indicates—

“**general practice**” when used to describe the purpose for which a nursing home is used, means all medical, gynecological and surgical cases, excluding maternity cases;

“**maternity home**” means any nursing home, or part thereof, dealing exclusively with maternity cases;

“**nursing home**” means any premises where the nursing or care of patients is carried on for gain, but does not include—

- (a) any institution owned or controlled by the Government of the Republic of South Africa or a Provincial Administration; or
- (b) any consulting room, dental surgery or home for aged persons.

**82. Use of premises.**—(1) Any person who operates a nursing home may use it for the purposes of either a maternity home or for general practice, but not for both those functions, unless—

- (a) the nursing home carried on business prior to the promulgation of these by-laws; or
- (b) the nursing home—

- (i) complies with the requirements of subsection (2);
  - (ii) is in possession of a permit authorising that activity; and
  - (iii) complies with the requirements of any relevant Town Planning Scheme.

(2) Any person who operates a nursing home may use the premises concerned as a maternity home and for general practice, subject to compliance with the following requirements—

- (a) one part of the premises shall be set aside exclusively as a maternity area for maternity cases and another part shall be set aside exclusively as a general practice area for general practice;
- (b) no room, passage, stairway, hall, corridor, lift, external entrance or exit or other portion of the premises may be used in common for purpose whatsoever, except those that are used for the purpose of—
  - (i) laundries;
  - (ii) central sterilising unit, including ancillary units and stores;
  - (iii) pathological laboratories;
  - (iv) kitchen, sculleries, washing-up facilities, larders and any associated storage space;
  - (v) storage space for unused or adequately sterilised stores;
  - (vi) an administrative office other than an office used to admit and discharge patients;
  - (vii) central pharmaceutical units;
  - (viii) mortuaries; and



- (ix) workshops;
- (c) access to any common area may not be gained from the maternity area by going through the general practice area, and vice versa;
- (d) any common area leading from the two exclusive areas shall be adequately ventilated;
- (e) there may not be any direct means of access between the two exclusive areas;
- (f) there may not be any opening, aperture or gap in any common wall dividing the two exclusive areas which could allow air to pass from one area to the other;
- (g) every floor of one of the exclusive areas, which is located immediately above the other exclusive area, shall be made of reinforced concrete or other impervious material;
- (h) no member of the nursing or ward domestic staff who has performed duties in one exclusive area may, within 24 hours thereafter, perform duties in or enter the other exclusive area in an official capacity or in uniform;
- (i) the uniforms and protective clothing worn by persons employed in the common area and the two exclusive areas, shall be clearly distinguishable from one another;
- (j) no furniture, equipment, utensils, apparatus, linen, blankets or any other articles located in a common area, may be taken to any exclusive area until they have been adequately sterilised;
- (k) all furniture, equipment, utensils, apparatus and other articles, excluding linen, blankets, kitchen utensils, catering equipment, crockery, medical, surgical instruments and other incidental items, used in or intended for use in the two exclusive areas, shall be clearly marked to indicate in which of the areas they are used or originated;
- (l) no article identified for use in the one exclusive area may be taken into or kept in the exclusive area unless a certificate is obtained from an environmental health practitioner that the article has been adequately sterilised;
- (m) all articles issued from the common area for use in the two exclusive areas, shall be returned to the common area;
- (n) no article issued for use in one exclusive area may be used in the other exclusive area until it has been returned to the common area for adequate sterilisation;
- (o) no patient from the maternity area may be accommodated, nursed or cared for in the general practice area, and vice versa; and
- (p) no person shall bring any animal, poultry or bird onto the premises.

**83. General requirements.**—No person may operate a nursing home which does not comply with the following requirements—

- (a) separate residential accommodation shall be provided for staff required to reside on the premises;
- (b) separate bathrooms and toilets shall be provided in accordance with section 85 (b) and (c), for each of the following classes of persons—
  - (i) patients;
  - (ii) nursing staff; and
  - (iii) domestic staff;
- (c) the bathrooms and toilets shall be designated for each sex and shall be laid out in a manner that satisfies an environmental health practitioner;
- (d) an adequate supply of running hot and cold potable water, drawn from the Municipality's main supply, shall be provided;

- (e) a water-borne sewerage system connected to the Municipality's sewer, a septic tank or other disposal system approved by the city engineer of the Municipality and an environmental health practitioner in writing, shall be provided;
- (f) adequate accommodation for the administrative purposes of the nursing home, shall be provided;
- (g) adequate storage accommodation for articles that are reasonably necessary to store on the premises, shall be provided;
- (h) an adequate kitchen and scullery, having regard to the size and layout of the nursing home, shall be provided;
- (i) an adequate accommodation and facilities for the storage and refrigeration of food, shall be provided;
- (j) a separate linen room, containing adequate cupboards or shelves for the storage of clean linen, shall be provided;
- (k) an incinerator, adequate for the complete incineration of any combustible article placed in it, may be provided;
- (l) any laundry located on the premises, shall comply with the provisions of these by-laws;
- (m) no autopsy may be performed on these premises, other than in a room which is used solely for the reception of dead bodies and is constructed as follows—
  - (i) the room shall be divided from any other room by a solid wall;
  - (ii) the floor and walls shall be constructed of an impervious material brought to a smooth finish;
  - (iii) all tables in the room shall have impervious tops;
  - (iv) a sink, supplied with hot and cold running potable water, shall be provided; and
  - (v) an adequate drainage system shall be provided;
- (n) adequate facilities shall be provided for the hygienic handling and disposal of flowers, vases and other related materials;
- (o) fire prevention equipment, which in the opinion of the chief fire officer of the Municipality is adequate, shall be provided and maintained on the premises;
- (p) a fire escape, the stairs of which are a minimum of 1 metre wide with landings at each turning point measuring a minimum of 2.2 metres by 1.7 metres, shall be affixed to the premises;
- (q) the premises shall provide adequate accommodation for the storage of any spare equipment, including particularly heavy equipment and gas cylinders, in a manner that will not obstruct any passages or exits to the premises; and
- (r) an emergency stand-by electrical plant shall be provided which is adequate to provide an immediate alternative supply of electricity to—
  - (i) each operating theatre throughout the period of any power failure; and
  - (ii) any part of the nursing home to ensure the continued operation, throughout the period of the failure, of all electrically operated appliances and equipment which, in the opinion of an environmental health practitioner, are or may be life saving.

**84. Floor requirements.**—No person may operate a nursing home, unless the following are provided on each floor—

- (a) a duty-room equipped in accordance with section 90;
- (b) adequate sluicing facilities, taking into account the number of beds on the floor;

- (c) a dressing fitted with adequate sterilising equipment, containing impervious shelves for the storage of sterile drums and other equipment, and used exclusively for—
  - (i) the sterilisation or preparation of instruments, dressings and other equipment; and
  - (ii) the treatment of patients;
- (d) a ward kitchen equipped with a sink with hot and cold running potable water, a refrigerator, a stove and cupboards for crockery and cutlery; provided that a floor does not require a separate ward kitchen if all the needs of that floor are adequately catered for by the premises' main kitchen;
- (e) an adequate room or cupboard for the storage of clean linen;
- (f) a portable receptacle for the collection of soiled linen;
- (g) a room reserved exclusively for sorting and handling linen: provided that such separate linen rooms are not required, if the entire premises are adequately served by one such room;
- (h) a room for the storage of any spare equipment including heavy equipment and gas cylinders; and
- (i) where accommodation is provided for children under the age of six years, a separate, milk room for the storage and preparation of milk and other children's foods, unless a ward kitchen adequately fulfils this purpose.

**85. Maintenance and construction.**—No person may operate a nursing home in or on premises which do not comply with the following requirements—

- (a) the premises shall be kept in good and hygienic condition at all times;
- (b) all walls shall be constructed of brick, stone, concrete or other impervious material;
- (c) except where glazed or glass bricks, glazed tiles or other similar material with a hard and smooth surface have been used, the internal walls of operating theaters, sterilising rooms, wards, labour wards, scrubbing-up rooms, dressing rooms, duty-rooms, kitchens, sculleries, pantries, food store-rooms, milk rooms, bathrooms toilets, sluice-rooms, wash-houses and mortuaries shall be—
  - (i) plastered and brought to a smooth finish; and
  - (ii) covered with a light-coloured washable paint, adequate plastic finish or other approved material;
- (d) the angles formed between each floor and wall, and between two walls, in operating units, wards, labour wards, sluice-rooms, milk rooms, bathrooms, toilets and kitchens, shall be rounded;
- (e) the floors of wards shall be constructed of concrete, hardwood or other durable material, brought to a smooth finish and maintained in this way at all times;
- (f) the floors of operating theatres, sterilising rooms, wards, including labour wards, scrubbing-up rooms, dressing-rooms, duty-rooms, kitchens sculleries, pantries, food store-rooms, milk rooms, bathrooms, toilets, sluice-rooms, wash-houses and mortuaries shall be made of cement concrete or other impervious material brought to a smooth finish and maintained at in this way at all times;
- (g) all ceilings shall be constructed so as not to attract dust; and
- (h) the ceilings of operating theaters, labour wards, sterilising rooms and scrubbing up rooms shall have a hard, smooth and washable surface.

**86. Ventilation.**—No person may operate a nursing home which does not comply with the provisions of the National Building Regulations and Building Standards Act with regard to adequate light and ventilation.

**87. Ward requirements.**—No person may operate a nursing home which does not comply with the following requirements in respect of each ward—

- (a) all ceilings shall have a minimum height of three metres, except in the case of existing nursing homes where the height may be a minimum of 2.6 metres as long as the floor area of the ward is sufficient to provide 22 m<sup>3</sup> of air space for every bed;
- (b) the size of the floor area shall be such as to provide a minimum of 8,5 m<sup>2</sup> of floor space for every bed;
- (c) no bed may be placed—
  - (i) within 750mm of any wall on the side of a bed or wall fixture, other than a wash-hand basin or central heating radiator; or
  - (ii) within one meter of any other bed;
- (d) the space left between beds in terms of paragraph (c), may be obstructed in any manner;
- (e) the following shall be displayed on the outside of each ward door—
  - (i) the number of the ward; and
  - (ii) the number of patients that may be accommodated in the ward;
- (f) an adequate number of easily accessible wash-hand basins, complying with the following requirements shall be placed inside each ward—
  - (i) the basins shall be of adequate size for scrubbing up; and
  - (ii) the basins shall be provided with an adequate supply of hot and cold running potable water;
- (g) no room, any of the windows of which are situated less than 1.5 metres from an object which obstructs its light, may be used as a ward; and
- (h) every ward shall have a door opening directly onto a passage.

**88. Maternity homes.**—Any person who operates a maternity home shall, in addition to the requirements for nursing homes, comply with the following requirements—

- (a) one or more rooms, as an environmental health practitioner may think fit to avoid overcrowding and congestion, shall be set aside for each of the following purposes—
  - (i) a nursery;
  - (ii) a labour ward;
  - (iii) a delivery ward; and
  - (iv) a milk room;
- (b) every delivery ward shall have a scrubbing-up basin, with a supply of hot and cold running potable water, the taps of which are designed for operation by elbow or by foot;
- (c) newborn infants shall be kept in the nursery except when brought to their mothers for feeding or for some other specific purpose, except that the infants may be kept with their mother at all times if there are no more than two maternity cases in a ward;
- (d) the floor area of any delivery ward in which a maximum of two maternity cases are accommodated, shall provide a minimum of 10m<sup>2</sup> for each bed and crib;
- (e) one separate crib for each baby, each with a minimum of at least 2 m<sup>2</sup> of floor space, shall be provided in every nursery;

- (f) the cribs shall be situated as follows—
  - (i) a minimum of 750 mm from any other crib; or
  - (ii) a minimum of 300 mm from any wall on the side of the crib or wall fixture, excluding a wash-hand basin or central-heating radiator;
- (g) a baby's bathing and changing-room, fitted with adequate baby bathing equipment, shall adjoin every nursery; and
- (h) every milk room shall be provided with—
  - (i) a sink made of porcelain, enamel or stainless steel and a wash-hand basin with hot and cold running potable water;
  - (ii) a refrigerator;
  - (iii) tables with impervious tops; and
  - (iv) adequate equipment for sterilising utensils used in the handling of milk.

**89. Operating theatres.**—Any person who operates a nursing home which receives patients in need of surgical treatment shall provide an operating theatre used exclusively for surgical operations, which complies with the following requirements—

- (a) every operating theatre shall be provided with—
  - (i) a scrubbing-up room or bay, which shall immediately adjoin the operating theater;
  - (ii) a sterilising room;
  - (iii) a theatre sluice-room; and
  - (iv) a recovery room;
- (b) the sterilising room, which adjoins an operating theatre, shall be separated by a swing door or other approved type of door;
- (c) the sluice-room, sterilising room and recovery room shall be reasonably accessible from the operating theatre; and
- (d) one sluice-room, sterilising room and recovery room may be used to serve more than one operating theatre.

**90. Ablution and sanitary requirements.**—Any person who operates a nursing home shall ensure that the premises comply with the following requirements—

- (a) all bathrooms shall be fitted with porcelain enamel or cast-iron enamel baths with a supply of hot and cold running potable water;
- (b) the following number of baths and toilets shall be provided for patients—
  - (i) in a maternity home—
    - (aa) the ratio of toilets to patients shall not be less than 1:8; and
    - (bb) the ratio of bathrooms to patients shall not be less than 1:12;
  - (ii) in any other nursing home—
    - (aa) the ratio of toilets to patients shall not be less than 1:12; and
    - (bb) the ratio of bathrooms to patients shall not be less than 1:12;
- (c) the following number of baths and toilets shall be provided for nursing staff, domestic staff and other employees—
  - (i) the ratio of each toilets and bathrooms to nursing and domestic staff shall not be less than 1:12 respectively; and
  - (ii) the ratio of each of the toilets and bathrooms or shower cubicles to other employees shall not be less than 1:12 respectively;
- (d) in calculating the number of toilets in terms of paragraph (b), no account shall be taken of any toilet contained in a bathroom; and

- (e) every toilet shall be equipped with an adequate flushing system maintained in proper working order.

**91. Sluice-rooms.**—Any person who operates a nursing home shall ensure that every sluice-room located on the premises—

- (a) is a minimum of 7 m<sup>2</sup> in area and have a minimum width of 2.2 metres;
- (b) opens into a well-ventilated passage and is accessible to every ward which it serves;
- (c) has a sluice-pan of approved design and equipped with an adequate flushing system maintained in proper working order;
- (d) has smooth and impervious shelves or other adequate apparatus for the storage of bed- pans or other sanitary utensils;
- (e) has, in the case of a maternity home, adequate apparatus for sterilising bed-pans by steam or boiling water and in the case of a nursing home carrying on a general practice, adequate apparatus for cleaning bed-pans;
- (f) has an impervious receptacle, with a tight fitting lid and of adequate size, for the reception of soiled dressings; and
- (g) is used only for—
  - (i) the storage and cleansing of bed-pans and other sanitary utensils;
  - (ii) the temporary deposit of soiled dressings; and (iii) the testing of urine.

**92. Kitchens and sculleries.**—Any person who operates a nursing home shall ensure that any kitchen and scullery located on the premises complies with the following requirements—

- (a) every draining board and top of every table installed, whether as a new installation or by way of replacement, shall be constructed of stainless steel, enameled metal or of another adequate smooth and impervious material;
- (b) every sink installed, whether as a new installation or by way of replacement, shall—
  - (i) be constructed of stainless steel;
  - (ii) have two compartments each with hot and cold running potable water; and
  - (iii) together with its draining board, be installed at least 100mm away from any wall.
- (c) any wall within 600mm of any part of a sink, draining board or of any table on which food is prepared or handled, shall be tiled or treated in some other adequate manner to a minimum height of 1.35 metres above the floor;
- (d) a receptacle with a tight fitting lid suitable for the reception of kitchen refuse shall be provided;
- (e) the receptacle shall be kept tightly shut and emptied at least once a day into an external refuse receptacle; and
- (f) a hood or canopy of adequate size, having a flue at least 300mm in diameter and which emits fumes and gasses in such a manner that it creates no public health nuisance, shall be provided immediately over any stove where cooking is carried out on the premises.

**93. Storage of foodstuffs.**—Any person who operates a nursing home shall ensure that—

- (a) all crockery, cutlery and foodstuffs are stored in a hygienic place and manner;
- (b) adequate refrigeration facilities are provided for the storage of perishable foodstuffs; and
- (c) any room, in which fruit and vegetables are stored, is adequately ventilated and equipped with heavy wire shelves and racks.



**94. Layout of rooms.**—No person who operates a nursing home may do so unless the rooms referred to in section 87 and 88 comply with the following additional requirements—

- (a) the rooms may not be situated in, or share an entrance with any—
  - (i) ward or room used for sleeping;
  - (ii) sluice-room; or
  - (iii) toilet and urinal;
- (b) the rooms shall be provided with adequate racks, shelves and other means to store bulk goods at a minimum height of 225 mm above the floor;
- (c) adequate lighting and ventilation, as prescribed by the National Building Regulations and Building Standards Act, shall be provided.

**95. Medicines and poisons.**—Any person who operates a nursing home shall ensure that—

- (a) a room or cupboard, of adequate size is set aside, to be used solely for the storage of medicines and drugs;
- (b) every room or cupboard set aside in terms of paragraph (a), is kept locked at all times except when medicines or drugs are being removed from it or returned to it; and
- (c) within that room or cupboard, a separate lockable cupboard or locker is reserved for the storage of poisons, habit-forming drugs and potentially dangerous drugs.

**96. Sterilisation.**—Any person who operates a nursing home shall provide adequate apparatus for the sterilisation of instruments.

**97. Laundering.**—If laundering is carried out on the premises of a nursing home, this shall take place in accordance with the provisions of Chapter 11.

**98. Reception rooms for soiled articles.**—Any person who operates a nursing home must ensure that—

- (a) the reception room for soiled articles is used exclusively for receiving and sorting soiled articles;
- (b) a wash-hand basin, supplied with running hot and cold potable water is provided, in each reception room;
- (c) each reception room is mechanically ventilated in a manner that ensures that any air generated in the room is discharged into the atmosphere; and
- (d) a separate reception room is provided in any maternity home and used exclusively for receiving and sluicing of baby napkins.

**99. Laundry rooms.**—If laundering is carried out on the premises of a nursing home, the premises that are used for such laundering shall comply with the requirements of premises on which a laundry business is conducted as contemplated in section 65 of these By-laws.

**100. Storage rooms.**—Any person who operates a nursing home shall ensure that—

- (a) any storage room is used exclusively for the storage and distribution of those articles intended to be stored in such storerooms;
- (b) any storage room contains adequate moveable shelving made of impervious material;
- (c) every shelf is a minimum of 225 mm above the floor;

- (d) containers used for the reception or conveyance of soiled or laundered articles are adequately marked so that they can be easily distinguishable from one another; and
- (e) all persons employed in any part of the laundry are provided with, and wear caps covering their hair and clean overalls made of light-coloured material, of a design approved by an environmental health practitioner.

**101. Linen.**—Any person who operates a nursing home shall ensure that at all times; all linen provided in the premises is—

- (a) of good quality;
- (b) maintained in good repair; and
- (c) available in a quality adequate to ensure the prompt replacement of soiled articles.

**102. Refuse receptacles.**—Any person who operates a nursing home shall provide an adequate number of refuse receptacles on the premises.

**103. Accommodation for nursing staff.**—No person may operate a nursing home unless—

- (a) adequate sleeping accommodation is provided for the resident nursing staff employed on the premises;
- (b) adequate arrangements are made for the separation of the sleeping accommodation of members of the staff on day duty and those on night duty, so as to avoid the undue disturbance of staff sleeping; and
- (c) a dining-room and separate recreation room is provided for the nursing staff; provided that one room may be used as a dining and recreation room if the room is adequate for both purposes.

## CHAPTER 14 : CHILD-CARE SERVICES

**104. Definitions.**—In this chapter, unless the context otherwise indicates—

“**child-care service**” means any service, whether for gain or otherwise, for the reception, protection, care and bringing-up of more than six children apart from their parents, but does not include any reform school, boarding school, school hostel or any establishment which is maintained or used mainly for the tuition or training of children and which is controlled by or which has been registered or approved by the State, including a Provincial administration, as contemplated in The Childrens Act, 2005 (Act No. 38 of 2005).

**105. Permit requirements.**—No person may provide a child-care service except on child-care premises which comply with the requirements of section 106 to 116 and in terms of a permit authorising that activity.

**106. General requirements for child-care premises.**—A child-care service may only be provided in or on premises which are located, designed, constructed, finished, equipped and in such a condition that children—

- (a) can be cared for hygienically; and
- (b) can be adequately protected against any possible public health hazard and public health nuisance.

**107. Indoor play areas.**—Child-care premises on which children under compulsory school-going age are cared for, shall be provided with an indoor play area which shall—

- (a) be enclosed by buildings and structures constructed of materials and in a manner that ensures the health and safety of children in that area;
- (b) have a floor which is smooth, easily washable and which prevents permeation of dampness;
- (c) have a play area with a minimum of 1,5 m<sup>2</sup> free unobstructed floor space per child, or 3 m<sup>2</sup> if no outdoor play area is provided, and which is divided by walls or removable partitions into separate indoor play areas in which children of the following age groups are cared for separately at all times—
  - (i) 0-2 years;
  - (ii) 2-4 years; and
  - (iii) 4 years up to compulsory school-going age; and
  - (iv) school-going children.

**108. Outdoor play areas.**—If child-care premises have an outdoor play area it shall—

- (a) be free of any excavations, steps, projections, levels or any surface which may adversely impact on the health and safety of children using that area;
- (b) provide a minimum outdoor play area of 2 m<sup>2</sup> per child;
- (c) have an adequate means of enclosure and a lockable gate to prevent a child leaving the premises on his or her own and to prevent the entrance of any animal and unauthorised person; and
- (d) have separate outdoor play areas for the following different age groups—
  - (i) 0-2 years;
  - (ii) 2-4 years;
  - (iii) 4 years up to compulsory school-going age; and
  - (iv) school-going children.

**109. Toilet and wash facilities.**—Child-care premises shall have adequate toilet and wash facilities for all children with—

- (a) a ratio of not more than 15 children for each toilet or chemical toilet;
- (b) a ratio of not more than 20 children for each hand wash facility; and
- (c) a supply of hot and cold running potable water shall be available at every wash hand basin, or if no running water is available, a minimum of 25 liters of potable water, stored in a hygienically clean container, shall be available on the premises at all times.

**110. Toilet and wash facilities for children under the age of 2 years.**—Child premises shall provide the following additional toilet and wash facilities for children under the age of 2 years—

- (a) a separate napkin changing unit for changing the napkins of children under the age of 2 years;
- (b) adequate wash facilities to clean children wearing napkins;
- (c) adequate containers for the storage of clean and soiled napkins.

**111. General requirements.**—No person may provide a child-care service unless the child-care premises comply with the following additional requirements—

- (a) separate toilet and wash facilities shall be provided for staff members;
- (b) no child may, at any time, have access to living quarters of staff and adequate measures shall be taken to keep the living quarters separate;

- (c) an adequate sick-bay area for the treatment and care of any child who falls ill or who is injured during day care, shall be provided;
- (d) an adequate method for hand washing shall be provided in the sick-bay area;
- (e) An approved lockable and adequately equipped first aid unit shall be provided and maintained in the sick-bay area;
- (f) an adequate office area shall be provided;
- (g) an adequate kitchen area, where food is to be handled, prepared, stored and provided to children, shall be provided;
- (h) the kitchen area referred to in paragraph;
- (g) shall comply with any relevant law;
- (i) a separate storage area of adequate size shall be provided for the storage of indoor and outdoor play materials, equipment, stretchers, sleeping mats, bedding and linen; and
- (j) a separate designated storage facility of adequate size for the storage of the personal belongings of each child and staff member shall be provided.

**112. Resting and play equipment.**—Any person who provides a child-care service shall provide—

- (a) adequate child-sized seating and tables for each child;
- (b) adequate individual resting or sleeping places for each child;
- (c) an approved blanket for individual use of each child; and
- (d) adequate indoor and outdoor play equipment for the children's use.

**113. After-school facilities.**—Any person who provides a child-care service for children of school-going age shall provide the following after-school care facilities—

- (a) if an after-school care is provided on the same premises as for the care of children under school going age, the facilities for the two groups of children shall be kept totally separate, except for the kitchen and office area;
- (b) an indoor care area of at least 1,5 m<sup>2</sup> free floor space for each child shall be provided;
- (c) an outdoor play area of at least 2 m<sup>2</sup> for each child shall be provided;
- (d) one toilet and one hand wash facility shall be provided for every 20 children, or part of that number, and the facilities shall be separately designated for the use of each sex; and
- (e) adequate seating and tables shall be provided for each child.

**114. Medical care for children.**—Any person who provides a child-care service or is in charge of child-care premises shall—

- (a) in respect of any child who becomes ill or has suffered an injury requiring medical attention—
  - (i) immediately notify the parent or guardian of the child;
  - (ii) immediately call for medical assistance; and
  - (iii) provide necessary care and treatment in the sick-bay area required in terms of section 106 (c);
- (b) immediately notify the Municipality in the event of the illness being a communicable disease;
- (c) ensure that every child has completed basic immunisation schedules as considered necessary by the Municipality;

- (d) comply with the provisions of any relevant legislation, The National Health Act, 2003 (Act No. 61 of 2003) and regulations published under the Health Act, 1977 (Act No. 63 of 1977), regarding the exclusion of children from day-care services on account of infectious diseases;
- (e) be trained in basic first aid; and
- (f) only administer medicine to a child with the written consent of that child's parent or guardian.

**115. Safety measures.**—No person may provide a child-care service unless the following safety measures are complied with—

- (a) children shall be adequately protected against fires, hot water installations, electrical fittings and appliances, heating appliances and any other article, thing or substance that may be dangerous or cause injury to any child;
- (b) any slats or rails forming part of an enclosure, security gate, play pen, bed cot or any other object or structure whatsoever, shall be a minimum of 75 mm apart, shall be installed and maintained in a good state of repair, and if painted, only non-toxic paint shall be used;
- (c) all medicines, pesticides, detergents and other harmful substances shall be stored in a locked place inaccessible to any child at all times;
- (d) no noxious, or poisonous or dangerous plant or shrub may be permitted on the premises;
- (e) no animal or bird may be kept on the premises;
- (f) no person known or suspected to be suffering from an infectious or contagious disease, and no person so suffering, may be allowed on the premises while, in the opinion of an environmental health practitioner, the person is capable of communicating the infectious or contagious disease to the children;
- (g) no paddling pool, swimming pool or other structure may be permitted in any childcare service without adequate fencing and a safety net;
- (h) any sandpit shall be adequately covered when not in use and shall be treated with a treatment agent on a regular basis;
- (i) any other reasonable measures which may, in the opinion of an environmental health practitioner, be necessary to protect the children from any physical danger, shall be taken by the child-care service provider on the instruction of an environmental health practitioner.

**116. General duties of a child-care service provider.**—Any person who provides a child-care service shall—

- (a) ensure that the children are properly cared for and supervised at all times;
- (b) maintain every part of the premises, including any equipment, in good repair and in a clean and hygienic condition at all times;
- (c) ensure that all persons on or in the premises are clean in person and clothing and are in a good state of health;
- (d) ensure that no person smokes or uses any tobacco product in the presence of children;
- (e) ensure that toys, books and other indoor play materials intended for day-to-day use are available in any indoor play area and suitably stored so that they are within easy reach of the children;

- (f) ensure that the children are at all times under the direct supervision of an adult in the following ratio—
  - (i) one adult supervisor for every 6 babies between 0-18 months;
  - (ii) one adult supervisor for every 12 children between 18 months and 3 years;
  - (iii) one adult supervisor for every 20 children between 3 and 5 years;
  - (iv) one adult supervisor for every 30 children between 5 and 6 years; and
  - (v) one adult supervisor for every 35 children of school going age;
- (g) if transport to or from a child care service is provided, ensure that—
  - (i) the children are supervised by at least one adult apart from the driver during transport;
  - (ii) the doors of the vehicle are lockable so that they cannot be opened from inside the vehicle;
  - (iii) no children are transported in the front seat or the boot of the vehicle;
  - (iv) no babies are placed under the seat of a vehicle;
  - (v) the vehicle is not overloaded in terms of any applicable law;
  - (vi) the driver of the vehicle holds a valid license to transport the passengers; and
  - (vii) the vehicle is licensed and is in a road worthy condition;
  - (viii) the vehicle used is approved by the relevant traffic authority for the transportation of children;
- (h) when children are transported in the back of an enclosed light commercial vehicle, ensure that no exhaust fumes enter the enclosed area and that it is adequately ventilated;
- (i) if meals are provided, display a two-week menu that shall be visible to the parents;
- (j) provide nutritionally balanced meals of adequate volume to satisfy the energy needs of the children in each age group;
- (k) provide a laundry area an adequate distance from any area used to care for children or the kitchen, if laundry is done on the premises;
- (l) provide an adequate number of bins with self-closing lids for the disposal of paper, paper towels, tissues and other waste materials, inside the premises;
- (m) provide an approved refuse area, with adequate refuse bins, for the storage of refuse pending removal;
- (n) provide each child with a towel, preferably disposable, for his or her individual use on the premises;
- (o) provide adequate individually marked pegs or hooks for each child to hang his or her towel on; and
- (p) provide an adequate and easily available supply of toilet paper, soap and tissues for the children's use.

**117. Application for admission.**—Any person who provides a child-care service shall ensure that—

- (a) an application form containing the following information is completed by the parent or guardian of every child when he or she is admitted to the child-care services—
  - (i) the child's name and date of birth;
  - (ii) the name, address and telephone number of the parent or guardian;
  - (iii) the place of employment and telephone number of the parent or guardian;
  - (iv) the name, address and telephone number of a responsible person other than the parent or guardian who may be consulted in emergencies; and



- (v) the name, address and telephone number of the child's doctor together with permission to consult him/her;
- (b) all application forms are kept for a minimum period of three years from the date a child is discharged; and
- (c) the date of admission and discharge of each child is written on the relevant application form.

**118. Registers.**—Any person who provides a child-care service shall keep an admission and discharge register of all children admitted to and discharged from the child-care service, in which—

- (a) the presence or absence of each child is recorded daily; and
- (b) each child's date of birth is recorded.

**119. Medical reports.**—Any person who provides a child-care service shall obtain a report from the parent or guardian of each child containing the following health data—

- (a) information concerning the child's general state of health and physical condition;
- (b) operations, illness and any communicable disease which the child has suffered and the relevant dates;
- (c) details of required immunisation; and
- (d) details of allergies and any medical treatment the child may be undergoing.

**120. General journal.**—Any person who provides a child-care service shall keep a journal, in which any important or outstanding event, including any incident on the premises or during transportation of children, and any explanation is recorded.

**121. Medical journal.**—Any person who provides a child-care service shall keep a medical journal in which the details and quantity of any medicine given to a child is recorded, and the child-care provider shall ensure that the journal is signed daily by the parent or guardian of any child to whom medicine was given.

## CHAPTER 15 : DAIRYMEN AND MILK DEALER

**122. Definitions.**—In these By-laws, unless inconsistent with the context—

“**dairy**” means any premises whether within or without the City used for the production and supply of milk for sale or distribution within the City;

“**dairyman**” means any person who owns, occupies or manages a dairy and is the holder of a Certificate of Registration;

“**milk**” means the mammary secretion obtained from the mammary glands of healthy cows of the bovine species during the usual lactation period by means of complete and regular milking;

“**milk dealer**” means any person who receives milk from a dairyman for the purpose of pasteurisation or sterilisation and resale within the City after treatment;

“**milk product**” means any product derived exclusively from milk whether or not containing food additives permitted by law or other food ingredients;

“**pasteurisation**” means the process described by regulations made in terms of the Foodstuffs, Cosmetics and Disinfectants Act, No. 54 of 1972;

“**sell**” means to offer, advertise, keep, display, transmit, consign or deliver for sale, or to exchange, or to dispose of to any person in any manner whether for a consideration or otherwise, and the terms “sold”;

“**selling**” and “**sale**” shall be construed accordingly, and

“**sterilisation**” means the process whereby a product in its hermetically sealed package is subjected to heat treatment to such a degree as to remain free from viable microorganisms, and the terms “sterilise” and “sterilised” shall be construed accordingly.

**123. Application of chapter.—**(1) No person shall—

(a) carry on the business of a dairyman or milk dealer; or

(b) introduce any milk into the City for the purpose of—

(i) sale or distribution for human consumption;

(ii) pasteurisation, sterilisation or treatment, or

(iii) manufacture into milk products,

unless he is the holder of a certificate of registration issued by the Environmental Health Manager in terms of these by-laws.

(2) All milk introduced into the City shall be deemed to have been introduced for one or more of the purposes set out in this by-laws unless the contrary is proved.

**124. Certificate of registration.—**

(1) Application for a certificate of registration and for renewals thereof shall—

(a) (i) be made in the manner, and contain such particulars, as may be specified by the, Environmental Health Manager; and

(ii) in the case of an application to renew a certificate, be made at least 14 days prior to 31 December of each year;

(b) be accompanied by the prescribed fee, which shall not be refunded regardless of the outcome of the application; and

(c) in the case of a milk dealer, contain a list of the names and addresses of all persons from whom supplies of milk are or will be obtained.

(2) To ascertain whether the applicant complies with the requirements of all applicable laws, the Environmental Health Manager/Environmental Health Practitioner may—

(a) carry out inspections and investigations relating to the dairy, or premises to be used by a milk dealer, and all utensils, vehicles, apparatus and things intended to be used in connection therewith; and

(b) call upon the applicant to provide him with samples of milk which such applicant intends to distribute or sell for human consumption.

(3) If the Environmental Health Manager is satisfied that the application complies with the provisions of these by-laws, he shall—

(a) issue or renew a certificate of registration to the applicant; and

(b) in the case of new applications, record the details of the applicant in a register of dairymen and milk dealers.

(4) Should any information supplied by an applicant in terms of this by-laws no longer be accurate in so far as it relates to the operation or the premises of any dairy or the business or premises of any milk dealer such dairyman or milk dealer shall within 7 days of such altered circumstances inform the Environmental Health Manager in writing thereof.

(5) A certificate of registration shall—

(a) not be transferable;

- (b) be valid only in respect of the premises specified therein; and
  - (c) be valid for a period of one year commencing on 1 January.
- (6) Any person aggrieved by the refusal of the Environmental Health Manager to grant a new application or to renew a certificate may appeal against such refusal to the Msunduzi Municipality.
- (7) No person shall sell or supply any milk for human consumption which he has obtained otherwise than from a dairyman or milk dealer registered in terms of these by-laws.
- (8) The Environmental Health Manager may prohibit the use of any particular carrier or vehicle which in the opinion is unsuitable for the conveyance and distribution of milk, and such carrier or vehicle shall not thereafter be used for such purposes without his written consent.
- (9) Whenever the Environmental Health Manager is of the opinion that the outbreak or spread of sickness or disease is attributable to milk produced or sold by any dairyman or milk dealer or their employees, such dairyman or milk dealer shall at the request of the Environmental Health Manager—
  - (a) exhibit for inspection all invoices, accounts, books and other documents relating to the supply of such milk; and
  - (b) furnish forthwith to the Environmental Health Manager—
    - (i) an accurate list of the names and addresses of the customers or persons to whom he supplied such milk; and
    - (ii) for any period specified by the Environmental Health Manager, an accurate list of the names and addresses of all persons from whom milk is sold or distributed by such dairyman or milk dealer, was obtained.

**125. Offences and penalties.—**(1) Any person who—

- (a) withholds or gives false or misleading information in terms of these by-laws, or
  - (b) contravenes any provision of these by-laws,
- shall be guilty of an offence.

## **CHAPTER 16 : MISCELLANEOUS**

**126. Offences and penalties.—**It is an offence for any person to—

- (a) contravene or fail to comply with any provisions of these by-laws; or
- (b) fail to comply with any notice issued in terms of these by-laws; or
- (c) fails to comply with any lawful instruction given in terms of or for the purposes of these by-laws;
- (d) obstructs or hinders any authorised official of the Municipality or a peace officer in the execution of his or her duties under these by-laws;
- (e) any person convicted of an offence contemplated in section 163 is liable on conviction to a fine ,or in default of payment, to imprisonment for a period not exceeding six months, and in the case of a continuing offence, to a further fine not exceeding R50, or in default of payment to imprisonment not exceeding one day, for every day during the continuance of such offence after a written notice has been issued by the Council requiring the discontinuance of such offence, and for a second or subsequent offence he shall be liable on conviction to a fine or in default or payment to imprisonment for a period not exceeding six months.

**127. Serving of notices.**—(1) A notice, order or other document is regarded as having been properly served if—

- (a) it has been delivered to the person concerned personally;
- (b) it has been sent by registered post or speed post to the person to whom it is addressed at his or her last known address;
- (c) it is served on a person apparently not less than 16 years of age and apparently in charge of the premises at the addressee's last known address;
- (d) if the address of the person concerned in the Republic of South Africa is unknown, if it has been served on that person's agent or representative in the Republic of South Africa in the manner provided for in paragraph (a), (b) or (c); or
- (e) if the address of the person concerned and his or her agent or representative in the republic of South Africa is unknown, if it has been posted in a conspicuous place on the premises to which it relates.

(2) A notice, order or other document which may in terms of these by-laws be served on the owner or occupier of the specified premises and need to bear the name of the owner or occupier.

**128. Application to the State.**—These by-laws bind the State, including the Municipality.

**129. Repeal.**—The by-laws listed in schedule 3 are hereby repealed.

**130. Short title.**—These by-laws are called the Public Health By-laws, 2015.

#### **SCHEDULE 1 : PUBLIC HEALTH NUISANCES**

**131. General Nuisances.**—An owner or occupier of premises creates a public nuisance if he or she causes or allows—

- (a) any premises or part thereof to be of such a construction or in such a state as to be offensive, injurious or dangerous to health;
- (b) any street, stream, pool, lagoon, ditch, gutter, watercourse, sink, cistern, water closet, earth closet, pail closet, urinal, cesspool, cesspit, drain, sewer, dung pit, slop tank, ash heap or dung heap to be so foul or in such a state or so situated or constructed as to be offensive or to be injurious or dangerous to health;
- (c) any stable ,kraal, shed, run or premises for the keeping of animals or birds and which is so constructed, situated, used or kept as to be offensive or injurious or dangerous to health;
- (d) any accumulation of refuse, offal, manure or other matter which is offensive or injurious or dangerous to health;
- (e) any public building to be situated, constructed, used or kept as to be unsafe or to be injurious or dangerous to health;
- (f) any dwelling to be occupied without proper and sufficient supply of potable water within a reasonable distance;
- (g) any factory or industrial or business premises not kept in a clean state and free from offensive smells arising from any drain, water closet, earth closet, urinal or any other source, or not ventilated so as to destroy or render harmless and inoffensive as far as practicable any gas, vapour, dust or other impurity generated, or so overcrowded or so badly lighted or ventilated, as to be injurious or dangerous to the health of those employed therein or thereon;

- (h) any factory or industrial or business premises to cause or give rise to any smell or effluvia which is offensive or injurious or dangerous to health;
- (i) any building, room or structure to be used wholly or partly by a greater number of persons than will allow less than 12 m<sup>3</sup> of free air space and 4 m<sup>2</sup> of floor space for each person aged 10 years or more and 6 m<sup>3</sup> of free air space and 2 m<sup>2</sup> of floor space for each person less than 10 years of age; or
- (j) any other activity, condition or thing declared to be a nuisance by the Minister in terms of the Health Act.

**132. Pest Control.** (1) An owner or occupier of premises creates a public health nuisance if—

- (a) the premises are maintained in a manner that attracts or harbours rodents or other pests, or is conducive to breeding thereof;
- (b) flies are being attracted to, or can breed on, the premises, in significant numbers because—
  - (i) insufficiently rotted manure or any other organic material is being kept or used; or
  - (ii) any other substance that attracts flies is used or kept other than for the purposes of trapping or killing flies;
- (c) mosquitoes can breed in significant numbers on the premises because—
  - (i) containers in which mosquitoes can breed, such as tyres, bottles, crockery, and tins, have been left or are kept on the premises;
  - (ii) tanks, barrels and similar containers in which mosquitoes can breed are not fitted with mosquito-proof covers or mosquito wire gauze screens in a manner that prevents mosquitoes gaining access to water contained in them;
  - (iii) gutters and down pipes are sagging or clogged so that stagnant water can accumulate in them; or
  - (iv) approved measures have not been taken to prevent mosquitoes breeding in ponds, excavations, wells, swimming pools or any other stagnant water source on the premises.
- (2) The following measures are approved measures for the purposes of subsection (1) (c) (iv)—
  - (a) draining accumulated water at least once every seven days;
  - (b) covering accumulated water with oil at least once every seven days; and
  - (c) in the case of wells, providing a mosquito-proof cover and a pump.

**133. Air pollution.**—An owner or occupier of premises creates a public health nuisance if—

- (a) any waste on the premises is burned outside except in an approved appliance;
- (b) ash, grit, soot or smoke is emitted from any chimney or appliance or from any other means on the premises in a manner or quantity that is sufficient to have an adverse impact on public health;
- (c) the erection or destruction of a building or structure causes dust to be discharged into the surrounding atmosphere in a manner or quantity that is sufficient to have an adverse impact on public health; or
- (d) any dust is generated on, and emitted from the premises due to any activity or process and discharged into the surrounding atmosphere in a manner or quantity that is sufficient to have an adverse impact on public health.

**134. Fouling and littering of public places and open spaces.**—(1) A person who creates a public nuisance if he or she throws, dumps, stores, keeps or drops refuse, rubbish, glass, tins, paper, car wrecks or parts of motor vehicles, dead animals, waste water or flushing water or other litter or waste, whether liquid or solid, on or in a street, road, bridge, thoroughfare, open space, vacant stand, public place or erf, spruit or watercourse, or cause or permit to be thrown, dumped or dropped there, or cause or permit any such liquid to flow into such a place.

(2) The person who has contravened sub item (1) shall remedy, to the satisfaction of the environmental health practitioner, any damage to the environment which resulted from such contravention.



**SCHEDULE 2 : SCHEDULED USES**

**(Sections 1, 8, 9 and 11)** The activities and uses of premises listed in this schedule are considered to pose an unacceptable risk to public health unless the measures specified in the relevant chapter of these by-laws and where required, in a permit, are taken to avoid the risk or to reduce it to a level acceptable to the Municipality.

*Part A:**Activities for which a permit is required*

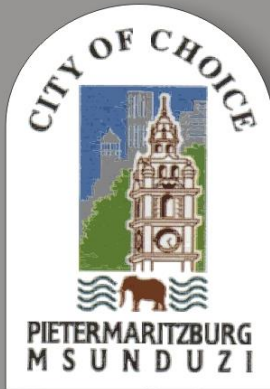
<b>Section</b>	<b>Activity</b>
30.	Provision of service to remove human excrement or urine
46.	Offensive trades
<b>Section</b>	<b>Activity</b>
52.	Hairdressing, beauty and cosmetology services
61.	Accommodation establishments
81.	Nursing homes used for maternity purposes and for medical and surgical purposes.
105.	Child care services

**Part B: Schedule uses****Chapter Scheduled Use**

4.	sanitary services
5.	Private sewage works
6.	Water
7.	Offensive trades
8.	Hairdressing, beauty and cosmetology services
9.	Second hand goods
10.	Accommodation establishments
11.	Dry cleaning and laundry establishments
12.	Swimming pools and Spa-baths
13.	Nursing homes
14.	Child-care services

**SCHEDULE 3 : REPEALED BY-LAWS**

<b>Number and year</b>	<b>Name of By-laws</b>	<b>Extent of repeal</b>
618 of 1957	Public Health By-laws	Entire except sections 22 to 26
117 of 1975	Swimming Bath By-laws	Entire
66 of 1994	Dairymen and Milk Dealers By-laws	Entire
1391 of 1929	Regulations for the control of offensive trades in Pietermaritzburg	Entire
87 of 1953	Crèches and Crèches- Cum-Nursery School	Entire



# The Msunduzi Municipality

## PUBLIC OPEN SPACES BY-LAWS

### PUBLIC OPEN SPACES BY-LAWS

[Municipal Notice No. 57 of 2014.][Date of Commencement: 24 June, 2014.]

These By-laws were published in *Provincial Gazette* No. 1163  
dated 24 June, 2014.

### MSUNDUZI LOCAL MUNICIPALITY PUBLIC OPEN SPACES BY-LAWS

The Msunduzi Municipality acting in terms of section 98 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), read with section 13 of the said Act, hereby publishes the By-laws set forth hereafter, as made by the Municipality, which By-laws shall come into effect on the date of publication thereof.

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### **CHAPTER 1 : INTERPRETATION AND FUNDAMENTAL PRINCIPLES**

#### **1. Definitions and interpretation.—**

(1) In these By-laws, unless the context otherwise indicates—

**“active game”** means any physical sport, game or other activity participated in by one or more persons which is undertaken within a public open space other than in ‘an area set aside for that purpose, and which may cause injury to other users of the public open space, a nuisance or damage to vegetation or municipal property within a public open space and includes rugby, golf, archery, football, tennis, badminton, hockey, netball, volleyball, skateboarding, roller-skating, in-line skating, BMX pedal cycle activities and motor cycle scramble activities;

**“authorised official”** means any official of the Municipality who has been authorised by the Municipality to administer, implement, and enforce the provisions of these By-laws;

**“conservation public open space”** or **“conservation area”** means public open space which is managed by or on behalf of the Municipality for conservation purposes, and includes any nature reserve, greenbelt, ravine, bird sanctuary and site of historic, ecological or archaeological value;

**“Municipality”** means the Msunduzi Municipality and its successors in law and includes the Council of the Municipality or its Executive Committee, a structure or person exercising a delegated power or carrying out an instruction, where any power in these By-laws has

been delegated or sub delegated, or a service provider fulfilling a responsibility under these By-laws, assigned to it in terms of section 81 (2) of the Local Government: Municipal Systems Act (Act No. 32 of 2000) or any other law, as the case may be;

**“designated area”** means an area designated by the Municipality as an area in which an active game or any other activity or conduct, which would otherwise be prohibited under Chapter 3 of these By-laws, may be undertaken;

**“environment”** means the surroundings within which humans exist and that are made up of—

- (a) the land, water and atmosphere of the earth;
- (b) micro-organisms, plant and animal life;
- (c) any part or combination of paragraphs (a) and (b) and the interrelationships among and between them; and
- (d) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being;

**“environmentally sustainable”** means the exercising of any decision-making powers or performance of any activities in a manner aimed at ensuring that—

- (a) the risk of harm to the environment and to human health and safety is minimised to the extent reasonably possible under the circumstances;
- (b) the potential benefits to the environment and to human health and safety are maximised to the extent reasonably possible under the circumstances; and
- (c) legislation intended to protect the environment and human health and safety is complied with;
- (d) development meets the needs of the present without compromising the ability of future generations to meet their own needs;

**“local community”** means local community/community as defined in section 1 of the Local Government: Municipal Systems Act No. 32 of 2000;

**“municipal manager”** means a person appointed as such by the Municipality in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

**“municipal property”** means any structure or thing owned or managed by or on behalf of the Municipality and which is incidental to the use and enjoyment of a public open space and includes any building, lapa, kiosk, bench, picnic table, playground equipment, fountain, statue, monument, fence, pole, notice and sign;

**“notice”** means a clear and legible official notice drawn up by the Municipality in English and Zulu and prominently displayed in a public open space;

**“nuisance”** means an unreasonable interference or likely interference with—

- (a) the health or well-being of any person;
- (b) the use and enjoyment by an owner or occupier of his or her property; or
- (c) the use and enjoyment by a member of the public of a public open space;

**“organ of State”** means—

- (a) any department of State or administration in the national, provincial or local sphere of government; and
- (b) any other functionary or institution—
  - (i) exercising a power or performing a function in terms of the Constitution of the Republic of South Africa Act; or
  - (ii) exercising a public power or performing a public function in terms of any legislation, but does not include a court of law and a judicial officer;

**“person”** means a natural person or a juristic person, and includes an organ of State;

**“prescribed fee”** means a fee determined by the Municipality by resolution in terms of any applicable legislation;

**“printed matter”** includes any advertisement, billboard, poster, book, pamphlet or handbill;

**“prohibited activity”** means any activity or behaviour which is prohibited in terms of Chapter 3 from being undertaken in a public open space, either completely or without permission in terms of section 21, 22 or 23;

**“public open space”** means any land which—

- (a) is owned by an organ of State, or
- (b) over which an organ of State has certain real rights arising from the filing in the Deeds Office or other registration office of a general plan of a township, agricultural holding or other division of land, or any alteration, addition to or amendment of such land approved by the Surveyor-General, on which is marked the land to which the public has a common right of use; and
- (c) is controlled and managed by the Municipality; and
- (d) is either—
  - (i) set aside in terms of any law, zoning scheme or spatial plan, for the purpose of public recreation, conservation, the installation of public infrastructure or agriculture; or
  - (ii) predominantly undeveloped and open and has not yet been set aside for a particular purpose in terms of any law, zoning scheme or spatial plan;

**“public utility public open space”** means public open space which is managed by or on behalf of the Municipality for the purposes of providing a public service, which includes road reserves and areas subject to electrical, pipeline and other public utility servitudes, but excludes Municipality housing, clinics and other social services;

**“recreational public open space”** means public open space which is managed by or on behalf of the Municipality for public recreational purposes, and includes any park, botanical garden, sports ground and playground, but excludes any golf course;

**“road reserve”** means that portion of a road, street or thoroughfare improved, constructed or intended for vehicular traffic and which is between the edges of the roadway and that portion of a road, street or thoroughfare, including the sidewalk, which is not the roadway or shoulder;

**“special event”** means a parade, procession, race, concert, show, exhibition, festival, ceremony, film shoot, photographic shoot or similar event, which requires, for that purpose, exclusive use of a part of a public open space;

**“urban agricultural public open space”** means public open space which is managed by or on behalf of the Municipality for urban agricultural purposes;

**“vehicle”** means a device designed or adapted mainly to travel on wheels, but excludes a wheelchair and children’s pushchair and perambulator;

**“waste”** means any substance or article which a person wishes to dispose of because it is unwanted, superfluous, broken, worn out, contaminated or otherwise spoilt and that has been discarded or has been accumulated or stored so that it can be discarded, reused, reclaimed or recycled;

**“watercraft”** includes any boat, raft, yacht, canoe, inflatable mattress, model ship or boat, radio-controlled boat or similar device;

**“water body”** means any body of water within a public open space and includes a pond, fountain, artificial watercourse, dam, lake, canal, reservoir, stream, river and wetland.

(2) If any provision in these By-laws vests or imposes any power, function or duty of the Municipality in or on an employee of the Municipality and such power, function or duty has in terms of section 81 (2) of the Local Government: Municipal systems Act, 2000, or any other law been assigned to a service provider, the reference in such provision to such employee must be read as a reference to the service provider or, where applicable, an employee of the service provider authorised by it.

**2. Application of By-laws.—**

(1) These By-laws apply to every public open space which falls under the jurisdiction of the Municipality, but do not apply to cemeteries.

(2) These By-laws are binding on the State.

**3. Purpose of By-laws.—**The purpose of these By-laws is to provide, in conjunction with other applicable legislation, an effective legal and administrative framework—

(1) To ensure that the way in which the Municipality controls, manages and develops public open spaces is environmentally sustainable, and is in the long-term interests of the whole community of Pietermaritzburg Msunduzi, including future generations; and

(2) which clearly defines the rights and obligations of the public in relation to public open spaces.

(3) To give effect to a person's Constitutional rights—

(a) to an environment that is not harmful to their health or well-being;

(b) to have the environment protected for the benefit of present and future generations, through reasonable legislative and other measures that—

(i) prevent pollution and ecological degradation;

(ii) promote conservation; and

(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

## **CHAPTER 2 : MANAGEMENT AND ADMINISTRATION OF PUBLIC OPEN SPACES**

**4. Principles of By-laws.—**

(1) Public open spaces shall be managed, and where appropriate developed, in the interests of the local community, and in determining the interests of the local community—

(a) the long-term collective interests of the people of Pietermaritzburg Msunduzi, and of South Africa, must be prioritised over the interests of any specific interest group or sector of society;

(b) a long-term perspective, which takes account the interests of future generations, must be adopted; and

(c) the interests of other living organisms which depend on public open spaces must be taken into account.

(2) Public open spaces shall be managed in an environmentally sustainable manner.

(3) Subject to the provisions of subsection (5) and section 7, people shall be given access to public open spaces on a non- discriminatory and equitable basis.

(4) If necessary, special measures shall be taken to facilitate access to public open spaces by historically disadvantaged persons and by disabled persons.

(5) Access to a public open space may be restricted in a manner which does not unjustifiably discriminate against any person or class of persons—



- (a) if the restriction is authorised by these By-laws or by any other law; or
  - (b) in order to achieve the purposes of these By-laws.
- (6) The recreational, educational, social and other opportunities which public open spaces offer shall be protected and enhanced to enable local communities, particularly historically disadvantaged communities, and the public to improve and enrich their quality of life.
- (7) Local communities shall be encouraged to use and care for public open spaces in their areas.
- (8) The natural environment and heritage resources within public open spaces shall be identified, preserved, protected and promoted, for the benefit of the local community, the public and future generations.

**5. Application of principles.**—The public open space management principles set out in section 4, and the national environmental management principles set out in section 2 of the National Environmental Management Act, 1998 (Act No. 107 of 1998), shall be considered and applied by any person—

- (a) exercising a power or function or performing a duty under these By-laws;
- (b) formulating or implementing any policy which is likely to have a significant effect on, or which concerns the use of, public open spaces within the Municipality's jurisdiction; or
- (c) exercising a public power or function or performing a public duty which is likely to have a significant effect on, or which concerns the use of, public open spaces.

**6. General powers of Municipality.**—The Municipality may in relation to any public open space—

- (a) designate any area within a public open space as an area within which one or more activities otherwise prohibited in terms of these By-laws may be undertaken, and display a prominent notice to this effect at every entrance to the designated area;
- (b) develop any public open space in accordance with the principles set out in section 4;
- (c) erect, construct, establish or demolish municipal property; and
- (c) exercise any other power reasonably necessary for the discharge of the Municipality's obligations in terms of these By-laws relating to the management of public open spaces.

**7. Fees.**—Any member of the public shall, where deemed appropriate by the Municipality, pay—

- (a) a prescribed fee to use recreational or other facilities which the Municipality provides within any public open space;
- (b) a prescribed fee for entrance to any public open space which is significantly more expensive to maintain than other public open spaces, such as botanical gardens;
- (c) a prescribed fee for the right to undertake a special event;
- (d) a prescribed fee for the right to exclusively use municipal property for a specific period;
- (e) a deposit prior to undertaking a prohibited activity permitted by the Municipality;
- (f) an annual or monthly fee for the right to use urban agricultural public open space to the exclusion of any other person; and
- (g) a prescribed fee for processing applications for permits or letters of permission under these By-laws, if such a fee or deposit has been determined by the Municipality.

**8. Restricting access.**—The Municipality may restrict access to any public open space or to any part of a public open space for a specified period of time—

- (a) to protect any aspect of the environment within a public open space;
- (b) to reduce vandalism and the destruction of property;
- (c) to improve the administration of a public open space;
- (d) to develop a public open space;
- (e) to enable a special event which has been permitted in terms of section 22, to proceed; or
- (f) to undertake any activity which the Municipality reasonably considers necessary or appropriate to achieve the purposes of these By-laws.

**9. Powers of authorised officials.**—In relation to any public open space, an authorized official may—

- (a) to the extent authorised by the Municipality administer, implement and enforce the provisions of these By-laws;
- (b) issue a notice in terms of section 20;
- (c) instruct any person to leave a public open space if the authorized official reasonably believes that the person is contravening any provision of these By-laws, and fails to immediately terminate such contravention upon the instruction of that official; and
- (d) if such official is a peace officer, exercise any power which may be exercised by a peace officer under the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

**10. Obligations in relation to public open spaces.**—

(1) The Municipality shall within a public open space display any notice required under these By-laws.

(2) In relation to recreational public open spaces, the Municipality shall—

- (a) ensure that they are open to the public between sunrise and sunset, unless specified otherwise in terms of a notice; and
- (b) prominently display a notice at every entrance indicating—
  - (i) the opening and closing times of that recreational public open space; and
  - (ii) any rules made by the Municipality in relation to that recreational public open space.

### CHAPTER 3: PROHIBITED CONDUCT

**11. Prohibited activities.**—

(1) Any person who undertakes an activity or behaves in a manner that is prohibited in terms of these By-laws, commits an offence unless, in addition to any exceptions contained in sections 12 to 19, that activity or conduct—

- (a) takes place in a designated area within which that activity or conduct is allowed; or
  - (b) is authorised in terms of a permission granted or permit issued in terms of section 21, 22 or 23; or
  - (c) is deemed to be authorised by the Municipality under subsection
- (2) Subject to the provisions of subsection (3), a person is not in contravention of any provision of section 12 to 19 if that person needs to undertake the prohibited activity—

- (a) to perform his or her obligations as an employee, agent or contractor of the Municipality under his or her contract with, or mandate from, the Municipality to achieve the purposes of these By-laws;
  - (b) to carry out public duties as an employee, agent or contractor of an organ of State within a public open space which is subject to a public utility servitude in favour of that organ of State;
  - (c) to fulfil his or her duties as an authorised official; or
  - (d) to fulfil his or her duties as a peace officer.
- (3) Subsection (2) shall not be interpreted to allow a contravention of any activity which the Municipality has expressly refused to permit.

**12. General prohibition.**—No person may within a public open space—

- (a) act in a manner which is dangerous to life or property;
- (b) contravene the provisions of any notice within any public open space;
- (c) unlawfully enter a public open space to which access has been restricted in terms of section 8;
- (d) cause a nuisance; or
- (e) behave in an indecent or offensive manner.

**13. Prohibited use.**—No person may within a public open space—

- (a) bathe, wade, or swim in or wash him- or herself, an animal or any object, including clothing, in any water body;
- (b) make, light or otherwise start a fire except in a facility provided by the Municipality for that purpose;
- (c) camp or reside;
- (d) consume, brew, store or sell any alcoholic beverage;
- (e) use any sound equipment, including a radio, portable hi-fi or car stereo;
- (f) play an active game, except in an area designated for that purpose on a sport playing field or on a golf course; or
- (g) shoot a projectile of any nature;
- (h) discharge or use any fireworks.

**14. Waste.**—No person may within a public open space—

- (a) deposit, dump or discard any waste, other than in a receptacle provided by the Municipality for that purpose; or
- (b) pollute or deposit any waste or thing in a manner which may detrimentally impact on a water body; or
- (c) act in any manner which contravenes the Municipality's Solid Waste By-laws.

**15. Vehicles.**—No person may within a public open space

- (a) except at times specified and on roads or pathways provided by the Municipality, drive, draw or propel any vehicle other than a bicycle;
- (b) drive, draw or propel a vehicle in excess of five kilometers per hour; or
- (c) park a vehicle in a public open space, except in designated area or other area where parking is otherwise permitted by the Municipality.

**16. Vegetation and animals.—**

- (1) Subject to the provisions of subsection (2), no person may within a public open space—
- (a) disturb, damage, destroy or remove any tree, shrub or other vegetation;
  - (b) affix or place any printed matter on a tree;
  - (c) plant any vegetation;
  - (d) alter the slope or drainage pattern so as to interfere with the access of water, air or nutrients to any tree or other plant;
  - (e) capture or attempt to capture, chase, shoot at, injure, throw objects at, tease, molest or in any other way disturb any animal, fish, or bird;
  - (f) disturb, damage or destroy any bird nest or egg;
  - (g) ride a horse, except—
    - (i) in a public open space or any part thereof designated by the Municipality for that purpose; and
    - (iii) a person who in the performance of his or her official duties, patrols a public open space on horseback;
  - (h) walk, carry, ride or bring an animal other than a horse or dog; or
  - (i) walk any dog unless—
    - (i) it is in a public open space or any part thereof which has not been designated by the Municipality as an area where no dogs are allowed, and it is on a leash and under control of a person; or
    - (ii) it is in a public open space or any part thereof designated by the Municipality as an area where dogs may run free: Provided that if any dog excretes in a public open space, the person in control of the dog must immediately remove such excrement and dispose of it in a waste bin or other receptacle provided by the Municipality for that purpose.
- (2) The provisions of subsection (1) (a) and (c) do not apply to any person who has obtained a permit in terms of section 23 to undertake agricultural activities in an urban agricultural public open space.

**17. Municipal property and erection of structures.—**

- (1) Subject to the provisions of subsection (2), no person may within a public open' space—
- (a) deface, damage, destroy or remove any municipal property;
  - (b) disturb the surface of any land, whether by digging, undertaking any earthworks or otherwise;
  - (c) erect, build or assemble any structure, including a hut, tent, screen, bulletin board, pole, stand or stage;
  - (d) affix or place on any municipal property, or distribute, any printed matter; or
  - (e) plug, tamper with, or in any way damage any plumbing, electrical, heating or other fixtures or installations.
- (2) The provisions of subsection (1) (b) do not apply to any person who has obtained a permit in terms of section 23 to undertake agricultural activities in an urban agricultural public open space.

**18. Selling and special events.—**

- (1) No person may within a public open space—
- (a) use municipal property in a way that unfairly restricts or prevents other users of the public open space from enjoying that municipal property; or

- (b) except within a public open space or part thereof, which has been let to a person by the Municipality for that purpose, sell, hawk, offer or display any goods or articles for sale or hire;
- (2) No person may undertake a special event, except in terms of a permit issued in terms of section 22.

**19. Community service.**—Except in terms of an agreement entered into in terms of section 24, no person may within a public open space undertake any community or voluntary work of any description.

**20. Restoration or removal notices.**—

- (1) Unless permission or a permit to do so has been obtained in terms of section 21, 22 or 23, an authorised official may issue a restoration or removal notice to any person who has in a public open space—
  - (a) damaged, defaced, disturbed, destroyed, demolished or removed vegetation or a municipal structure;
  - (b) erected, built or assembled a structure; or
  - (c) dumped, discarded or deposited any waste, other than in a receptacle provided by the Municipality for that purpose.
- (2) The restoration or removal notice may direct the person concerned within a reasonable time specified in the notice to take stated reasonable steps specified in the notice—
  - (a) to restore or rehabilitate the affected area to the reasonable satisfaction of the Municipality; or
  - (b) to remove a structure or thing and restore the affected site, as nearly as practicable, to its former condition.

## **CHAPTER 4 : APPLICATIONS FOR AUTHORISATION**

**21. Application for permission.**—

- (1) Any person who wishes to undertake a prohibited activity must make application in writing to the Municipality for permission to do so, which application must be accompanied by the prescribed fee.
- (2) The Municipality may, after receiving an application, request the applicant to provide additional information which the Municipality reasonably requires in order to consider the application.
- (3) The Municipality may refuse to consider an application until it has been provided with the information that it reasonably requires to make an informed decision and if the prescribed fee has not been paid.
- (4) Subject to the provisions of subsections (2) and (3), the Municipality shall consider the application within a reasonable time and shall either—
  - (a) refuse the application; or
  - (b) grant permission in writing to the applicant subject to such conditions as the Municipality may consider appropriate to best achieve the purposes of these By-laws, which may include payment of a deposit, a prescribed fee or both.
- (5) The Municipality may not grant permission for any person to behave in a manner which is prohibited in terms of section 12 (a) or (e).

**22. Application for a special event permit.—**

- (1) An application for permission to hold a special event in a public open space shall be made at least 21 days prior to the proposed date of the special event.
- (2) The time period referred to in subsection (1) may, on good cause shown, be reduced by the Municipality.
- (3) An application in terms of subsection (1), shall contain the following information—
  - (a) the name and full contact details of the applicant, including postal address, telephone and fax numbers and email address, if available;
  - (b) the nature and purpose of the special event;
  - (c) the intended route or area proposed to be used for purposes of the special event; and
  - (d) any permission required under Chapter 3 of these
  - (e) By-laws.

(Editorial Note: Wording as per original *Provincial Gazette*.)

- (4) Subject to any permit conditions imposed by the Municipality, the holder of a special events permit shall have the right to use the area of public open space specified in the permit to the exclusion of any other person during the period specified in the permit.

**23. Application for permission to farm in an urban agricultural public open space.—**

- (1) An application for permission to farm in an urban agricultural public open space shall contain the following information—
  - (a) the name and full contact details of the applicant, including postal address, telephone and fax numbers and email address, if available;
  - (b) the nature of the agricultural activity that the applicant proposes to undertake; and
  - (c) the size and location of the area on which the applicant wishes to undertake the proposed agricultural activity.
- (2) A permit under this section may require the permit holder to pay an annual or monthly fee for the use of the land.
- (3) The holder of an urban agricultural permit may, subject to any condition specified in the permit, use the area of public open space specified in the permit for agricultural purposes to the exclusion of any other person.

**CHAPTER 5: CO-OPERATIVE MANAGEMENT AGREEMENTS****24. Entering into agreements.—**

- (1) The Municipality may enter into a written agreement with any organ of State, local community or organization to provide for—
  - (a) the co-operative development of any public open space; or
  - (b) the co-operative management of any public open space; and
  - (c) the regulation of human activities within a public open space.
- (2) The Municipality may not enter into an agreement in terms of subsection (1) (b) unless it reasonably believes that entering into such an agreement will promote the purpose of these By-laws.
- (3) The Municipality shall monitor the effectiveness of any agreement entered into in terms of subsection (1), in achieving the purposes for which it was entered into and may cancel



the agreement after giving reasonable notice to the other party if the Municipality has reason to believe that the agreement is not effective, or is inhibiting the attainment of the purpose of these By-laws.

## CHAPTER 6 : PLANT PRESERVATION ORDERS

### 25. General.—

(1) If the Municipality believes that any plant or group of plants in a public open space requires legal protection the Municipality may issue a plant preservation order in respect of that plant or group of plants.

(2) A plant preservation order—

(a) must indicate the plant or plants to which it relates; and

(b) may provide that any person who cuts, disturbs, damages, destroys, removes, transports, exports, purchases, sells, donates or in any other manner acquires or disposes of the plant or plants to which it relates, commits an offence.

(3) The Municipality must prominently display a copy of a plant preservation order issued within 3 metres of the plant or plants to which the order relates.

**26. Procedure.**—Unless, in the Municipality's opinion, the issuing of a plant preservation order is required as a matter of urgency, the Municipality must, before issuing a plant preservation order in terms of section 25—

(a) give notice of the proposal to protect the plant or group of plants and invite comments and objections within a specified period, by publishing a notice in the *Provincial Gazette* and in two newspapers circulating in the area in which the plant or group of plants is situated;

(b) notify any affected organs of State; and

(c) consider any comments and objections received in response to the notice.

## CHAPTER 7: MISCELLANEOUS

### 27. Offences and penalties.—(1) Any person who—

(a) contravenes or fails to comply with any provisions of these By-laws;

(b) fails to comply with any notice or other document issued or displayed in terms of these By-laws;

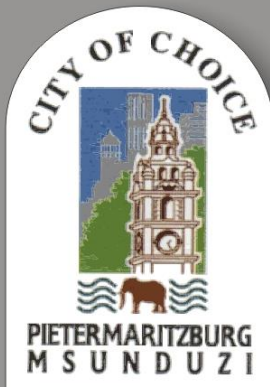
(c) fails to comply with any lawful instruction given in terms of these By-laws; or

(d) obstructs or hinders any authorised official in the execution of his or her duties under these By-laws is guilty of an offence and liable on conviction to a fine or in default of payment to imprisonment for a period not exceeding six months and in the case of a continuing

offence, to a further fine not exceeding R50, or in default of payment to imprisonment not exceeding one day, for every day during the continuance of such offence after a written notice has been issued by the Municipality and served on the person concerned requiring the discontinuance of such offence.

**28. Repeal.**—The laws listed in Schedule 1 to these By-laws are hereby repealed.

**29. Short Title.**—These By-laws are called the Public Open Spaces By-laws, 2008.



# The Msunduzi Municipality

## RULES OF ORDER BY-LAWS



KwAZULU-NATAL PROVINCE  
KwAZULU-NATAL PROVINSIE  
ISIFUNDAZWE sAKwAZULU-NATALI

**Provincial Gazette • Provinsiale Koerant • Igazethi Yesifundazwe**

**GAZETTE EXTRAORDINARY—BUITENGEWONE KOERANT—IGAZETHI EYISIPESHELI**

*(Registered at the post office as a newspaper) • (As 'n nuusblad by die poskantoor geregistreer)*  
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**Vol. 9**

**PIETERMARITZBURG,**

25 JUNE 2015  
25 JUNIE 2015  
25 kuNHLANGULANA 2015

**No. 1381**

**PREAMBLE**

WHEREAS every municipal councillor must recognise that the prime function of local government is at all times; to serve the best interests of all of the community, must be dedicated to the concepts of effective and, democratic local government, must promote the dignity and worth of the services rendered by local government and maintain a constructive, creative and practical attitude toward local government and a deep sense of social responsibility as an elected representative, must be dedicated to the highest ideals of honour and integrity in all public and personal relationships in order that the community, municipal officials and employees may merit the respect and confidence of the elected representatives, must set and achieve community goals and uphold municipal policies, must refrain from interference in the administration of the municipality and from all other partisan political activities which would impair performance as an elected representative, must make it a duty to continually improve his professional ability and develop competencies required to perform the duties of an elected representative, must keep the community informed of municipal affairs, must encourage communication and foster friendly and courteous service to the community and seek to improve the quality and image of municipal councillors, must handle each challenge without discrimination and with principles of justice and fairness, must seek no favour and acknowledge that personal gain or profit secured by a councillor's position is dishonest, must adhere to the Code of Conduct for Councillors, comply with the standing rules and orders and by -laws of a municipal council and at all times respect the rule of law;

BE IT THEREFORE ENACTED BY THE MUNICIPAL COUNCIL OF THE MSUNDUZI MUNICIPALITY, AS FOLLOWS:-

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## **CHAPTER 1: DEFINITIONS**

### **Definitions**

In these by- laws, any word or expression shall have the meaning assigned thereto in the relevant legislation, unless the context indicates otherwise-

**"absent"**, in relation to a meeting of the council means absent without having obtained leave from the meeting.

**"amend a motion"** means to make minor alterations or modifications to a motion without changing the original meaning or intention of the motion.

**"appeal authority"** means the appeal authority as envisaged in section 62 of the Local Government: Municipal Systems Act No 32 of 2000

**"bylaw"** means legislation passed by the council of a municipality;

**"chairperson"** means a councillor elected in a permanent or acting capacity to control and conduct any meeting of a committee of council;

**"council"** means the council of the Msunduzi Municipality;

**"council -in- committee"** means that when the council during the course of its deliberations resolves to sit as a committee in circumstances where matters of a confidential or legal nature are to be debated or in circumstances where, in the opinion of the majority of the members of the council, the presence of the media, officials of the municipality or members of the public would prevent free and open discussion on the matter under consideration.

**"Code of Conduct"** means the Code of Conduct for councillors contained in Schedule 1 to the Systems Act;

**"contact details"** means a physical address, postal address, electronic mail address, telephone number facsimile number and cellular -phone number;

**"calendar day"** means a twenty -four hour day as denoted on the calendar;

**"councillor"** means a member of a municipal council;

**"day"** means any ordinary day other than a Saturday, Sunday or Public Holiday, except where otherwise stated;

**"duly authorised official /officials"** means any peace officer appointed in terms of the Criminal Procedure Act No. 51 of 1 977; traffic official and security officer of the municipality.

**"executive committee"** means the council's executive committee established in terms of section 43 of the Structures Act;

**"explanation"** means the clarification of some material part of a councillor's former speech which may have been misunderstood;

**"in- committee"** means any council or committee meeting at which the public and or officials of the municipality are excluded;

**"integrated development plan"** means a single, inclusive and strategic plan for the development of the municipality and applicable in terms of Chapter 5 of the Systems Act;

**"mayor"** means a councillor elected as the mayor of the municipality in terms of section 48 of the Structures Act;

**"meeting"** means a meeting of the council or any one of its committees;



**"municipal asset"** means any movable, immovable, corporeal, incorporeal, tangible and intangible property to which the municipality holds title;

**"municipal manager"** means the person appointed municipal manager in terms of section 82 of the Structures Act and includes any person acting in that capacity;

**"notice of motion"** means the instrument by which councillors may bring items on to the agenda of a council meeting in terms of rule 23;

**"notice of question"** means the instrument by which councillors may put a question requiring a written reply in accordance with rule 24;

**"performance management system"** means the performance management system as described and Rules of Order Bylaws

**"point of order"** means the pointing out of any deviation from or anything contrary to, the conduct and or any other irregularity in the proceedings of a meeting;

**"precincts"** means the council chamber and all places of meeting, the areas to which the public are allowed access and all other venues where the meetings of the council or a committee of the council are conducted;

**"public"** includes the media and means any person within the Republic of South Africa;

**"rule"** means by -law, referring to sections of these by -laws;

**"rules committee"** shall mean the rules committee as referred to in rule 46 of these by -laws;

**"service delivery agreement"** means an agreement between a municipality and an institution or person mentioned in section 76(b) of the Systems Act in terms of which a municipal service is provided by that institution or person, either for its own account or on behalf of the municipality;

**"speaker"** means the chairperson of the council elected in terms of section 36 of the Structures Act and includes any acting speaker when he or she is elected to perform the functions of the speaker;

**"Structures Act"** means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

**"Systems Act"** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

**"table"** means to submit a report or any official document to the council or a committee of council for consideration at a meeting of the council or a committee of council of which notice has been given in terms of these rules and orders;

**"gender and number"** In every rule, unless the contrary intention appears, words importing the masculine gender include females and words in the singular number include the plural, and words in the plural number include the singular and words importing the feminine gender include males.

## **CHAPTER 2 APPLICATION AND INTERPRETATION OF THESE RULES AND ORDERS BY-LAWS**

### **2. Application of these rules and orders bylaws**

- (1) These rules and orders by -laws govern the proceedings of the council and committees of the council and must be complied with by:-
  - (a) all councillors;
  - (b) any member of the public while present in the precincts;
  - (c) any deputation addressing the council or a committee of the council; and
  - (d) any official of the municipality.
- (2) Subject to the provisions of Chapter 12, these by -laws shall apply to the municipal council and to its committees established in terms of sections 79 and 80 of the Structures Act.
- (3) Until the provisions of Chapter 12 of these by -laws with regard to committees envisaged therein determining its own procedures have been complied with, the provisions relating to these committees as contained in the Rules and Procedures as adopted by the municipal council in May 2011 shall apply to such committees.

### **3. Interpretation of these rules and orders bylaws**

- (1) Any interpretation of these rules and orders by -laws must be made having due regard to the supremacy of the Constitution, national, provincial and municipal legislation, the rule of law and the rules of natural justice.
- (2) The ruling of the speaker or chairperson with regard to the interpretation of these rules and orders by-laws at a meeting of the council or committee of the council shall, subject to rules 3(5) and 3(6), be final and binding.
- (3) The interpretation and the ruling of the speaker or chairperson of any of these rules and orders by-laws must be recorded in the minutes of the council or committee meeting.
- (4) The municipal manager must keep a register of the rulings and legal opinions.
- (5) Any councillor may request the municipal manager, in writing within five days from a ruling made in terms of rule 3(2), to obtain clarity on the interpretation and ruling. The municipal manager must thereafter report to the council or committee of the council.
- (6) The council or committee of the council may, after consideration of the report in terms of rule 3(5) confirm, amend or substitute the ruling of the speaker or chairperson subject to any rights which any third party may have accrued as a result of the ruling and all decisions affecting the rights of others must be in writing and reasons must be recorded of such decisions.

### **CHAPTER 3**

#### **FREQUENCY, ADMISSION OF PUBLIC AND NOTICE OF MEETINGS**

#### **4. Council meetings**

- (1) The council must hold an ordinary meeting of the council not less than once per month.
- (2) The speaker must convene all meetings of the council in accordance with rule 4(1) and subject to rule 6.
- (3) The Council shall adjourn for fourteen days during July and thirty days during December /January annually.

#### **5. Admission of public**

- (1) All meetings of the council and those of its committees must be open to the public, and the council or committee of the council may not exclude the public from a meeting, other than when the council or committee, due to the nature of the business being transacted or when the disclosure of any matter may be prejudicial to the interests of the municipality, deems it reasonable and justifiable to do so having due regard to the principles of an open and democratic society.
- (2) The council or a committee of the council may not for any reason whatsoever exclude the public when considering, voting or noting any of the following matters :-
  - (a) a draft by -law tabled in the council;
  - (b) a budget tabled in the council;
  - (c) the municipality's integrated development plan, or any amendment of the plan tabled in council;
  - (d) the municipality's performance management system, or any amendment of the system, tabled in council;
  - (e) the decision to enter into a service delivery agreement;
  - (f) any report on an award in terms of supply chain management policy;
  - (g) the disposal or acquisition of municipal capital asset;
  - (h) any other matter prescribed by legislation.
- (3) The municipal manager must give notice to the public, in a manner determined by the council, of the time, date and venue of every ordinary meeting of the council or committee of the council and any special or urgent meeting of the council or committee of the council, except when time constraints make this impossible.
- (4) The circumstances in which the council or a committee of the council shall exclude the public are the following:
  - (a) any discussion relating to the terms and conditions of employment of any member of staff or labour issue relating thereto;
  - (b) any matter relating to any litigation being conducted by the council;
  - (c) any confidential or personal information of any member of staff, councillor or member of the public;
  - (d) any investigation, report or internal audit report in the course of consideration and before it is served before council;
  - (e) any discussion in respect of the rights of third parties where such discussions are confidential until a final decision has been made by council or a sub-committee concerned.
  - (f) any matter deemed confidential at the discretion of the municipal manager.

**6. Notice to attend an ordinary council meeting**

- (1) The speaker must convene meetings of the council, at least monthly, through a duly signed notice of council meeting, stating the date, place and time of the meeting and accompanied by or containing the agenda of the proposed meeting.
- (2) Notice to attend a meeting in terms of rule 6(1) shall be given at least
  - (a) three calendar days prior to an ordinary meeting and;
  - (b) twenty-four hours prior to a special meeting.
  - (c) seven days prior to an ordinary meeting with regard to the passing of by-laws; approval of budgets; imposition of rates and other taxes, levies and duties and raising of loans.

**7. Special meetings**

- (1) The speaker
  - (a) for the purpose of pertinent or urgent council business
  - (b) or at the request of a majority of the councillors of the municipality, must call a special meeting of the council.
- (2) A special meeting must be convened in compliance with rule 6(2)(b) and rule 7(1)(b) no later than four days from the date of receipt of a request.
- (3) A request for the calling of a special meeting, as contemplated in rule 7(1)(b), shall-
  - (a) be signed by no less than 50% (fifty per centum) plus one of all councillors of the municipality; and
  - (b) be accompanied by-
    - (i) a duly signed notice of motion; and
    - (ii) a written statement by the councillor signing the notice of motion giving reasons as to why the intended business of the special meeting is urgent and cannot wait for an ordinary meeting of the council.
  - (c) If the speaker fails to convene a meeting in terms of this rule, the municipal manager must convene such meeting and conduct an election of an acting speaker in term of section 41 of the Structures Act.

**8. Service of notices and agenda**

- (1) Notice to attend a meeting or any other official communication from the council, shall be delivered to-
  - (a) a physical address within the area of jurisdiction of the municipality; or
  - (b) an e-mail address; or
  - (c) by a short message service (SMS);  
provided that contact details shall be supplied by each councillor to the municipal manager in writing within two days of a councillor's election and, thereafter, whenever the councillor wishes to change either address and at which address the councillor shall accept service and or receipt of any notice to attend a meeting and any other official communication from the council.
  - (d) the pigeon hole of the councillors situated in the councillor's common room. Once the Process Manager: Sound Governance has delivered the agenda of the council meeting to the pigeon hole; all agendas will be deemed to have been properly delivered.

- (2) All documentation relevant to any council or committee meeting must be given to all councillors at least three calendar days prior to an ordinary council or committee meeting and twenty-four hours prior to a special council or special committee meeting.
- (3) All councillors must inform the speaker of any change of their contact details within three days of such change.
- (4) Subject to rule 5(3), notice to attend a meeting must be displayed on the public notice boards of the municipality.

#### **9. Non-receipt of notice**

Non-receipt of a notice to attend a meeting shall not affect the validity of any meeting or proceedings of council or any of its committees.

### **CHAPTER 4: QUORUM**

#### **10. Quorum**

- (1) Notwithstanding that there may be vacancies; the quorum of a council must be fifty percent (50 %) plus one (1) of the total number of councillors determined in accordance with the municipality's establishment notice, before a vote may be taken on any matter
  - a) Subject to a quorum, the failure of any councillor to vote shall not invalidate the proceedings of the council meeting.
- (2) Notwithstanding that there may be vacancies; a majority of the number of councillors appointed to a committee of council must be present at a meeting of the committee before a vote may be taken on any matter.
  - a) Subject to a quorum, the failure of any councilor to vote shall not invalidate the proceedings of the committee meeting.

#### **11. Cancellation and adjournment in absence of quorum**

- (1) No meeting shall take place, if no quorum is present fifteen minutes after the time at which a meeting was due to commence, unless it is unanimously agreed by the councillors present to allow further time not exceeding fifteen minutes for a quorum, whereafter if no quorum is present, the meeting must be cancelled.
- (2) If during discussion on an item at any meeting of council or any of its committees the attention of the speaker or chairperson is called to the number of councillors present, he or she shall-
  - (a) count the councillors present;
  - (b) if it is found that there is no quorum, the speaker or chairperson must adjourn the meeting and allow an interval of fifteen minutes for a quorum to become present;
  - (c) if a quorum becomes present after the adjournment then the meeting must continue;
  - (d) if no quorum becomes present after the adjournment then the chairperson or speaker must forthwith adjourn the meeting.
- (3) When a meeting is adjourned as a result of no quorum, the meeting shall be re-convened within seven days as a continuation meeting.

## CHAPTER 5: ATTENDANCE

### 12. Attendance

- (1) All councillors shall punctually attend and remain in attendance at each meeting of the council and a committee of which that councillor is a member except when: -
  - a) leave of absence is granted in terms of rule 13;
  - b) that councillor is required to withdraw in terms of rule 45(2);
  - c) that councillor is absent with the permission of the speaker or chairperson.
- (2) Each councillor attending any meeting of the council or a committee of the council shall sign an attendance register provided for that purpose.
- (3) The attendance register shall be filed in the office of the municipal manager.
- (4) Any councillor who is entitled to leave of absence in terms of rule 13 and no longer requires such leave may attend the meeting from which leave of absence was granted and sign the attendance register.
- (5) Councillors, who are not members of council Committees may attend meetings of such committees as observers, but may not participate during discussions without the permission of the Chairperson and shall be excluded during the discussion of confidential matters by such committees.

### 13. Leave of absence

- (1) Leave of absence shall not be granted in such a manner that more than the number required for a quorum will at any one time be absent.
- (2) If a councillor -
  - (a) is unable to attend a meeting of which notice had been given; or
  - (b) is unable to remain in attendance at a meeting; or
  - (c) will arrive after the stipulated commencement time of a meeting,he or she shall, as soon as is reasonably possible and prior to that meeting, lodge with the municipal manager a written application for leave of absence from the whole or any part of the meeting concerned, which application must provide reasonable and bona fide reasons for the application and show good cause for the granting of the application.
- (3) The municipal manager must as soon as possible inform the speaker or chairperson of the meeting concerned of any application for leave of absence received.
- (4) The council or relevant committee must as soon as possible consider an application for leave of absence and either grant or reject the application with reasons and immediately inform the municipal manager of its decision.
- (5) A councillor shall be deemed absent without leave from the meeting concerned where an application for leave of absence has not been granted and he or she -
  - (a) failed to attend a meeting; or
  - (b) failed to remain in attendance at a meeting.
- (6) Where a councillor fails to remain in attendance at a meeting -
  - (a) without being granted permission to do so; or
  - (b) without obtaining permission from the speaker or chairperson to leave prior to the close of the meeting, the time of leaving must be recorded in the minutes of the meeting and that councillor shall be deemed to have been absent without leave at that meeting;
- (7) Where a councillor arrives late at a meeting, without obtaining permission to do so, the time of arrival and the reasons for the late attendance must be recorded in the minutes



of the meeting and the councillor may attend the meeting and sign the attendance register in terms of rule 12(2).

- (8) Leave of absence for two or more consecutive council or committee meetings must be sanctioned by the council or the relevant committee.

#### **14. Non-attendance**

- (1) Subject to compliance with the procedure set out in rule 13, a councillor who is absent without good cause from a meeting, of which notice has been given, shall be deemed to be in breach of these bylaws and the procedure outlined in section 14 of the Code of Conduct must then be complied with.
- (2) Where a councillor has been absent without obtaining leave from a meeting -
- (a) the Rules Committee as contemplated in rule 42, the speaker or chairperson as the case may be, shall invite the councillor to provide a formal explanation setting out the reasons for the councillor's absenteeism from the meeting;
  - (b) the Rules Committee, speaker or chairperson shall consider the explanation and decide whether or not the councillor was absent with good cause, providing appropriate reasons for the decision;
  - (c) the councillor may appeal in writing to the appeal authority against the Rules Committee, speaker's or chairperson's decision within 21(twenty one) days of receipt of such decision.
  - (d) the council, appeal authority or committee, as the case may be, shall
    - allow the councillor an opportunity to make representations, oral or written; and
    - (ii) consider the councillor's appeal, within 6 (six) weeks together with any comments from the speaker or chairperson of the meeting concerned;
    - (iii) make a finding as to whether the councillor was absent with or without good cause within a reasonable period.
- (3) The municipal manager shall keep a record of all incidents in respect of which councillors have been found to be absent or deemed to be absent without leave and without good cause and shall submit a written report to the speaker whenever a councillor is absent from three or more consecutive meetings which that councillor was required to attend.
- (4) Where the speaker receives a report in terms of rule 14(3), the speaker must submit the report to council and direct that the matter be investigated in accordance with Item 14 of the Code of Conduct.

### **CHAPTER 6: ADJOURNMENT**

#### **15. Adjourned meetings**

Subject to rule 11(3), a council or committee meeting may, by majority vote, be adjourned to another day or hour but no later than 7 days after the original meeting.

#### **16. Continuation meeting**

- (1) When a meeting is adjourned, notice of the continuation meeting shall be served in terms of rule 8.
- (2) No business shall be transacted at a continuation meeting except such as is specified in the notice of the meeting, which was adjourned.

## CHAPTER 7: PROCEEDINGS

### 17. Speaker and chairpersons of meetings

- (1) The chairperson of the municipal council shall be called the speaker, who is elected at the first sitting of the council after its election from among the councillors, or when necessary to fill a vacancy.
- (2) The Municipal Manager of the municipality or, if the Municipal Manager is not available, a person designated by the MEC for Local Government in the province of KwaZulu - Natal, presides over the election of a speaker.
- (3) The procedure set out in schedule 3 of the Structures Act shall apply to the election of a speaker.
- (4) The municipal council must elect a mayor and deputy mayor in accordance with the provisions of section 48 of the Structures Act.
- (5) At every meeting of the council, the speaker, or if he or she is absent, an acting speaker, shall be the chairperson and shall perform the duties stipulated in terms of section 37 of the Structures Act and must ensure that each councillor when taking office is given a copy of these rules and orders and the Code of Conduct.
- (6) The speaker:-
  - (a) presides at meetings of the council
  - (b) performs the duties and exercises the powers delegated to the speaker in terms of section 59 of the Systems Act;
  - (c) must ensure that the council meets at least monthly;
  - (d) must maintain order during meetings;
  - (e) must ensure compliance in the council and council committees with the code of conduct set out in schedule 1 to the Systems Act.;
  - (f) must ensure that council meetings are conducted in accordance with these rules and orders of council;
  - (g) shall be responsible for the certification of confirmed minutes.
  - (h) is elected for a term ending when the next council is declared elected and shall vacate office if that person:-
    - (i) resigns as a speaker;
    - (ii) is removed from office in accordance with section 40 of the Structures Act; or
    - (iii) ceases to be a councillor.
- (7) The mayor of the municipality: -
  - (a) presides over meetings of the executive committee; and
  - (b) performs the duties, including any ceremonial functions and exercises the powers delegated to the mayor by the municipal council or executive committee.
- (8) The deputy mayor exercises the powers and performs the duties of the mayor if the mayor is absent or not available or if the office of the mayor is vacant. The mayor may delegate duties to the deputy mayor.
- (9) The speaker or chairperson of council and committee meetings: -
  - (a) must maintain order during meetings;
  - (b) must ensure compliance in the council with the Code of Conduct for councillors;
  - (c) must ensure that meetings are conducted in accordance with these standing rules and orders.
- (10) If the speaker or chairperson of the council or committee of the council is absent or not available to perform the functions of speaker or chairperson, or during a vacancy, the

council or committee under the direction of the municipal manager or his /her nominee must elect another councillor to act as speaker or chairperson as the case may be.

- (11) No meeting of the council or a committee of the council may commence or continue unless a speaker or chairperson presides at a meeting.

## **18. Minutes**

- (1) The proceedings of every council meeting must be electronically recorded and retained in accordance with the Archives and Record Service of South Africa Act, 43 of 1996.
- (2) Written minutes of the proceedings of each council and committee meeting must be accurately recorded and retained in accordance with the Archives and Record Service of South Africa Act, 43 of 1996.
- (3) The approved minutes of every meeting of a council or committee other than in-committee meetings must be available to the public.
- (4) Where the municipal manager is of the opinion that any resolution or proceeding of a council or committee meeting may be in contravention of any law or by-law, he or she must advise the council or committee accordingly and full details of such opinion must be recorded in the minutes.
- (5) Any request for a transcript or portion of the transcript must be made in terms of the Promotion of Access to Information Act No. 2 of 2000.

## **19. Order of business**

- (1) The order of business at every meeting of the council or its executive committee or committee of council is preceded by the following procedure
  - (a) the bell is rung when the meeting is due to start;
  - (b) all councillors stand at their places;
  - (c) the speaker and the mayor enter the Chamber and stand at their places;
  - (d) the speaker calls upon all councillors to recite the dedication;
  - (e) brief period of silence;
  - (f) all present in the Chamber are then seated.
- (2) The order of business at every meeting, following the procedure in 19(1) is as follows:
  - (a) notice of meeting;
  - (b) applications for leave of absence;
  - (c) presentations
  - (d) confirmation of minutes of previous meeting;
  - (e) matters arising from the minutes
  - (f) announcements by the chairperson;
  - (g) declarations of pecuniary or other conflict of interest;
  - (h) reports;
  - (i) notices of motion;
  - (j) questions of which notice has been given;
- (3) The speaker or chairperson may, in his/her discretion, at any stage bring forward or defer to later on the agenda any business that is on the agenda.

## **20. Confirmation of minutes of previous meeting**

- (1) The minutes of every meeting shall be confirmed at the next ordinary meeting of that council or committee and shall be signed by the speaker or chairperson.
- (2) No motion or discussion shall be allowed upon the minutes of a previous meeting, other than relating to the accuracy of those minutes.

## 21. Reports

- (1) Any report submitted to the council or a committee of the council must, with the exception of a report accepted by the speaker or chairperson as a matter of urgency, be provided to councillors in terms of rule 8.
- (2) The speaker or chairperson must allow debate in accordance with chapter 10 on any report submitted to the council or a committee of the council, at the meeting at which that report is submitted and if the debate is incomplete or does not take place for any reason whatsoever, then the debate in respect of that report shall be held, at the next meeting.
- (3) Before the council takes a decision on any of the following matters it shall first require the Executive Committee to submit to it a report and recommendation on the matter:
  - (a) the passing of by-laws;
  - (b) the approval of budgets;
  - (c) the imposition of rates and taxes, levies and duties;
  - (d) the raising of loans;
  - (e) the approval of an integrated development plan and/or any amendment to the plan;
  - (f) the approval of a performance management system
  - (g) the appointment and conditions of service of the Municipal Manager and any Head of Department of council.

## 22. Motions

- (1) No subject shall be brought before council or a committee of council by a councillor except by way of notice of motion.
- (2) A notice of motion must -
  - (a) be in writing; and
  - (b) be signed by the councillor submitting it and by another councillor acting as seconder; and
  - (c) refer to one matter only.
- (3) A notice of motion shall be lodged with the municipal manager before 12h00 seven calendar days prior to the next meeting, failing which the notice will be considered at the next ensuing meeting.
- (4) The municipal manager must-
  - (a) date and number each notice of motion;
  - (b) enter each notice of motion lodged in a register, which shall be open to inspection by any councillor and the public; and must
  - (c) enter each notice of motion on the agenda in the order received.The speaker or chairperson shall -
  - (a) read out the number of every motion and the name of the mover and seconder;
  - (b) ascertain which motions are unopposed and these shall be passed without debate; and
  - (c) call the movers of the opposed motions in the order they appear on the agenda.
- (6) A councillor submitting a motion shall move such motion and shall have the right of reply.
- (7) A motion shall lapse if the councillor and seconder who submitted it are not present at the meeting when such motion is being debated.

- (8) A councillor shall be allowed not more than three notices of motion on the same agenda.
- (9) Prior to including a notice of motion on the agenda, the speaker shall ensure that the notice of motion complies with the requirements of by-law 22(2). The speaker shall reject any motion:
  - (a) which, in the Speaker's opinion does not comply with by-law 22(2);
  - (b) in respect of which the council does not have jurisdiction;
  - (c) in respect of which a decision by a judicial or quasi-judicial body is pending;
  - (d) which if adopted, would be contrary to any law or policy of the national and provincial governments;
  - (e) which is incapable of execution.
  - (f) which is administrative or operational in nature

### **23. Questions**

- (1) A councillor may put a question requiring a written reply from any political office bearer, municipal manager or head of department of the municipality concerning any matter related to the effective performance of the municipality's functions and the exercise of its powers, provided that a written notice of question has been lodged with the speaker or chairperson and the municipal manager at least seven days prior to the council or committee meeting and the municipal manager must ensure that the councillor receives a written reply, at the council or committee meeting.
- (2) If after a question has been replied to, a councillor is of the opinion that the reply is not clear or is ambiguous, he or she may, with the consent of the speaker or chairperson, request a follow-up question.

### **24. Supply of information to a councillor**

- (1) No councillor shall approach or communicate with any officer of the municipal administration concerning the business of the municipality other than when exercising his rights or liberties as an ordinary member of the public.
- (2) A councillor may approach and communicate with the municipal manager or any head of department or any officer of the municipal administration specifically designated by the municipal manager or by the head of department concerned for this purpose, in order to obtain such information as he or she may reasonably require for the proper performance of his/her duties as a councillor.

### **25. Items of an urgent nature**

- (1) Items of an urgent nature may be placed on an agenda by the Municipal Manager and or the mayor with the prior consent of the speaker or chairperson, which consent shall not be unreasonably withheld.
- (2) Prior to adoption, councillors must be afforded reasonable time as determined by the speaker or Chairperson to peruse and consider any report or official documents submitted to the council on an urgent basis.

### **26. Interpretation**

If a majority of councillors present so resolve, an interpreter may be used in meetings of the council and committees of the council.

## **27. In-committee**

- (1) Subject to rule 5, the council or a committee of council may, at any time, resolve to proceed in committee.
- (2) The public shall be excluded from any in-committee meetings.
- (3) The municipal manager, municipal official or any person exempted from this rule by the speaker or chairperson, shall not be excluded from any in- committee meeting.
- (4) All proceedings in- committee must be recorded in terms of rule 18(1) and 18(2) and shall be confidential.
- (5) Unauthorised disclosure of any confidential matter must be dealt with in terms of the Code of Conduct.

## **CHAPTER 8: VOTING**

### **28. Decisions by voting**

- (1) A quorum must be present in order for a vote to be taken.
- (2) All questions concerning the following matters must be determined by a decision taken by the council with a supporting vote of a majority of the number of councillors determined in accordance with the municipality's establishment notice: -
  - a) the passing of by -laws;
  - b) the approval of budgets;
  - c) the imposition of rates and other taxes, levies and duties;
  - d) the raising of loans;
  - e) the rescission of a council resolution; and
  - f) any other matter prescribed by legislation.
- (3) All other questions before the council shall be decided by a majority of the votes cast by the councillors present.
- (4) If on any matter there is an equality of votes, the speaker or chairperson may exercise a casting vote in addition to a deliberative vote as a councillor, provided that a speaker or chairperson shall not exercise a casting vote during the election of any office bearer of council.

### **29. Method of voting**

- (1) Voting shall be by a show of hands unless the law prescribes otherwise, or the council or committee by resolution of a majority of the councillors present resolves to proceed with a secret written ballot.
- (2) During the taking of a vote no councillor may leave the council chamber or committee room.
- (3) The municipal manager or his/her nominee, shall count the votes cast and shall record the result of voting, but the speaker or chairperson shall announce the result.

### **30. Dissenting votes**

- (1) A councillor may request that his/her dissenting vote be recorded as evidence of how he or she voted on the motion.

## **CHAPTER 9: REVOCATION OF COUNCIL AND COMMITTEE RESOLUTIONS**

**31. Revocation of council resolutions**

- (1) Approval to revoke or alter a resolution of council may not be delegated to any person or committee.
- (2) Prior notice of an intention to move a motion for the revocation or alteration of a council resolution must be given.
- (3) Any revocation or alteration of a council resolution must be approved by a majority of the number of the members of the council.

**32. Revocation of committee resolutions**

- (1) Approval to revoke or alter a resolution of a committee of the council may not be delegated to any person.
- (2) Prior notice of an intention to move a motion for the revocation or alteration of a resolution of a committee of the council must be given.
- (3) Any revocation or alteration of a resolution of a committee of the council must be approved by a majority of the number of the members of that committee and submitted to the council for revocation.

**CHAPTER 10: DEBATE****33. Opportunity to speak**

- (1) A councillor may only speak when so directed by the speaker or chairperson.
- (2) A councillor shall indicate a desire to speak by raising his/her hand or by activating the light on the microphone provided and awaiting the direction of the speaker or chairperson, which direction must not be withheld.

**34. Relevance**

Every speaker must restrict himself/herself strictly to the matter under consideration.

**35. Length of speeches**

Other than the delivery of the mayoral report or the presentation of the estimates of income and expenditure, no speech shall exceed three minutes in length without the consent of the speaker or chairperson.

**36. Councillors to speak only once**

A councillor may not speak more than once on any motion or proposal unless permission to do so is granted by the speaker or chairperson provided that the mover of the motion may speak to the motion, shall have the right of reply and the reply shall be confined to answering previous speakers and shall not introduce any new matter into the debate.

**37. Precedence of the speaker or chairperson**

Whenever the speaker or chairperson rises during a debate, any councillor then speaking or offering to speak must seat himself /herself and the councillor must be silent, so that the speaker or chairperson may be heard without interruption.

**38. Points of order**



- (1) Any councillor may raise a point of order at any time by standing to draw the attention of the speaker or chairperson.
- (2) The point of order takes precedence over everything else in the meeting and the speaker or chairperson must grant immediate hearing to the councillor raising the point of order and rule accordingly.
- (3) The ruling of the speaker or chairperson on a point of order shall be final and shall not be open to discussion.

### **39. Explanation**

Any councillor may as allowed to by the speaker or chairperson speak in explanation, provided that such explanation is confined to some material part of the discussion, which may have been misunderstood.

## **CHAPTER 11: CONDUCT**

### **40. General conduct**

- (1) Councillors and officials must during any council or committee meeting-
  - (a) conduct the business in the highest decorum and integrity that the occasion deserves;
  - (b) must, at all times adhere to the principles contained in the code of conduct and these rules and orders;
  - (c) must at all times adhere to the rule of law and the by -laws of the municipality;
  - (d) must be dressed appropriately for the dignity of the meeting;
  - (e) must not use offensive or objectionable language;
  - (f) must not use a cellular phone during, bring a firearm or any dangerous weapon into a meeting of council or any of its committees;
  - (g) shall not converse aloud with any person;
  - (h) shall not interrupt any person whilst speaking, except to call attention -
    - (i) to a point of order;
    - (ii) to a point of clarification;
    - (iii) to a question of privilege as provided for in Section 28 of the Structures Act.

### **41. Misconduct**

- (1) The speaker may order a councillor to withdraw and apologise for any word, statement, opinion or gesture made by that councillor.
- (2) if a councillor or councillors behave improperly during a meeting of council or any of its committees, the speaker shall direct the councillor or councillors to conduct himself /herself or themselves properly and, if speaking, to stop speaking and resume his/her seat or their seats.
- (3) In the event of persistent disregard of the directions of the speaker, the speaker shall direct such councillor or councillors to retire from the meeting and remove himself /herself or themselves from the place of meeting until the item under discussion has been finalized.
- (4) In the event that any misconduct by a councillor or councillors prejudices the proceedings of the council or committee the speaker or chairperson must adjourn the meeting and any such misconduct by a councillor or councillors must be dealt with in terms of these standing rules and orders and the Code of Conduct.

- (5) Any councillor who refuses to leave a meeting of the council or a committee of the council when directed to do so by the speaker or chairperson of a meeting in terms of any rule in these by-laws, may be forcibly removed by any duly authorised official /officials and such councillor shall be deemed to be in breach of these by-laws.

## **CHAPTER 12: COMMITTEES**

### **42. Establishment**

- (1) A Municipal council may -
- (a) establish one or more committees necessary for the effective and efficient performance of any of its functions or the exercise of any of its powers;
  - (b) appoint the members of such a committee from among its members; and
  - (c) dissolve a committee at any time.
- (2) The Municipal council
- (a) must determine the functions of a committee;
  - (b) may delegate duties and powers to it in terms of section 32;
  - (c) must appoint the chairperson;
  - (d) may authorise a committee to co -adopt advisory members who are not members of the council within the limits determined by the council;
  - (e) may remove a member of a committee at any time ;and
  - (f) may determine a committee's procedure.

### **43. Committees to Assist the Executive Committee**

- (1) If a municipal council has an executive committee, it may appoint in terms of section 79, committees of councilors to assist the executive committee and such committees may not in number exceed the number of members of the executive committee.
- (2) The executive committee -
- (a) may delegate any powers and duties of the executive committee to the committee;
  - (b) is not divested of the responsibility concerning the exercise of the powers or the performance of the duty ;and
  - (c) may vary or revoke any decision taken by a committee, subject to any vested rights.
- (3) Such a committee must report to the executive committee in accordance with the directions of the executive committee.

### **44. Membership**

- (1) Members of the committees shall be appointed by the council in accordance with rule 42 or 43 of the rules.
- (2) The mayor shall be a member of all portfolio committees ,ex officio
- (3) In the absence of the mayor, the deputy mayor shall take the place of the mayor as ex officio member of portfolio committees, with the exception of any portfolio committee of which the deputy mayor is the Chairperson.

### **45. Chairpersons**

- (1) The council shall elect the chairperson of each committee.

- (2) In the absence of the chairperson those members of the committee present shall elect an acting chairperson from amongst their number, provided that should the mayor or deputy mayor be present, and so wish, the mayor or deputy mayor may take the chair.
- (3) The speaker shall chair every joint meeting of portfolio committees ,provided that-
  - (a) The speaker may delegate the right to chair the meeting to any of the chairpersons of the committees concerned, and
  - (b) In the absence of the Speaker, one or other of the chairperson of the committees in question shall chair the meeting.
- (4) In the absence of agreement as to which of the two or more chairpersons should chair the meeting, the matter shall be decided by a majority of the members of the relevant committees present.
- (5) The chairperson shall.
  - (a) maintain order during meetings of the committee ,ensure compliance with the code of Conduct of councillors set out in Schedule 1 to the Structures Act and that meetings are conducted in accordance with these By -laws to the extent that such Bylaws are applicable to committees of the council;
  - (b) preside at every meeting of the committee at which he or she is present; and
  - (c) be entitled to vote in the first instance and in the case of an equality of votes in addition to his deliberation vote, shall give a second or casting vote.
- (6) In the absence of the Chairperson, the acting or deputy chairperson shall have the same powers and rights of voting as those possessed by the chairperson.

#### **46. Rules Committee**

- (1) The municipal council may by resolution of a majority of councillors establish a special committee to be known as the Rules Committee to investigate and make findings on any alleged breaches of the Code of Conduct, including sanctions for non -attendance at meetings and to make recommendations regarding any other matter concerning these by-laws.
- (2) The Rules Committee shall consist of the speaker, the mayor and one representative of each political party represented on the council, such representative to be nominated from time to time by each political party.

#### **47. Own rules**

Every committee of the council shall determine its own procedures subject to any directions from council and these by -laws.

### **CHAPTER 13: PECUNIARY INTEREST**

#### **48. Declaration of pecuniary interest**

- (1) A councillor must disclose to the municipal council, or to any committee of which that councillor is a member, any direct or indirect personal or private business interest that that councillor, or any spouse, partner or business associate of that councillor may have in any matter before the council or committee.
- (2) The councillor making a declaration must withdraw from the proceedings of the council or committee unless the council or committee decides that the councillor's direct or indirect interest in that matter is trivial or irrelevant.

- (3) A councillor 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 councillor is aware at the first meeting of the council at which it is possible for the councillor to make disclosure.
- (4) The disclosure of interests in terms of rule 48(1) and benefit in terms of rule 48(3) does not apply to an interest or benefit which a councillor, or a spouse, partner, business associate or close family member has or acquires in common with other residents of the municipality.

## **CHAPTER 14: BREACH AND SANCTIONS**

### **49. Breach**

Any councillor who fails or refuses to obey any of the provisions of these by-laws or any resolution of council shall be guilty of a breach of the Code of Conduct.

### **50. Sanction**

Where it is alleged that a councillor has breached these rules, the council must, in terms of item 14 of the Code of Conduct investigate the alleged breach and may impose a sanction as contained in the Code of Conduct.

## **CHAPTER 15: GENERAL PROVISIONS**

### **51. State of the City Address**

- (1) The mayor shall deliver the State of the City Address, within 30 days after the adoption of the integrated development plan and budget which shall take place in a venue within the Municipal boundaries.
- (2) No debate of the mayor's address shall take place after the address nor shall any questions be allowed.
- (3) A special meeting of council shall be convened to debate the mayor's State of the City Address within 10 days after delivery of the address.
- (4) The political parties represented at council shall be allocated the number of the members to debate the mayor's State of the City Address according to their proportional representation at council and the names of the councillors to lead the debate on behalf of their political parties shall be given to the Office of the speaker at least two days prior to the date fixed for the special council meeting.
- (5) The sequence in which the councillors shall be allocated for the debate of the State of the City Address shall be determined by the speaker, subject to the opposition parties being allowed to speak first.
- (6) After leading the debate, each councillor must leave a copy of his /her address with the council secretariat.
- (7) No questions shall be allowed during and after the debate and each councillor nominated to lead the debate shall be allocated a maximum time of 10 minutes.
- (8) The mayor shall respond to the debate at the next council meeting following the debate and such response shall mark the end of all deliberations of the mayor's State of the City Address.

**52. Repeal of existing by-laws**

The council's existing by -laws in respect of rules and orders are hereby repealed.

**53. Short title and commencement**

These by -laws shall be called the ***The Rules of Order By-laws*** and shall come into operation on the date of publication in the Provincial gazette.



# The Msunduzi Municipality

## STREET TRADING BY-LAWS

### STREET TRADING BY-LAWS

[MUNICIPAL NOTICE NO. 86 OF 2013.][DATE OF COMMENCEMENT: 18 JUNE 2015.]

These By-laws were published in *Provincial Gazette* No. 1038  
dated 18 June, 2015.

### MSUNDUZI MUNICIPALITY STREET TRADING BY-LAWS

The Msunduzi Municipality, acting in terms of section 98 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), read with section 13 of the said Act, hereby publishes the By-laws set forth hereafter, as made by the Municipality, which By-laws shall come into effect on the date of publication thereof.

### ARRANGEMENT OF BY-LAWS

1. Preamble
2. Definitions
3. Powers of the Msunduzi Municipality
4. Prohibitions
5. Restrictions
6. Identification of lawful traders
7. Cleanliness of place of business and protection of public health
8. Trading in parks and gardens
9. Objections used for display of goods
10. Removal and impoundment
11. Representations regarding impoundments
12. General offences and penalties
13. Application of other laws
14. Repeal

**1. Preamble.**—The Msunduzi Municipality, acting in terms of section 11 read with section 98 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), hereby publishes its Street Trading By-laws.

The Msunduzi Municipality recognises the objectives of the Constitution, which include the promotion of social and economic development whilst ensuring a safe and healthy environment. The Msunduzi Municipality therefore recognises the need to adopt a developmental approach to enable access to job and entrepreneurial opportunities within the informal trading sector, to harmonise the relationship between the informal trading sector and the formal trading sector and to facilitate the migration of informal trading into the formal trading sector.

The purpose of these By-laws is to regulate street trading within the jurisdictional area of the Msunduzi Municipality in a manner that recognises and enhances the Municipality's constitutional and other statutory obligations.

**2. Definitions.**—(1) In these By-laws, except as otherwise expressly provided or unless the context otherwise requires—

- (a) **“approval”** means approval by the authorised official and “approve” has a corresponding meaning;
- (b) **“authorised official”** means an official of the Council to whom it has delegated a duty, function or power under these By-laws, in relation to the exercise or performance of that duty, function or power and includes any employee acting under the control and direction of such official;
- (c) **“Chief Financial Officer”** means the person designated as such in terms of section 80 of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);
- (d) **“City”** means the City of Pietermaritzburg;
- (e) **“Council”** means the City Council of the City and includes, in relation to a duty, function or power under these By-laws, a committee or official of the Council to whom it has delegated that duty, function or power;
- (f) **“designated official”** means the council official designated by the Municipal Manager For the purpose of considering representations made in terms of by-law”;
- (g) **“Environmental Health Officer”** shall mean an official appointed as such by the Council or another municipality having jurisdiction over environmental health matters in the City;
- (h) **“litter”** includes any receptacle, container or other object or matter discarded or abandoned by a trader or his customers or left behind by him or them;
- (i) **“local authority service”** means any system conducted by or on behalf of a local authority for the collection, conveyance, treatment or disposal of refuse, sewage or stormwater or for the generation, impounding, storage, purification or supply of water, gas or electricity;
- (j) **“local authority service works”** means all property or works of whatsoever nature necessary or desirable for or incidental to any local authority service;
- (k) **“Municipal Manager”** means the person appointed as by the Council in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), or another person delegated in writing by the Municipal Manager;



- (l) **“Non-profit Organisation”** means an organisation registered as such in terms of the Non-profit Organisations Act, 1997 (Act No. 71 of 1997);
- (m) **“nuisance”** bears the meaning given to it by the Ordinance;
- (n) **“Ordinance”** means the Local Authorities Ordinance, 1974 (Ordinance 25 of 1974);
- (o) **“Perishable goods”** means any goods liable to rapid deterioration, rot or decay and shall include foodstuff such as fish, fruit, vegetables, plants, bread, meat and dairy products;
- (p) **“prescribed”** means prescribed by the Council by resolution;
- (q) **“property”** in relation to a street trader, means any goods, receptacle, vehicle or movable structure used or intended to be used in connection with the carrying on of his business as such;
- (r) **“public place”** means a public place as defined in section 1 of the Ordinance;
- (s) **“public road”** means a public road as defined in section 1 of the Road Traffic Act, 1996 (Act No. 93 of 1996);
- (t) **“roadway”** means a roadway as defined in section 1 of the Road Traffic Act, 1996;
- (u) **“sell”** includes—
  - (i) barter, exchange or hire out;
  - (ii) display, expose, offer or prepare for sale;
  - (iii) store with a view to sell; or
  - (iv) provide a service for reward,and **“sale”** has a corresponding meaning;
- (v) **“sidewalk”** means a sidewalk as defined in section 1 of the Road Traffic Act, 1996;
- (w) **“street trader”** means a person who carries on the business of street trading;
- (x) **“street trading”** means the selling of any goods (including a living thing) or the supplying or offering to supply any service for reward, as a street vendor, peddler or hawker in a public road or public place but does not include the sale of newspapers only;
- (y) **“the Act”** means the Businesses Act, 1991 (Act No. 71 of 1991) and includes the regulations made thereunder;
- (z) **“vehicle”** includes—
  - (i) a self-propelled vehicle;
  - (ii) a trailer;
  - (iii) a hand-drawn or propelled vehicle.

(2) In these By-laws, unless the context otherwise indicates, any word or expression defined in the Act shall bear the meaning so given to it and a “verge” shall mean a verge as defined in section 1 of the Road Traffic Act, 1996.

(3) For the purpose of these By-laws a single act of offering for sale or of selling goods or services from a public road or public place constitutes the carrying on of the business of a street trader.

(4) For the purpose of these By-laws a reference to a person carrying on the business of street trader shall include any employee of any such person.

### 3. Powers of the Msunduzi Municipality.—

(1) The Municipality may, subject to the provisions of by-law 3 (2) up to and including by-law 3 (10), by resolution declare any place in its area of jurisdiction to be an area which the carrying on of the business of street vendors, pedlar or hawker may be restricted or prohibited.

- (2) A motion that steps be taken to declare an area under this subsection shall be dealt with at a meeting of the Full Council of the Municipality.
- (3) Before such a motion is adopted, the Full Council of the Municipality shall have regard to the effect of the presence of a large number of street vendors, pedlars or hawkers in that area and shall consider whether—
- (a) more effective supervision or control in that area, including negotiations with any person carrying on in that area the business of street vendor, pedlar or hawker or their representatives, will make such declaration unnecessary; and
  - (b) the intended restriction or prohibition will drive out of business a substantial number of street vendors, pedlars or hawkers.
- (4) If such a motion is adopted the municipality shall cause a plan to be prepared showing the position of the area concerned.
- (5) On completion of the said plan the municipality shall cause to be published in a newspaper circulating in the area of jurisdiction of the municipality, a notice setting out its intention to effect the restriction or prohibition concerned as well as its reasons therefor, stating that the said plan is open for inspection at a place and during the hours mentioned in the notice and calling upon any person who has any objection to the intended restriction or prohibition to submit in writing to the local authority within a period mentioned in the notice, which period shall not be shorter than 21 days following the day upon which the notice appeared in the newspaper, such objection or objections.
- (6) The municipality shall, at least 21 days before the last day on which objections may be submitted in terms of such notice, cause a copy of the said notice to be displayed at a suitable place in or near the area concerned.
- (7) The municipality shall consider every objection submitted in terms of by-laws 3 (5) or 3 (6) and may thereafter resolve on the declaration of the area concerned.
- (8) The municipality shall cause the declaration to be published in the *Official Gazette*, and such declaration shall take effect on the date of such publication.
- (9) The municipality shall forthwith after the publication referred to in by-law 3 (8) submit to the Member of the Executive Council a copy of the plan of the area, the notice published in the newspaper in terms of by-law 3 (5) the notice published in the *Official Gazette* in terms of by-law 3 (8) and all objections received, together with its comments thereon.
- (10) The Member of the Executive Council may within a period of 60 days after such submission and after consultation with the local authority concerned, by notice in the *Official Gazette* amend or revoke the declaration concerned.
- (11) Notwithstanding the provisions of section 17C (2) of the Promotion of Local Government Affairs Act, 1983 (Act No. 91 of 1983), the Municipality shall not authorise any committee of, or any officer or employee in the service of, the local authority to perform any duty assigned to the local authority by or under by-laws 3 (2), 3 (3) or 3 (7).
- (12) Notwithstanding the provisions of any other law, the Full Council of the Municipality may—
- (a) by resolution, and after compliance mutatis mutandis with the provisions of by-law 3 (2) up to and including by-law 3 (8) lease any verge as defined in section 1 of the Road Traffic Act, 1989, or any portion thereof, to the owner or occupier of the contiguous land on the condition that such owner or occupier shall admit a specified

- number of street vendors, pedlars or hawkers in stands or places on such verge designated by such owner or occupier;
  - (b) set apart by resolution and demarcate stands or areas for the purposes of the carrying on of the business of street vendor, pedlar or hawker on any public road the ownership or management of which is vested in the local authority or on any other property in the occupation and under the control of the local authority; and in like manner extend, reduce or disestablish any such stand or area;
  - (c) by agreement let or otherwise allocate any stand or area demarcated under by-law 3 (12) (b) or otherwise established for such purposes.
- (13) The Municipality may determine the size and extent of any particular stand set apart, let or demarcated.

**4. Prohibitions.**—No person shall carry on the business of a street trader—

- (a) at a place or in an area declared under section 6A (2) (a) of the Act as a place or area in which the carrying on of street trading is prohibited;
- (b) on the verge, contiguous to—
  - (i) a building belonging to, or occupied solely by, the State or the Council;
  - (ii) a church or other place of worship; or
  - (iii) a building declared to be a national monument under the National Monuments Act, 1969 (Act No. 28 of 1969),except to the extent that the carrying on of such business is permitted by a notice or sign erected or displayed by the Council and in compliance therewith;
- (c) on a verge contiguous to a building in which business is being carried on by any person who solely or mainly sell goods of the same or similar nature as goods being sold by the street trader concerned, without the consent of that person;
- (d) on that half of a public road contiguous to a building used for residential purposes, if the owner or person in control or any occupier of the building objects thereto;
- (e) at a place where it substantially obstructs pedestrians in the use of a sidewalk or take up a position or deposit his property on a sidewalk so as to do so;
- (f) at a place where it causes an obstruction to vehicular traffic;
- (g) at a place where it causes an obstruction in front of—
  - (i) an entrance to or exit from a building;
  - (ii) a fire hydrant;
  - (iii) closed circuit television cameras;
  - (iv) automated bank teller machines;
- (h) on a stand or in any area contemplated in section 6A (3) (b) of the Act if he is not in possession of proof that he has hired such stand or area from the Council or that it has otherwise been allocated to him;
- (i) in contravention of the terms and conditions of the lease or allocation to him of a stand or area contemplated in section 6A (3) (b) and (c) of the Act.

**5. Restrictions.**—No person carrying on the business of a street trader shall—

- (a) if such business is carried on any public road or public place—
  - (i) sleep overnight at the place of such business; or
  - (ii) erect any structure (other than a device which operates in the same manner as, and is shaped like an umbrella) for the purpose of providing shelter,without prior written approval of the Council;

- (b) carry on such business in such a manner as to—
  - (i) create a nuisance;
  - (ii) damage or deface the surface of any public road or public place or any public or private property; or
  - (iii) create a traffic hazard;
- (c) other than in a refuse receptacle approved or provided by the Council, accumulate, dump, store or deposit or cause or permit to be accumulated, dumped, stored or deposited any litter on any land or premises or on any public road or public place;
- (d) obstruct access to a service or to service works of the Council or of the State or any statutory body;
- (e) interfere with the ability of persons using a sidewalk to view the goods displayed behind a shop display window or obscure such goods from view;
- (f) obstruct access to a pedestrian arcade or mall;
- (g) carry on business or take up a position or place his property on a portion of a sidewalk or public place in contravention of a notice or sign erected or displayed by the Council for the purposes of these By-laws;
- (h) carry on such business in a place or area in contravention of any restriction imposed by Council resolution in terms of section 6A (2) (a) of the Act;
- (i) obstruct access to pedestrian crossings, parking or loading bays or other facilities for vehicular or pedestrian traffic;
- (j) obstruct access to or the use of street furniture such as bus passenger benches or shelters and queuing lines, refuse disposal bins, and other facilities designed for the use of the general public; or
- (k) obscure any road traffic sign displayed in terms of the Road Traffic Act, 1996, and regulations made thereunder or any markings, notice or sign displayed or made in terms of these By-laws;
- (l) make an open fire on a public road or public place;
- (m) store his or her property in a manhole, storm water drain, public toilet or tree;
- (n) unless authorised by the Chief Fire Officer, utilise any gas fired equipment irrespective of the nature of such equipment and then only in compliance with any written conditions imposed by the Chief Fire Officer;
- (o) sell or promote alcoholic products, pesticides, insecticides, poisonous and hazardous substances;
- (p) unless authorised by the Council, use any amplified equipment or similar devices which emit sound in order to attract customers and then only in compliance with any conditions imposed;
- (q) use any electrical supply or power generation unless expressly authorised by the Council and then only in compliance with any conditions imposed;
- (r) sell any live-stock, pets, reptiles, birds, rabbits, wild animals and, or poultry unless expressly authorised by the Council and then only in compliance with any conditions imposed;
- (s) display his or her goods or other property on or in a building, without the written consent of the owner, lawful occupier, or person in control of such building or property.

## 6. Identification of lawful traders.—

- (a) The Municipality shall issue to every owner as contemplated in by-law 3 (12) above, to every person admitted in terms of by-law 3 (12), and to every street trader to whom the municipality has allocated a stand or with whom the municipality has concluded a lease agreement or who is otherwise authorised to conduct the business of pedlar or hawker, a Street Traders' Identification Permit which Identification Permit shall serve as confirmation of such owner's, admitted person's, street trader's, pedlar's or hawker's right to occupy a particular stand or area or otherwise conduct business as contemplated in these by-laws.
- (b) The Municipality shall be entitled, by virtue of a resolution as contemplated in section 75A of the Local Government: Municipal Systems Act, to levy a fee for the issuing or reissuing of such a Street Trader's Identification Permit.
- (c) An owner contemplated in by-law 3 (12) above, all persons admitted in terms of by-law 3 (12), a pedlar or hawker and any other person otherwise authorised to conduct business in terms of these by-laws shall, retain and produce such Street Trading Permit on demand to an authorised official.
- (d) The Municipality may, at the written request of a street trader issue a Street Identification Permit to a bona fide employee of the Street Trader.
- (e) No person shall carry on any business on any stand or assist in the carrying on of such trading unless he or she is in possession of the aforesaid Identification Permit which permit shall serve as prima facie proof that he has hired a stand or area from the Municipality or that it has otherwise been allocated to him or her or that he or she is a bona fide employee of such a street trader.
- (f) No person shall without prior written permission of the Council, sell, donate, lease, sublet or in any other way transfer or alienate to another person any stand or area hired or otherwise allocated to him or her by the Council or otherwise permit such other person to trade from any stand or area hired or allocated to him.

**7. Cleanliness of place of business and protection of public health.—**Every street trader shall—

- (a) unless prior written approval exempting him from the provisions of this section has been given by the Council, daily remove from any public road or public place at the end of each trading day or at the conclusion of trading all goods, movable structures, waste, packaging material, stock and equipment of whatsoever nature which are utilised in connection with such trading;
- (b) carry on his business in such a manner as not to be a danger or threat to public health or public safety;
- (c) at the request of an officer or an employee of the Council move or remove anything so that the place of business may be cleaned or to carry out any work in relation to a public road, public amenity or service;
- (d) keep the area or stand occupied by him for the purpose of his business as well as his property in a clean and sanitary condition and free of litter;
- (e) if his activities involve the cooking or other preparation of food, take steps to ensure that no fat, oil or other substance drops or overflows onto the surface of a sidewalk or splashes against a building or other structure;
- (f) ensure that he or she does not carry out any trading outside the stand or area demarcated or let to or allocated to him or her in any way;

(g) ensure that a space of not less than 1,5 metres is left between the wall of the shop contiguous to which he or she conducts his or her business and himself or herself; and leave a space of not less than 0,5 metres from the kerb of the roadway.

**8. Trading in parks and gardens.**—No street trader shall carry on business in a garden or park to which the public has the right of access except with the prior written approval of the Council and in compliance with any conditions imposed by him when granting such consent.

**9. Objections used for display of goods.**—A street trader shall ensure that any structure, container, surface or other object used by him for the preparation, display, storage or transportation of goods—

- (a) is maintained in a good state of repair and in a clean and sanitary condition; and
- (b) is not so placed or stacked so as to constitute a danger to any person or so as to be likely to injure any person.

**10. Removal and impoundment.**—(1) For the purpose of this By-law “**goods**” includes any perishable goods, receptacles, vehicles or movable structures.

(2) An authorised official may remove and impound any goods, without an order of Court—

- (a) which he reasonably suspects are being used or are intended to be used or have been used or in connection with the carrying on of any business of a street trader; and
- (b) which he finds at a place where the carrying on of such business is restricted in terms of these by-laws or prohibited in terms of these by-laws and which in his opinion constitutes an infringement of such provision;
- (c) whether or not such goods are in the possession or under the control of any person at the time of such removal or impoundment.

(3) Any authorised official acting in terms of by-law 10 (2) shall—

- (a) except where goods have been left or abandoned or where a person refuses to receive such a receipt, issue to the person carrying on the business of a street trader or where such street trader is not present at the location where the business is being carried on, to any other person so present and apparently over the age of eighteen years, a receipt for any property so removed and impounded, which receipt must—
  - (i) contain the full names and physical address of the person carrying on the business of street trader, or where applicable, the full names of the other persons referred to in by-law 10 (3) (a);
  - (ii) contain an inventory which itemises the property to be removed and impounded;
  - (iii) provide the physical address where the impounded property will be kept;
  - (iii) state the conditions for the release of the impounded property;
  - (iv) reflect the provisions of by-laws 10 and 11;
  - (v) provide the name and physical address of a designated official to whom representations may be made regarding such impoundment and the time period within which such representations may be made;
  - (vi) a signed certificate by the authorised official certifying that the information contained in the receipt is correct;
  - (vii) a signed certificate from the person carrying on the business of a street trader or where such street trader is not present at the location where the business is being carried on, the person referred to in by-law 10 (3) certifying that the information contained in the receipt is correct; provided where any of the aforesaid persons



refuse to sign such certificate, the authorised official shall obtain such a certificate from another authorised official present at the location where business is being carried on and who shall append his full names, designation and signature to such certificate and which shall, unless proved to the contrary, be deemed to be true and correct in all respects;

(b) forthwith convey such impounded goods to a facility approved by the Council for this purpose;

(c) forthwith complete the register referred to in by-law 10 (5).

(4) Any authorised official acting in terms of by-law 10 (2) may discard, destroy, sell for the benefit and income of the municipality or donate perishable goods to non-profit organisations after the lapse of 48 hours after the impoundment of the aforesaid perishable goods, provided that such sale or donation shall only take place after written approval thereof by an Environmental Health Officer, provided further that an Environmental Health Officer may instruct in writing that perishable foods shall be discarded or destroyed prior to or after the expiry of the aforesaid 48 hours where health considerations so require, in which event an authorised official shall comply with such instruction.

(5) Any authorised official acting in terms of by-law 10 (4) shall keep a register of the following:

- (i) full names of the owner whose goods were impounded;
- (ii) the date and time of impoundment;
- (iii) the place of impoundment;
- (iv) a detailed and itemised description of the goods impounded;
- (v) the date and time of disposal, destruction, sale or donation;
- (vi) the proceeds gained from any sale and proof that such proceeds were credited in full to a bank account nominated by the Chief Financial Officer for this purpose;
- (vi) in the event of any sale or donation, the identity number, address and contact details of any such purchaser or recipient of any such donation;
- (vii) in the event of any disposal or destruction, the place where such disposal or destruction took place;
- (viii) the written approval granted or instruction issued by the Environmental Health Officer as contemplated in by-law 10 (4);
- (ix) the estimated market value of the goods impounded.

(6) The Council may, subject to these by-laws discard with, sell or donate to non-profit organisations any goods other than perishable goods that have not been collected from the Council within 90 days of impoundment.

(7) Subject to and without detracting from the provisions of by-law 10 (4) and 10 (6), goods shall be returned forthwith to a street trader after payment of any prescribed fees levied for any expenses incurred in respect of any transportation, impoundment or storage or where the designated official so directs, provided that nothing in these by-laws shall confer on the Council or its employees any duty to preserve any perishable goods.

(8) Neither the Council nor a councillor, official, officer, employee or agent of the Council shall be liable for any loss of or damage to any goods removed, impounded, discarded, destroyed, donated or sold in terms of this section.

(9) By-laws 10 and 11 shall not detract from any other legal remedies the Council may have in law.

## **11. Representations regarding impoundments.—**



- (a) Any street trader may make written or oral representations regarding the impoundment of his or her goods to the designated official.
- (b) Such representations must be made within the time period stipulated by the authorised official in terms of by-law 10 (3) (a) (v).
- (c) The designated official may, after having considered the aforesaid representations and any submissions made by the authorised official—
  - (i) uphold and confirm the decision of the authorised official to impound the goods concerned; or
  - (ii) set aside the decision of the authorised official to impound the goods in which event the authorised officer shall return such goods forthwith to the street trader except where perishable goods had already been discarded or destroyed on the instruction of an Environmental Health Officer in terms of by-law 10 (4).

**12. General offences and penalties.—**(1) Any person who—

- (a) contravenes or fails to comply with any provision of these By-laws;
- (b) ignores, disregards or disobeys any notice, sign or marking displayed or erected for the purpose of these By-laws;
- (c) contravenes or fails to comply with any approval or condition granted or imposes in terms of these By-laws;
- (d) for the purpose of these By-laws makes a false statement knowing it to be false in a material particular or deliberately furnishes false or misleading information to an authorised official or officer; or
- (c) threatens, resists, interferes with or obstructs an authorised official, officer or employee of the Council in the performance of his powers, duties or functions under these By-laws;

shall be guilty of an offence and on conviction be liable to a fine or imprisonment for a period not exceeding six months.

(Editorial Note: Numbering as per original *Provincial Gazette*.)

(2) When an employee of a street trader performs any act or is guilty of any omission which constitutes an offence under these By-laws the employer shall be deemed to have performed the act or to be guilty of the omission himself and he shall be liable on conviction to the penalties mentioned in sub-by-law (1) unless he proves to the satisfaction of the Court that—

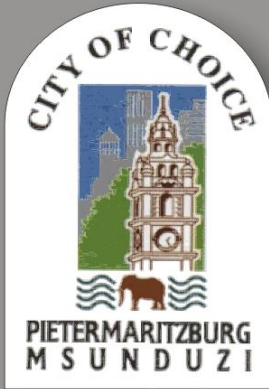
- (a) in performing the act or being guilty of the omission the employee was acting without his knowledge or permission;
- (b) all reasonable steps were taken by him to prevent the act or omission in question; and
- (c) it was not within the scope of the authority or the course of the employment of the employee to perform an act of the kind in question.

(3) The fact that an employer issued instructions forbidding any act or omission referred to in sub-by-law (2) shall not of itself be accepted as sufficient proof that he took all steps referred to in paragraph (b) of that sub-by-law.

(4) When an employer is by virtue of the provisions of by-law 12 (2) liable for anything done or omitted by his employee, then that employee shall also be liable to prosecution for the offence.

**13. Application of other laws.**—Subject to the provisions of the Act, compliance with these by-laws shall not absolve any person from complying with any other law and nothing herein shall detract from the provisions of any other law insofar and to the extent that such law applies to or otherwise regulates the activities of a street trader.

**14. Repeal.**—The Street Trading By-laws published under Notice No. 5128 of 23 May 1996 are hereby repealed.



# The Msunduzi Municipality

## TOWN TRAILS AND CONSERVATION AREAS BY-LAW

13 August 1992

CITY OF PIETERMARITZBURG

### PIETERMARITZBURG TOWN TRAILS AND CONSERVATION AREAS BYLAWS

The City Council of the City of Pietermaritzburg, has in terms of section 268 of the Local Authorities Ordinance, 1974 (Ordinance 25 of 1974), adopted the subjoined bylaws.

#### Definitions

1. In these bylaws unless the Context indicates otherwise-

**"animal"** means any vertebrate or invertebrate, including birds, reptiles, fish and insects, whether alive or dead, belonging to a species which is not a domestic species and includes the egg or any part of such animal;

**"conservation area"** means any piece of land owned by, vested in or under the control of the Council which is declared to be a conservation area by the Council and is described in Schedule II to these bylaws and demarcated by means of signs to be a conservation area;

**"Council"** means the Pietermaritzburg City Council;

**"Director of Parks"** means the official of the Council appointed to that post in the Council's service or, in his absence, the Acting Director;

**"officer"** means any employee of the City Engineers' Departments, City Electrical Engineer's Department, Fire Division, Traffic and Security Division or Parks and Recreation Department acting the course and scope of his employment;

**"town trail"** means a route for the passage of persons for the purpose of recreation, sightseeing or the like, Within the area of jurisdiction of the Council, as described in Schedule I to these bylaws and in addition to the track of such route includes an area 5 m wide on each side of such track;

**"town trail sign"** means a sign erected at or on any town trail and may include any device identifying such trail and providing information as to its direction and length;

**"vegetation"** includes moss, lichen, fungi roots, bulbs, bark, fruit seeds and also humus and dead vegetable matter;

**"vehicle"** includes any pedal cycle, motor cycle of whatever type and size, and any vehicle drawn by animals.

**"weapon"** means a firearm or other weapon or implement with which a projectile can be so propened that it can kill, injure or immobilise an ammal, the ammunition for a Firearm and any projectile (or use in connection with such weapon or Implement and any chemical or preparation for use in connection

with such projectile.

2. (a) No town trail or conservation area shall be open to the public except by resolution of the Council. .

(b) In opening any town trail or conservation area ,to the public the Council may-

- (i) restrict admission thereto to the holders of permits issued by the Director of Parks,
- (ii) restrict the numbers of permits which may be issued in respect of any town trail or conservation area, and
- (iii) make a charge, in accordance with the charges prescribed in the Council's tariff of charges, for admission to any town trail or conservation area.

(c) No person shall enter or remain on or in any town trail or conservation area which has not been opened to public except with the prior consent of the Director of Parks and subject to such conditions as he may impose.

(d) No person shall enter or remain on or in any town trail or conservation area open to the public unless or until any admission charge prescribed in the Council's tariff of charges has been paid.

3. In respect of any town trail or conservation area opened to the public in terms of bylaw 2(a), the Director of Parks may-

- (a) determine the places at which persons may enter and/or leave such town trail or conservation area;
- (b) determine the days and times of the day during which such town trail or conservation area shall be open to the public;
- (c) determine those parts of such town trail or conservation area to which the public shall not have access; and
- (d) erect signs to indicate the times, days or places determined by him in terms of paragraphs (a), (b) or (c).

4. No person shall ignore or act contrary to any direction contained in a sign erected in terms of bylaw 3.

5. No person shall wilfully do or cause to be done any of the following things on or in any town trail or conservation area:

- (a) drive any vehicle, except on roads provided for the purpose by the Council; .
- (b) swear, shout, quarrel or make any other loud noise likely to disturb the peace; .
- (c) be in possession of or use any musical instrument, radio or record player or the like without the prior written consent of the Director of Parks;
- (d) discard or dump any dead animal, litter or rubbish of any description otherwise than in a refuse receptacle provided for the purpose by or on behalf of the Council; .
- (e) be in possession of or use any weapon or explosive device or explosive material,
- (f) break any glass or deposit or scatter any objects or substances likely to injure persons, plants or animals;
- (g) destroy, damage, remove, pluck or otherwise interfere with any vegetation other than at the direction of the Director of Parks;
- (h). remove or displace any rock or soil, save as may be done in the ordinary course of walking, or paint, draw or scratch anything on any object; .
- (i) divert or otherwise interfere with the course of any stream, watercourse or dam,

- (j) bathe or paddle in or pollute any stream, pond, reservoir or dam,
- (k) discard any smoldering or burning object or light any fire or do anything to facilitate the spread of fire,
- (l) kill, hunt, chase, injure, capture, remove or otherwise disturb any animal,
- (m) feed any animal therein;
- (n) Destroy, injure, remove or otherwise disturb any nest or animal breeding place whether occupied or not;
- (o) plant *any* trees, shrubs or other plants without the prior consent of the Director of Parks
- (p) destroy, damage, alter, shift or remove any signs, gates, fences, beacons or other works made or erected by or on behalf of the Council; .
- (q) Urniate in public or commit any drunken, indecent or obscene act, or .
- (r) picnic otherwise than in an area set aside by the Council for that purpose.

6. Every person on or in a town trail or conservation area who is accompanied by, or has custody of, a child under the age of 16 years shall take all reasonable steps to ensure that such child does not contravene these bylaws.

7. Every person upon any town trail shall-

- (a) keep on a leash any dog. brought by him onto a town tail and shall prevent such dog from rushing at or injuring any person or other animal;
- (b) obey the instructions of any officer;
- (c) if riding or leading a horse, mule or donkey, keep the same under proper control and shall not, when riding it, do so in a manner dangerous to members of the public using such town trail or conservation area.

8. (1) The Director of Parks may erect any signs he may consider necessary for the information of the public using the town trails or conservation areas.

(2) The Director of Parks may erect such signs as be considers necessary to regulate the conduct of persons upon or in a town trail or conservation area in order to give effect to the requirements of these bylaws.

8. No person shall take any animal, including any domestic animal, other than horses into a conservation area or allow any animal, including any domestic animal, in his charge to enter or remain in such area provided that where a public road passes through a conservation area such dog or other domestic animal or pet shall be confined to a vehicle under the control of such person while passing through the conservation area.

9. 10. Any person who contravenes any of these bylaws shall be guilty of an offence and be liable to the penalties prescribed in section 266 (7)(a) of the Local Authorities Ordinance. 1974 (Ordinance 25 of 1974) provided that no officer who contravenes these bylaws shall commit an offence if such contravention was necessary for the proper performance of his duty. The proviso to lhis bylaw shall. mutatis mutandis, apply in respect of any contractor of the Council when perfonning any act necessary for the proper fulfilment of his contract with the Council.

11. In the event of conflict between these bylaws anl the provisions of any other bylaw, the provisions of these bylaws shall prevail.

## SCHEDULE 1

Trail name	Route	Approximate length
DorpSpruit	From a point abutting Roberts Road to a point abutting Tomlinson Road with a branch from old quarry to VilliersDrive	
Ferncliff Water Trails	From the Ferncliff picnic site to Bushbuck Dam and including the following dams: Kingfisher, Boulder, Hammerkop, Yellowbill, Dassie, Eagle and Porcupine pool.	
Lower Linwood	From the end of Linwood Drive to a junction on the World's View Trail with the Wylie Trail. .... with a branch to the start of the TetelukuTrail	2,8km 1,5km
Montrose	From a point abutting on the Howick Road to a junction on the World's View Trail with the Upper Linwood Trail	1,1km
Teteluku	From a point abutting on Celtis Road to a point abutting on Worlds View road ..... with a branch to a second point abutting on Celtis Road	3.4km 1.3km
Upper Linwood	From a point on the Teteluku Trail along the bed of the abandoned Howick railway to a junction on the World's ViewTrail with the Montrose Trail	2,4km
World's view	From a point abutting on Voortrekker Road to the World's View Toposcope	2,4km
Wylie	From a point on the boundary of Wylie Park to a junction on the World's View Trail with the Lower Linwood Trail	1,9km

## SCHEDULED

**A. Bisley Conservation Area**

Bisley Vallev area south of the ring road and portions of Rem of, Townlands, ,Portion of Rem of Lot 1589, Lot 3064, Lot 536 and Lot 3055 of Pietermaritzburg.

**B. Femcliffe Conservation Area**

The Chase Valley escarpment bounded on the north by the Municipal boundary, on the south by the forestry contour road (940 metre contour) beginning at a point abutting on Town Bush Road, to a point abutting Otto's Bluff Road. on the west by DV Harris Water Works and on the east by the Otto's Bluff Road, including Lot 169, 177 ,270, 400 and 602 of Pietermaritzburg.

**DETERMINATION OF ADMISSION OF GUILT FINES IN RESPECT OF THE  
PIETERMARITZBURG TOWN TRAILS AND CONSERVATION AREAS BYLAWS**

I, Jonathan Felton Skead, in my capacity as Municipal Prosecutor hereby make the following admission of guilt fine determinations in terms of Section 57(5)(a) of the Criminal Procedure Act 51 of 1977

<b>OFFENCE</b>	<b>ADMISSION OF GUILT FINE</b>
1. Contravention of bylaw 4	R100,00
2. Contravention of bylaw 5 (a) - (k) and (m) - (r)	R100,00
3. Contravention of bylaw 5 (1)	R250,00
4. Contravention of bylaw 7	R100,00
5. Contravention of bylaw 9	R100,00





# The Msunduzi Municipality

## WASTE MANAGEMENT BY-LAWS

### WASTE MANAGEMENT BY-LAWS

[Municipal Notice No. 91 of 2012.][Date of Commencement: 20 September, 2012.]

These By-laws were published in *Provincial Gazette Extraordinary*  
No. 821  
dated 20 September, 2012.

### MSUNDUZI LOCAL MUNICIPALITY WASTE MANAGEMENT BY-LAWS

The Municipal Manager of the Msunduzi Municipality, acting in terms of section 13 (a) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), hereby publishes the Waste Management By-laws for the Msunduzi Municipality, as adopted by its Council, as set out hereunder.

### PREAMBLE

**WHEREAS** the Municipality, aware of the Constitutional right of every person to an environment that is not harmful to his or her health or well-being and protecting present and future generations of persons in the Municipal area by providing, in conjunction with applicable laws, a legal and administrative framework in terms of which the Municipality can develop and manage its obligations under the Waste Act;

**AND WHEREAS** at present the Municipality does not provide a waste removal service to all areas under its control and has identified the need for this to be addressed in its Integrated Waste Management Plan which has been developed in terms of section 12 of the Waste Act;

**AND WHEREAS** the Municipality recognises that any National Waste Management Strategy will require the Municipality to introduce waste minimisation and recycling in order to ensure sustainability of resources and that the adoption of By-laws shall provide the enabling legislation to achieve the targets which may be prescribed by the Minister of MEC;

**NOW THEREFORE IT IS ENACTED AS FOLLOWS—**

## ARRANGEMENT OF BY-LAWS

1. Definitions
2. Designation of Waste Management Officers and Environmental Management Inspectors
3. The Municipal Integrated Waste Management Plan
4. Dumping and littering
5. Waste minimisation and recycling of waste
6. Collection and removal of waste
7. Conditions of use of the waste removal service
8. Provision of waste containers
9. Hazardous waste
10. Garden waste
11. Builders waste
12. Conduct at waste disposal facility
13. Access to premises
14. Waste information system
15. Offences and penalties
16. Repeal of By-laws

**1. Definitions.**—In these By-laws, unless the context indicates otherwise—

**“authorised official”** means an official of the Council to whom it has assigned or delegated a duty, function or power under these By-laws in relation to the exercise or performance of that duty, function or power and includes any employee acting under the control and direction of such official;

**“commercial services”** means any service, excluding a municipal service, relating, or connected, to, accumulating, collecting, managing, recycling, sorting, storing, treating, transporting, disposing, buying or selling of waste or any other manner of handling waste;

**“DAEARD”** means the Department of Agriculture, Environmental Affairs and Rural Development;

**“disposal site”** means a site used for the accumulation of waste for the purpose of disposing or treatment of such waste;

**“DWAF”** means the Department of Water Affairs;

**“environmental management inspector”** means a suitably trained person appointed in terms of Chapter 7 of MEMA;

**“garden service”** means the provision of a garden service including the cutting of grass, pruning of trees and any other horticultural activity including landscaping to any domestic, business, commercial or industrial property;

**“industrial effluent”** means any liquid, either with or without any particles of matter in suspension therein, which is discharged from, or wholly, or in part, produced by or in connection with or as a result of any manufacture, trade, mixing, mining or chemical process or industry carried on in any premises;

**“Integrated Waste Management Plan”** means a plan prepared in terms of section 12 of the Waste Act;

**“litter”** means any object or matter which is discarded by a person in any place except in an approved receptacle provided for that purpose or at a waste disposal or processing facility;

**“local community”**, in relation the Municipality, means that body of persons comprising—

- (a) the residents of the Msunduzi Municipality;
- (b) the ratepayers of the Msunduzi Municipality;
- (c) the private sector, any civic organisation, non-governmental organisation, labour organisation or body which is involved in local affairs within the municipal area; and
- (d) a visitor or other person residing outside of the Msunduzi Municipality who, because of his or her presence in the Municipality, makes use of services or facilities of the Municipality;

**“MEC”** means the Member of the Executive Council of the Province of Kwa-Zulu Natal who is responsible for waste management in the province;

**“minimization”**, when used in relation to waste, means the avoidance of the amount and toxicity of waste that is generated and, in the event that waste is generated, the reduction of the amount and toxicity of waste that is disposed of;

**“Minister”** means the Minister of Agriculture, Environmental Affairs and Rural Development;

**“municipal area”** means any area within the boundary of the Msunduzi Municipality as demarcated by the Demarcation Board or as amended by such Board from time to time;

**“municipality”** means The Msunduzi Municipality and its successors in law, and includes the Council of the Municipality or its Executive Committee or any other body acting by virtue of any power delegated to it in terms of legislation, as well as any officer to whom the Executive Committee has delegated any powers and duties in relation to these By-laws;

**“municipal service”** means a service relating to the collection of waste provided exclusively by the Municipality in accordance with the provisions of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

**“NEMA”** means the National Environmental Management Act, 1998 (Act No. 107 of 1998);

**“nuisance”** means any injury, harm, damage, inconvenience or annoyance to any person or the environment which is caused in any way whatsoever by the improper handling or management of waste, including but not limited to, the storage, placement, collection, transport or disposal of waste, or by littering;

**“occupier”**, in relation to any premises, means any person who is in actual occupation of such premises and if no person is in actual occupation thereof, any person who whether as owner, lessee, licensee or otherwise has, for the time being, control of such premises and shall include a street trader who occupies a site for the purposes of such street trader’s business;

**“owner”** means—

- (a) the person in whom from time to time is vested the legal title to premises;
- (b) in the case where the person in whom the legal title is vested is insolvent or deceased, or is under any form of legal disability whatsoever, the person in whom the administration and control of such person’s property is vested as curator, trustee, executor, administrator, judicial manager, liquidator or other legal representative;
- (c) in any case where the Municipality is unable to determine the identity of such person, a person who is entitled to the benefit of the use of the premises or a building or buildings thereon;

- (d) in a case where such premises have been leased for a period of thirty years or longer, the lessee thereof;
- (e) in relation to—
  - (i) a piece of land delineated on a sectional plan registered in terms of the Sectional Titles Act, 1986 (Act No. 95 of 1986), the developer or the body corporate in respect of the common property; or
  - (ii) a section as defined in such Act, the person in whose name such section is registered under a sectional title deed, and includes the lawfully appointed agent of such a person;

**“person”** includes a juristic person such as a registered company or a registered close corporation;

**“pollution”** means any change in the environment caused by—

- (a) substances; or
- (b) radioactive, or other, waves; or
- (c) noise, odours, dust, heat emitted from any activity, including the storage or treatment of waste or substances, construction and the provision of a service, whether engaged in by any person or organ of state, where that change has an adverse effect on human health or well-being or on the composition, resilience and productivity of natural or managed ecosystems, or on materials useful to people, or will have such an effect in the future;

**“property”** means—

- (a) immovable property registered in the name of a person including, in the case of a sectional title scheme, a sectional title unit registered in the name of a person;
- (b) a right registered against immovable property in the name of a person, excluding a mortgage bond registered against the property;
- (c) a land tenure right registered in the name of a person or granted to a person in terms of legislation; or
- (d) public service infrastructure;

**“prescribed fee”** means a fee prescribed by the Municipality in terms of applicable legislation;

**“public place”** means any land which—

- (a) owned by an organ of State; or
- (b) is controlled and managed by the Municipality and is either—
  - (i) set aside in terms of any law, zoning scheme or spatial plan, for the purposes of public recreation, conservation, the installation of public infrastructure or agriculture; or
  - (ii) is predominantly undeveloped and open and has not yet been set aside for a particular purpose in terms of any law, zoning scheme or spatial plan;
- (c) managed by or on behalf of the Municipality for the purposes of providing a public service, which includes road reserves and areas subject to electrical, pipeline and other public utility servitudes;
- (d) is managed by or on behalf of the Municipality for public recreational purposes, and includes any park, botanical garden, sports ground and playground, but excludes any golf course;

**“public road”** means any road, street or thoroughfare or any other place (whether a thoroughfare or not) which is commonly used by the public or any section thereof or to which the public has a right of access, and includes—

- (a) the verge of any such road, street or thoroughfare;

- (b) any bridge, ferry or drift traversed by any such road, street or thoroughfare; and
- (c) any other work or object forming part of or connected with or belonging to such road, street or thoroughfare;

**“recycle”** means a process where waste is reclaimed for further use, which process involves the separation of waste from a waste stream for further use, and the processing of that separated material as a product of raw material;

**“recycling station”** means any site designated by the Municipality for the purpose of reclaiming waste for further use;

**“resident”** in relation to the Municipality, means a person who is ordinarily resident in the municipal area;

**“re-use”** means to utilise articles from the waste stream for similar or different purposes without changing the form or properties of the articles;

**“street trader”** means a person who sells, barter, exchanges, hires out, displays, exposes, offers or prepares for sale, barter, exchange or hire, any goods, or who provides or offers any service for reward as a street vendor, hawker or pedlar but does not include any person who sells newspapers only;

**“Structures Act”** means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

**“Systems Act”** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

**“tariff”** means the use charge for the provision of a municipal service as determined by the Municipality in terms of applicable legislation;

**“verge”** means that portion of a road, street or thoroughfare, including the sidewalk, which is not the roadway or the shoulder of the road, street or thoroughfare;

**“waste”** means—

(a) any substance, whether or not that substance can be reduced, re-used, recycled or recovered—

- (i) that is surplus, unwanted, rejected, discarded, abandoned or disposed of;
- (ii) for which the generator has no further use for the purposes of production;
- (iii) that must be treated or disposed of; or

(iv) that is identified as waste by the Minister by notice in the *Gazette*, and includes waste generated by the medical or other sector, and further includes—

(b) **“builder’s waste”** which means waste generated by demolition, excavation or building activities on any premises;

(c) **“bulky waste”** which means waste which cannot by virtue of its mass, shape, size or temporary extraordinary generation conveniently be stored in a waste receptacle or container, but shall not include builders waste or special domestic waste;

(d) **“commercial waste”** which means solid waste generated on property used for non-residential purposes such as office buildings, stores, markets, theatres, hotels, warehouses, industrial operations and manufacturing processes and which are occupied by wholesale, retail, institutional or service establishments, and includes waste generated by office workers or employees of these establishments, as well as street traders as defined in the Municipality’s Street Trading By-laws;

(e) **“domestic waste”** which means waste of a kind normally produced or generated on residential premises but does not include garden waste, sand, liquid matter, the carcass of any animal or industrial waste or builders’ waste;

(f) **“garden waste”** which means waste generated as a result of normal gardening activities on any premises, including grass cuttings, leaves, plants, hedge clippings and the like, excluding logs, the size of which shall be determined by the Municipality from time to time;

(g) **“hazardous waste”** which means any waste that directly or indirectly represents an immediate or potential threat to human health or to the environment by introducing one or more of the following risks—

- explosions or fire;
- infections, pathogens, parasites or their vectors;
- chemical instability reactions or corrosion;
- acute or chronic toxicity to animals or human beings;
- cancer, mutations, tumours or birth defects;
- toxicity, or damage to the ecosystems or natural resources;
- accumulation in biological food chains, persistence in the environment, or multiple effects, so that it requires special attention and cannot be released into the environment, or be added to sewage, or be stored in a situation which is either open to the air or from which leachate could emanate;

(h) **“industrial waste”** which means waste in solid form which is generated as a result of activities carried on in a factory, but shall not include builders’ waste, special industrial waste or trade waste;

(i) **“inert waste”** which means waste that—

- (i) does not undergo any significant physical, chemical or biological transformation after disposal;
- (ii) does not burn, react physically or chemically biodegrade or otherwise adversely affect any other matter or environment with which it may come into contact; or
- (iii) does not impact negatively on the environment because of its pollutant content and because the toxicity of its leachate is insignificant;

(j) **“trade waste”** which means waste generated as a result of commercial or industrial activities from any premises including shops, offices, hotels, restaurants, guest houses and the like and shall include litter and waste generated by a street trader as defined in the Municipality’s Street Trading By-laws;

**“Waste Act”** means the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008);

**“waste bin”** means a receptacle, the size and quality of which shall be approved by the Municipality from time to time, for the temporary storage and removal of waste;

**“waste collector”** means a person who is registered under the provisions of these By-laws as a waste collector;

**“waste container”** means a receptacle which is larger than a waste bin, the size and quality of which shall be approved by the Municipality from time to time, and supplied by the Municipality or a private waste service provider for the temporary storage and removal of waste;

**“waste disposal facility”** means any facility or site which receives waste for disposal thereof, and which is operated in terms of a permit obtained from DAEDARD or where such facility is an incinerator, and includes waste transfer facilities and recycling stations;

**“waste container”** means a receptacle, which is larger than a waste bin, the size and quality of which shall be approved by the Municipality from time to time, and supplied by



the Municipality or a private waste service provider for the temporary storage and removal of waste;

**“waste generator”** means any person that generates or produces waste;

**“waste management activity”** means any activity listed in Schedule 1 of the Waste Act or published by notice in the *Government Gazette* in terms of section 19 of the Waste Act, and includes—

- (a) the importation and exportation of waste;
- (b) the generation of waste, including the undertaking of any activity or process that is likely to result in the generation of waste;
- (c) the accumulation and storage of waste;
- (d) the collection and handling of waste;
- (e) the reduction, re-use, recycling and recovery of waste;
- (f) the trading in waste;
- (g) the transfer of waste;
- (h) the treatment of waste; or
- (i) the disposal of waste;

**“waste management control officer”** means a waste management control officer designated under section 58 (1) of the Waste Act;

**“waste management licence”** means a licence issued under section 49 of the Waste Act;

**“waste management service”** means a service that relates to one or more waste management activities;

**“waste minimisation program”** means a program that is intended to promote the reduced generation and disposal of waste;

**“waste oil”** means mineral or synthetic oil which is contaminated, spoilt or otherwise unfit for its original purpose;

**“waste recycler”** means any person that provides a waste minimisation service by separating waste which has been received at a waste transfer station or a waste disposal facility into all or some of the following categories—

- (a) paper;
- (b) metals;
- (c) glass;
- (d) plastic; or
- (e) organic materials,

for the purposes of resale and re-use as recyclable material;

**“waste removal service area”** means the designated portion of the municipal area for which the Municipality provides a waste removal service, as amended from time to time;

**“waste transfer facility”** means a facility or site that is used to accumulate and temporarily store waste before it is transported to a recycling station or a waste disposal facility.

## **2. Designation of Waste Management Officers and Environmental Management Inspectors.—**

- (a) In terms of section 10 (3) of the Waste Act, the Municipality shall designate, in writing, a Waste Management Officer from its administration to be responsible for co-ordinating matters pertaining to waste management activities in the Municipality in the manner as set out in the National Waste Management Strategy established in terms of section 6 of the Waste Act or as determined by the Minister or MEC by notice in the *Gazette*.



(b) The designation referred to in subsection (a) may be subdelegated by that officer to another officer within the Municipality subject to conditions and limitations as may be determined.

(c) The Municipality shall further appoint sufficiently trained environmental management inspectors in terms of Chapter 7 of NEMA to undertake monitoring and enforce compliance with the Waste Act and these By-laws.

### **3. The Municipal Integrated Waste Management Plan.—**

(a) In terms of section 12 (2) (c) to (i) and section 12 (3) of the Waste Act, the Municipality shall compile and annually review an Integrated Waste Management Plan in conjunction with the relevant Provincial Department and collect and provide all information required in order to complete this Provincial plan.

(b) The Municipality shall report annually on the progress made in the implementation of its Integrated Waste Management Plan, including the performance as it relates to section 12 (2) (a) to (i) of the Waste Act and in terms of section 46 of the Systems Act.

### **4. Dumping and littering.—**

(1) No person shall dump, deposit, discharge, spill or release waste, or cause or permit such waste to be dumped, discharged, spilled or released, whether or not the waste is in a container or receptacle, in or at any place, whether publicly or privately owned, including but not limited to vacant land, rivers, waterways, catchments, sewers and stormwater drains, except in a container or at a place which has been specially indicated, provided or set apart for such purpose.

(2) The prohibition referred to in subsection (1) shall apply to any person who, for whatever reason, opens a receptacle containing waste material and dumps, deposits, discharges, spills or releases such waste onto a public street and who thereafter fails to return such waste material to the receptacle.

(3) No person shall, while driving a vehicle, or while being conveyed in a vehicle, throw or deposit waste in or on any public place, public road or private premises within the Municipality and no driver of a vehicle shall allow or permit any passenger in such vehicle to throw or deposit such waste in a like manner.

(4) (a) No person shall throw, discard or deposit any circular, pamphlet or other advertisement in or on any public road or private property or place within the Municipality.

(b) No person shall throw, discard or deposit any circular, pamphlet, or other advertisement in or on any private premises if requested by any person thereon not to do so, or if there is placed on the premises in a conspicuous position a sign indicating in any manner that the occupants of the said premises do not wish to have any such circular, pamphlet, or other advertisement left in or on such premises.

(c) No person shall drive or move any vehicle in the Municipality unless such vehicle is constructed or loaded so as to prevent any load, contents or waste from being blown or deposited in or on any public road or on private property.

(5) (a) Where, in the case of any part of a public road, the Municipality considers that, in order to facilitate the cleaning of such part of the road on a particular day, it is appropriate to prohibit the parking of vehicles in that part of the road during certain hours of such day, the Municipality may give notice in accordance with the following provisions of this section prohibiting such parking.

(b) Such notice shall specify the particular area, the particular day and the hours in question and shall—

- (i) be served on the occupier of any premises adjoining the particular area; and
- (ii) be conspicuously displayed at places in the area concerned.

**5. Waste minimisation and recycling of waste.—**

(1) The Municipality shall take all steps necessary to introduce waste minimisation programs in the municipal area in accordance with any norms and standards provided for in the National Waste Management Strategy and in terms of section 8 (3) of the Waste Act.

(2) The waste minimisation programs referred to in subsection (1) may take the form of—

- (a) the introduction of norms and standards for the design and packaging of products produced within the municipal area at the manufacturing stage to ensure that waste can be avoided and/or reduced at pre-consumer stage while encouraging the manufacture of products that are reusable or recyclable at post-consumer stage;
- (b) the sorting, re-use, recycling and recovery of waste from areas within the municipal boundary;
- (c) the separation of waste at the point of generation and collection of such separated waste;
- (d) the appointment of waste recyclers to undertake commercial services at designated waste disposal facilities within the municipal area.

(3) Any waste generator may, by written notice served on him by the Municipality, be called upon to participate in such waste minimisation programs by separating his waste at the point of generation on his premises, with some or all of the cost of such waste separation being borne by the waste generator concerned.

(4) All other costs relating to the collection, transportation and disposal of this separated waste by the Municipality, or any private waste services provider tasked therewith, shall be borne by the Municipality.

(5) In accordance with subsection (2) (d), the Municipality or a private waste recycler appointed by the Municipality, may undertake the recycling of waste already disposed of at a waste disposal facility in order to extend the lifespan of the facility.

(6) No person may commence, undertake or conduct a waste management activity within the Municipality, except in accordance with the requirements or standards of a waste management licence or the norms and standards which have been developed by the Municipality where no licensing process is required in terms of the Waste Act.

**6. Collection and removal of waste.—**

(1) The Municipality shall, where possible, provide a waste removal service for all occupied premises within the waste removal service area and the occupier of any premises shall be liable for all charges levied for such service, irrespective of whether or not such service is utilised, and regardless of whether or not the service is provided on a day other than the normal day of collection. Any charges levied for such service shall be prescribed in the Municipality's tariff of charges.

(2) The occupier of premises shall within seven days of the occupation of such premises notify the Municipality in writing that the premises have been occupied and whether the service the occupier requires relates to the removal of domestic, commercial or industrial waste, or a combination of these.

(3) The occupier of any premises shall ensure that all waste generated on such premises is placed and kept in waste containers, waste bins, bags or other receptacles which shall be covered or sealed and retained on the premises until they are removed.

**7. Conditions of use of the waste removal service.—**

(1) On the day determined by the Municipality for waste removal for a particular area, the occupier of any premises within such area shall, unless directed otherwise by the Municipality, place any waste bins, bags or other receptacles on the verge immediately outside the boundary of such premises.

(2) No hot ash, unwrapped glass fragments or other waste which may cause damage to the Municipality's containers or bins, or injury to the persons or vehicles employed in removing waste from any premises, shall be placed in any waste bins or bags unless appropriate steps have been taken to avoid any damage or injury.

(3) No material, including any liquid, which by reason of its mass or other characteristics is likely to render any waste container, waste bin, bag or other receptacle unreasonably difficult for the Municipality's employees to handle, shall be placed therein.

(4) Every waste container or waste bin on or outside any premises shall be covered by means of a lid or other covering so as to prevent any nuisance or health hazard, and any such container or bin shall be kept clean and in an hygienic condition.

(5) The waste container, waste bins or bags placed outside the premises of the occupier or owner remains the sole responsibility of the occupier or owner until such time as the refuse has been collected by the Municipality, whether or not such service is provided on a day other than the normal day of collection.

(6) The Municipality shall determine the capacity of waste bins, bags or receptacles which shall be utilised by occupiers for waste removal purposes, or the number of such bins, bags or receptacles and the days on which the service shall operate.

**8. Provision of waste containers.—**

(1) The Municipality, or a private waste service provider, may deliver waste containers to premises if, having regard to the quantity of waste generated on the premises concerned, the suitability of such waste for storage in waste containers, and the accessibility and adequacy of the space provided by the occupier of any premises for waste collection vehicles, such waste would, in the opinion of the Municipality, be more appropriately stored in waste containers rather than waste bins.

(2) Any waste containers delivered by the Municipality, or a private waste service provider, in terms of this section shall remain in the ownership of the Municipality or the private waste service provider, as the case may be.

(3) An occupier of premises shall be liable for the replacement or repair costs of a lost, stolen or damaged waste container at the applicable replacement cost of such container.

(4) An occupier of any premises shall provide sufficient space and any other facilities deemed necessary on such premises for the storage of waste containers delivered by the Municipality, or a private waste service provider, in terms of subsection (2).

(5) A waste container shall—

(a) be placed in such a position on the premises as will allow its storage without it being visible from a public road;

- (b) where trade waste is generated on the premises, be placed in such a position as will allow the collection and removal of such waste by the Municipality's employees without hindrance, or by a private waste services provider, as the case may be;
- (c) be so located as to permit convenient access to and egress from such premises by the Municipality's waste collection vehicles or by the vehicles of a private waste services provider.

**9. Hazardous waste.—**

- (1) Whenever any hazardous waste is stored, generated or treated on any premises, the Municipality may, by written notice served on the waste generator—
  - (a) prohibit the removal, disposal, treatment, storage, conveyance or handling of such hazardous waste, or
  - (b) order the removal, disposal or treatment of such hazardous waste in a specified manner and at certain times within a period stipulated in such notice.
- (2) If such waste generator fails to comply with the terms of a notice contemplated by subsection (1), he shall be guilty of an offence and the Municipality may remove, or cause to be removed, dispose of or treat such hazardous waste in any suitable manner and recover the expenses incurred in doing so from such waste generator.
- (3) No person shall—
  - (a) remove or convey hazardous waste from any premises, or
  - (b) convey or transport hazardous waste on or over any public road, unless such hazardous waste is securely and properly contained in a receptacle or vehicle designed to prevent spillage or contamination.
- (4) The Municipality may, by written notice served on a waste generator on whose premises hazardous waste is generated, stored, treated or disposed of, requiring him to provide the Municipality in writing with such particulars, verified by a suitably qualified industrial chemist, as may be stipulated in such notice, relating to—
  - (a) the quantity and composition of hazardous waste generated on such premises, and
  - (b) the method of storage, treatment or disposal of such hazardous waste.
- (5) The waste generator shall in similar manner inform the Municipality of any change in the quantity or composition or the method of storage, treatment or disposal of such hazardous waste.
- (6) No person shall deliver to, or discharge at, a disposal site, any hazardous waste.
- (7) No person shall deliver to, or discharge at, a disposal site, any industrial effluent or cause the same to be done except with the prior written consent of the Municipality and in accordance with any conditions it may deem appropriate.
- (8) Any costs which may be incurred by the Municipality in remedying any damage or in abating any nuisance caused by the discharge of hazardous waste or industrial effluent in contravention of the provisions of these By-laws, or any conditions imposed by the Municipality in terms of these By-laws, shall be borne by and be recoverable from the owner of, or the person responsible for the discharge of, such waste or effluent.

**10. Garden waste.—**

- (1) The Municipality may, from time to time, set aside certain sites for the disposal of garden waste and certain recyclable materials.

- (2) The sites referred to in subsection (1) shall be designated by means of notice boards erected at such sites.
- (3) Any waste referred to in subsection (1) shall be brought to such site in or on a vehicle capable of carrying a load of not more than one ton.
- (4) No person, entering such a site shall deposit any waste other than that contemplated in subsection (1) in the containers provided at such sites.
- (5) No private garden service, or maintenance, operator or contractor may enter a site designated by the Municipality for the disposal of garden waste, unless such operator or contractor enters the site in the course and scope of the business of such operator or contractor.
- (6) The Municipality may appoint a waste recycler or various waste recyclers to conduct commercial services at any or all of the sites designated in subsection (1) for the purpose of separating waste into various categories for the purposes of resale and reuse as recyclable material.

#### **11. Builders waste.—**

- (1) Where in the opinion of the Municipality, excessive rubble, rubbish, other debris or waste material is allowed to accumulate on a site before or during building operations, it may, by written notice, order the owner of such site to have such rubble, rubbish, other debris or waste material removed within the period specified in such notice.
- (2) Any owner who fails to comply with such notice shall be guilty of an offence and the Municipality may remove such rubble, rubbish, other debris or waste material from such site and may recover the costs of such removal from the owner.
- (3) Any person erecting or demolishing any building shall remove any surplus material and matter arising from such erection or demolition from the site and from any other land or public place affected by such material or matter during or after completion of such erection or demolition, failing which the Municipality may, by written notice, order the owner of such building to have such surplus material and matter removed within a period specified in such notice.
- (4) Any person who removes any material in terms of subsection (3), shall produce to the Municipality a copy of the weighbridge ticket, if the material has been moved to the Municipality's landfill site, or other documentary proof in the event that the material has been removed to some other area or site, indicating the site or area to which the material has been removed.
- (5) Any person who fails to comply with a provision of subsection (3) or a notice served on such person in terms thereof, shall be guilty of an offence.

#### **12. Conduct at waste disposal facility.—**

- (1) Every person who, for the purpose of disposing of waste, enters a waste disposal facility controlled by the Municipality, shall—
  - (a) enter such facility at an authorised access point indicated as such;
  - (b) present the waste for weighing in the manner required by the Municipality's official having authority at such site;
  - (c) give such official all the particulars required in regard to the composition of the waste;
  - (d) provide such official with full information as to the person who is liable to pay the tariff charge for the waste deposited to enable an account to be rendered to such person;

- (e) ensure that any container brought on to the site shall have its correct tare legibly displayed on both sides;
- (f) follow all instructions given to such person in regard to access to the actual disposal point, the place where and the manner in which the waste should be deposited.
- (2) Any person who contravenes any of the provisions of subsection (1) may be refused entry to, or be removed from, the waste disposal facility.
- (3) No person shall enter a waste disposal facility controlled by the Municipality for any purpose other than the disposal of waste in terms of these By-laws, and then only at such times and between such hours as the Municipality may from time to time determine.
- (4) The Municipality may at any time require a vehicle and/or its container to be weighed at a weighbridge on the site.
- (5) At any disposal site the official having authority at such site may refuse to accept waste which may, in such official's opinion, have a detrimental impact on the environment, or may accept such wastes subject to such conditions as the official may deem appropriate.
- (6) All waste removed by the Municipality to a waste disposal facility and all waste on a waste disposal facility controlled by the Municipality shall be the property of the Municipality and no person who is not duly authorised by the Municipality to do so shall remove or interfere therewith.
- (7) No person shall cause, or allow, a vehicle under such person's control to remain at a disposal site for longer than is necessary for the discharge of waste.
- (8) If, owing to mechanical failure, a vehicle becomes incapable of leaving a disposal site, the person in charge of such vehicle shall take immediate steps to prevent any obstruction on the site by making arrangements for the removal of the vehicle from the site.
- (9) If, for any reason, the person in charge of the vehicle fails to remove the vehicle from the site within a reasonable time, the Municipality's official on duty at the site may take whatever steps the official deems necessary to remove the vehicle from the site so as not to cause further obstruction, at the cost of the owner of such vehicle, and neither the Municipality nor any employee of the Municipality shall incur any liability to the owner for any loss or damage which may be suffered by the owner as a result of such action.
- (10) Any person entering a landfill site for the purposes of disposing of waste shall, in addition to complying with the above provisions, comply with all conditions stipulated in any permit issued by the Department of Water Affairs and Forestry.

### **13. Access to premises.—**

- (1) The occupier of premises to which the Municipality provides a waste removal service shall grant the Municipality access to the premises for the purpose of collecting and removing waste and shall ensure that nothing obstructs, frustrates or hinders the Municipality in the carrying out of its service.
- (2) If, in the opinion of the Municipality, the collection or removal of waste from any premises is likely to result in damage to the premises or to the Municipality's property, or injury to the waste collectors or any other person, it may, as a condition of rendering a waste collection service in respect of the premises, require the occupier to indemnify it in writing in respect of any such damage or injury or any claims arising out of either.



**14. Waste information system.—**

(1) In terms of the Waste Act the Municipality shall establish a waste information system in order to obtain accurate waste balance information and to enable adequate waste management planning and prioritisation.

(2) Where a waste generator generates more than 100 kg of waste daily, he shall—

(a) register as such with the Municipality, and report at monthly intervals to the Municipality on the quantities of the different types of waste generated on his premises; and

(b) report on the waste management options that are being utilised to manage such waste.

(3) All waste recyclers who conduct commercial services at any Municipal waste management

facilities, undertaking waste separation, recovery, recycling, treatment, reuse and disposal services shall—

(a) provide monthly reports on the quantities and types of waste received, to the Municipality; and

(b) report on the waste management options that are being utilised to manage the different waste streams.

**15. Offences and penalties.—**

(1) In terms of these By-laws, any person who fails—

(a) to take all reasonable measures to ensure that where waste must be disposed of, such waste shall be treated or disposed of in an environmentally sound manner;

(b) to manage waste in such a manner that it does not endanger health or the environment or cause a nuisance through noise, odour or visual impact;

(c) to commence, undertake or conduct a waste management activity in accordance with the requirements or standards determined for that activity or in terms of the requirements of a waste management licence issued in respect of that activity;

(d) to obtain authority to dispose of waste on any land, waterbody or other facility; or

(e) to comply with a condition or requirement of a waste management licence, shall be guilty of an offence and, if convicted, shall be liable to a fine to be determined by a Court of competent jurisdiction in addition to any other penalty or award that may be imposed or made in terms of NEMA or the Waste Act.

(2) Any person who—

(a) fails to store waste correctly on his premises that results in pollution of the environment or harm to health as a result of spillage, leakage, wind-blown litter, odour, poor visual impact or breeding of vectors;

(b) fails to store waste in a municipal-approved container and location;

(c) fails to obtain authorisation to collect waste where such authorisation is required;

(d) intentionally or negligently throws, drops, spills or discards any litter into or onto any public space, land, vacant erf, watercourse, street, road or any place to which the public has access;

(e) fails to comply with a norm or standard established in terms of the Waste Act;

(f) knowingly supplies false or misleading information to a Waste Management Control Officer or an Environmental Management Inspector;



shall be guilty of an offence and, if convicted, shall be liable to a fine to be determined by a Court of competent jurisdiction in addition to any penalty or award that may be imposed or made in terms of NEMA or the Waste Act.

(3) Any person who fails to furnish data, information, documents, samples or materials to the Municipality as required in terms of these By-laws shall be guilty of an offence and, if convicted, shall be liable to a fine to be determined by a Court of competent jurisdiction in addition to any other penalty or award that may be imposed or made in terms of NEMA or the Waste Act.

(4) Any person who is convicted of an offence under these By-laws or the Waste Act and who persists after having been so convicted, with the act or omission that constituted the offence, shall be liable to a fine not exceeding R1 000 or to imprisonment for a period not exceeding 20 days or to both such fine and imprisonment in respect of each day that such person persists with such act or omission.

(5) The Municipality may serve a notice on the occupier of any premises, requiring such occupier to clear any waste on such premises in a manner and within a time specified in such notice.

(6) If a person on whom a notice has been served under subsection (5), fails to comply with the requirements imposed by the notice, such person shall be guilty of an offence and liable on conviction to the penalties prescribed from time to time by a Court of competent jurisdiction.

(7) If a person on whom a notice is served in terms of subsection (5), fails to comply with any requirements imposed by such notice, the Municipality may—

- (a) enter on the premises and clear the waste; and
- (b) recover from the occupier the expenditure incurred in having done so.

(8) Where on any occasion an authorised officer of the Municipality finds any person who such officer has reason to believe has on that occasion committed an offence under these By-laws, he may serve a notice on that person offering such person the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.

(9) Where a person is served with a notice under subsection (8)—

- (a) no proceedings shall be instituted for that offence before the expiration of fourteen days following the date of the notice; and
- (b) such person shall not be convicted of that offence if the fixed penalty is paid before the expiration of that period.

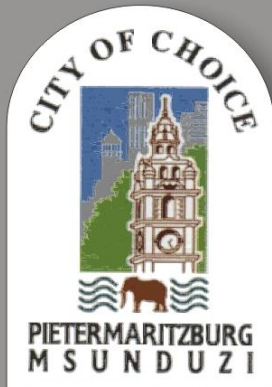
(10) A notice under subsection (8) shall give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence and shall specify—

- (a) the period provided for in subsection 9 (a);
- (b) the amount of the fixed penalty; and
- (c) to whom, and the address at which, the fixed penalty may be paid.

(11) The fixed penalty payable to the Municipality in pursuance of a notice under subsection (8) shall be prescribed by the Municipality from time to time.

## **16. Repeal of By-laws.—**

The Solid Waste By-laws published on 17 March 2005 under Provincial Notice No. 8 of 2005, are hereby repealed.



# The Msunduzi Municipality

## WATER SERVICES BY-LAWS

### WATER SERVICES BY-LAWS

[Municipal Notice No. 58 of 2014.][Date of Commencement: 24 June, 2014.]

These By-laws were published in *Provincial Gazette* No. 1163  
dated 24 June, 2014.

### MSUNDUZI LOCAL MUNICIPALITY WATER SERVICES BY-LAWS

The Msunduzi Municipality acting in terms of section 98 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), read with section 13 of the said Act, hereby publishes the By-laws set forth hereafter, as made by the Municipality, which By-laws shall come into effect on the date of publication thereof.

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*Editorial Note: Wording as per original Provincial Gazette.*

*Please note that section 14 was not included in this By-law.)*

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## CHAPTER 1: GENERAL PROVISIONS

**1. Definitions and Interpretation.**—(1) In these By-laws and the Schedules thereto, unless the context otherwise indicates—

**“accommodation unit”** in relation to any premises, means a building or section of a building

occupied or used or intended for residential occupation or use by any person;

**“affected person”** means a person who has been served with a designated notice;

**“Act”** means the Water Services Act, 1997 (Act No. 108 of 1997);

**“air gap”** means the unobstructed vertical distance through the free atmosphere between the lowest opening from which any pipe, valve or tap, supplies water to a tank or fitting or other device, and the overflow level thereof;

**“approved”** means approved by the Council;

**“authorised official”** means any official of the Council who has been authorised by it to administer, implement and enforce the provisions of these By-laws;

**“backflow”** means the flow of water in any pipe or fitting in a direction opposite to the normal direction of flow;

**“backflow preventer”** means any device or means to prevent backflow;

**“back siphonage”** means the backflow resulting from pressures lower than atmosphere pressure in water installation;

**“basic sanitation”** means the minimum standard of safe and hygienic sanitation services and sewage disposal rendered to households, pre scribed in terms of the Act, under regulation 2 of Government Notice R509 of 8 June 2001, as amended from time to time, or any substitution for that regulation;

**“basic water supply”** means the minimum standard of water supply services necessary for the reliable supply of water to households to support life and personal hygiene, prescribed in terms of the Act, under regulation 2 of Government Notice R509 of 8 June 2001, as amended from time to time, or any substitution for that regulation;

**“best practicable environmental option”** means the option that provides the most benefit or causes the least damage to the environment as a whole, in both the long and the short term;

**“borehole”** means a hole sunk into the earth for the purpose of locating, abstracting or using subterranean water, and includes a spring;

**“building regulations”** means the National Building Regulations made in terms of the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977);

**“business unit”** in relation to any premises means any building or section of a building occupied or used, or intended to be used for purposes other than residential occupation;

**“combined installation”** in relation to water supply means a water installation used for fire-fighting and domestic, commercial or industrial purpose;

**“commercial effluent”** means effluent emanating from an enterprise having a commercial purpose where the effluent is neither industrial effluent nor standard domestic effluent;

**“commercial purpose”** in relation to the supply of water, means water supplied to premises to be used in the carrying out a trade or business;

**“communal sewer”** means a sewer main and connecting sewers and in respect of which a group of consumers and/or owners has constituted itself as a person willing to assume responsibility for, and has signed an agreement accepting responsibility, for the maintenance and repair of the communal sewer;

**“communal water connection”** means a consumer connection through which water services are supplied to more than one consumer, and “communal water services work” has a corresponding meaning.

**“connecting point”** means the point at which a drainage installation joins the connecting sewer;

**“connecting sewer”** means a pipe owned by the Council and installed by it for the purpose of conveying sewage from a drainage installation on any premises, to a sewer beyond the boundary of those premises, or within a servitude area, or within an area covered by a way-leave document or other type of agreement;

**“connection pipe”** means a pipe, the ownership of which is vested in the Council and installed by it for the purpose of conveying water from a main to a water installation, and includes a “communication pipe” referred to in SABS Code 0252 Part I;

**“consumer”** means—

(a) any person who occupies premises to whom, and in respect of which premises, the Council—

(i) has agreed to provide water services;

(ii) is actually providing water services;

(iii) has entered into an agreement with the Council for the provision of water services to or on any premises;

(b) the owner of any premises to which the Council is providing water services;

(c) where water services are provided through a single connection to a number of accommodation units or consumers or occupiers, means the person to whom the Council agreed to provide such water services; and

(d) any end-user who receives water services from the Council or other water services institution;

**“conventional water meter”** means a meter where the account is issued subsequent to the consumption of water;

**“Council”** means the Msunduzi Municipality established in terms of the Municipal Structures Act, 1998 (Act No. 117 of 1998) as amended, exercising its legislative and executive authority through its municipal Council; or—

(a) its successor in title; or

(b) a structure or person exercising a delegated power or carrying out an instruction, where any power in these By-laws has been delegated or sub-delegated, or an



instruction given, as contemplated in section 59 of the Local Government: Municipal Systems Act, 2000; (Act No. 32 of 2000);

(c) a service provider fulfilling a responsibility under these By-laws, assigned to it in terms of section 81 (2) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) or any other law, as the case may be;

**“day”** means a 24 hour period commencing and ending at 24:00;

**“Designated officer”** means a person designated as such in terms of section 94 of these By-laws.

**“domestic purposes”** in relation to the supply of water means the general use of water supplied for personal and residential uses, including health and hygiene, drinking, ablution, culinary, household and garden maintenance;

**“drain installation”** means a system situated on any premises and vested in the owner thereof that is used for or intended to be used for or in connection with the reception, storage, treatment or conveyance of sewage or other form of waste water on those premises to the connecting point, and includes a drain, a fitting, an appliance, a septic tank, a conservancy tank, a pit latrine and a private pumping installation, forming part of or being ancillary to such system;

**“Drainage work”** includes any drain, sanitary fitting, water supplying apparatus, waste or other pipe or any work connected with the discharge of liquid or solid matter into any drain or sewer or, otherwise connected with the drainage of any premises;

**“dwelling unit”** means an interconnected suite of rooms designed for residential purposes and occupation by a single household, regardless of how many persons comprise the household,

**“ECA”** means the Environment Conservation Act, 1989 (Act No. 73 of 1989) and any regulations made in terms thereof, or any superseding legislation;

**“effluent”** means any liquid, whether or not containing matter in solution or suspension, which is discharged from any premises directly or indirectly into a drainage work;

**“EIA”** means an environmental impact assessment as contemplated in NEMA, and/or the EGA;

**“EIA regulations”** means the EIA Regulations as published in Government Notice R 1183 on 5 September 1997, as amended from time to time, or any regulations made in substitution therefor under the ECA or any superseding legislation;

**“emergency”** means any situation that poses a risk or potential risk to life, health, the environment, or property, or declared to be an emergency under any law;

**“enforcement notice”** means any notice issued by a designated officer under these By-laws, which instructs the person to whom it is issued to comply with the terms of the notice;

**“environmental cost”** means the full cost of all measures necessary to restore the environment to its condition prior to an incident which causes damage to it, and in the event of this not being possible the value of the cost benefit that has been lost through the damage to or destruction of the environment;

**“fire installation”** means a potable water installation that conveys water intended for fire-fighting purposes only;

**“fixed quantity water delivery connection”** means a water installation, which delivers a fixed quantity of water to a consumer in any single day;

**“flood level”** means that level reached by flood waters resulting from a storm designated in terms of recognised engineering criteria as being of a frequency to be expected once in every 50 years;



**“flood plain”** means the area below the flood level subject to inundation;

**“general installation”** means a water installation which conveys water for a combination of domestic, commercial and industrial purposes;

**“household”** means the family unit of persons, or individuals, in occupation of a building or part of a building, designed for residential occupation by such family unit, or individuals;

**“industrial effluent”** means any liquid, whether or not containing matter in solution or suspension, which is given off in the course of or as a result of any trade, manufacturing, mining, chemical or other industrial process or in any laboratory, or in the course of research, or agricultural activity, and includes any liquid or effluent emanating from the use of water, other than standard domestic effluent or stormwater, and “trade effluent” bears the same meaning;

**“industrial purposes”** in relation to the supply of water means water supplied to any premises which constitutes a factory as defined in the General Administrative Regulations, Occupational Health & Safety Act, 1993 (Act No. 85 of 1993) or any, superseding legislation, including the use of water for purposes of mining, manufacturing, retailing and service industries, generating electricity, land-based transport, construction or any related purpose;

**“installation work”** means work in respect of the construction of, or carried out on, a water installation;

**“law”** means any law, including the common law;

**“main”** means a pipe, other than a connection pipe, vesting in the Council and used by it for the purpose of conveying water to any number of consumers;

**“measuring device”** means any method, procedure, process, device, apparatus, or installation that enables the quantity and/or quality of water services provided to be quantified or evaluated;

**“meter”** means a water meter as defined by regulation 81 (a) Government Notice R 2362 dated 18 November 1977, published in terms of the Trade Metrology Act, 1973 (Act No. 77 of 1973) or any superseding legislation or, in the case of a water meter of a size greater than 100 mm, a device which measures the quantity of water passing through it;

**“National Water Act”** means the National Water Act, 1998 (Act No. 36 of 1998);

**“NEMA”** means the National Environmental Management Act, 1998 (Act No. 107 of 1998);

**“nuisance”** means any condition, thing, act or omission which is offensive or injurious or which tends to prejudice the safety, good order, peace or health of one or more of the residents in any particular locality within the area of the Council, or the rights, or reasonable comfort, convenience, peace, or quiet, of the occupants of any area within the Council’s jurisdiction;

**“occupier”** means a person who occupies any premises or part thereof;

**“owner”** includes—

(a) the person in whom from time to time is vested the legal title to premises, including, but not limited to, the registered owner according to the title deed;

(b) where the owner of the premises concerned is insolvent, deceased, has assigned his estate for the benefit of his creditors, has been placed under curatorship in terms of an order of court, is a closed corporation being wound up, or is a company being wound up or under judicial management, includes the person in whom the administration of such premises is vested as executor, administrator, trustee, assignee, curator, liquidator or judicial manager as the case may be;

- (c) in any case where the Council is unable to determine the identity of such person, a person who is entitled to the benefit of the use of such premises; and
- (d) the lessee under any registered lease of land which is entered into for a period of not less than ten years or for the natural life of the lessee or any other person mentioned in such lease or which is renewable from time to time at the will of the lessee indefinitely or for period which together with the first period of such lease amount in all to not less than ten years, whether or not such renewal is dependent on the periodical consent or permission of, or the periodical renewal of a licence by the State or any statutory licensing body;
- (e) in relation to—
  - (i) a piece of land delineated on a sectional plan registered in terms of the Sectional Titles Act, 1986 (Act No. 95 of 1986), the developer or the body corporate in respect of the common property; and
  - (ii) a section as defined in such Act, the person in whose name the relevant unit is registered under a sectional title deed, and includes the lawfully appointed representative of such a person;

**“person”** means any natural or juristic person, an unincorporated body, and includes a voluntary association or trust, an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), and the Minister of Water Affairs and Forestry, or his successor in function as Minister of Water Affairs;

**“pollution”** means the introduction of any substance into the water supply system, a water installation or a water resource, that may make the water harmful to health or the environment, or impair its quality for the use for which it is intended;

**“premises”** means any piece of land, with or without improvements, the external surface boundaries of which are delineated on—

- (a) a general plan or diagram registered in terms of the Land Survey Act, 1927 (Act No. 9 of 1927) or in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937); or
- (b) a sectional plan registered in terms of the Sectional Titles Act, 1986 (Act No. 95 of 1986);

**“prescribed”** means, determined by resolution of the Council from time to time;

**“prescribed fee”** means a fee determined by the Council by resolution in terms of section 10G (7) (a) (ii) of the Local Government Transition Act, 1993 (Act No. 209 of 1993), or any other applicable legislation;

**“prescribed tariff”** means a schedule of prescribed fees;

**“professional engineer”** means a person registered as a professional engineer in terms of the Engineering Profession Act, 2000 (Act No. 46 of 2000);

**“public notice”** means at least two notices, each notice being in one of the official languages in general use in the area, but in a different official language to the other notice and published in at least one newspaper in general use within the area in question, preferably a newspaper published predominantly in the same language as the notice;

**“qualified plumber”** means a person who has passed the plumbing trade test of the Department of Labour, and received a certificate therefor;

**“sanitation services”** means the collection, removal and disposal or purification of human excreta, sewage and any other effluent including domestic and industrial effluent resulting from the use of water;

**“SABS”** means South African Bureau of Standards;

**“service pipe”** means a pipe which is part of a water installation provided and installed on any premises by the owner or occupier, and which is connected, or to be connected, to a connection pipe to serve the water installation on the premises;

**“sampler”** means a person who takes samples for analysis from the sewage disposal and stormwater disposal systems, and who has been certified as qualified to do so by the Council;

**“sewage”** means waste water, industrial and commercial effluent, standard domestic effluent and other liquid waste, either separately or in combination, but does not include stormwater;

**“sewage disposal system”** means a structure, pipe, valve, pump, meter or other appurtenance used in the conveyance of sewage through the sewer reticulation system, and the treatment thereof at a sewage treatment plant under the control of the Council and which may be used by it in connection with the disposal of sewage;

**“sewer”** means any pipe or conduit which is the property of or is vested in the Council and which may be used or is intended for the conveyance of sewage from the connecting sewer but does not include a drain as defined; and “municipal sewer” has a corresponding inclusive meaning;

**“standard domestic effluent”** means domestic effluent with prescribed strength characteristics in respect of chemical oxygen demand, total nitrogen, total phosphates and settleable solids as being appropriate to a sewage discharge from domestic premises within the jurisdiction of the Council, but does not include industrial effluent;

**“stormwater”** means water resulting from natural precipitation or accumulation and includes rainwater, subsoil water or spring water;

**“Systems Act”** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

**“terminal water fitting”** means a water fitting at an outlet of a water installation that controls the discharge of water;

**“trade premises”** means premises upon which any form of industrial effluent is produced;

**“water fitting”** means a component of a water installation, other than a pipe, through which water passes or in which it is stored;

**“water installation”** means the pipes and water fittings which are situated on any premises and vested in the owner thereof, and used, or intended to be used in connection with the use of water on such premises, and includes a pipe and water fitting situated outside the boundary of the premises, which either connects to the connection pipe relating to such premises, or is otherwise laid with the permission of the Council;

**“water services”** means water supply services and sanitation services, as defined in these By-laws and includes the collection and disposal of industrial effluent;

**“water services work”** means a reservoir, dam, well pump-house, borehole, pumping installation, purification works, sewage treatment plant, access road, electricity transmission line, pipeline, meter, fitting or apparatus built, installed or used by a water services institution—

- (a) to provide water services;
- (b) to provide water for industrial use; or
- (c) to dispose of industrial effluent;

**“water supply services”** means the abstraction, conveyance, treatment and distribution by the Council, of water for domestic, industrial and commercial purposes;

**“water supply system”** means a structure, aqueduct, pipe, valve, pump, meter or other apparatus relating thereto which is vested in the Council, and is used or intended to be used in connection with the supply of water;

**“wet industry”** means an industry which discharges industrial effluent;

**“working day”** means a day other than a Saturday, Sunday and public holiday;

**“working month”** means a calendar month excluding any Saturday, Sunday, and public holiday.

(2) If any provision in these By-laws vests or imposes any power, function or duty of the Council in or on an employee of the Council and such power, function or duty has in terms of section 81 (2) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) or any other law been assigned to a service provider, the reference to such employee shall be read as a reference to the service provider or, where applicable, an employee of the service provider authorised by it.

## **2. Meaning of certain words the same as in Acts.—**

Any word or expression used in these By-laws to which a meaning has been assigned in—

(1) the Act will bear that meaning; and

(2) The National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977), and Chapter III of the Building Regulations there under, will bear that meaning unless the context indicates otherwise.

## **3. Levels of service.—**

(1) The Council may, subject to applicable law and in its own discretion provide various levels of service to consumers. Such levels of service may include—

(a) water supply from communal water points;

(b) water supply from mobile vehicles;

(c) metered full pressure water supply connections;

(d) ventilated improved pit latrines;

(e) conventional water borne installations connected to the Council's sewer.

## **4. Application for water services.—**

(1) No person may consume, abstract or be supplied with water from the water supply system, or utilise the sewage disposal system or any other sanitation services, unless he or she has applied to the Council on the prescribed form for such services, and such application has been agreed to.

(2) An application for the use of water services approved by the Council constitutes an agreement between the Council and the applicant, and takes effect on the date referred to in the application.

(3) The person referred to in subsection (2) will be liable for all the prescribed fees in respect of water services rendered to him or her until the agreement has been terminated in accordance with these By-laws, and is the consumer for all purposes during the currency of the agreement.

(4) The Council, may, if it deems it necessary, require a third party to be bound jointly and severally as surety and co-principal debtor with the consumer, for the payment of any prescribed fees under these By-laws.

(5) An application form shall contain at least the following minimum information—

- (a) a statement by the applicant that he or she is aware of and understands the contents of the form;
  - (b) acceptance by the applicant of the provisions of these By-laws, and acceptance of liability for the cost of water services rendered until the agreement is terminated;
  - (c) the name of the proposed consumer, and his or her identity or registration number, where applicable;
  - (d) the address or stand number of the premises to or on which, water services are to be rendered, or a communal water connection operates;
  - (e) the address to which accounts shall be sent;
  - (f) if water is to be supplied, the purpose for which the water is to be used;
  - (g) the agreed date on which the provision of water services will commence; and
  - (h) a copy of any applicable lease agreement or written confirmation from the owner or the owners agent, stating the date of occupation.
- (6) Water services rendered to a consumer are subject to the provisions of these By-laws and the conditions contained in the relevant agreement.
- (7) The applicant shall be informed if the Council refuses an application for the provision of water services, or is unable to render such water services on the date requested for such provision of water services to commence, or is unable to render the water services, and the Council shall furnish the applicant with the reasons therefor and, if applicable, the date when the Council will be able to provide such water services.

#### **5. Special agreements for water services.—**

The Council may enter into a special agreement for the provision of water services to an applicant—

- (1) inside its area of jurisdiction, if the service applied for necessitates the imposition of conditions not contained in the prescribed form or in these By-laws; and
- (2) outside its area of jurisdiction, if such application has been approved by the Council having jurisdiction in the area in which the premises to be supplied are situated.

### **FEES**

#### **6. Prescribed fees for water services.—**

- (1) All prescribed fees payable in respect of water services rendered by the Council in terms of these By-laws, including but not limited to the payment of connection fees, fixed fees or any additional fees or interest in respect of failure to pay such prescribed fees on the specified date shall be in terms of section 10 of the Act and regulations made thereunder.
- (2) All fees determined by the Council for the use of the sewers, or for discharge into the sewage disposal system or otherwise in connection with such system, are payable in respect of these By-laws by the owner of the premises, or the consumer, whichever is applicable, in respect of which the fees are raised.
- (3) If any piece of land, whether or not there are any improvements thereon, is, or in the opinion of the Council could be, connected to a sewer, the owner of that land shall pay to the Council the fees determined by the Council.

**7. Deposit.—**

- (1) Every consumer shall on application for the provision of water services and before such water services will be provided by the Council, deposit with the Council a sum of money equal to the estimated fees for two average months water services as determined by the Council.
- (2) The Council may require a consumer to whom services are provided and who was not previously required to pay a deposit, for whatever reason, to pay a deposit on request, within a specified period.
- (3) The Council may from time to time review the sum of money deposited by a consumer in terms of subsection (1) and, in accordance with such review—
  - (a) require that an additional amount be deposited by the consumer; or
  - (b) refund to the consumer such amount as may be held by the Council in excess of the revised deposit.
- (4) Subject to the provisions of subsections (5) and (8), an amount deposited with the Council in terms of subsections (1) or (2) shall not be regarded as being in payment or part payment of an account due for water services rendered.
- (5) If, upon the termination of the agreement for the provision of water services, an amount remains due to the Council in respect of water services rendered to the consumer, the Council may apply the deposit in payment or part payment of the outstanding amount and refund any balance to the consumer, if the address of the consumer is known.
- (6) No interest will be payable by the Council on the amount of a deposit held by it in terms of this section.
- (7) An agreement for the provision of water services may contain a condition that a deposit will be forfeited to the Council if it has not been claimed within twelve months of the date of termination of the agreement.
- (8) In the case of disconnection of a water supply for an unpaid account, the deposit will be allocated to the unpaid account, and a new deposit shall be paid before the water supply is reconnected.

**8. Payment for water services.—**

- (1) Water services provided by the Council to a consumer shall be paid for by the consumer at the prescribed fees, for the particular category of water services provided.
- (2) The consumer is responsible for payment for all water services provided to him or her from the date of commencement of the services until the date of termination thereof.
- (3) The Council may estimate the quantity of water services provided in respect of a period or periods within the interval between successive measurements which may not be more than 180 days apart, and may render an account to a consumer for the services so estimated, which estimate shall, for the purposes of these By-laws, be regarded as an accurate measurement until the contrary is proved.
- (4) If a consumer uses water supply services for a category of use other than that for which it is provided by the Council in terms of an agreement and as a consequence is charged at a rate lower than the rate which should have been charged, the Council may make an adjustment of the amount charged in accordance with the rate which should have been charged and recovered from the consumer the fees payable in accordance with such adjustment, and may also review the amount of the deposit held, in accordance with section 7 (3).



(5) If amendments to the prescribed fees for water services provided become operative on a date between measurements for the purpose of rendering an account in respect of such fees—

- (a) the same quantity of water services shall be regarded as having been provided in each period of twenty-four hours during the interval between the measurements; and
- (b) any prescribed fee shall be calculated on a *pro rata* basis in accordance with the prescribed fee which applied immediately before such amendments.

(6) Failure by the Council to comply with the period of 180 days referred to in subsection (3) will not disentitle the Council from recovering any monies due to it by a consumer.

#### **9. Accounts.—**

(1) Accounts shall be rendered and administered in accordance with the requirements of the Council.

(2) If it is established that a meter is defective, the Council shall, in accordance with section 34, adjust the account rendered.

(3) Monthly accounts will be rendered to consumers for the amount due and payable, at the address last recorded with the Council.

(4) Failure by the Council to render an account does not relieve a consumer of the obligation to pay any amount due and payable.

#### **10. Termination of agreements.—**

(1) A consumer may terminate an agreement for the provision of water services by giving to the Council not less than seven days' notice in writing of his or her intention to do so.

(2) The Council may, by notice in writing of not less than 30 days, advise a consumer of the termination of his or her agreement for the provision of water services if—

(a) he or she has not used the water services during the preceding six months and has not made arrangements to the satisfaction of the Council for the continuation of the agreement;

(b) he or she has failed to comply with the provisions of these By-laws and has failed to rectify such failure to comply following the issue of a compliance notice contemplated in section III or has failed to pay prescribed fees due and payable: Provided that the provisions of the Act, these By-laws and any other applicable law shall be followed before the agreement is terminated; or

(c) an arrangement has been made by such consumer with another water services institution to provide water services to the consumer.

(3) The Council may, after having given notice, terminate an agreement for services if a consumer has vacated the premises to which such agreement relates.

(4) (a) If it is determined by a body legally empowered to do so, other than the Council that an existing water service on private property, or emanating from private property, is creating environmental damage, or water pollution, or water wastage, and the owner of the property, or the consumer, whichever is applicable, is directed to carry out such measures as are required under any Act or law to rectify the situation, the Council is not liable for any damages arising as a result of the measures required to be taken or in respect of damages suffered as a result of a permanent or temporary termination of the services.

(b) Should the consumer fail to carry out such measures, the Council may, subject to the provisions of Chapter 5, undertake the measures required, and any expenditure incurred may be recovered from the owner of the premises or the consumer as the case may be.



**11. Limitation and/or discontinuation of water services.—**

(1) The Council may limit or discontinue water services provided in terms of these By-laws—

- (a) at the written request of a consumer;
- (b) if the agreement for the provision of services has been terminated in terms of section 10 and the Council has not received an application for subsequent services to the premises, within a period of ninety days of such termination;
- (c) if the building on premises to which services were provided has been demolished;
- (d) if the consumer has unlawfully interfered with the water installation or service in any way;
- (e) in an emergency;
- (f) if there has been material abuse of the water services by the consumer or an occupier of the premises; or
- (g) if the use of the water services is creating significant environmental damage or water pollution.

(2) The Council will, where a water service has been in terms of subsection (1) discontinued, only be obliged to restore it when the prescribed fees for the discontinuation and reconnection of the water service and any applicable deposit have been paid.

**12. Restoration of water services.—**When a consumer enters into an agreement for the payment of the arrears amount in instalments after the receipt of a final demand notice or a discontinuation notice, the water services will be restored to the type of service the consumer elected in terms of the agreement for the provision of water services, as soon as reasonably possible.

**13. Obligations.—**

- (1) The Council shall take reasonable measures to realise the right of every person to a basic water supply and sanitation services as defined in the Act, subject to the limitations contained in the Act.
- (2) Notwithstanding this basic right, every person who is the head of a household or in charge of a business enterprise or industrial undertaking or the representative of any such person, and who or which desires to consume water shall make application to the Council to acquire such services.
- (3) If the Council is unable to meet the general requirements of all its consumers, it shall give preference to providing a basic water supply and basic sanitation services to all its consumers.
- (4) The Council shall not be obliged to provide water services—
  - (a) to areas or consumers outside the defined limits of the Council's area of jurisdiction;
  - (b) where, due to the nature of the topography, water services cannot be provided economically and/or cost effectively; or where the necessary bulk infrastructure does not exist or is inadequate to service additional consumers.

**15. Environmental impact assessments.—**

(1) If an EIA is required to be carried out before the provision of the water services can be approved or commenced, the applicant for such services shall be responsible for the carrying out of such EIA, and for the expenses connected therewith.

(2) After environmental approval has been granted and the provision of water services has been approved by the Council, it is the responsibility of the proposed consumer or any entity established under any law to represent the property interests of any consumer or group of consumers to ensure that all laws and conditions affected by the provisions of water services and relating to environmental management and control are complied with.

**16. General responsibility for compliance with these By-laws, and other laws.—**

(1) The owner of premises is ultimately responsible for ensuring compliance with these By-laws in respect of all or any matters relating to any installation, and if he or she is not the consumer who actually uses the water services, the owner is jointly and severally liable with such consumer in respect of all matters relating to the use of any water services on his or her property, including any financial obligation.

(2) The consumer is primarily responsible for compliance with these By-laws in respect of matters relating to the use of any water service.

(3) No approval given under these By-laws relieves any owner or consumer from complying with any other law relating to the abstraction and use of water, or the disposal of effluent.

**17. Unauthorised use of water services.—**

(1) No person may gain access to water services from the water supply system, sewage disposal system or any other sanitation services unless an agreement has been entered into with the Council for the rendering of those services.

(2) A designated officer may issue a compliance notice in terms of section 104 to ensure compliance with subsection (1) by, *inter alia*, ordering a person making unauthorised use of water services to—

(a) apply for such services in terms of section 4 or 5; and

(b) undertake and complete, to the reasonable satisfaction of the designated officer, such plant as may be necessary to ensure that the consumer installation through which access was gained complies with the provisions of these By-laws, and to make application in the prescribed manner for such services.

**18. Purpose of water services.—**Where the purpose or extent for which water services are used is changed, the consumer shall inform the Council, and shall enter into a new agreement with the Council, expressed to be effective from the date on which such change of use took or will take effect.

**19. Interference with water supply system or any sanitation services.—**

(1) No person shall—

(a) operate or maintain any part of the water supply system;

(b) operate any sewage disposal system;

(c) effect a connection or reconnection to the water supply system or sewage disposal system; or

(d) render any other sanitation services, unless in any such case he or she has been authorised to do so by the Council in writing.

(2) No person shall interfere with, or willfully or negligently damage, or permit damage to or interference with any part of the water supply system or sewage disposal system belonging to the Council.

(3) No person shall do anything that would obstruct damage, interfere with, encroach onto or impede access by the Council to any servitude registered in its favour and in relation to the supply of water. The Council may require the owner of the property by written notice to remedy such obstruction, damage, encroachment or impediment within a stipulated time period. In the event that such owner fails to comply with such written notice, the Council may, in its discretion, do everything reasonably necessary to remedy such obstruction, damage, encroachment or impediment, and at the cost of the owner. Where such obstruction, damage, encroachment or impediment is of such nature or extent so as to constitute an immediate risk to life or require immediate remedial action in the public interest, the Council may take the aforesaid remedial steps without prior notice to the owner and without having to apply to a competent court for permission to take such remedial steps.

**20. Obstruction of access to water supply system or any sanitation service.—**

No person shall prevent or restrict physical access to the water supply system or sewage disposal system by any employee of the Council.

## **CHAPTER 2: WATER SUPPLY SERVICES**

**21. Provision of connection pipe.—**

(1) If an agreement for water supply services in respect of premises has been concluded and no connection pipe exists in respect of the premises, the owner shall make application on the prescribed form and pay the prescribed fees for the installation of such a pipe.

(2) If application is made for water supply services which are of such an extent or so situated that it is necessary to extend, modify or upgrade the water supply system in order to supply water to the premises, the Council may agree to the extension, modification or upgrade, if the owner pays for the cost thereof, as determined by the Council.

**22. Location of connection pipe.—**

(1) A connection pipe provided and installed by the Council shall—

(a) be located in a position determined by the Council after consultation with the owner referred to in section (1), and be of a suitable size as determined by the Council; and

(b) terminate at the boundary between the land owned by or vested in the Council, or over which either of them has a servitude or other right, and the owner's premises.

(2) If there is land between the boundary of land owned by or vested in the Council and the land of an owner who has made an application referred to in subsection (1), and the intervening land is not subject to a servitude or other right to carry a connection pipe, such pipe shall terminate at the boundary of the land owned by the Council, or vested in it.

(3) The Council shall be liable for the maintenance of any meter and associated valve which may be situated on the consumer's premises.

(4) The Council may, at the request of any person, agree, subject to such conditions as it may impose, to a connection to a main other than that which is most readily available for the provision of water supply to the premises if the applicant agrees to be responsible for any extension of the water installation to the connecting point designated and agreed to by

the Council and for obtaining at his or her cost, such servitudes over other property as may be necessary.

**23. Provision of single water connection for supply to several consumers on same premises.—**

(1) Only one connection pipe to the water supply system may be provided for the supply of water to any premises, irrespective of the number of accommodation units, business units or consumers located on such premises.

(2) Where the owner, or the person having the charge or management of any premises on which several accommodation units, business units, or consumers are situated, requires the supply of water to such premises for the purpose of separate supply to the different units or consumers, the Council may, in its discretion, provide and/or install either—

(a) a single measuring device in respect of the premises as a whole or a number of such units or consumers; or

(b) a separate measuring device for each such unit or consumer or any number thereof.

(3) Where the Council has installed a single measuring device as contemplated in subsection (2) (a), the owner or the person having the charge or management of the premises, as the case may be—

(a) shall, if the Council so requires, install and maintain on each branch pipe extending from the connection pipe to the different units or consumers—

(i) a separate measuring device; and

(ii) an isolating valve; and

(b) is liable to the Council for the prescribed fees for all water supplied to the premises through such single measuring device, irrespective of the different quantities consumed by the different consumers served by such measuring device.

(4) Notwithstanding the provisions of subsection (1), the Council may permit more than one connection pipe to be provided on the water supply system for the supply of water to any premises comprising sectional title units or if, in the opinion of the Council, undue hardship or inconvenience would be caused to any consumer on such premises by the provision of only one connection pipe.

(5) Where the provision of more than one connection pipe is authorised by the Council in terms of subsection (4), the prescribed fees for the provision of a connection pipe are payable in respect of each water connection so provided.

(6) Where premises are supplied with water by a number of connection pipes, the Council may require the owner to reduce the number of connection points and alter his or her water installation accordingly at the owner's expense.

**24. Interconnection between premises or water installations.—**

(1) An owner of premises shall ensure that no interconnection exists between—

(a) the water installation on his or her premises and the water installation on any other premises; or

(b) where several dwelling or business units are situated on the same premises, the water installations of such units, unless he or she has obtained the prior written consent of the Council and complies with any conditions that may have been imposed.

(c) Any water installation connected to a borehole and any water installation connected to the Council's water supply system.

**25. Disconnection of water installation from connection pipe.—**

(1) The Council may disconnect a water installation from the connection pipe and remove the connection pipe if—

- (a) the agreement for supply has been terminated in terms of section and it has not received an application for a subsequent supply of water to the premises served by the pipe within a period of 90 days of such termination; or
- (b) the building on the premises concerned has been or is in the process of being demolished pursuant to the grant of a permit for such demolition in terms of law.

**26. Water supplied from a hydrant.—**

(1) The Council may authorise a temporary supply of water to be taken from one or more fire hydrants specified by it, subject to such conditions and for such period as may be generally prescribed or specifically imposed by it in respect of such supply.

(2) Except in an emergency, a person who requires a temporary supply of water referred to in subsection (1) shall apply therefor.

(3) The Council may, for the purpose of supplying water from a hydrant, provide a portable water meter to be returned to the Council on termination of the temporary supply, which portable meter and all other fittings and apparatus used for the connection of the portable water meter to a hydrant remains the property of the Council and will be provided subject to any conditions imposed by the Council.

**27. Quantity, quality and pressure.—**

Water supply services provided by the Council shall comply with the minimum standards set for the provision of water supply services in terms of section 9 of the Act.

**28. General conditions of supply.—**

(1) Subject to the provisions of the Act, the supply of water by the Council does not constitute an undertaking by it to maintain at any time or any point in its water supply system—

- (a) an uninterrupted supply;
- (b) a specific pressure or rate of flow in such supply; or
- (c) a specific standard of quality of water:

Provided that if the water supply to a consumer is interrupted for more than 24 hours, the Council shall provide an alternative basic water supply as soon as reasonably practicable.

(2) The Council may specify the maximum height above ground level or mean sea level to which water is supplied from the water supply system.

(3) If an owner requires that any of the standards contemplated in section 9 of the Act, be maintained on his or her premises, he or she shall make provision in the water installation for such maintenance.

(4) The Council, may, in an emergency, interrupt the supply of water to any premises without prior notice.

(5) If the consumption of water by a consumer adversely affects the supply of water to any other consumer, the Council may apply such restrictions as are necessary, to the supply of water to the first mentioned consumer, in order to ensure a reasonable supply of water to the other consumer or consumers concerned, and shall inform the first mentioned consumer of such restrictions.

- (6) The Council will not be liable for any damage to property caused by water flowing from fittings left open when the water supply is re-instated, following an interruption in supply for any reason.
- (7) Every steam boiler and any premises which require, for the purpose of the work undertaken on the premises, a continuous supply of water, shall have a cistern fitted and in working order and holding a water supply deemed adequate by the occupier of the premises.
- (8) No consumer may resell water supplied to him by the Council except with the written permission of the Council, which may stipulate the maximum price at which the water may be resold, and may impose such other conditions as the Council may deem necessary.
- (9) The Council does not undertake to maintain sufficient pressure in the water supply system to ensure the operation of manually actuated toilet flushing valves which require a specified minimum pressure to operate.

**29. Measuring of quantity of water supplied.—**

- (1) The Council shall measure the quantity of water supplied at such regular intervals as the Council may determine, but which shall not exceed 180 days.
- (2) Any measuring device through which water is supplied to a consumer by the Council, and its associated apparatus, shall be provided and installed by the Council, and remains its property, and may be changed and maintained by the Council when deemed necessary by it.
- (3) The Council may install a measuring device, and its associated apparatus, at any point on the service pipe.
- (4) If the Council installs a measuring device on a service pipe in terms of subsection (3), it may install a section of pipe and associated fittings between the end of its connection pipe and the meter, and such section is deemed to form part of the water installation.
- (5) If the Council installs a measuring device together with its associated apparatus on a service pipe in terms of subsection (3), the owner shall—
  - (a) provide a place satisfactory to the Council in which to install it;
  - (b) ensure that unrestricted access is available to it at all times;
  - (c) be responsible for its protection and be liable for the costs arising from damage thereto, excluding damage arising from normal fair wear and tear;
  - (d) ensure that no connection is made to the pipe in which the measuring device is installed, between the measuring device and the connection pipe or water main serving the installation;
  - (e) make provision for the drainage of water which may be discharged, from the pipe in which the measuring device is installed, in the course of work done by the Council on the measuring device;
  - (f) not use nor permit to be used on any water installation, any fitting, machine or appliance which causes damage or, in the opinion of the Council, is likely to cause damage to any meter.
- (6) No person other than an authorised official of the Council may—
  - (a) disconnect a measuring device and its associated apparatus from the pipe in or to which they are installed or connected;
  - (b) break a seal which the Council has placed on any meter; or
  - (c) in any other way interfere with a measuring device and its associated apparatus.



- (7) If the Council considers that, in the event of the measuring device being a meter, the size of the meter is unsuitable by reason of the quantity of water supplied to premises, it may install a meter of such size as it may deem necessary, and may recover from the owner of the premises concerned the prescribed fees for the installation of the replacement meter.
- (8) The Council may, at the owner's expense, install or require the installation, of a measuring device to each business or dwelling unit on any premises, if such units are in separate occupancy, for use in determining the quantity of water supplied to each such unit: Provided that where a fixed quantity water delivery system is used, a single measuring device may be used to supply more than one unit.
- (9) Failure by the Council to comply with the period of 180 days referred to in subsection (1), will not disentitle the Council from recovering any monies due to it by a consumer.

**30. Quantity of water supplied to consumer.—**

- (1) For purposes of assessing the quantity of water supplied to a consumer during any period and measured by a measuring device installed by the Council over a specific period, for the purposes of these By-laws it will be deemed that—
- (a) the quantity is represented by the difference between measurements taken at the beginning and end of such period;
  - (b) the measuring device was accurate during such period; and
  - (c) the entries in the records of the Council were correctly made.
- (2) If water is supplied to, or taken by, a consumer without its passing through a measuring device, the estimate by the Council of the quantity of such water will be deemed to be correct.
- (3) Where water supplied by the Council to any premises is in any way taken by the consumer without such water passing through any measuring device provided by the Council, the Council may for the purpose of rendering an account, make an estimate, in accordance with subsection (4), of the quantity of water supplied to the consumer during the period that water is so taken by the consumer.
- (4) For the purposes of subsection (3), an estimate of the quantity of water supplied to a consumer shall be based on—
- (a) the average monthly consumption of water on the premises registered over three succeeding measuring periods taken over not more than 180 days in total, after the date on which the irregularity referred to in subsection (2) was discovered and rectified; and/or
  - (b) the period preceding the date referred to in subsection (2) but not exceeding 36 months.
- (5) Nothing in these By-laws may be construed as imposing on the Council an obligation to cause any measuring device installed on any premises to be measured at the end of any fixed period, and the Council may estimate the quantity of water supplied over any period during the interval between successive measurements of the measuring device, which may not be more than 180 days apart, and render an account to a consumer for the quantity of water so estimated.
- (6) The Council shall, on receipt from the consumer of written notice of not less than seven days and subject to payment of the prescribed fees, measure the quantity of water supplied to such consumer at a time or on a day other than that upon which it would normally be measured.



- (7) If a contravention of section 29 (6) occurs, the consumer shall pay to the Council the cost of such quantity of water estimated by the Council to have been supplied to the consumer.
- (8) Until such time as a measuring device has been installed in respect of water supplied to a consumer, the estimated consumption of that consumer shall be based on the average consumption of water supplied to the specific zone within which the consumer's premises are situated, during a specific period.
- (9) Where in the opinion of the Council it is not reasonably possible or cost effective to measure water supplied to each consumer within a particular zone, the Council may determine the fees to be paid by each consumer within that zone irrespective of actual consumption.
- (10) Fees determined in terms of subsection (9) will be based on the estimated average consumption of water supplied to that zone.
- (11) Where water supply services are provided through a communal water services work, the amount due and payable by consumers gaining access to water supply services through that communal water services work, will be based on the estimated average consumption of water supplied to that water services work, and the decision of the Council in arriving at that amount is final and binding on each consumer affected thereby, unless legally set aside.
- (12) For the purposes of subsections (8) and (9), a zone is that local area of land, of which the premises occupied by the consumer is a part, which is zoned in terms of a town planning scheme or an integrated development plan for homogeneous usage.
- (13) Failure by the Council to comply with the period of 180 days referred to in subsections (4) (a) and (5), will not disentitle the Council from recovering any monies due to it by a consumer.

**31. Defective measurement.—**

- (1) If a consumer has reason to believe that a measuring device, used for measuring water, which was supplied to him or her or installed by the Council, is defective, he or she may, against payment of the prescribed fee, make application in writing for the measuring device to be tested.
- (2) The consumer referred to in subsection (1) shall lodge a deposit equal to the cost of the test with the Council, prior to the test being undertaken.
- (3) If it is alleged that a measuring device is inaccurate, the device shall be subjected to a standard industry test to establish its accuracy.
- (4) The consumer referred to in subsection (2), shall be informed of the prescribed range of accuracy then applicable, and the possible cost implications including the estimated cost of such test, as set out in subsection (5) (a) prior to such test being undertaken.
- (5) If the outcome of any test shows that a measuring device is—
- (a) within a prescribed range of accuracy, the consumer will be liable for the costs of such test and any other amounts outstanding; or
  - (b) outside a prescribed range of accuracy, which is not due to any act or omission of the consumer, the Council will be liable for the costs of such test and the consumer shall be informed of the amount of any credit to which he or she is entitled.
- (6) Any deposit lodged by a consumer for the testing of a measuring device—
- (a) may be retained by the Council if the measuring device is found not to be defective; or

- (b) shall be refunded to the consumer if the measuring device is found to be defective, and the defect is not due to any act or omission of the consumer.
- (7) If the measuring device is—
- (a) a meter to which the regulations relating to water meters published under the Trade Metrology Act, 1973, are applicable, it will be deemed to be defective if, when tested in accordance with SABS Code 1529 Part 1, it is found to have a percentage error in over-registration or under-registration greater than that permitted for a meter in use in terms of that specification.
- (b) a meter of a size greater than 100 mm diameter but not exceeding 800 mm diameter to which the specification referred to in subsection (a) is not applicable, it will be deemed to be defective, when tested in accordance with SABS Code 1529 Part 4-1998 if it is found to have a percentage error in over-registration or under-registration greater than permitted for a meter in terms of that specification.
- (8) In addition to applying the provisions of subsection (6), if the measuring device is found to be defective, the Council shall—
- (a) repair the measuring device or install another device which is in good working order, without charging the consumer, unless the costs thereof are recoverable from the consumer where section 29 (6) has been contravened;
- (b) determine the quantity of water services for which the consumer will be charged on the basis set out in section 34.
- (9) A consumer is entitled, on giving the Council reasonable notice of his, her or its intention, to be present at the testing of any meter in which the consumer is interested.
- (10) Any meter removed for testing by the Council shall be retained intact and be available for inspection for a period of three months after testing.

### **32. Special measurement.—**

- (1) If the Council wishes, for purposes other than charging for water consumed, to ascertain the quantity of water which is used in a part of a water installation, it may, by written notice, advise the owner of the premises affected, of its intention to install a measuring device at such point in the water installation as it may specify.
- (2) The installation of a measuring device referred to in subsection (1), its removal, and the restoration of the water installation after such removal shall be carried out at the expense of the Council.

**33. No reduction of amount payable for water wasted.—**A consumer is not entitled to a reduction of the amount payable in respect of water wasted or water losses in a water installation.

### **34. Adjustment of quantity of water supplied through defective measuring device.—**

- (1) If a measuring device is found to be defective, the Council may estimate the quantity of water supplied to the consumer concerned during the period in which, in its opinion, such measuring device was defective, on the basis of the average daily quantity of water supplied to him or her over—
- (a) a period between two successive measurements subsequent to the replacement of the measuring device or, if this is not possible;
- (b) the period in the previous year, corresponding to the period in which the measuring device was defective; or, if this is not possible;

- (c) the period between three successive measurements prior to the measuring device becoming defective.
- (2) (a) If the quantity of water supplied to a consumer during the period when his or her measuring device was defective cannot be estimated in terms of subsection (1), the Council may estimate the quantity; and
- (b) the consumer shall be informed of the method used by the Council to estimate the quantity of water supplied to him or her, as contemplated in subsections (1) and (2), and given an opportunity to make representations to the Council before a final estimate is arrived at.

**35. Approval of installation work.—**

- (1) If an owner wishes to have installation work done, he or she shall first obtain the written permission of the Council: Provided that permission is not required in the case of water installations in dwelling units or installations where no fire installation is required in terms of SABS Code 0400 or in terms of any By-laws, or for the repair or replacement of an existing pipe or water fitting, other than a fixed water heater and its associated protective devices.
- (2) If any of the installation work is governed by the EIA Regulations, then the owner shall ensure compliance and obtain the relevant authorisation in respect thereof.
- (3) Application for the permission referred to in subsection (1) shall be accompanied by—
  - (a) the prescribed fees, if applicable;
  - (b) copies of the drawings as prescribed by the Council, reflecting the information and in the form required by Clause 4.1.1 of SABS Code 0252: Part I; or
  - (c) a certificate from a professional engineer or qualified plumber certifying that the installation has been designed in accordance with SABS Code 0252: Part I or, has been designed on a rational basis.
- (4) The provisions of subsections (1), (2) and (3) do not apply to a qualified plumber who replaces a fixed water heater or its associated protective devices.
- (5) Any authority given in terms of subsection (1) lapses at the expiry of a period of twenty-four months after the first day of the month succeeding the month in which the authority is given.
- (6) A complete set of approved drawings of installation work shall be available at the site of the work at all times until such work has been completed, where permission is required in terms of subsection (1).
- (7) If installation work has been done in contravention of subsections (1), (2) or (3), a designated officer may, subject to the provisions of Chapter 5, issue a compliance notice requiring the owner of the premises concerned—
  - (a) to comply with the relevant subsection, within a specified period;
  - (b) if the work is still in progress, to cease the work; and
  - (c) to remove all such work as does not comply with these By-laws.

**36. Persons permitted to do installation and other work.—**

- (1) No person who is not a qualified plumber may be permitted to—
  - (a) do any installation work other than the replacement or repair of an existing pipe or water fitting;
  - (b) replace a fixed water heater or its associated protective devices;
  - (c) inspect, disinfect or test a water installation, fire installation or storage tank;
  - (d) service, repair or replace a back flow preventer; or

- (e) install, maintain or replace a meter provided by an owner in a water installation.
- (2) No person may require or engage a person who is not a qualified plumber to do the work referred to in subsection (1).
- (3) Notwithstanding the provisions of subsection (1), the Council may permit a person who is not a qualified plumber to do installation work on his or her own behalf on premises owned and occupied solely by himself or herself and his or her household, provided that such work may be required to be inspected and approved by a qualified plumber at the direction of the Council.

**37. Provision and maintenance of water installation.—**

- (1) An owner shall provide and maintain his or her water installation at his or her own cost and, except where permitted in terms of these By-laws, shall ensure that the installation is situated within the boundary of his or her premises.
- (2) Before doing work in connection with the maintenance of a portion of his or her water installation which is situated outside the boundary of his premises, an owner shall obtain the written consent of the Council or the owner of the land on which such portion is situated, as the case may be.

**38. Technical requirements for a water installation.—**

- (1) Notwithstanding the requirement that a certificate be issued in terms of section 35 (3) (c), all water installations shall comply with SABS Code 0252 Part I and all fixed electrical storage water heaters shall comply with SABS Code 0254.
- (2) In addition to any requirement of SABS Code 0252 Part I, the consumer shall, at his or her own expense, or the Council may in its discretion and at the consumer's expense, and for the consumer's exclusive use, provide and install a stop-cock at a suitable point inside the boundary of the premises on the consumer's side of the meter leading to the water installation.

**39. Use of pipes and water fittings to be authorised.—**

- (1) No person may, without the prior written permission of the Council, install or use a pipe of water fitting in a water installation within the Council's area of jurisdiction unless it is of a type that is included in the schedule of approved pipes and fittings as compiled by the Council.
- (2) Application for the inclusion of a type of pipe or water fitting in the schedule referred to in subsection (1), shall be made on the form pre scribed by the Council and be accompanied by the prescribed fees.
- (3) A type of pipe or water fitting may be included in the schedule referred to in subsection (1) if—
  - (a) it bears the standardization mark of the South African Bureau of Standards in respect of the relevant SABS specification issued by the Bureau; or
  - (b) it bears a certification mark issued by the SABS to certify that the type of pipe or water fitting complies with an SABS mark, specification or a provisional specification issued by the SABS: Provided that no certification marks shall be regarded as valid if issued more than two years previously.
- (4) The Council may, in respect of any type of pipe or water fitting included in the schedule, impose such additional conditions as it may deem necessary in respect of the use or method of installation thereof.

- (5) A type of pipe or water fitting may be removed from the schedule if it—
  - (a) no longer complies with the criteria upon which its inclusion was based; or
  - (b) is no longer suitable for the purpose for which its use was accepted.
- (6) The current schedule referred to in subsection (1) shall be available for inspection at the office of the Council at any time during working hours.
- (7) The Council may sell copies of the current schedule at the prescribed fees.

**40. Unlawful water installation work.**—where any installation work has been constructed in contravention of the provisions of these By-laws, the owner shall on receiving a compliance notice by the Council, carry out such alterations to the installation as prescribed in the notice.

**41. Labelling of terminal water fittings and appliances.**—

- (1) A terminal water fitting and appliance using or discharging water shall be marked, or have included within the packaging of the item, the following information—
  - (a) the range of pressure in kPa over which the water fitting or appliance is designed to operate; and
  - (b) the flow rates, in litres per minute, related to the design pressure range, including at least the following water pressures—
    - (i) 20 kPa;
    - (ii) 100 kPa; and
    - (iii) 400 kPa.

**42. Owner to prevent pollution of water.**—(1) An owner shall provide and maintain effective measures to prevent the entry of any substance or matter, which may be a danger to health or may adversely affect the portability of water or affect its fitness for use, in—

- (2) the water supply system or plant; and
- (3) any part of the water installation on his or her premises.

**42A. Protection of water supply system.**—(1) The owner shall take such measures as may be required by the Council to prevent the backflow of water from the water installation to the water supply system in the case of—

- (a) a fire or combined installation on premises; and
- (b) a general installation serving the following activities—
  - (i) medical treatment of people or animals;
  - (ii) medical, pharmaceutical or chemical research and manufacturing;
  - (iii) agriculture, including dairies and nurseries;
  - (iv) photographic processing;
  - (v) laundering and dry-cleaning;
  - (vi) metal plating;
  - (vii) treatment of skins and hides; and
- (c) a general installation serving—
  - (i) mortuaries;
  - (ii) abattoirs;
  - (iii) sewage purification works;
  - (iv) refuse processing plants;
  - (v) oil processing and storage facilities;
  - (vi) wineries, distillers, breweries, yeast and cold drink factories;

- (vii) sports facilities; or
  - (viii) any other premises on which an activity is carried out which in the opinion of the Council is likely to cause a danger to health or affect the potability of water in the event of a substance resulting from such activity entering the water supply system; and
  - (d) a general installation on any premises after a compliance notice by the Council to do so.
- (2) The measures required in terms of subsection (1) may include—
- (a) the discharge of water from the service pipe into a storage tank through an air gap; or
  - (b) the passing of water through—
    - (i) a reduced pressure backflow preventer; or
    - (ii) a double check backflow preventer; or
  - (c) any other measures approved by the Council which achieve the same purpose.

**42B. Design and installation of backflow preventer.**—A backflow preventer contemplated in section 42A shall be designed and installed in accordance with the requirements of SABS Code 0252 Part 1

**42C. Inspection and servicing of backflow preventer.**—

- (1) The owner of premises on which a reduced pressure or double check backflow preventer is installed shall, at his own expense, cause the back-flow preventer to be—
- (a) inspected and serviced not less than once in every 12 months to ensure that it is in working order; and
  - (b) replaced or completely overhauled once in every 5 years.
- (2) The owner shall maintain a record of the inspections and services referred to in subsection (1) in which shall be recorded—
- (a) the name and address of the contractor who carried out the servicing;
  - (b) the date on which the work was done; and
  - (c) the details of the repairs or replacements that were effected.
- (3) The record of inspections shall be kept available for inspection by the Council.

**42D. Protection of water installations.**—

- (1) The owner of any premises shall prevent the back siphonage into his or her water installation of a substance which is likely to cause a danger to health or affect the portability of water, in the case of a terminal water fitting which is so designed that a hose or other flexible pipe is or can be attached to it, which shall include a hose bib-cock, a laboratory tap, and a movable shower unit—
- (a) a fire hose-reel in a combined installation;
  - (b) an underground irrigation system; or
  - (c) any other fitting which may provide contact between polluted water and the water installation.

**43. Water restrictions.**—

- (1) Whenever there is a scarcity of water available for distribution and supply to consumers, the Council may prohibit or restrict the use of water under its control or management, as contemplated in section 241A of the Local Authorities Ordinance (No. 25 of 1974).



(2) Wherever it acts in terms of subsection (1), the Council shall cause a notice of the resolution taken in terms of section 241A (1) of the Local Authorities Ordinance, 1974, to be published in one or more local newspapers, in two of the official languages.

(3) Notwithstanding the provisions of subsections (1) and (2), should an emergency arise in relation to the availability of water for distribution and supply to its consumers, and immediate steps are necessary to avert or remedy any actual or potential consequences of such emergency, the Council may take any steps contemplated in section 241A of the Local Authorities Ordinance, 1974, without taking the resolution contemplated in that section.

**44. Waste of water unlawful.—**

(1) No consumer may permit—

- (a) the purposeless or wasteful discharge of water from terminal water fittings;
- (b) pipes or water fittings forming part of a water installation to leak;
- (c) the use of maladjusted or defective water fittings in a water installation;
- (d) an overflow of water from a water installation to persist; or
- (e) a wasteful use of water to persist.

(2) An owner shall repair or replace any part of his or her water installation which is in such a state of disrepair that it is either causing or is likely to cause an event referred to in subsection (1).

(3) If an owner fails to take measures as contemplated in subsection (2), a designated officer may issue an enforcement notice in connection there with.

(4) Every consumer shall ensure that any equipment or plant connected to his or her water installation uses water in an efficient manner.

**45. Prohibition of use of certain equipment in a water installation.—**A designated officer may, by compliance notice, prohibit the use by a consumer of any equipment in a water installation if, in his or her opinion, its use of water is wasteful, and such equipment shall not be returned to use until its efficiency has been restored, and a written application to do so has been approved by the Council.

**46. Sampling of water.—**

(1) The Council may take samples of water obtained from a source other than the water supply system, and cause the samples to be tested for compliance with the requirements referred to in section 49 (2).

(2) The prescribed fees for the taking and testing of the samples referred to in subsection (1) shall be paid by the person to whom approval to use the water for potable water was granted in terms of that section.

**47. Testing of pressure in water supply system.—**The Council shall, on application by an owner and on payment of the prescribed fees, determine and Furnish the owner with the value of the pressure in the water supply system relating to his or her premises, over such period as the owner may request.

**48. Pipe in street or public place.—**No person may, for the purpose of conveying water derived from whatever source, lay or construct a pipe or associated component on, in or under a street, public place or other land owned by, vested in, or under the control of the Council, except with the prior written permission of the Council, and subject to such conditions as may be imposed by it on granting permission.

**49. Use of water from source other than the water supply system.—**

(1) Except with the prior permission of the Council, no person may use or permit the use of water obtained from a source other than the water supply system, other than rain water tanks which are not connected to the water installation, and in accordance with such conditions as the Council may impose, for domestic, commercial or industrial purposes, and except with the approval of any other authority required by any law.

(2) Any person requiring the permission referred to in subsection (1) shall, at his or her own cost, provide the Council with proof to its satisfaction that the water referred to in that section complies or will comply with the requirements of SABS Code 241:1999 (Fourth Edition): Drinking Water, and any other requirement contained in these By-laws or any other law applicable to the consumption of water, or that the use of such water does not, or will not, constitute a danger to health.

(3) Any permission given in terms of subsection (1) may be withdrawn if, in the opinion of the Council—

(a) a condition imposed in terms of that subsection is breached; or

(b) the water no longer conforms to the requirements referred to in subsection (2).

(4) If water obtained from a borehole or other source of supply on any premises is used for a purpose which gives rise to the discharge of such water or a portion thereof into the sewage disposal system, the Council shall install a meter and any necessary monitoring equipment in the pipe leading from such borehole or other source of supply to the point or points where it is so used.

(5) The provisions of section 30 shall apply insofar as they may be applicable in respect of any meter referred to in subsection (4).

**50. Special provisions for fire services.—**

(1) Any water installation for the provision of water for fire fighting purposes, shall comply with the provisions of SABS Code 0252-1:1994 or any revision or substitution thereof.

(2) Notwithstanding the provisions of subsection (1), the special provisions contained in sections 51 to 61 inclusive apply, insofar as they are applicable, to the supply of water for fire fighting purposes.

**51. Payment for fire services.—**The consumer and the owner of the premises are jointly and severally liable to pay the fees determined by the Council, in respect of any fire extinguishing installation or appliance used or installed upon such premises.

**52. Dual and combined installations.—**(1) Any new building erected after the adoption of these By-laws shall comply with the following requirements in relation to the provision of fire extinguishing services—

(a) if, in the opinion of any officer or employee of the Council charged with the approval of plans, boosting of the system is required, either in terms of ensuring adequate pressure or supply of water for the purposes which the system is intended to meet, a dual pipe system shall be used, one for fire extinguishing purposes and the other for general domestic purposes;

(b) combined installations, in which the same pipes and fittings are used for fire extinguishing and general domestic purposes, are only permitted where no booster pumping connection is provided on the water installation;

(c) in the circumstances contemplated in paragraph (b), a fire hydrant shall be provided by the Council, at the consumer's expense, within 90 metres of the property to provide

- a source of water for the use of the crew of any fire tender sent to extinguish a fire; and
- (d) all pipes and fittings shall be capable of handling pressures in excess of 1 015 kPa, which could be expected when boosting takes place and shall be designed to maintain their integrity when exposed to fire conditions.

**53. Connection pipes for fire extinguishing services.—**

- (1) A single connection to the water supply system, to serve a connection pipe for a fire installation, excluding a sprinkler system, may be provided by the Council.
- (2) The Council may provide and install at its cost a meter on the connection pipe referred to in subsection (1).
- (3) Where, there is an existing connection pipe for the sole purpose of fire extinguishing services, such connection pipe may only be used for that purpose.
- (4) No take-off of any kind from any connection pipe referred to in subsection (3) may be made, nor may any water therefrom be used except in connection with an automatic sprinkler and drencher, a hydrant connection or a hose-reel connection, or for any pressure tank connection therewith, and such tank shall be controlled by an approved fitting.
- (5) A separate connection pipe shall be laid and used for every fire sprinkler extinguishing system, unless otherwise approved.

**54. Valves in connection pipe.—**

- (1) Every connection pipe shall be fitted with a proper gate valve, which shall be—
  - (a) supplied by the Council at the expense of the consumer;
  - (b) installed between the consumer's property and the main;
  - (c) of the same diameter as the connection pipe; and
  - (d) installed in such position as may be specified by the Council.

**55. Inspection and approval of fire extinguishing installation.—**

- (1) No water may be supplied to any fire extinguishing installation until—
  - (a) it has been inspected and tested by the Council;
  - (b) the Council has certified in writing that such water installation is complete and complies with the requirements of these By-laws; and
  - (c) the fees determined by the Council for such inspection and testing have been paid.

**56. Connection to be at the pleasure of the Council.—**

- (1) The Council is entitled, in its absolute discretion, to grant or refuse an application for the connection of a fire extinguishing installation to its main.
- (2) If in its opinion a fire extinguishing installation which it has allowed to be connected to its main is not being kept in proper working order or is otherwise not being properly maintained, or is being used in contravention of sections, 53 (3) or 53 (4), the Council is entitled either to require the installation to be disconnected from the main, or itself to carry out the work of disconnecting it at the expense of the owner or consumer, as the case may be.

**57. Meter in fire extinguishing connection pipe.—**

(1) The Council is entitled to install a water meter in any connection pipe used solely for fire extinguishing purposes, and the owner of the premises will be liable for the whole of the cost of so doing. And for any water consumption registered by such meter.

**58. Sprinkler extinguishing installation.—**

(1) A sprinkler installation may be installed in direct communication with the main, but the Council is not bound to guarantee any specified pressure at any time.

**59. Header tank or double supply from main.—**

(1) Unless a sprinkler installation is provided with a duplicate or reserve supply from a separate main, the consumer shall install a header tank on or in the building or structure at such elevation as will compensate for any failure or reduction of pressure in the Council's main.

(2) The main pipe leading from such header tank to the sprinkler installation may be in direct communication with the main from which the principal supply of water is drawn, provided that such main pipe shall be equipped with a reflux valve which, if the pressure in the main fails or is reduced for any reason, will shut off the opening to the main.

(3) Where a sprinkler Installation is provided with a duplicate or reserve supply from a separate main, each supply pipe shall be equipped with a reflux valve situated within the premises.

**60. Sealing of private fire hydrants.—**

(1) Except in the case of a fire installation supplied through a connection pipe fitted with a meter, a private hydrant and hose-reel shall be sealed by the Council and such seal may not be broken by any person other than the Council in the course of servicing and testing, except for the purpose of opening the hydrant in the case of fire.

(a) Every owner or consumer shall give the Council at least 48 hours' notice of his or her intention to cause a fire extinguishing installation to be serviced and tested.

(2) The cost of resealing a hydrant and hose-reel referred to in subsection (1) (a), shall be borne by the consumer except when such seal is broken by the Council's employee for testing purposes.

(3) Any water consumed after the breaking of the seal referred to in subsection (2), other than in the course of testing by the Council or in the course of fighting a fire, shall be paid for by the consumer at the fees determined by the Council for domestic purposes.

(4) The quantity of water consumed as contemplated in subsection (3), shall be determined by the Council.

### **CHAPTER 3: SANITATION SERVICES**

**61. Objectionable discharge to sewage disposal system.—**

(1) No person may discharge, or cause or permit the discharge or entry into any sewer of any sewage, industrial effluent or other liquid or substance—

(a) which may be offensive to, or may cause a nuisance to the public;

(b) which is in the form of steam or vapour or has a temperature exceeding 44 degrees Celsius at the point where it enters the sewer;

(c) which has a pH value less than 6,5;

- (d) which contains any substance of whatsoever nature likely to produce or give off explosive, flammable poisonous or offensive gases or vapours in any sewer;
  - (e) which contains any substance having an open flashpoint of less than 65 degrees Celsius or which gives off a poisonous vapour at a temperature below 65 degrees Celsius;
  - (f) which contains any material of whatsoever nature, including oil, grease, fat or detergents capable of causing an obstruction to the flow in a sewer, to a drain or interference with the proper operation of a sewage treatment plant;
  - (g) which may inhibit the unrestricted conveyance of sewage through the sewage disposal system;
  - (h) which contains any substance in such concentration as is likely in the final treated effluent from any sewage treatment plant to produce an undesirable taste after chlorination, or an undesirable odour or colour, or excessive foam—
    - (i) which contains any substance listed in Schedule A hereto – in amounts higher than those specified therein;
    - (ii) which may harm or damage any sewer, mechanical appliance, sewage treatment plant or equipment;
    - (iii) which may prejudice the use of sewage effluent for re-use; or
    - (iv) which may adversely affect any water into which treated sewage effluent is discharged, or any land or crop irrigated with the sewage effluent;
  - (i) which contains any substance of whatsoever nature which—
    - (i) which is not amenable to treatment at the sewage treatment plant; or
    - (ii) causes or may cause a breakdown or inhibition of the normal sewage treatment processes; or
    - (iii) is of such nature as is or may be amenable to treatment only to such degree as to result in the final treated effluent from the sewage treatment plant not complying in all respects with any requirements imposed in terms of the National Water Act; and
  - (j) whether listed in Schedule A to this Chapter or not, either alone or in combination with other matter may—
    - (i) generate or constitute a toxic substance dangerous to the health of a person employed at the sewage treatment plant, or entering a Council sewer or manhole in the course of his or her duty; or
    - (ii) adversely affect the equipment of the sewage treatment plant or the land used for the disposal of treated sewage effluent; or
    - (iii) adversely affect any process whereby sewage is treated or wherein any re-use of sewage effluent is permitted.
- (2) No person may cause or permit any solid, liquid or gaseous substance, other than stormwater to enter—
- (a) any stormwater drain, stormwater sewer or excavated or constructed water course;
  - (b) any river, stream, or natural water course or any public water, whether ordinarily dry or otherwise, except in accordance with the provisions of the National Water Act; or
  - (c) any street or premises.
- (3) No person shall cause or permit any stormwater to enter the sewage disposal system.

(4) An authorized official may require any owner of premises from which there is a discharge of any sewage, industrial effluent, or any substance referred to in subsection (1), to conduct at his or her cost periodic expert inspections of the premises, in order to identify precautionary measures which would ensure compliance with these By-laws, and report such findings to the Council.

(5) If any contravention of any provision of subsection (1) takes place on any premises, or elsewhere, the owner of such premises, or any person aware of the contravention shall as soon as possible notify the Council of the details of the contravention and the reason for it.

**62. Specified on-site sanitation.—**

(1) Any drainage installation constructed or installed shall comply with any applicable specifications in terms of the Building regulations and any standards prescribed in terms of the Act.

(2) Where the draining installation is a pit latrine, it shall be of the ventilated improved pit latrine type and conform to the specification of the Council, as amended from time to time.

(3) No conservancy tank, septic tank/french drain or any other on-site sanitation system may be installed on a premises without written permission from Council, who may grant such permission subject to any conditions which may apply.

**63. Services associated with on-site sanitation services.—**

(1) The removal or collection of conservancy tank contents or the emptying of pits will be based on the volume removed by vacuum tanker or otherwise.

(2) However, the Council may, after written application and at its discretion and on such conditions as it may prescribe, allow private persons to carry out such services within its area of jurisdiction.

**64. Charges in respect of services associated with on-site sanitation services.—**

(1) Charges in respect of the removal or collection of conservancy tank contents or the emptying of pits will be based on the volume removed by vacuum tanker or otherwise.

(2) If the volume of the conservancy tank contents or the emptying of pits cannot be quantified, the Council may charge a fixed charge as prescribed.

**65. Disused conservancy and septic tanks.—**

(1) If an existing conservancy tank or septic tank is no longer required for the storage or treatment of sewage, or if permission for such use is withdrawn, the owner shall either cause it to be completely recovered, or to be completely filled with earth or other suitable material, and the land involved to be rehabilitated.

(2) The Council may require the tank referred to in subsection (1) to be otherwise dealt with or it may permit it to be used for some other purpose, subject to such conditions as may be considered necessary, regard being had to all the circumstances of the case.

**66. Provision of a connecting sewer.—**

(1) If an agreement for the use of the sanitation system exists and no connecting sewer exists in respect of any premises, the owner shall immediately make application on a form approved by Council and pay the prescribed charge for the installation of such a connecting sewer by Council.



(2) If an application is made for use of the sanitation system to a premises which is so situated that it is necessary to extend the sewer in order to connect the sanitation system to the premises, Council may agree to the extension, subject to such conditions as it may impose.

(3) Should an on-site sanitation system be located on a premises, and a sanitation system is constructed by the Council, such that the said premises can now be served by the said system, the owner of the premises shall, within six (6) months of receiving written notification from the Council—

- (a) make application for a connecting sewer in accordance with subsection (1); and
- (b) abandon the on-site sanitation system on the premises once the connecting sewer has been made.

**67. Location of connecting sewer.—**

(1) A connecting sewer provided and installed by the Council in terms of section 66, shall—

- (a) be located in a position and of a size determined by the Council, and
- (b) terminate at a connection point approximately 1 meter inside the premises from the boundary of the land owner or controlled by the Council, or over which it has a servitude or other right of way.

(2) In determining the location of a connecting sewer, the Council shall ensure that the owner is aware of—

- (a) practical restrictions that may exist regarding the location of a connecting sewer;
- (b) the cost implications of the various possible locations of the connecting sewer;
- (c) whether or not the Council requires the owner to fix the location of the connecting sewer by providing a portion of his or her sewer installation at or outside the boundary of his or her premises, or such agreed position inside or outside his or her premises where the connection is required, for the Council to connect to such installation.

(3) Where an owner is required to pump sewage from his or her premises into the sanitation system as provided for in terms of the Building Regulations, the rate and time of discharge into the sewer shall be subject to the approval of the Council.

**68. Provision of one connecting sewer for several consumers on same premises.—**

(1) Notwithstanding the provisions of section 66 only one connecting sewer to the sanitation system may be provided for the disposal of sewage from any premises, irrespective of the number of consumer units of consumers located on such premises.

(2) Notwithstanding subsection (1), the Council may authorise that more than one connecting sewer be provided onto the sanitation system for the disposal of sewage from any premises comprising several consumer units if, in the opinion of the Council, undue hardship or inconvenience would be caused to any consumer on such premises by the provision of only one connecting sewer.

(3) Where the provision of more than one connecting sewer is authorised by the Council, under subsection (2), the tariffs and charges for the provision of a connecting sewer is payable in respect of each connecting sewer so provided.

**69. Interconnection between premises.—**Every owner of premises shall ensure that no interconnection exists between the drainage installation on his or her premises and any drainage installation on other premises, unless he or she has obtained the prior written

permission of the Council and complies with any conditions that may have been imposed in granting such permission.

**70. Disconnection of drainage installation from connecting sewer.**—The Council may disconnect a drainage installation from the connecting sewer and seal the opening to the sewer so made and recover from the owner the fees determined by the Council, if—

- (1) notified in writing by the owner when a drainage installation is to be disconnected from a connecting sewer; or
- (2) the building on the premises concerned has been demolished.

**71. Approval of drainage work.**—

- (1) No person may construct, reconstruct, alter, add to or make any permanent disconnection in or of any drainage installation without first having obtained the permission of the Council in writing.
- (2) No drainage work mentioned in subsection (1) for which permission has been given in terms of these By-laws, may be commenced until after the expiration of two clear days after notice in writing has been served on the Council stating the day on and time at which it is intended to commence the work.
- (3) Before any part of a drainage installation is permanently covered or otherwise rendered practically inaccessible to visual inspection, it shall be inspected and approved by the Council.

**72. Unlawful drainage work.**—

- (1) Where any drainage work has been constructed without complying with the provisions of these By-laws concerning the submission and approval of plans, the owner shall, subject to the provisions of Chapter 5, on receiving a compliance notice from a designated officer, comply with the said provisions within the period prescribed in that notice.
- (2) Where any drainage installation has been constructed or any drainage work has been carried out which fails in itself in any respect to comply with any of these By-laws other than those referred to in subsection (1), the owner shall, on receiving a compliance notice from the Council, and notwithstanding that he or she may have received approval of the plans in respect of the said installation or work in terms of these By-laws, carry out such alterations to the installation, remove such parts thereof, and carry out such other work as and within the time which the notice may specify.
- (3) The Council shall, subject to the provisions of Chapter 5, where such a notice has not been complied with within the time prescribed therein, proceed itself to carry out any such alteration, removal or other work as it may deem necessary for compliance with these By-laws and recover the cost thereof from the owner.

**73. Ingress of stormwater into drainage installation prohibited.**—

- (1) No part of a drainage installation may at any time be constructed or designed to allow or be capable of allowing water from any source, not being soil water or waste water, both as defined in the national regulations published in Government Notice R 2378 of 12 October 1990, as amended, to enter the drainage installation.
- (2) No person may discharge or cause or permit to be discharged any substance other than sewage into a drainage installation.

(3) No pipe, channel or other device used for conducting or capable of being used to conduct rainwater from any roof or other surface may be permitted to discharge into any gully forming part of a drainage installation.

(4) Should the Council at any time become aware of any installation which does not comply with the provisions of subsections (1), (2) or (3) or that any provision thereof has or is being contravened it may, subject to the provisions of section 76 and Chapter 6, carry out such alterations to the installation as it may deem necessary to ensure compliance with the provisions of those sections and recover from the owner the costs or the prescribed fees as determined by the Council. In addition, the owner shall be liable to pay to the Council the cost imposed on it by Umgeni Water as a result of a contravention of this by-law in accordance with any tariffs adopted by it in accordance with the provisions of section 75A of the Local Government: Municipal Systems Act, (Act No. 32 of 2000), and provided that such tariffs contain an objective method or criteria for the estimation of such cost, such tariffs may also provide for the estimation of such cost.

**74. Emission of gas.**—When a nuisance exists or could exist, owing to the emission of gas from any trap or sanitary fitting or any other part of a drainage installation, the Council may require the owner, at his or her own expense; to take such action as may be necessary to prevent such nuisance.

**75. Industrial grease traps.**—

(1) Industrial effluent which contains or, in the opinion of the Council, is likely to contain, grease, oil, fat or inorganic solid matter in suspension, shall, before it is allowed to enter any sewer, be passed through one or more tanks or chambers of approved type, size and capacity designed to intercept and retain such grease, oil, fat or solid matter.

(2) Oil, grease or any other substance which is contained in any industrial effluent or other liquid which gives off a flammable or noxious vapour at a temperature of or exceeding 20 degrees Celsius, shall be intercepted and retained in a tank or chamber so as to prevent the entry thereof into the sewer.

(3) The tank or chamber shall be regularly cleaned of such grease, oil, fat or solid matter and the person discharging effluent to the tank or chamber shall maintain a register in which shall be recorded—

- (a) the dates on which the tank or chamber was cleaned;
- (b) the name, address, and telephone number of the company employed to clean the tank or chamber; and
- (c) a certificate from the person who undertook the cleaning, certifying the cleaning of the tank or chamber, and stating the manner in which the contents of the tank or chamber were disposed of.

**76. Mechanical appliances for lifting sewage.**—

(1) Where any part of a building or premises is at such a level in relation to the sewer that a drainage installation serving that part cannot discharge into the sewer by gravitation, the Council may, subject to subsections (2) and (4) and to any other conditions it may deem necessary, permit the sewage from such part to be raised by a mechanical appliance to discharge at such point and such level as it may determine.

(2) Before installing any mechanical appliance for the raising or transfer of sewage, the owner shall apply in writing to the Council for permission to do so, and shall thereafter furnish such additional information as the Council may require.

(3) Drawings of the proposed installation shall be completed and signed by a professional engineer, and the owner of the premises.

(4) The maximum discharge rate from any mechanical appliance, and the times between which the discharge may take place, shall be as prescribed by the Council which may, at any time, require the owner to install such fittings and regulating devices as may be necessary to ensure that the said prescribed maximum discharge rate will not be exceeded.

**77. Drain in street or public place.**—No person may, for the purpose of conveying sewage derived from whatever source, lay or construct a drain on, in or under a street, public place or the land owned by, vested in, or under the control of the Council, except with the prior written permission of the Council and subject to such conditions as it may impose.

**78. Construction by Council of drainage work.**—The Council may agree with the owner of any premises that any drainage work which such owner desires or is required to construct in terms of these By-laws or the building regulations, will be constructed by the Council against payment, in advance, of all costs associated with such construction, and such agreement does not absolve the owner from complying with the requirements of any other law in respect of such construction work.

**79. Maintenance of drainage installation.**—

(1) The owner or occupier of any premises shall maintain any drainage installation and any sewer connection on such premises.

(2) The Council itself is entitled, whether or not it has been requested by the owner to do so, at its own discretion to remove a blockage from a drainage installation and may charge the owner therefor in accordance with the prescribed fees determined by the Council.

(3) Should the clearing by the Council of any blockage in a drainage installation necessitate the removal or disturbance of any paving, lawn or other artificial surfacing on any premises, the Council shall not be liable for the reinstatement thereof.

(4) Should any drainage installation on any premises overflow as a result of an obstruction in the connecting sewer, and the Council be reasonably satisfied that such obstruction was caused by objects emanating from the drainage installation, the owner of the premises served by the drainage installation is liable for the cost of clearing the blockage in accordance with the prescribed fee determined by the Council.

(5) Where a blockage has been removed from a drain or portion of a drain which serves two or more pieces of land, the charges for clearing of such blockage are recoverable in the first place in equal portions from each of the owners thereof, who are, however, ultimately jointly and severally liable for the whole charge.

(6) The Council may, on the written application of the owner or occupier of any premises, inspect and test the drainage installation of such premises or any section thereof, and recover from the owner or occupier the cost of such inspection and test, calculated at the rate specified in the prescribed tariff of charges.

**80. Installation of pre-treatment facility.**—The Council may require that any premises which require connection to a sewage disposal system for the first time shall be provided with a minimum pre-treatment facility of a type specified by it prior to those premises being connected to the sewage disposal system.

**81. Protection from ingress of flood water.**—Where premises constructed within, or any portion of a property lie within the 1 in 50 years flood plain, the top level of any manhole, inspection chamber and gully located below the level of such flood plain shall be above the 1 in 50 years flood level, except in the case of a manhole and inspection chamber the cover of which is secured in place by approved means.

#### **CHAPTER 4 :DISPOSAL OF INDUSTRIAL EFFLUENT AND TRADE PREMISES**

**82. Application for disposal of industrial effluent.**—

(1) A person shall apply for permission to discharge industrial effluent into the sanitation system.

(2) An application for permission to discharge industrial effluent into the sanitation system shall be accompanied by—

- (a) a written consent from the owner of the premises, where the applicant is not the owner thereof;
- (b) such plans, in triplicate, and such other particulars as are necessary to describe the premises, drainage system and any works, apparatus or plant from which the industrial effluent is to be discharged and to identify the sewer to which the discharge is to be made and the point of discharge;
- (c) particulars of the anticipated nature, composition, temperature, volume and rate of discharge of, and the proposed method of any treatment of the industrial effluent and the period or periods during which the industrial effluent is to be discharged;
- (d) a general description of the process or activity giving rise to the discharge;
- (e) a description of the techniques to be used for preventing the discharge into any environmental medium of such industrial effluent;
- (f) proposals for monitoring the discharge of such industrial effluent;
- (g) any additional information which the applicant wishes the Council to take into account in considering the application; and
- (h) a nominated address at which the applicant agrees to accept service of all notices contemplated in these By-laws.

(3) Simultaneously with the making of an application contemplated in section 82 (2), the applicant shall publish in a newspaper designated by the Council, notice of such application.

(4) A notice under subsection 3 shall contain, as a heading, the words “Discharge of Industrial

Effluent” and shall—

- (a) state the name of the applicant;
- (b) give a general description of the industrial effluent;
- (c) state the nature of the trade or industry;
- (d) state the name and location of the premises from which the industrial effluent is to be discharged;
- (e) state the place at which, and period during which the application may be inspected; and

- (f) state the date by which, and the place at which objections may be lodged.
- (5) The application shall lie for inspection by interested parties in a designated office of the Council for a period of fourteen (14) days after publication of the notice. (6) Where notice of any application has been published under subsection (3), any person having an interest in the matter may, within 14 (fourteen) days after the date of such publication, lodge any objections or representations in writing addressed to the municipality, stating—
- (a) the person's name and address;
  - (b) the person's interest in the matter;
  - (c) the matter in respect of which the person is objecting to the application or in respect of which a representation is being submitted;
  - (d) the grounds for objection or representations; and
  - (e) whether or not a hearing is requested.
- (7) The Council shall consider every application and any objection thereto and shall consult any persons and authorities as he or she deems necessary for the purposes of considering such application and any objections thereto.
- (8) Every applicant and objector shall, during the consideration of an application and any objection thereto, be entitled to attend before the Council in person, or, if such person is a body corporate, to be represented by a person authorised thereto by such body corporate and shall be entitled to be heard.
- (9) The Council shall, if requested by the applicant or any other objector, and may, if he or she considers it necessary, convene a hearing in which event he/she shall give notice thereof to the applicant and every objector of the date, time and place of the hearing.
- (10) Any interested person may inspect any documents relevant to the application until the application is determined.
- (11) The Council may, if in its opinion the capacity of a sanitation system is sufficient to permit the conveyance and effective treatment and lawful disposal of the industrial effluent, it will, for such period and subject to such conditions it may impose, grant written permission to discharge industrial effluent.
- (12) Any person who wishes to construct or cause to be constructed, a building which shall be used as a trade premises, shall at the time of lodging a building plan in terms of section (4) of the National Building Regulations and Building Standards Act, also lodge applications for the provision of sanitation services and for permission to discharge industrial effluent in terms of subsection (2).
- (13) Any permission granted by the Council in terms of section 82 shall—
- (a) be personal to the applicant;
  - (b) terminate two years from the date of grant or such lesser period as the Council may stipulate when granting the permission; and
  - (c) not be ceded, assigned or otherwise transferred without the written permission of the Council.
- (14) A person to whom such permission is granted shall pay to the Council any prescribed tariffs and charges as determined from time to time.

**83. Unauthorised discharge of industrial effluent.**—(1) No person shall discharge or cause or permit to be discharged into the sanitation system any industrial effluent, except with and in terms of the written permission of the Council, and in accordance with all provisions of this permission.



**84. Quality standards for disposal of industrial effluent.—**

(1) A person to whom permission has been granted in terms of section 82 shall ensure that no industrial effluent is discharged into the sanitation system of the Council, unless it complies with the standards and criteria set out in Schedule A hereto.

(2) The Council may, by writing into the permission concerned, relax or vary the standards in Schedule A, provided that the Council is satisfied that any such relaxation represents the best practicable environmental option.

(3) In determining whether relaxing or varying the standards in Schedule A represents the best practicable environmental option a Council will consider—

(a) whether the applicant's undertaking is operated and maintained at optimal levels;

(b) whether technology used by the applicant represents the best available option to the applicant's industry and, if not, whether the installation of such technology would entail unreasonable cost to the applicant;

(c) whether the applicant is implementing a programme of waste minimisation which complies with national and local waste minimization standards to the satisfaction of the Council;

(d) the cost to the Council of granting the relaxation or variation; and

(e) the environmental impact or potential impact of such a relaxation or variation

(4) Test samples may be taken at any time by a duly qualified sampler to ascertain whether the industrial effluent complies with Schedule A or any other standard laid down in a written permission.

**85. Conditions for disposal of industrial effluent.—**

(1) The Council may, in the written permission or at any time, by written notice, require a consumer to—

(a) subject the industrial effluent to such preliminary treatment as in the opinion of the Council, will ensure that the industrial effluent conforms to the standards prescribed in Schedule A, provided that it does not unduly endanger the health and safety of persons working in the sewer, and will render it innocuous to the materials of which the sewer is constructed and to the plant and equipment of the sewage treatment plants, before being discharged into the sanitation system;

(b) will be necessary to control the rate and time of discharge into the sanitation system in accordance with the conditions imposed by it, or to measure the quantity of industrial effluent discharged from premises;

(c) install for the conveyance of his or her industrial effluent into the sanitation system at a given point, a drainage installation separate from the drainage installation for waste water and standard domestic effluent and may prohibit such person from disposing of his or her industrial effluent at any other point and from disposing of his or her waste water and standard domestic effluent by means other than into the sanitation system;

(d) construct on any pipe conveying his or her industrial effluent to any sewer, a manhole or stop-valve in such position and of such dimensions and materials as the Council may prescribe;

(e) provide all such information as may be required by the Council, to enable it to assess the tariffs or charges due;

(f) install equipment and the like, and to provide adequate facilities such as level or overflow detection devices, standby equipment, overflow catch-pits, or other appropriate means to prevent a discharge into the sanitation system which is in

- contravention of these By-laws, or to otherwise ensure compliance with these By-laws;
- (g) cause any meter, gauge or other device installed in terms of this section to be calibrated by an independent authority at the cost of that person at such intervals as required by the Council, and copies of the calibration to be forwarded to it; and
  - (h) cause such industrial effluent to be analysed as often and in such manner as may be prescribed by the Council, and provide it with the results of these tests when completed.
- (2) The cost of any treatment, plant, works or analysis which the permit holder may be required to carry out, construct or install in terms of subsection (1), shall be borne by the consumer concerned.
- (3) The written permission of the Council shall be obtained for any proposed changes to the composition of industrial effluent discharged into the sanitation system.
- (4) In taking samples and conducting tests for the purposes of subsection (1) (e) above, the Council shall—
- (a) notify the owner or occupier of the premises or the person in charge, or apparently in charge of the premises, of his/her presence and his/her intention to take any sample or make any test or measurement and invite such person to be present at the taking of such sample or making of such test or measurement;
  - (b) take one sample of effluent and cause it to be placed in a container for analysis at the laboratory of the Council.

**86. Withdrawal of written permission for disposal of industrial effluent.—**

- (1) The Council may withdraw any permission, after giving at least 14 (fourteen) days' written notice of its intention to a person permitted to discharge industrial effluent into the sanitation system if the person—
- (a) fails to ensure that the industrial effluent discharged conforms to the industrial effluent standards prescribed in Schedule A of these By-laws or the written permission;
  - (b) fails or refuses to comply with any notice lawfully served on him or her in terms of these By-laws or contravenes any provisions of these By-laws or any condition imposed in terms of any permission granted to him or her; and
  - (c) fails to pay the assessed charges in respect of any industrial effluent discharged.
- (2) The Council may, on withdrawal of any written permission—
- (a) in addition to any steps prescribed in these By-laws, and on 14 (fourteen) days written notice authorise the closing or sealing of the connecting sewer of the said premises to any sanitation system for such charge it may determine;
  - (b) refuse to accept any industrial effluent until it is satisfied that adequate steps are or have been taken to ensure that the industrial effluent to be discharged conforms with the standards prescribed in Schedule A; and
  - (c) require the person concerned to take all steps necessary to facilitate the disposal of industrial effluent by other lawful means.

**87. Right of appeal.—**Any applicant for permission to discharge industrial effluent, or any person who is dissatisfied with any decision taken by the Council relating to a refusal to grant or renewal of such permission, or any conditions attached thereto, or any variation of such conditions, any withdrawal of such permission may, within 30 (thirty) days after being notified of the decision of the Council, lodge a written notice of appeal with the Council in terms of section

23 of these By-laws, provided that notwithstanding any such appeal, any drainage connection closed or sealed shall remain closed or sealed.

**88. Obligations of a holder of a permission to discharge industrial effluent.—**

(1) Every owner and occupier of premises where industrial effluent, domestic effluent or any other liquid is produced shall prevent any discharge prohibited by Schedule A from entering or being discharged into any sewer, and every holder of a permission, owner and occupier who permits or negligently fails to prevent such entering or discharge, shall be guilty of an offence.

(2) Where it is shown that effluent discharging from any premises at the point where such effluent joins the sewer, does not conform to the limits prescribed in Schedule A, it shall be presumed, until the contrary is proved, that—

- (a) the owner and occupier thereof and the operator of the industry being conducted thereon knew of such discharge;
- (b) the owner and occupier thereof and the operator of the industry being conducted thereon knew that such discharge did not comply with the said limits; and
- (c) the measurements taken of the discharge at said point accurately reflect the measurements of the effluent being discharged from the premises.

(3) The holder of a permission shall not make, or cause or permit to be made, any change to the premises or in the manner of running, using, maintaining or operating the premises or in any operation or process carried on at the premises, which change causes, or is intended or likely to cause, a material increase in the quantity or quality of industrial effluent or both, discharged from the premises, unless prior written approval of the Council has been obtained for such change.

(4) For the Council purposes of subsection (3), changes to the premises include—

- (a) any change in the construction, structure or arrangement of the premises or any building serving the premises;
- (b) any change in the construction, structure, arrangement, alignment, direction or condition of any channelling device, system or facility serving the premises; and
- (c) any change of, to, or in, any plant, machine, process or equipment used or installed at the premises which affects the production or treatment of any effluent.

(5) An application for the approval of any changes as provided for in subsections (3) and (4) shall be made in writing to the Council and the provisions of section 82 shall apply *mutatis mutandis* to such application.

(6) In the event of there being any change in circumstances arising from—

- (a) any changes envisaged in subsection 3;
- (b) the introduction of new or revised standards prescribed by the Council or national legislation;
- (c) any amendment to these By-laws; or
- (d) constraints from the nature and capacity of the treatment processes at the sewage treatment works, the Council may, after the expiration of 60 (sixty) days' written notice to the holder of a permission of his/her intention to do so, amend, modify or revoke such permission or any conditions attached thereto and/or impose additional conditions for the acceptance of any industrial effluent into any sewer or prohibit the discharge of any or all of such industrial effluent into such sewer.

(7) The provisions of section 87 of these By-laws shall apply *mutatis mutandis* to any notification given to an owner or occupier in terms of subsection (6).

(8) The holder of a permission and the owner or occupier of any premises shall ensure that all employees are instructed in procedures to avoid accidental discharges of industrial effluent into a sewer or generally into the environment, to remove, disperse or destroy any industrial effluent so accidentally discharged and to otherwise prevent, abate or mitigate any harmful effects caused by any such accidental discharge of industrial effluent.

(9) (a) The owner and occupier of any premises shall forthwith furnish the Council in writing with any information concerning an accidental discharge of industrial effluent and shall comply forthwith with any requirements of the Council for the prevention, abatement or mitigation of the effects thereof.

(b) The owner and occupier of any premises shall forthwith notify the Council of any rupture or damage to or blockage of any sewer on the premises and take immediate steps to repair such sewer.

(10) The Council shall, if it considers such action necessary, immediately report the circumstances of any such accidental discharge to the operator of the sewage treatment works, and to the council, the action which he/she has taken.

**89. Measurement of quantity of standard domestic effluent discharged.—**

(1) The quantity of standard domestic effluent emanating from a residential unit situated on a single erf is not measured for tariff purposes, and a fixed monthly charge is levied.

(2) For all other residential premises such as flats, simplex/duplex developments and the like, as well as commercial and institutional premises, the quantity of standard domestic effluent discharged shall be determined by a percentage of water supplied by the Council which, in its opinion and in the light of the available information, reflects the proportion between the likely quantity of sewage discharged from the premises and the quantity of water supplied thereto.

(3) Where a premises is supplied with water from a source other than or in addition to the Council's water supply system, including abstraction from a river or borehole, the quantity of standard domestic effluent will be a percentage of the total water used on that premises as may be reasonably estimated by the Council.

**90. Measurement of quantity of industrial effluent discharged.—**

(1) The quantity of industrial effluent discharged into the sewage disposal system shall be determined—

(a) where a measuring device is installed by the quantity of industrial effluent discharged from a premises as measured through that measuring device; or

(b) until such time as a measuring device is installed, by a percentage of the water supplied by the Council, to that premises.

(2) Where a premises is supplied with water from a source other than or in addition to the Council's water supply system, including abstraction from a river or borehole, the quantity will be a percentage of the total water used on that premises as may be reasonably estimated by the Council.

(3) Where a portion of the water supplied to the premises forms part of the end product of any manufacturing process or is lost by reaction or evaporation during the manufacturing process or for any other reason, the Council, may on application reduce the assessed quantity of industrial effluent.

(4) In cases where, in the opinion of the Council, the method of calculation of the charges payable in terms of the Council's tariff of charges does not, for any reason, give an adequate

estimate of treatability of the industrial effluent, the Council shall be entitled to adopt any other scientific method of assessing the treatability of the industrial effluent and may also enter into a special agreement with the applicant or holder of the permission concerned whereby an alternative method of assessing the treatability of the industrial effluent and of calculating the industrial effluent charge is adopted.

(5) Unless the Council shall in any particular case agree otherwise in writing with the holder of the permission concerned, charges payable in terms of the Council's tariff of charges shall be levied monthly.

(6) If a meter, whereby the quantity of water consumed on the premises is measured, is proved by the holder of the permission concerned to be defective, the appropriate adjustment shall be made to the quantity of industrial effluent discharged when calculated as prescribed by subsection (1). In the absence of such proof, the meter shall be deemed to operate accurately.

**91. Reduction in the quantity determined in terms of section 90.—**

(1) A person shall be entitled to a reduction in the quantity determined in terms of section 90 in the event that the quantity of water on which the percentage is calculated was measured during a period where water was wasted or a leakage was undetected if the consumer demonstrates to the satisfaction of the Council, that the said water was not discharged into the sanitation system.

(2) The reduction in the quantity shall be based on the quantity of water loss through leakage or wastage during the leak period.

(3) The leak period shall be either the measuring period immediately prior to the date of repair of the leak or the measurement period during which the leak is repaired, whichever results in the greater reduction in the quantity.

(4) The quantity of water loss shall be calculated as the consumption for the leak period less an average consumption, based on the preceding three months, for the same length of time. In the event of no previous consumption history being available, the average water consumption will be determined by the Council, after due consideration of all relevant information.

(5) There shall be no reduction in the quantity if the loss of water directly or indirectly resulted from the consumer's failure to comply with or contravention of these By-laws.

**92. Register of holders of permission to discharge industrial effluent.—**

(1) The Council shall keep a register which shall be available for inspection by the public at all reasonable hours and shall contain the following particulars of every permission granted by the Council under these By-laws and which continues to be in force—

- (a) the date of grant of the permission and the name and address of the person to whom it was granted;
- (b) brief details thereof, including any conditions attached to it;
- (c) the date and brief details of any variations thereto indicating whether the variations were effected in pursuance of an application or otherwise;
- (d) whether the permission was granted or varied in accordance with a direction given by the appeal tribunal; and
- (e) Whether any legal action was taken against the owner or occupier and the outcome thereof.

(2) The particulars specified in subsection (1) shall be entered in the register within 14 (fourteen) days from the grant, or, as the case may be, variation or amendment, of the permission to which they relate.

**93. Liability of holders of permission to discharge industrial effluent.**—Any person who discharges any industrial effluent into the sewer in contravention of these By-laws which damages any component of the sewer or the industrial effluent treatment works or which entails additional treatment costs shall be liable, in addition to prosecution under these By-laws, for the costs of the necessary repairs to the sanitation system and the sewage treatment works and the additional treatment costs thereby incurred.



## SCHEDULE A: ACCEPTANCE OF INDUSTRIAL EFFLUENT FOR DISCHARGE INTO THE SEWAGE DISPOSAL SYSTEM

[Schedule A corrected by MN 36 of 31 March 2011.]

No industrial effluent shall be accepted for discharge into the sewage disposal system unless it complies with the following conditions. The industrial effluent shall not contain concentrations of substances in excess of those stated below—

<b><u>General Quality Limit</u></b>	<b><u>Units</u></b>
1. Temperature (C)	45°C
2. pH	6,5 < pH < 9,5
3. Grease & Mineral Oil, Tar and Tar Oils not dissolved in the aqueous phase	50 mg/l
4. Cobalt (Co)	5 mg/l
5. Animal & Vegetable Oils, Fats or Waxes	250 mg/l
6. Total Sugar & Starch (as Glucose)	1 000 mg/l
7. Sulphates in Solution (SO=4)	250 mg/l
8. Sulphides, Hydrosulphides (as S=) & Polysulphides	25 mg/l
9. Chlorides (as C-)	1 000 mg/l
10. Flouride (as F-)	5 mg/l
11. Phenols (as phenol)	10 mg/l
12. Cyanides (as CN-)	20 mg/l
<b><u>General Quality Limit</u></b>	<b><u>Units</u></b>
13. Suspended Solids	400 mg/l
14. Total Dissolved Solids	5 000 mg/l
15. Electrical Conductivity	400 mSiemens/m
<b><u>Heavy Metal Limits</u></b>	
16. Copper (as Cu)	5 mg/l
17. Nickel (Ni)	5 mg/l
18. Zinc (Zn)	5 mg/l
19. Iron (Fe)	50 mg/l
20. Boron (B)	5 mg/l
21. Selenium (Se)	1 mg/l
22. Manganese (Mn)	50 mg/l
23. Lead (Pb)	5 mg/l
24. Cadmium (Cd)	1 mg/l
25. Mercury (Hg)	1 mg/l
26. Chromium [CR(iii)]	25 mg/l
27. Chromium [CR(vi)]	0 mg/l
28. Arsenic (As)	1 mg/l
29. Titanium (Ti)	20 mg/l
30. Molybdenum (Mo)	1 mg/l
31. Phosphates (P)	20 mg/l
32. Free Saline Ammonia (N)	80 mg/l
33. Total Kjeldahl Nitrogen	100 mg/l

### **Special Limitations**

35. No calcium carbide or any other substance whatsoever liable to give off explosive or offensive gases or vapours in the sanitation system.
36. No radioactive waste or isotopes.
37. No yeast or yeast wastes, molasses spent or unspent.

38. No substance which has an open flash point of less than 65 degrees centigrade or which gives off a poisonous vapour below 65 degrees centigrade.
39. Any substance which, whether alone or in combination with other matter, may in the opinion of the Council, cause a nuisance of any kind to the public or, in particular, injury to, or danger to the health of persons entering the sanitation system or carrying out any work in connection therewith or working at the sewage treatment works, or which may be injurious to the sanitation system, sewage treatment works or any land used for disposal of sludge, or which shall in any way injuriously affect any of the processes whereby sewage is treated or the re-use of treated sewage effluent.

(Editorial Note: Numbering as per original *Provincial Gazette*.)

## CHAPTER 5 : ENFORCEMENT OF THE BY-LAWS AND LEGAL MATTERS

**94. Authorisation of designated officer.**—The Council may authorise any person in its employment or in the employment of a service provider as contemplated in section 76 of the Systems Act, or in the employment of a Water Board as contemplated in the Water Services Act as a designated officer.

**95. Powers of designated officer.**—

- (1) A designated officer who executes work or conducts an inspection may—
  - (a) execute work on or inspect premises;
  - (b) question a person present on any premises in respect of any matter which may be relevant to the work or inspection;
  - (c) question a person whom the designated officer believes may have information relevant to the work or inspection;
  - (d) inspect any document that a person is required to maintain in terms of any law or that may be relevant to any work or inspection;
  - (e) copy any document referred to in paragraph (d) or if necessary, remove the document in order to copy it;
  - (f) take samples of any substance that is relevant to the work or inspection;
  - (g) monitor and take readings or make measurements;
  - (h) take photos or make audio-visual recordings of anything or any person, process, action or condition on or regarding any premises; and do what is necessary for the execution of work or the conducting of an inspection that the Council is required to undertake in terms of these By-laws.
- (2) A designated officer who removes anything other than a substance contemplated in subsection (1) (f) from premises being worked upon or inspected, shall—
  - (a) issue a receipt for it to the owner or a person in control of the premises; and
  - (b) return it as soon as is practicable after achieving the purpose for which it was removed.
- (3) Before commencing work or inspecting any premises, a designated officer shall identify him or herself and explain his or her authority or furnish proof of such authority to the person apparently in control of the premises or the person who gave permission to enter.

**96. Observing fundamental rights.**—A designated officer who enters and executes work or inspects any premises in terms of this Chapter shall do so with strict regard for decency and orderliness and with regard for each person's human rights including the right to dignity, freedom, security and privacy.

**97. Using force to enter.**—

(1) A designated officer may overcome any resistance to entry, execution of work or inspection by using as much force as is reasonably required, including breaking a lock, door or window of the premises to be entered.

(2) Before resorting to force, the designated officer shall audibly demand admission and shall announce his or her purpose, unless he or she reasonably believes that doing so may induce someone to destroy, dispose of, or tamper with, an article or document that is the object of the work or inspection.

(3) The Council shall not be liable compensate anyone who suffers damage because of forced entry during the execution of any work or any inspection when no one responsible for the premises was present.

**98. Designated officer may be accompanied.**—During the execution of any work or an inspection, a designated officer may be accompanied by a member of the South African Police Services or by any other person reasonably required to assist in executing the work or conducting the inspection or overcoming any resistance to entry.

**99. Duty to produce document.**—Any person who holds any document relevant to the execution of any work or inspection contemplated in this Chapter shall produce it at the request of a designated officer.

**100. Duty to answer question and assist designated officer.**—

(1) Any person who is questioned by a designated officer in terms of this Chapter shall answer truthfully and to the best of his or her ability.

(2) An owner or occupier of any premises shall provide any facility and assistance that is reasonably required by a designated officer to perform his or her functions effectively.

**101. Compliance notice.**—

(1) A designated officer who becomes aware that any provision of these By-laws has not been complied with, may issue a compliance notice to the owner or person apparently in control of the relevant premises.

(2) A designated officer who is satisfied that the owner or person apparently in control of any premises has satisfied the terms of a compliance notice may issue a compliance certificate to that effect.

(3) A compliance notice remains in force until a designated officer has issued a compliance certificate in respect of that notice.

(4) A compliance notice shall set out—

(a) the provision that has not been complied with;

(b) details of the nature and extent of non-compliance;

(c) any steps that are required to be taken and the period with which those steps shall be taken; and

- (d) any penalty that may be imposed in terms of these By-laws in the event of non-compliance with these steps.

**102. Complaints against persons other than the Council or service provider.—**

- (1) Anyone may lodge a complaint with a designated officer, either directly or through any other channel established by the Council, that another person—
  - (a) is likely to cause or has caused a disruption of the provision of water and sanitation services without just cause; or
  - (b) is likely to act or has acted contrary to any provisions of these By-laws; in which event the designated officer, unless he or she has reasonable grounds to believe that the complaint is frivolous, shall investigate the complaint and, take any necessary action which is competent in terms of these By-laws.

**103. Official address.—**

- (1) For the purpose of the service of any notice, order or other document relating to legal proceedings—
  - (a) the address of the owner of the premises on which domestic water is consumed or generated is deemed to be the official address of such owner; and
  - (b) the address of the consumer, as referred to in section 4 (5) (e) is deemed to be the official address of the consumer.
- (2) Where any notice or other document is required by these By-laws to be served on any person other than for the purpose of criminal proceedings, it shall be served on him or her personally, failing which it may be served on any member of his or her household or any employee as the case may be, of the apparent age of 16 years or older, at the place of residence or business of that person, or if sent by registered post, to the official address contemplated in subsection (1), it will constitute *prima facie* proof of the service of such notice.

**104. Recovery of costs and fees.—**

- (1) Any costs which the Council is entitled to recover from a consumer, owner or other person in terms of these By-laws include, where applicable, any prescribed fees, expenses incurred in any exploratory investigation, survey, plan, specification, or schedule of quantities compilation, supervision, administration or authorization charges, including the cost of any ancillary work associated therewith, wear and tear on plant and equipment utilized in any of these activities, the provision of labour and the costs, including environmental costs, involved in the disturbing and making good of any part of any street, ground or water services work.

**105. Legal compliance warranty.—**

- (1) Notwithstanding any provision to the contrary, any consumer by making application for water services, warrants that he or she will—
  - (a) in his or her activities, application and use of the water services, processes, and operations, comply with all relevant laws, regulation, and standards governing the environment, health and safety;

- (b) take all reasonable measures to prevent pollution or environmental degradation from occurring, continuing or recurring;
- (c) insofar as such harm to the environment is authorized by law, or cannot reasonably be avoided or stopped, minimize and rectify such pollution or degradation of the environment; and
- (d) bear all costs and expenses incurred in meeting the above obligations and the implementation thereof.

**106. False statement or information.**—No person may make a false statement or furnish false information to the Council, an authorised official, a designated officer or an employee of the Council or falsify a document issued in terms of these By-laws.

**107. Exceptions to application of these By-laws.**—

- (1) If authority was given before the date of commencement of these By-laws for installation work to be done, or if authorized work is in progress on such date, such work shall comply with any applicable laws which were in force in the relevant portion of the area of jurisdiction of the Council, immediately prior to such date.
- (2) For a period of 90 days after the commencement of these By-laws, the Council may give authority for installation work to be done in accordance with any law mentioned in subsection (1).
- (3) No owner may be required to comply with these By-laws by altering a water installation or part thereof which was installed in conformity with any law applicable immediately before the date of commencement of these By-laws: Provided that if in the opinion of the Council, the installation or a part thereof is so defective, or in such a condition or position as to cause waste or undue consumption of water pollution of the water supply, or a health, safety or environmental hazard, it may by notice in writing require the owner to comply with the provisions of these By-laws within a specified and reasonable period.

**108. Exemptions.**—

- (1) The Council may by resolution exempt any person from complying with a provision of these By-laws, subject to any conditions it may impose, if it is of the opinion that the application or operation of that provision would be unreasonable in the circumstances, provided that the Council may not grant an exemption from any section of this section that may result in—
  - (a) the wastage or excessive consumption of water;
  - (b) the evasion or avoidance of water restrictions;
  - (c) significant negative effects on public health, safety or the environment;
  - (d) non-payment for services;
  - (e) the installation of pipes and fittings which are not approved in terms of these By-laws;or
- (f) Non-compliance with the Act or any regulations made in terms thereof.
- (2) Subject to the provisions of the Promotion of Administrative Justice Act, 2000, the Council may at any time after giving written notice of at least thirty days, withdraw any exemption given in terms of subsection (1), and may compel the owner or consumer, as

the case may be, to comply with the relevant section or sections within a period to be stated in the notice of withdrawal: Provided that it may withdraw such an exemption without such notice if, in the opinion of the designated officer there is a present or imminent danger to public health or the environment, or of the wastage or excessive consumption of water, or of the evasion of water restrictions or the obligation to pay for the consumption of water supplied.

#### **109. Offences.—**

(1) It is an offence for any person to—

- (a) refuse to grant a designated officer access to premises obstruct, interfere or hinder a designated officer who is exercising a power or carrying out a duty under these By-laws;
- (b) fail or refuse to provide a designated officer with a document or information that the person is required to provide under these By-laws;
- (c) give false or misleading information to a designated officer;
- (d) unlawfully prevent the owner of any premises, or a person working for that owner, from entering the premises in order to comply with a requirement of these By-laws;
- (e) pretend to be a designated officer;
- (f) falsely alter an authorization to a designated officer or written authorization, compliance notice or compliance certificate issued in terms of this Chapter;
- (g) disclose any information relating to the financial or business affairs of any person which was acquired in the performance of any function or exercise of any power in terms of these By-laws, except—
  - (i) to a person who requires that information in order to perform a function or exercise a power in terms of these By-laws;
  - (ii) if the disclosure is ordered by a court of law; or
  - (iii) if the disclosure is in compliance with the provisions of any law;
- (h) contravene or fail to comply with any provisions of these By-laws;
- (i) fail to comply with any notice issued in terms of these By-laws;
- (j) fail to comply with any lawful instruction given in terms of these By-laws; or
- (k) obstruct or hinder any authorized official of the Council in the execution of his or her duties under these By-laws.

(2) Any person convicted of an offence contemplated in subsection (1) is liable on conviction to a fine, or in default of payment, to imprisonment for a period not exceeding six months, and in the case of a continuing offence, to a further fine not exceeding R50, or in default of payment to imprisonment not exceeding one day, for every day during the continuance of such offence after a written notice has been issued by the Council requiring the discontinuance of such offence, and for a second or subsequent offence he shall be liable on conviction to a fine or in default or payment to imprisonment for a period not exceeding six months.

#### **110. Application of these By-laws.—**

(1) The provisions of the Chapter apply to all persons or bodies, including the State.



(2) A provision of this Chapter conferring a power or imposing a duty applies in respect of—

- (a) all premises;
- (b) any person or thing on or in any premises;
- (c) the owner or occupier of all premises; and
- (d) any matter relating to premises, a person, or thing.

(2) For the purposes of these by-laws, the head of a national or provincial department or the municipal manager of the Council is deemed to be the owner and occupier of all premises that the department or municipality occupies or uses to the exclusion of any other person.

**111. Repeal of By-laws.**—The Water Supply By-laws published under Provincial Notice No. 247 of 1957 on 10 June 1957, the Industrial Effluent By-laws published under Municipal Notice No. 93 of 1998 on 19 November 1998, and the Water Services By-laws published under Municipal Notice No. 7 of 2005 dated 17 March 2005, are hereby repealed.

**112. Short title.**—These By-laws are called the Water Services By-laws, 2013.



# The Msunduzi Municipality

## CEMETERIES AND CREMATORIA BY-LAWS

### CEMETERIES AND CREMATORIA BY-LAWS

[MUNICIPAL NOTICE NO. 98 OF 2015.][DATE OF COMMENCEMENT: 25 JUNE 2015.]

These By-laws were published in *Provincial Gazette* No. 1392  
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#### MSUNDUZI MUNICIPALITY

#### CEMETERIES AND CREMATORIA BY-LAWS

The Msunduzi Municipality acting in terms of section 98 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), read with section 13 of the said Act, hereby publishes the By-laws set forth hereafter, as made by the Municipality, which By-laws shall come into effect on the date of publication thereof.

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## CHAPTER 1: GENERAL

### 1. **Definitions.**—In these by-laws, unless the context otherwise indicates—

**“adult”** means a deceased person over the age of 12 years and any other deceased person whose coffin cannot be accommodated in an excavation of 1,40m in length and 400 mm in width;

**“after-hours fee”** means a fee determined over and above the fee for burial or cremation outside normal week day cemetery operating hours, save in the case of cremations or burials, which, because of religious belief, are undertaken after such hours, or in the case of burial, where the mourners undertake to close the grave;

**“ashes”** means the cremated remains of a body;

**“Births and Deaths Registration Act”** means the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992);

**“body”** means any dead human body, including the body of a stillborn child;

**“burial order”** means an order issued in terms of the Births and Deaths Registration Act;

**“burial”** means burial or inhumation into earth or any other form of burial and includes a tomb and any other mode of disposal of a body;

**“cemetery”** means any land or part thereof within the municipal area set aside by the Council or approved by the Council as a cemetery;

**“child”** means a deceased person who is not an adult;

**“Council”** means the Msunduzi Municipal Council or any other committee or official duly delegated by the Msunduzi Municipal Council or the Accounting Officer of the Msunduzi Municipality, as the case may be, to exercise the powers and carry out the responsibilities in terms of these by-laws;

**“columbarium”** means a wall or garden of remembrance;

**“cremation”** means the process of disposing of a human body by fire;

**“cremation authority”** means any organisation, society, trust or company authorised to manage and control the day-to-day administration of the crematoria;

**“crematorium”** means a crematorium as defined in section 1 of the Cemeteries and Crematoria Act, 1996 (Act No. 12 of 1996) (KwaZulu-Natal) and includes the buildings in which the ceremony is conducted and the cremation carried out;

**“crematorium section”** means a section of a cemetery or crematorium set aside by the Council for the burial of ashes;

**“cremated remains”** means all recoverable ashes after the cremation process;

**“exhumation”** means the removal of a body from its grave;

**“garden of remembrance”** means a section of a cemetery or crematorium set aside for the erection of memorial work, placing or scattering of ashes, but does not include a columbarium;

**“grave”** means any piece of land excavated for the burial of a body within a cemetery and includes the contents, headstone or other marker of such place and any other structure on or associated with such place;

**“grave of conflict”** means the grave of a person who died while defending the country;

**“hero”** means a person who performed a heroic act for the country and is given the status of a hero by the Council;

**“indigent person”** means a destitute person who has died in indigent circumstances, or if no relative or other person, welfare organisation or non governmental organisation can be found to bear the burial or cremation costs of such deceased person and includes a pauper;

**“indigent relief”** means assistance received for the burial or cremation of an indigent person;

**“manager: environmental health”** means the officer appointed by Council and who is duly registered as an environmental health practitioner with the Health Professions Council of South Africa;

**“memorial section”** means a section of a cemetery set aside for the erection of memorials;

**“memorial wall”** means a wall in a cemetery or crematorium section provided for the placement of inscribed tablets commemorating deceased persons;

**“memorial work”** means any headstone, monument, plaque, or other work, or object, erected or intended to be erected in any cemetery or crematorium to commemorate a deceased person, and includes a kerb demarcating a grave, and a slab covering a grave;

**“minister”** means the Member of the Executive Council responsible for cemeteries and crematoria in KwaZulu-Natal;

**“municipal area”** means the area under the control and jurisdiction of the Council;

**“niche”** means a compartment in a columbarium or garden of remembrance for the placing of ashes;

**“officer-in-charge/caretaker”** means the person in the employ of the Council who, from time to time, is in control of any cemetery;

**“prescribed”** means prescribed by the Council;

**“prescribed fee”** means a fee determined by the Council by resolution of that Council or its successor;

**“stone mason”** means a person carrying on business as a stone mason;

**“the Act”** means the KwaZulu-Natal Cemeteries and Crematoria Act, 1996 (Act No. 12 of 1996), as amended;

**“victim of conflict”** means a person defined in section 1 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999).

## CHAPTER 2: ESTABLISHMENT AND MANAGEMENT OF CEMETERIES

### 2. Establishment of cemeteries.—

- (1) The Council may from time to time set aside and reserve suitable municipal land within the municipality for the establishment and management of a public cemetery. The Council may consider and approve an application for the establishment and maintaining of a private cemetery or a private columbarium on private land on the conditions that the Council may deem necessary.
- (2) The Council may set aside, reserve and demarcate within a cemetery, in accordance with an approved layout plan, such areas as the Council may deem necessary for exclusive use by the members of a particular religion or denomination, or for the burial of adults, children, security forces or war heroes, or any other relevant category (excluding racial groupings).
- (3) No human remains shall be—

- (a) buried except in a cemetery; or
- (b) cremated except at a crematorium subject to legislation;
- (4) No cemetery or crematorium shall be operated in the absence of the council's permission and a valid certificate of registration.
- (5) No body may be interred without the permission of the officer-in-charge. Such permission shall not be given unless a written order signed by the Registrar of Deaths has been produced along with notice of interment. In cases where a post-mortem or inquest into the cause of death has been held a Magistrate's warrant shall be given to the officer-in-charge together with such order.

### **3. Official hours.—**

- (1) Every cemetery shall be open every day of the week. The official opening and closing hours of the cemetery shall be determined by the Council.
- (2) Burials shall take place on the days and during the hours as determined by the Council.
- (3) The Council has the right to close a cemetery or any portion thereof to the public for such periods and for such reasons as the Council may deem fit and no burial or cremation of human remains shall take place thereafter.
- (4) No person shall be or remain in a cemetery or part thereof before or after the official hours as determined by the Council or during any period when it is closed for the public, without the permission of the caretaker.
- (5) No person under 12 years of age may enter a cemetery unless such person is under care of a responsible person.
- (6) No person shall solicit any business or exhibit, distribute or leave any tract, business card or advertisement within any cemetery or use same for conveyance of goods, parcels or other material, except such as are intended for use in such cemetery.
- (7) No person shall sit, stand or climb upon or over any memorial work, gate, wall, fence or building in any cemetery.
- (8) No person shall commit any nuisance or breach of the peace, nor use threatening, abusive or insulting language in any cemetery.
- (9) No person shall bring or allow any dog, cat, fowl or other animal to wander inside any cemetery. Any animal found in any cemetery may be confiscated by the Council without any compensation to the owner thereof.
- (10) No person shall ride any animal, motor cycle or cycle within any cemetery in which such riding is not expressly permitted by the Council.
- (11) All vehicles within the cemetery shall proceed at a walking pace therein and no vehicle shall pass within close proximity to any point where a funeral service is being conducted; and
- (12) No person shall hold or take part in any demonstration in any cemetery without the consent of Council.

### **4. Register.—**

- (1) A register of graves and burials shall be kept by the caretaker.
- (2) Such register shall be completed as far as possible immediately after a burial has taken place, with reference to the prescribed particulars contained in the burial order concerned; and
- (3) Any written permission, notice or document issued by the Council under these by-laws shall be signed by the officer-in-charge.



**5. Numbering of graves.—**

- (1) All graves in a cemetery that are occupied or for which a burial has been authorised in terms of the provisions of this by-law shall be numbered by the Council; and
- (2) The number shall be affixed to the grave and indicated on a plan to be kept available in the caretaker's office.

**6. Reservation of graves.—**

- (1) No reservation of a grave in a cemetery shall be allowed except for a public purpose; and
- (2) Reservation of graves made and recorded in the official records of the Council in terms of any previous by-laws shall remain valid and the Council shall honour such reserved rights.

**7. Transfer of reserved rights.—**

- (1) A reserved right as contemplated in section 6 (2) may not be transferred without the prior approval of the Council.
- (2) Application to transfer such right shall be made to the caretaker in writing by completing and submitting a prescribed application form.
- (3) If the application is granted, a certificate will be issued in favour of the transferee who will become the holder; and
- (4) The reserved right may be cancelled on request of the holder and if the request is approved by the Council, the amount paid by the holder (if any) minus 10% administration fees, will be refunded to the holder.

**8. Number of corpses in a grave.—**

- (1) Only one corpse may be buried in a grave with measurements as contemplated in these by-laws.
- (2) Only two corpses may be buried in an extra deep grave with measurements as set out in subsection 15 (4): Provided that application for the burial of two corpses has been made to the caretaker in writing by completing and submitting the required application form before the first corpse is buried.
- (3) After the re-opening of a grave for the purpose of the burial of a second corpse as mentioned in subsection 9 (2) in that grave, a concrete layer of not less than 25 mm thick shall be cast above the coffin previously buried; and
- (4) If on re-opening any grave, the soil is found by the manager: environmental health to be offensive or dangerous to the general health of people, the situation will be handled in consultation with the manager: environmental health.

**9. Number of corpses in a coffin.—**

- (1) A deceased stillborn child and his or her deceased mother may be buried in the same coffin at the fee for a single interment of an adult; and
- (2) Still-born twin babies may be buried in the same coffin at the fee for a single interment of a stillborn child.

### CHAPTER 3 : BURIALS

#### 10. Application for a burial.—

- (1) Application for permission for a burial in a cemetery shall be made to the caretaker in writing by completing and submitting a prescribed application form. An application shall be accompanied by—
  - (a) the prescribed burial order;
  - (b) the prescribed fees; and
  - (c) a reservation certificate, if applicable.
- (2) No person shall, without the prior written approval of the Council, execute, cause, or allow a burial in any other place in the municipality than in a cemetery established and managed by the Council. This includes the burial of a corpse, of ashes and of a cadaver. Council shall adopt a formal policy within six months of date of promulgation with regard to burial of corpses, ashes and cadavers in places that are not within an established cemetery.
- (3) An application for permission for a burial must be submitted to the caretaker at least 24 working hours prior to the planned burial, failing which the caretaker may refuse the application.
- (4) No person shall execute a burial or cause or allow a burial to be executed in a cemetery, unless written permission for the burial has been obtained, a specific grave has been allocated for the purpose of the burial and a date, and time for the burial has been arranged with the caretaker.
- (5) In allocating a date and time for a burial, the caretaker shall have regard to the customs of the deceased's relatives and their religion or church affiliation.
- (6) In allocating a grave the caretaker shall as far as practicable possible allow the responsible person access to a plan of the cemetery showing the various sections, and allow him or her to select the section of his choice, but not the individual grave of his or her choice. The allocation of a specific grave is the sole responsibility and discretion of the caretaker and a burial shall be executed only in a grave allocated by him or her.
- (7) The Council may allow in its discretion a burial without payment of the prescribed fees in a part of a cemetery set aside for such purposes and in such manner as it may deem fit.
- (8) Notice of cancellation or postponement of a burial must be submitted to the caretaker at least 4 working hours before the time set for the burial.
- (9) The granting of permission for a burial and the allocation of a specific grave in a cemetery, does not give the applicant, the responsible person or any other person any right in respect of such grave other than to bury a corpse in the grave; and
- (10) Except with the permission of the Council, no person shall place or cause any coffin constructed of any material other than natural wood or other perishable material to be placed in any grave.

#### 11. Burial of a corpse.—

- (1) All graves shall be provided by the caretaker with the exception of brick-lined or concrete-lined graves, in which cases the brickwork or concrete work shall be carried out by the undertaker under the supervision of the caretaker and in conformity with the specifications applicable to ordinary graves.
- (2) There shall be at least 1.4 m of soil between the top of an adult coffin and the ground surface, and at least 900 mm of soil between the top of a child coffin and the ground surface.

- (3) All corpses shall be placed in a coffin for the burial thereof, except as provided for religious reasons.
- (4) No person shall without the prior permission of the caretaker conduct any religious ceremony or service according to the rites of one denomination in any portion of a cemetery reserved by the Council in terms of the provisions of this by-law, for the use of some other denomination.
- (5) No person shall permit any hearse in a cemetery to leave the roads provided, and every hearse shall leave the cemetery as soon as possible after the funeral for which it was engaged.
- (6) Every person taking part in any funeral procession or ceremony shall comply with the directions of the caretaker as to the route to be taken within the cemetery.
- (7) No person shall convey or expose a corpse or any part thereof in an unseemly manner in any street, cemetery or public space.
- (8) Every application and every document relating to any burial shall be marked with a number corresponding to the number in the register referred to in section 4 and shall be filed and preserved by the Council for a period of not less than ten years.
- (9) Every coffin or body upon being placed in any grave shall, at once, be covered with 1.4m of earth; and
- (10) No person shall disturb any human remains or any soil adjacent thereto in any cemetery, except where such disturbance is expressly permitted by this by-law or by an order of court.

## **12. Burial of ashes.—**

- (1) Ashes may be buried in a coffin and only two such coffins containing ashes may be buried in an extra deep grave; provided that a coffin does not exceed the average body weight of 70 kg, and further-more that the grave is re-adjusted to the prescribed depth and measurements.
- (2) No person shall execute a burial or cause a burial of ashes to be executed in a cemetery, unless written permission for the burial has been obtained, a specific grave or niche has been allocated for the purposes of the burial and a date, and time for the burial has been arranged with the caretaker.
- (3) Application for the burial of ashes for definite periods or in perpetuity, or for the provision of memorial tablets of approved material to be fixed on the building, columbarium or other facility shall be made to the caretaker in writing by completing and submitting a prescribed application form.
- (4) Niches will be allocated by the caretaker strictly in the order in which the applications therefore are received and no reservations for future use will be made.
- (5) An application for permission for a burial must be submitted at least 24 working hours prior to the planned burial, failing which the caretaker may refuse the application.
- (6) An urn or casket containing ashes that has been deposited in a building, columbarium, or other facility shall not be removed without the caretaker's prior written consent.
- (7) Every niche containing ashes shall be sealed by a tablet approved by the Council and shall only be opened for the purpose of withdrawing an urn or casket contained therein for disposal elsewhere, or for the purpose of depositing an additional urn or casket therein where after it will once again be sealed.
- (8) Application for the opening of a niche shall be made to the caretaker in writing by completing and submitting a prescribed application form.

- (9) No person shall introduce any material into the columbarium for the purpose of constructing or erecting any memorial work therein unless and until—
  - (a) approval for the burial has been obtained from Council;
  - (b) approval for the erection of the memorial work has been obtained from Council; and
  - (c) the prescribed fees have been paid which shall be determined by Council from time to time.
- (10) Any person engaged upon any work on the columbarium, shall execute such work to the satisfaction of the caretaker, and such work shall be undertaken during the official office hours of the cemetery.
- (11) No permanent wreaths, sprays, flowers, or floral tributes may be placed in or on a columbarium.
- (12) The columbarium may be visited daily during the official cemetery hours as determined by Council; and
- (13) Plaques shall be made of material approved by the Council and shall be affixed simultaneously with the placing of the ashes and within 30 days of the obtaining of the consent.

**13. Burial of a cadaver.—**

The remains of a corpse used at an educational institution for the education of students, generally known as a cadaver, may be buried in one coffin and two such coffins containing cadavers may be buried in an extra deep grave as contemplated in subsection 15 (4): Provided that a coffin does not exceed the average body weight of 70 kg, and furthermore that the grave is re-adjusted to the prescribed depth and measurements.

**14. Persons dying outside the municipal area.—**

The provisions of these by-laws shall apply *mutatis mutandis* to any burial in a cemetery of a person who has died outside the municipality.

**15. Grave measurements.—**

- (1) The excavation of a grave for an adult shall be at least 1820 mm deep, 2300 mm long, and 760 mm wide.
- (2) The excavation of a grave for a child shall be at least 1370 mm deep, 1520 mm long, and 610 mm wide.
- (3) In the event that a grave of a greater depth, length or width than those specified above is required, application in respect thereof, together with extra prescribed fees that are due, shall be made to the caretaker together with the application to obtain permission for a burial.
- (4) The excavation of an extra deep grave for the burial of two corpses shall be at least 2400 mm deep 2300 mm long and 760 mm wide.
- (5) Deviations from measurements of graves shall be as follows—

Extra wide	: 2300 mm long
	: 840 mm wide
Extra long	: 2530 mm long
	: 760 mm wide
Rectangular small	: 2300 mm long
	: 900 mm wide
Brick-nogging	: 2600 mm long

: 1050 mm wide

- (6) The area of a rectangular grave for an adult shall be 1500 mm wide by 2600 mm long;
- (7) The area of a grave for an adult shall be 1210 mm wide by 2430 mm long; and
- (8) The area of a grave for a child shall be 1210 mm wide by 1520 mm long. If a coffin is too large, an adult grave shall be used.

#### **CHAPTER 4: RE-OPENING OF GRAVES AND EXHUMATIONS**

##### **16. Exhumations.—**

- (1) Save as otherwise provided for by law, no person may exhume or cause to be exhumed a body without the written consent of the—
  - (a) The Minister and the Council; or
  - (b) by an order of a court having jurisdiction over such matters.
- (2) Whenever an exhumation is to take place, the officer-in-charge must inform the Provincial Commissioner of the South African Police Services.
- (3) A member of the South African Police Services and an environmental health practitioner must always be present when an exhumation is being conducted.
- (4) An exhumation must not take place when the cemetery is open to the public and must take place under the supervision of the officer-in-charge.
- (5) If remains are to be exhumed from any grave, only the undertaker under the supervision of the officer-in-charge may cause the grave to be excavated for such exhumation.
- (6) (a) If a grave is to be excavated for exhumation, the officer-in-charge must be given 48 hours written notice before the time of exhumation; and
  - (b) The authority referred to in paragraph (1) (d) of this Section and the prescribed fee must accompany such notice.
- (7) A person who wishes to exhume the remains of an indigent person must pay the costs incurred by the Council at the time of burial, to the Administrator of Cemeteries.
- (8) The person carrying out the exhumation must ensure that the body and grave are properly disinfected and deodorised.
- (9) The South African Police Services must—
  - (a) if there is proof of illegal burial immediately exhume the body; and
  - (b) take it to a government mortuary for investigation.
- (10) A grave of victims of conflict and a grave which is older than 60 years may only be exhumed with the permission of the South African Heritage Resources Agency; and
- (11) A Commonwealth war grave may only be exhumed in accordance with the provisions of section 3 of the Commonwealth War Graves Act, 1992.
- (12) The Council may, if a body has been buried in contravention of these by-laws, cause the body to be exhumed and re-buried in another grave.
- (13) The relatives of the deceased must be—
  - (a) notified of the intended exhumation and re-burial; and
  - (b) allowed to attend.
- (14) An application contemplated in subsection (1) above shall be made by or with the written consent of the next-of-kin of the deceased person whose human remains are sought to be exhumed, provided that the Minister or the Council may dispense with such consent—
  - (a) in circumstances where such consent is not readily obtainable; or
  - (b) where in the opinion of the Minister or the Council the exhumation of any human remains is in the public interest and the consent of the next-of-kin is unreasonably withheld.

- (15) The application referred to in subsection (1) above shall contain or be accompanied by—
- (a) such particulars concerning the deceased person as may be prescribed, including—
    - (i) the place and cause of death;
    - (ii) the reasons for the proposed exhumation and removal of the human remains, including, where applicable, details of the efforts made to obtain the written consent of the next-of-kin;
    - (iii) the methods to be adopted in enclosing and removing the human remains, the precautions to be undertaken to prevent any danger to health or offence which may be caused;
    - (iv) the proposed place of re-interment;
  - (b) a medical certificate of the cause of death or duly certified copy thereof, or if such certificate or copy is not reasonably obtainable, other evidence of the cause of death to the satisfaction of the Minister and the Council; and
  - (c) the written permission of council of the cemeteries in which the human remains were interred and are to re-interred;
- (16) Save where it is desired to remove human remains from one grave to another in the same cemetery or to return them to the same grave, the Minister and the Council shall not, except in circumstances of a special nature, give consent for the exhumation of human remains until at least two years after interment and in the case of a person who died of an infectious disease until at least four years after interment.
- (17) Where an approval is granted in terms of this section, the applicant shall make proper and adequate provision, at his or her own expense, for—
- (a) the exhumation, conveyance to the new place of burial, if applicable and re-interment of the exhumed human remains; and
  - (b) where the human remains are to be re-interred in a different place, for the removal, conveyance and re-erection on the new grave site of any memorial stones and kerbing which may have been erected on the existing grave site.
- (18) Where the consent of the next-of-kin has been dispensed with in terms of subsection (3) above, the applicant shall take all reasonable steps to inform the next-of-kin of the deceased person whose remains were exhumed of the fact that the human remains were exhumed and of the place where such human remains have been re-interred.

#### **17. Screening of exhumation.—**

- (1) A grave from which a body is to be exhumed must be screened from the view of the public during the exhumation; and
- (2) The person carrying out the exhumation must provide a suitable receptacle for each body or remains.

#### **18. Re-use of graves.—**

- (1) A grave may be opened and excavated where such is for the purpose of interring therein the human remains of a different deceased person, provided that—
  - (a) the next-of-kin of the deceased person whose human remains were the most recent interment in that grave indicates in writing that he or she does not object; to such excavation and re-use or where no next-of-kin can be traced and the date contemplated in paragraph (b) (i) (aa) or ten years, whichever is the later, has elapsed since the most recent interment in that grave, the operator has advertised, in the manner prescribed by regulation in terms



of the Act, its intention to re-open and re-use such grave, and no objection to such re-opening and re-use has been received from the next-of-kin;

(b) the operator has obtained and complied with a written directive from—

(i) the Council's manager: environmental health, in which directive the manager: environmental health—

(aa) shall, after taking into account all relevant factors, state the earliest date on which, in his or her opinion, a particular grave or identified group of graves may be re-opened without any potential hazard to public health; and

(bb) may prescribe health-related procedures to be observed on such re-opening;

(c) prior to any grave being re-opened for the purposes of such re-use, all reasonable steps are taken to ascertain whether or not any human remains, other than skeletal bones, are present in such grave;

(d) in the event of human remains other than skeletal bones being present in a grave which is being re-opened for the purposes of reuse, such re-opening shall cease and the grave shall be re-filled forthwith;

(e) any skeletal bones found in a grave which has been re-opened for the purposes of re-use shall be re-interred in the same grave; and

(f) any re-opening of a grave, re-interment of any skeletal bones found in such grave, and the interment of the human remains of a different deceased person in such grave shall be effected by or under the supervision of—

(i) a practicing professional funeral undertaker; or

(ii) a committee of the body controlling that cemetery, where such committee has been established for the specific purpose of controlling and supervising burials and exhumations in such cemetery; or

(iii) a person authorised thereto by the operator.

(2) Any person aggrieved by a directive contemplated in paragraph (b) of subsection (1) shall have a right of appeal to the Minister in the manner prescribed.

(3) The Minister may, when considering an appeal contemplated in subsection (2), in his or her sole discretion—

(a) confirm, alter or set aside such directive;

(b) remit the matter to the manager: environmental health with instructions to deal with any question or matter in such manner as the Minister may deem necessary; or

(c) call for such further evidence as he or she deems necessary, and thereafter act in terms of paragraphs (a) or (b).

## CHAPTER 5: CREMATORIA

### 19. Conditions regarding permission to use or control crematoria.—

(1) The Council may permit any cremation authority to use and control any crematorium which has been erected within a cemetery owned and/or controlled by the Council.

(2) Such permission shall be given in writing and shall be subject to conditions as to the use and control thereof as the Council may impose. The following conditions inter alia shall apply to such permission—

(a) the cremation authority shall comply with provincial legislation in this regard;

(b) in the event of the cremation authority being a society or trust, a copy of the constitution or the trust deed, duly certified, shall be lodged with the officer-in-charge;

- (c) no cremation of a human body shall be undertaken except between the hours as determined by the Council;
- (d) the cremation authority or its duly authorised representatives shall be required to notify the officer-in-charge of the intention to cremate any human remains, giving the name, gender, age, nationality and the late residence of the deceased: and at least two hours' notice of the time for the proposed cremation shall be given;
- (e) no cremation of human remains shall be undertaken except in the crematorium itself; and
- (f) times set by the officer-in-charge shall be strictly observed and every service or ceremony in connection with a cremation shall be subject to the general control of such officer;
- (g) any corpse which contains a cardiac pacemaker or radio-active implant of any kind or any other material which may result in an explosion or harmful emissions when incinerated may not be cremated unless it is removed;
- (h) when cremated a corpse must be contained within a coffin;
- (i) a coffin in which a corpse is cremated must be made of wood or other non-toxic material;
- (j) non-toxic varnish, paint or glue must be utilised in the manufacturing of the coffin in which a corpse is cremated;
- (k) when cremated, a coffin may only contain combustible material, including clothing, shoes and other adornments of whatsoever nature, and the Council will have the right to remove non-combustible material from the coffin;
- (l) before a cremation is permitted to take place, the applicant or his or her representative will be obliged to produce a certificate certifying that the coffin complies with subsections (i) and (j) above;
- (m) no corpse may be removed from any coffin for the purpose of incineration and a coffin may not be opened in the crematorium except with the permission of the Council, which must not be unreasonably withheld.

**20. Withdrawal of permission.**—In the event of the cremation authority failing to carry out any of the above conditions, the Council may withdraw permission for the use of the crematorium.

## CHAPTER 6: MISCELLANEOUS

### 21. Special Conditions.—

- (1) No person may—
  - (a) commit or cause a nuisance within a cemetery or crematorium;
  - (b) ride an animal, cycle, or skateboard for recreational purposes or partake in any other form of recreational or sporting activity within any cemetery or crematorium, unless otherwise determined by the Council;
  - (c) with the exception of a blind person, bring into or allow an animal to wander inside any cemetery or crematorium, provided that dogs on leashes will be permitted unless otherwise determined by the Council;
  - (d) plant, cut, pick or remove a tree, plant, shrub or flower without the permission of the Council;
  - (e) hold or take part in a protest in any cemetery or crematorium;
  - (f) interrupt or disrupt—
    - (i) the performance of duties of an authorised official or workman employed by the Council;
    - (ii) a funeral undertaken in a cemetery;

- (g) obstruct, resist or oppose the officer in charge on the course of his or her duty, or refuse to comply with an order or request which the officer in charge is entitled under this by-law to make;
  - (h) mark, draw, scribble, paint or place an object on a wall, building, fence, gate, memorial work or other erection within any cemetery other than for official purposes;
  - (i) use water for any form of gardening without the permission of the Council;
  - (j) leave any rubbish, soil, stone, debris, garbage or litter within any cemetery;
  - (k) in any way damage, deface or desecrate any part of a cemetery or anything therein;
  - (l) enter or leave a cemetery, except by an entrance or exit provided for these purposes;
  - (m) solicit or conduct any business, order, exhibit, distribute or leave a tract, business card or advertisement within a cemetery, other than in the area designated for such purposes by the Council and with the prior permission of the Council;
  - (n) treat a grave or memorial work with disrespect, such as climbing or sitting on a grave or memorial work;
  - (o) enter an office, building or fenced place in a cemetery except in connection with lawful business;
  - (p) expose a corpse or part thereof in a cemetery;
  - (q) exceed the prescribed limit of 20 km per hour in a cemetery;
  - (r) use any cemetery as thoroughfare;
  - (s) allow or cause any animal to enter any cemetery with the exception of an officer in charge, living on site and who is keeping pets with the prior approval of the Council;
  - (t) bring any alcohol into or consume any alcohol in a cemetery or discharge any firearms in a cemetery except in the case of the police, state or military funeral;
  - (u) make or ignite a fire in a cemetery without the prior permission of the Council;
  - (v) hunt or harm any animals or birds;
  - (w) graze domestic animals in unused areas amongst the graves; or
  - (x) bring into a cemetery excavation equipment, saws or metal detecting equipment, other than with the permission of the Council; and
  - (y) conduct driving lessons in a cemetery.
- (2) An authorised official of the Council working in any cemetery may not enter into an agreement with a member of the public for the purpose of undertaking work in a cemetery on behalf of such a person, such as maintaining or digging a grave or any other related work.
- (3) The Council may impound an animal found in any cemetery.
- (4) Gazebos larger than two metres by three metres may not be erected in a cemetery without the prior permission of the Council.

## **22. Injuries and damages.—**

- (1) A person using a cemetery or crematorium does so at his own risk, and the Council accepts no liability whatsoever for any personal injuries sustained by such person or for any loss of or damage to such person's property relating to or resulting from the aforementioned usage of the cemetery; and
- (2) A person using a cemetery or crematorium accepts full responsibility for any incident, damages or injuries that may be caused by or that may result from the aforementioned use of the cemetery and he or she accordingly indemnifies the Council, its members, employees or agents, whether in personal or official capacity, against liability for all claims from whichever nature by himself, his or her dependants or third parties in respect of any patrimonial loss, consequential damages, injuries

or personal prejudice that may be suffered or sustained in connection with or resulting from such a person's use of a cemetery or crematorium. The aforementioned indemnity also applies to injuries sustained by employees of the Council while on duty at the cemetery or crematorium, as well as damages to Council property at the cemetery or crematorium.

**23. Fire-arms and traditional weapons.**—No fire-arms and traditional weapons shall be allowed in a cemetery or crematorium.

**24. Offences and penalties.**—

- (1) Any person contravening or failing to comply with any of the provisions of these by-laws; or
- (2) wilfully making any false declaration or representation or signing any false certificate in connection with or for the purpose of procuring the burial, exhumation or cremation of any human remains; or
- (3) threatens, resist, interferes with or obstructs an authorised officer or employee of the council in the performance of their duties or functions under these by-laws, shall be guilty of an offence and shall upon conviction by a court be liable to a fine not exceeding R60 000, or imprisonment for a period not exceeding three years or both a fine as well as period of imprisonment, or such other fine or period of imprisonment which the Minister of Justice may from time to time determine in terms of the provisions of section 92 of the Magistrate's Courts Act, 1944 (Act No. 32 of 1944).
- (3) Any expenses incurred by the Council as a result of a contravention of these by-laws or in the doing of anything which a person was directed to do under these by-laws and which he or she failed to do, may be recovered by the Council from the person who committed the contravention or who failed to do such thing.

(Editorial Note: Numbering as per original *Provincial Gazette*.)

**25. Complaints.**—

Any person wishing to lodge a complaint shall lodge such complaint, in writing with the Municipal Manager.

**26. Charges.**—

The Council shall be entitled to determine, raise and collect tariffs, charges and other fees in respect as contemplated in section 75A of the Local Government: Municipal Systems Act, The tariffs, charges and fees shall, unless otherwise determined, be payable in advance to the Council.

**27. Rights on graves.**—

No person shall acquire any right to or interest in any ground or grave in any cemetery save as expressly provided for in these by-laws.

**28. Consents, Notices and Orders.**—

Any written consent, notice or other order issued by the Council in terms of these by-laws shall be prima force evidence of the contents of such a signed consent, notice or other order.

**29. Consent required for Interment.—**

- (1) No person may dispose of a corpse in any manner other than the manner prescribed by the Msunduzi Municipality in these by-laws, and a person who wishes to dispose of a corpse must obtain the written consent of the Council before he or she disposes of the corpse, and must comply with the requirements of the Council.
- (2) A person who wishes to obtain the consent as contemplated in subsection (1) must submit to the officer in charge an application in writing together with—
  - (a) the proof of payment of the prescribed fee;
  - (b) the death certificate of the corpse;
  - (c) a burial order issued in terms of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992);
  - (d) in case of a funeral undertaker, the certificate of competence issued in terms of these by-laws and in the case where the burial order has been issued by a funeral undertaker, proof of authorisation in terms of section 4 of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992);
  - (e) an affidavit by the next of kin of the deceased, or where not practicable, other close relative, consenting to the disposal of the corpse when such corpse is to be buried in the manner requested;
  - (f) in the instance where a person—
    - (i) who at the time of his or her death was suffering from a communicable disease, this must be indicated in the application;
    - (ii) who at the time of his or her death had a pacemaker, this must be indicated in the application;
  - (g) details of cultural or religious practices that need to be adhered to.
- (3) The officer in charge may approve the application subject to the conditions set out in the approval, or refuse the application.
- (4) An application for interment must be submitted to the Council not later than 15:00 on the day before the intended interment or, where the grave exceeds the standard size, not later than 15:00 two days before the intended interment.
- (5) Should any alteration be made in respect of the day or hour previously fixed for an interment, or interment be cancelled, in the instance where the Council is responsible for the digging of a grave, notice of the alteration must be given to the officer in charge at the cemetery at least eight hours before the time fixed for the interment.
- (6) No refund will be made on monies paid in respect of the opening of an existing grave.
- (7) The Council reserves the right to inspect the contents of a coffin before interment.
- (8) The Council may refuse a person, including a funeral undertaker, permission to inter a corpse if relevant documentation required by the Council has not been submitted to the Council prior to the interment.
- (9) A person who interments a corpse without the written consent of the Council commits an offence.

**30. Religious ceremonies.—**

- (1) The members of any religious denomination may conduct religious ceremonies in connection with any interment or memorial service subject to the control and by-laws of the Council; and
- (2) No animal may be slaughtered on the premises of the cemetery regardless of any religious ceremony which may require an animal to be slaughtered.

**31. Hearses and vehicles at cemeteries.—**

- (1) Every hearse or vehicle after such removal shall leave the cemetery by the route indicated by the caretaker; and
- (2) The cemetery is a public place and all laws applicable to the driving of a vehicle and the use of a public road will be applicable inside the premises of the cemetery.

**32. Exposure of bodies.—**

No person shall convey a dead body, which is not covered, or any part thereof in any street, cemetery or public place.

**33. Instruction of Caretaker.—**Every person taking part in any funeral procession or ceremony shall comply with the directions of the caretaker while such person is within a cemetery.

**34. Music inside Cemetery.—**Only sacred singing shall be allowed in any cemetery, except in the case of police and military funerals or as otherwise approved by the caretaker.

**35. Interments attended by large numbers of people.—**In any case where it is probable that an unusually large number of persons will be present at any interment, the person giving notice of such interment shall notify the caretaker the day before the funeral.

**36. Indigent persons.—**

- (1) A person making application for the burial of an indigent person, must make a declaration to that effect and further provide written proof from the relevant ward Councillor confirming the financial status of the indigent person.
- (2) An indigent person may be interred according to the policy of the Council applicable to indigent persons.

**37. Pauper burials.—**The regulation of pauper burials shall be determined in a policy adopted by the Council.

## **CHAPTER 7 : FUNERAL UNDERTAKERS**

**38. Preparation of corpses.—**Unless otherwise provided for in this by-law, no person may prepare and/or store any corpse except on a funeral undertaker's premises in respect of which a certificate of competence has been issued and is in effect.

**39. Application for the issue or transfer of a certificate of competence.—**

- (1) (a) Any person wishing to apply for a certificate of competence in respect of new funeral undertaker's premises will, not less than 21 days before submitting his application to the Council cause a notice of his intention to be published in English and Zulu, in a newspaper that circulates in the area in which such premises will be or is situated.
- (b) Such notice must contain information to the effect that an application for the issue of a certificate of competence in terms of this by-law and other applicable legislation is to be submitted to the Council and that any person who wishes to object to such use may lodge his or her objection, together with substantiated representations, with the Council in writing within 21 days of the date of publication of such notice.



- (2) An application for the issue of a certificate of competence must be made to the Council in writing on the prescribed form and must be accompanied by—
- (a) a description of the premises and the location thereof; including equipment, storage facilities, preparation areas and toilet facilities;
  - (b) a complete ground plan of the proposed construction or of existing buildings on a scale of 1:100 including the effluent disposal system;
  - (c) a plan of the premises on which north is shown indicating adjacent premises already occupied by the applicant or other persons and the purpose for which such premises are being utilised or are to be utilised;
  - (d) particulars of any person other than the applicant or any of his or her employees who prepares or will prepare corpses on the premises;
  - (e) a contingency plan for the storage of corpses in the event of a refrigeration or cold room breakdown; and
  - (f) a cleansing and disinfection programme;
  - (g) details of registered health care waste remover, transporter and disposer.
- (3) The Council, when considering issuing a certificate of competence, may request from the applicant or any other person any such further information required.
- (4) The Council will not issue or transfer a certificate of competence unless a complete inspection of the premises concerned has been carried out by an environmental health practitioner appointed by the Council and the environmental health practitioner's report on such inspection, including recommendation on such issue or transfer, is in possession of the Council.

**40. Issue or transfer of certificate of competence.—**

- (1) When the Council is satisfied that the premises concerned—
- (a) complies with all requirements laid down in this by-laws and any other applicable legislation;
  - (b) are in all respects suitable for the preparation of corpses; and
  - (c) will not be offensive to any occupants of premises in the immediate vicinity of such premises, it will, on conditions as it may determine in respect of the funeral undertaker's premises concerned, issue a certificate of competence in the name of the applicant in such form as it may determine or will, by endorsement, transfer an existing certificate of competence to a new holder, as the case may be.

**41. Validity and transfer of certificate of competence.—**A certificate of competence, excluding a provisional certificate of competence, is, on endorsement by the Council, be transferable from one holder to a new holder and such certificate is, if so endorsed, be valid from the date of which it was issued until it is revoked or suspended in terms of this by-law.

**42. Issue of provisional certificate of competence.—**

- (a) Notwithstanding the fact that the Council is not satisfied as contemplated in section 40 with regard to funeral undertaker's premises in respect of which a certificate of competence has been applied for, the Council may, in the case of existing funeral undertaker's premises and subject to such conditions as Council may determine, issue a provisional certificate of competence in respect of such premises.
- (b) A certificate referred to in subsection (a) will only be issued if the Council is satisfied that the use of such funeral undertaker's premises does not and will not create a nuisance, and will be

issued for a maximum period of six months to enable the applicant to alter such premises in order to comply with the provisions of this by-law.

(c) If, after the period referred to in subsection (b), the premises does not comply with the provisions of this by-law, the Council may revoke the provisional certificate of competence.

**43. Duties of holder.—**

(1) (a) The holder must immediately inform the Council in writing if there are any changes in the particulars or circumstances supplied to the Council in the application for certificate of competence.

(b) A funeral undertaker must not dispose of a body in any place or premises other than a cemetery or crematoria registered in terms of the KwaZulu-Natal Cemeteries and Crematoria Act, 1996 (Act No. of 1996).

(c) The holder must comply with the provisions of this by-law, applicable legislation and any conditions imposed by the Council.

**44. Suspension or revocation of a certificate of competence or provisional certificate of competence.—**

(1) If the Council is of the opinion, on the strength of an inspection report and/or recommendation by the manager: environmental health or an environmental health practitioner, that there are reasonable grounds to suspect that—

(a) the funeral undertaker's premises concerned are utilised in such a way as to create a nuisance or that conditions constituting a nuisance have been or are being created on the funeral undertaker's premises concerned; or

(b) the premises concerned are utilised in contravention of the provisions of the Health Act, 2003 (Act No. 61 of 2003), this by-law or other applicable legislation or any conditions imposed by the certificate of competence or provisional certificate of competence, the Council may in its discretion—

(i) revoke certificate of competence or provisional certificate of competent concerned;

(ii) suspend the certificate of competence or provisional certificate of competence concerned for such period as the Council may determine, to enable the holder to comply with the applicable legislation and/or conditions imposed; provided that if the holder fails to comply within the period stipulated in the notice of suspension, the Council may revoke the relevant certificate without further notice.

(2) A notice issued by the Council in terms of section 71 (b) (ii) must be issued in writing, and then served on the holder.

(3) The suspension or revocation of a certificate of competence or provisional certificate of competence in terms of this by-law will have the effect that, from the date of the notice of suspension or revocation—

(a) no preparation of any corpse must be performed on the premises concerned;

(b) no corpse must be received for preparation on the premises concerned; and

(c) no corpse must be preserved on the premises concerned and every corpse must immediately be removed to a mortuary under the control of the State, a provincial administration or the Councillor any other funeral undertaker's premises, provided that this by-law will not be applicable and the said notice must not be so construed as to restrict any other business activity relating to the funeral undertaking profession including the sale of coffins and policies.

(4) Where the Council is of the opinion that a condition that gave rise to the revocation of a certificate as contemplated in this by-law was corrected after such revocation, it may, on written

application made by or on behalf of the holder, repeal such revocation by endorsement on the certificate concerned.

**45. Requirements relating to funeral undertaker's premises.—**

- (1) Provision for the following must be made on a funeral undertaker's premises—
  - (a) a preparation room for the preparation of corpses;
  - (b) change-rooms, separate for each sex, for the use of the employees employed at such premises;
  - (c) refrigeration facilities for the refrigeration of corpses;
  - (d) facilities for washing and cleaning of utensils and equipment inside the building;
  - (e) facilities for cleaning of vehicles on the premises; and
  - (f) facilities for loading and unloading corpses as contemplated in clause 72 (6).
- (2) No room on a funeral undertaker's premises must be used for any purpose other than the purpose for which it is intended.
- (3) The preparation room—
  - (a) must be so designed as to—
    - (i) be separate from all other rooms on the premises and so as not to be directly accessible from or in view of any office or salesroom: Provided that, where a preparation room on existing funeral undertaker's premises is so situated, the entrance thereto must be so concealed that the interior of the preparation room is completely out of sight of any person in any adjoining office or salesroom;
    - (ii) enable obnoxious odours and vapours to be adequately treated; and
    - (iii) be sufficiently ventilated and lighted;
  - (b) must have a floor-covering an area of not less than 6m<sup>2</sup> for the first table of the kind referred to in section 72 (3) (e) and 8m<sup>2</sup> for each additional table; constructed of concrete or similar waterproof material with a smooth non-slippery surface that is easy to clean, and sloped at an angle to ensure that any run-off will drain into a disposal system approved by the Council; and which, if it is replaced or laid after the date of commencement of this by-laws, will be provided with half round filling where it meets the walls—
    - (i) must have walls the inner surfaces of which have a smooth finish and are covered with a light-coloured washable paint or other suitable, smooth, waterproof, light- coloured and washable material;
    - (ii) must be provided with a ceiling not less than 2,4m above the floor level, which ceiling must be dust proof and painted with a light-coloured washable paint;
    - (iii) must contain not less than one table of stainless steel or glazed earthenware or other suitable material, equipped with a raised rim on the outside, a tap with cold running water to which a flexible pipe can be connected and a drainage opening connected to an approved disposal system;
    - (iv) must contain not less than one wash basin for each table, made of stainless steel or other suitable material, with a working surface of the same material, taps with hot and cold running water and a drainage opening permanently connected to an approved disposal system, and provided with disposable towels, a nailbrush and soap;
    - (v) must have not less than one tap with running water to which a flexible pipe, long enough to reach all corners of such room, can be connected for cleaning the interior surfaces; and

- (vi) must have door openings that are not less than 0,82m in width and 2,00m in height so that corpses can be taken into and out of such room without any difficulty.
- (4) Each change-room must contain at least the following—
  - (a) one hand-basin with hot and cold running water for every six employees or part thereof;
  - (b) disposable towels, soap, nailbrushes and disinfectant; and
  - (c) not less than one toilet for every 15 male employees or part thereof and not less than one toilet for every 15 female employees or part thereof employed at the funeral undertaker's premises concerned, provided that, where a separate urinal for men forms part of such facilities, one toilet plus one separate urinal must be permissible for every 30 men or part thereof.
- (5) Refrigeration facilities such as refrigeration or cold chambers for the keeping of corpses, must be installed in or close proximity of such preparation room and—
  - (a) where refrigerators are used, it must be constructed of a material that does not absorb moisture, must be provided with removable trays and must be so designed as to drain into an approved drainage system and be easy to clean;
  - (b) be of such nature that the surface temperature of any corpse must be no higher than 5°C during preparation. An accurate thermometer must be provided at the refrigerator or cold chamber and must be operational at all times;
  - (c) in instances where cold chambers are used, it must comply with sections 10 (3) (a) (ii), (b) (ii), (c), (d) and (h) and must be provided with shelves manufactured from a material that does not absorb moisture and that is easy to clean; and
  - (d) corpses are not to be stored on top of each other and must be stored individually on the trays or shelves.
- (6) The cleansing, loading and unloading facilities must consist of a paved area, screened from public view, with a drainage system into a gulley connected to a sewer system approved by the Council.
- (7) The loading and unloading of corpses and the cleansing of vehicles must not take place anywhere except in the area contemplated in section 72 (6).
- (8) The funeral undertaker's premises must be rodent-proof.

#### **46. Conveyance of mortal remains.—**

No person may convey any mortal remains—

- (a) unless the mortal remains have been sealed in an airtight container and placed in a non-transparent, sturdy, sealed coffin; or
- (b) no coffin container in which the mortal remains have been placed may be conveyed unless—
  - (i) the outer surface of such coffin or container is free from any leakages or any other secretion matter emanating from such mortal remains; and
  - (ii) offensive odours are absent.

#### **47. Hygiene.—**

- (1) All health care waste generated must be stored, removed, transported and disposed of in accordance with Council's Public Health By-laws or other applicable legislation.
- (2) Every holder of a certificate of competence relating to funeral undertaker's premises must—

- (a) provide clean protective clothing consisting of surgical gloves, gumboots, plastic aprons so designed that the front hangs over the top of the gumboots, face masks and overcoats/overalls to all employees and all other persons involved in the preparation of corpses or post-mortems, and each such employee or other person must, at all times when so involved, wear such clothing;
- (b) keep such premises free of pests and insects at all times;
- (c) clean immediately after the preparation of any corpse, all working areas or surfaces at such premises where corpses are prepared;
- (d) wash and disinfect all equipment used for the preparation of corpses immediately after use;
- (e) wash, clean and disinfect all protective clothing that has been used on the premises on a daily basis;
- (f) keep such premises clean and tidy at all times; and
- (g) if a corpse has been transported without a moisture-proof covering, wash and disinfect the loading space of the vehicle concerned after such corpse has been removed.

## **CHAPTER 8: CLOSURE OF CEMETERIES**

### **48. Closure of cemeteries.—**

- (1) (a) Despite any provision of this by-law and subject to the provisions of subsection (f) the Council may use any cemetery or portion thereof, of which it is the cemetery authority, which has been disused for a period of not less than 20 years for such a purpose as will not desecrate the ground and any human remains or any memorials in such a cemetery.
- (b) Despite any provision of this by-law, and subject to the provisions of subsection (f), the Council may close any cemetery or any part thereof, of which it is the cemetery authority, which has been disused for a period of not less than 20 years, or if good closure for such closure exists.
- (c) Despite any provision in this by-law, and subject to the provisions of subsection (f), the Council may use a cemetery or portion thereof, which has been used for another purpose in terms of subsection (a), or reopen any cemetery or portion thereof, which has been closed in terms of subsection (b).
- (d) The Council may, subject to the provisions of subsection (f), remove to another cemetery the human remains, memorials and other structures from a cemetery of which it is the cemetery authority, which has been closed or disused for a period of not less than 20 years and which has been approved for other usage by the competent authority or authorities as the case may be.
- (e) All rights possessed or enjoyed by any person in respect of a cemetery contemplated in subsection (a) and (b) will thereupon cease.
- (f) Before acting in terms of subsection (a), (b), (c) and (d) the Council must give notice of its intention to do so.

## **CHAPTER 9 : REPEAL OF BY-LAWS**

### **49. Repeal of existing by-laws and conflicts with the Cemeteries and Crematoria Act, 12 of 1996 (KwaZulu-Natal).—**

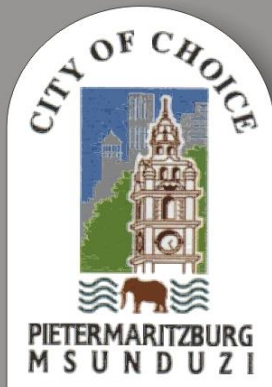
- (1) The Council's existing Cemetery by-laws published under Provincial Notices No. 403 of 1945, 80 of 1947, 242 of 1948, 588 of 1950, 703 of 1954, 166 of 1963 and 23 of 1965 and any other by-law regulating cemeteries and crematoria currently in operation within the area of jurisdiction of the Msunduzi Municipality, are hereby repealed.

(2) Nothing in these by-laws shall detract from the provisions of the Cemeteries and Crematoria Act, 1996 (Act No. 12 of 1996) (KwaZulu-Natal) and any regulations made pursuant thereto. In the event of any conflict between these by-laws and the aforesaid Act and its regulations, the Act and regulations shall prevail to the extent necessary.

**50. Short title and commencement.—**

These by-laws shall be called the Cemetery and Crematoria By-laws, 2015, and shall come into operation on publication in the *Provincial Gazette*.





# The Msunduzi Municipality

## SMOKE CONTROL REGULATIONS

### SMOKE CONTROL REGULATIONS

[Notice No. 621 of 1968.][Date of Commencement: 12 December, 1968.]

These By-laws were published in *Provincial Gazette Extraordinary* dated 12 December, 1968.

### CITY OF PIETERMARITZBURG LOCAL MUNICIPALITY SMOKE CONTROL REGULATIONS

The Minister of Health, after consultation with the Minister of Economic Affairs, has been pleased under the authority of section 18 (5) of the Atmospheric Pollution Prevention Act, 1965 (Act No. 45 of 1965), to approve of the subjoined Smoke Control Regulations for the City of Pietermaritzburg as made by the City Council at its meeting held on the 15th August 1968.

1. (1) In these regulations, unless the context otherwise indicated—
  - (ii) **“Council”** means the City Council of Pietermaritzburg.
  - (ii) **“the Act”** means the Atmospheric Pollution Prevention Act, 1965 (Act No. 45 of 1965).
- (2) Expressions other than those referred to in subregulation (1) have the meanings assigned to them by the Act.
2. (1) Save as provided in subregulation (2), no owner or occupier of any premises shall, except for an aggregate period not exceeding three minutes during any continuous period of thirty minutes, permit the emission or emanation from such premises of smoke which, if compared with a chart of the kind shown in the First Schedule to the Act, appears to be of a shade equal to or darker than shade 2 on that chart or which, when measured with a light absorption meter has an absorption of 40% or greater.
  - (2) The provisions of subregulation (1) shall not apply to smoke emanating from a fuel burning appliance during the start-up period or, if such emission could not reasonably have been prevented, while such appliance is being overhauled or during the period of any breakdown or disturbance of such appliance, and emitted in contravention of that subregulation.
  - (3) If on the written application of any person the Council is satisfied that there are adequate reasons for a temporary exemption of any fuel burning appliance or any premises from the provisions of subregulation (1), the Council may by notice in writing given to the applicant, grant for a specific period such exemption.

- 3.** No person shall install or cause or permit to be installed or alter or extend or cause or permit to be altered or extended any fuel burning appliance designed to burn solid or liquid fuel in or on any premises, unless the plans and specifications in respect of such installation, alteration or extension have been approved by the Council.
- 4.** If any fuel burning appliance has been installed, altered or extended in contravention of Regulation 3, the Council may by notice in writing require the owner or occupier of the premises in question to remove, within a period specified in the notice and at his own expense, such fuel burning appliance from such premises.
- 5.** The owner or occupier of any premises in or on which any fuel burning appliance is used shall, if so requested by the Council in writing, install, maintain and use at his own expense such apparatus as may be determined by the Council, for the purpose of indicating or recording or both indicating and recording the density or shade of the smoke emitted from such appliance or for the purpose of facilitating the observance of such smoke with a view to determining its density or shade and make available to the Council at all reasonable times any information recorded or ascertained by means of such apparatus.
- 6.** The provisions of these Regulations shall not apply to smoke emitted from any dwelling house or to the installation, alteration or extension of any fuel burning appliance in any dwelling house.
- 7.** No person shall burn and no owner, occupier or person in control of any premises or part thereof, shall allow any waste material, rubbish, garden refuse, cut grass, prunings or any similar material to be burnt in or on any premises or any part thereof, except in an incinerator which has been duly approved for this purpose in terms of these regulations. (G.N. 708/1978)
- 8.** Any person who contravenes any provision of these Regulations shall be guilty of an offence and be liable on a first conviction to a fine not exceeding two hundred rand, or in default of payment of such fine, to imprisonment for a period not exceeding six months, and on a second or subsequent conviction, to a fine not exceeding one thousand rand or, in default of payment of such fine, to imprisonment for a period not exceeding twelve months.
- 9.** These Regulations may be cited for all purposes as the Smoke Control Regulations.



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