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MOSSEL BAY MUNICIPALITY**AMENDMENT: MOSSEL BAY MUNICIPALITY REFUSE REMOVAL BY-LAW*****Adopted by Resolution E144-06/2021 of the Municipal Council of Mossel Bay***

The Municipality of Mossel Bay hereby publishes the Amended Mossel Bay Municipality Refuse Removal By-law as set out below in terms of Section 156 of the Constitution of the Republic of South Africa, 1996, the Mossel Bay Municipality, enacts as follows:-

The Afrikaans and Xhosa version of this By-Law will be available upon request. In the event of an inconsistency between the English, Afrikaans or Xhosa text, the English text shall prevail.

Aangeneem deur Resolusie E144-06/2021 van die Munisipale Raad van Mosselbaai

Die Munisipaliteit van Mosselbaai, publiseer hiermee die Gewysigde Mosselbaai Munisipaliteit Verordening insake Vullis Verwydering uiteengesit hieronder in terme van artikel 156 van die Grondwet van die Republiek van Suid-Afrika, 1996, die Munisipaliteit van Mosselbaai, bepaal soos volg: -

Die Afrikaanse en Xhosa-weergawe van hierdie Verordening sal beskikbaar wees op aanvraag. In die geval van 'n teenstrydigheid tussen die Engels, Afrikaans en Xhosa teks sal die Engelse teks aanvaar word.

IsiGqibo esiThatyathiweyo u E144-06/2021 seBhunga likaMasipala wase Mossel Bhayi

UMasipala wase Mossel Bhayi, ngokwenjenje wazisa umthetho omtsha ocetywayo kaMasipala wase Mossel Bhayi omalunga Nemiboniso Bhanya-bhanya njengoko kuchaziwe phantsi kweSoloty 156 loMgaqo-Siseko weRiphabliki yoMzantsi Afrika, 1996, uMasipala wase Mossel Bhayi, ukumiselo oku njengomthetho: -

Iinguqulelo zesiBhulu kunye nezesiXhosa zalo Mthetho ziyafumaneka ngesicelo. Kwiimeko apho kukho khona ukungangqinelani phakathi kwenguqulelo yesiNgesi, isiBhulu nesiXhosa, inguqulelo yesiNgesi iyakuthabatha indima ephambili.

MOSSEL BAY MUNICIPALITY

BY-LAW RELATING TO REFUSE REMOVAL

To provide for procedures, methods and practices to regulate the dumping of refuse and the removal thereof.

Definitions

1. In this By-law, unless the context otherwise indicates:-

“bin-liner” means a plastic bag, as prescribed by the Mossel Bay Municipality, which shall be placed inside the container;

“builders refuse” means any waste or refuse resulting from or generated by the construction, renovation or demolition of a building, other structure or works;

“bulky refuse” means any refuse, other than industrial refuse, which emanates from any premises and which by virtue of its mass, shape, size or quantity cannot be conveniently accumulated in or removed by a container with a bin liner;

“business premises” also trade premises or any premises zoned for other purposes than single residential purposes, agricultural purposes or undetermined in terms of a zoning scheme, but includes single residential premises where commercial activities are allowed in terms of an approval granted by the Mossel Bay Municipality;

“charge” means the charges or tariffs as determined from time to time by the Council of the Mossel Bay Municipality;

“domestic refuse” means any refuse or waste normally emanating from or incidental to, the normal occupation of a dwelling, flat, hotel, boarding-house, restaurant, guest house, hospital, school, café, shop, old age home or office but shall not include stones, soil, gravel, bricks, waste liquids, night soil, garden refuse, hazardous waste or industrial, builder’s or trade refuse;

“disposal” means an land fill management site where dumping is allowed as officially determined and designated;

“garden refuse” means any refuse which is generated as a result of normal gardening activities such as grass cuttings, leaves, plants, flowers, weeds and other similar light matter, but exclude bulk refuse;

“hazardous waste” means and include dangerous waste, medical waste, asbestos, motor oils, lubricants, toxic and chemical substances and any refuse, waste, matter, poison or liquid waste or substance which is or may be hazardous or harmful to the environment, to persons or to living organisms or which may cause pollution or which, in the opinion of the Director: Civil Services, constitute hazardous waste or specified in terms of specific legislation;

“head of depot” means the Manager: Community Safety or his or her authorised delegate;

“industrial refuse” means any refuse generated as a result of manufacturing, maintenance, production and dismantling activities and include hazardous refuse;

“land” means also any building or structure erected thereon and includes the premises;

“Municipality” means the Municipality of Mossel Bay in terms of the section 12 of the Municipal Structures Act, 117 of 1998, and includes any duly authorised agent, service provider thereof or any employee thereof acting in connection with this By-law by virtue of a power vested in the Municipality and delegated or sub-delegated to such office bearer, agent, employee or service provider;

“new building” means:-

- (a) a building erected after the date of commencement of this By-law,
- (b) a building which had been demolished, burnt or partly or completely destroyed and is re-constructed of which the re-construction started after the commencement of this By-law,
- (c) a building to which additions are being made, whether by addition of an extra storey or an enlargement which will increase the cubic space of the building,
- (d) a building structurally converted for a purpose which differs from that of which it has been approved for;

“nuisance” means any act, omission or condition which is in the opinion of Municipality detrimental health or offensive or injurious or which materially interfere with the ordinary comfort or convenience of the residents or the public or adversely affects safety of the residents or the public or which disturbs the tranquility of the neighbourhood and does nuisance also include any object or anything which is unsightly or is aesthetically an acceptable to the neighbourhood;

“occupier” means any lessee or other person, provided that where any premises is occupied by more than one lessor or served unrelated persons, or where any premises is not occupied, the owner of such premises shall be regarded as the occupier thereof;

“owner” the person in whom the legal title to the premises is vested, occupier, householder, director of a company, member of a close corporation, the person in control of any premises, or any person who obtains a benefit from the premises or is entitled thereto and includes the person administering an estate as curator, executor, proxy, trustee or administrator of a person in whom the legal title in immovable property is vested and who is insolvent, dead or of unsound mind;

“pavement” means that portion of a street between the road surface of the roadway and the boundary lines of adjacent properties or buildings which is intended for the use of pedestrians;

“person” also includes any legal person, voluntary association, body corporate developer, board, state department or controlling entity;

“public place” any square, street, thoroughfare, bridge, pathway, side-walk, alley, open area, garden, park or any open area in the area of jurisdiction of Municipality;

“refuse container” a plastic bag as supplied by or approved by the Municipality;

“residential premises” means any premises other than business or church premises, unless otherwise stated or approved, but include business premises that are designed in such a way that a part or parts of it used or can be used for residential purposes;

“refuse” means domestic, garden, office or trade refuse and also includes garden refuse, paper and other similar material. In the case of industries the refuse specifically or generally described by the Municipality, but explicitly exclude fluids, burning material, building rubble, ground or stones

“sidewalk” means that portion of a street between the outer boundary of the roadway and the boundary lines of adjacent properties or buildings which is intended for the use of pedestrians;

“trade refuse” means any trade material or trade waste as determined by the Municipality and agreed to by the owner or occupier.

and any word or expression when used in this By-law to which a meaning has been assigned in the Act shall have that meaning.

Application

2. (1) This By-law shall apply on all premises either situated on private-, or public property and be valid in the area of jurisdiction of the Municipality in so far as it is applicable and not inconsistent with or excluded by any other Act, and shall apply until it is amended. In the case of a dispute between the different texts, the English text shall be decisive.
- (2) All actions performed and contraventions committed, proceedings imposed or pending, in terms of any repealed By-law shall not be affected by such repeal and all licences issued and actions performed in accordance with a repealed By-law shall be valid and regarded to be executed and issued in terms of this By-law.
- (3) The provisions of this By-law do not derogate from the provisions of any other legislation which provides for the removal or disposal of specific types of refuse or waste as defined in that legislation.
- (4) This By-law binds any organ of state.

Compulsory use of service

3. (1) In areas where the Municipality renders a refuse removal service, no one except the Municipality, or a person authorised by the Municipality may remove any refuse, excluding garden refuse, from any premises or dispose thereof.
- (2) Each owner, excluding the owners of rural areas and small holdings for as long as such a service is not provided, must make use of the service provided by the Municipality for the removal or disposal of refuse, in respect of refuse originating from such premises.
- (3) The tariff as fixed from time to time by the Municipality is payable to the Municipality by the owner or occupier, irrespective whether the service is being used or not.

Refuse and waste removal services provided by the Municipality

4. (1) The Municipality provides refuse and waste removal services, either by itself, or by means of private contractors, municipal entities or community based service providers.
- (2) Owners of premises where a body corporate is in existence, commercial premises and agricultural premises are responsible for making independent arrangements for the removal of refuse and waste, but may, in areas where the Municipality

provides a refuse and waste removal service, apply to the Municipality to enter into an agreement for the removal or refuse or waste by the Municipality.

- (3) Municipality may in respect of the approval in terms of town planning legislation of new developments, redevelopments and subdivisions require:-
- (a) that provision be made for the storage, handling and safeguarding of refuse and waste;
 - (b) that new business premises and industries submit operational plans for refuse and waste minimisation, and
 - (c) that the operational plans contemplated in subparagraph (b), be implemented when required by the Municipality.

Domestic refuse removal

5. (1) The Municipality must render a service for the disposal of domestic refuse, subject to the conditions as maybe determined by the Municipality.
- (2) Nobody may without the written consent of the Municipality bury domestic refuse into any soil, with the exception of garden refuse.
- (3) Nobody may deposit any other material in a refuse container except domestic refuse.
- (4) The authority responsible for the disposal of domestic refuse, shall dispose thereof only in the prescribed disposal site.
- (5) The owner or occupier of the premises shall not allow refuse to accumulate on a premises or create a dangerous situation or health risk.
- (6) The Council of the Municipality determines from time to time by special resolution the tariff that may be levied on domestic refuse removal and all the requirements that goes therewith.

Accumulation and removal of domestic refuse

6. (1) The Municipality may, generally or in particular, issue instructions to occupiers on the manner in which or the arrangements according to which refuse or refuse bags shall be placed in containers, be removed therefrom, be tied and thereafter be placed on the sidewalk in front of the property or on a designated place.

- (2) No material, including hazardous material or any waste liquid which, by reason of its mass or other property is likely to render such bin liners or containers too difficult for the refuse removers to handle or carry or create a danger or health or physical risk, shall be placed in such bin liners or containers.
- (3) The containers or bin liners, or both, shall be removed by the Municipality at such intervals as the Municipality may deem necessary, only if such containers or bin liners, or both, have been put at the prescribed places as provided by the Municipality.
- (4) In any case where the occupier of a property is not also the owner, the Municipality may hold the owner himself, instead of the occupier, liable for compliance with the provisions of this By-law.

Garden refuse

7. (1) Garden refuse may be removed from property where it accumulates according to any arrangements which the owner or occupier of such property desires to make, provided that, should any accumulation of garden refuse not be removed and should such accumulation in the opinion of the Municipality constitute a nuisance, danger or fire hazard to nearby buildings, the Municipality may order such owner or occupier by written notice to remove such accumulation within a specified period.
- (2) If it has sufficient facilities available, the Municipality may in its discretion and on application from the occupier of property, remove garden refuse therefrom at the cost of the occupier.

Removal of bulky and industrial refuse

8. (1) The occupier or, in the case of premises occupied by more than one person, the owner of premises on which hazardous, bulky or industrial refuse is generated, shall ensure that such refuse is disposed of in terms of this By-law within a reasonable period after the generation thereof.
- (2) Hazardous, bulky and industrial refuse shall, once it has been removed from the premises on which it was generated, be deposited on a site designated by the Municipality as a disposal site or as arranged by legislation.

Builders rubble

9. (1) Builders rubble which may have originated or accumulated in the course of the construction, alteration, renovation or demolition of any structure or works shall be removed from the property concerned according to suitable arrangements to be made by the owner of such property. If there is any undue delay in the removal of such refuse after the completion of the works involved, the Municipality may direct, by written notice to such owner, that the refuse be removed within a specified time.

Trade refuse

10. The Municipality may enter into an agreement with the owner or occupier of any premises for the removal of trade refuse by the Municipality at a charge fixed by the Municipality.

Disposal

11. (1) The Municipality may set aside any disposal site or any part of a disposal site where only a particular kind of refuse may be deposited or dumped.
- (2) The Municipality may limit the type or size of vehicle from which waste may be dumped or deposited.
- (3) The Municipality may limit the quantity of waste in general, or the quantity of a particular type of waste, which may be dumped or deposited at any disposal site.
- (4) The Municipality may require that any waste to be dumped or deposited at a disposal site shall be dumped or deposited at a particular place or in a specified manner only or that it be treated, wrapped or packaged in a specific manner before being dumped or deposited.
- (5) The Municipality shall determine the days when and hours during which dumping may take place at any disposal site.
- (6) (a) requirement imposed in terms of this By-law may be indicated to the public by means of an appropriate notice erected at the entrance of the disposal site concerned, or as per written notice available at the disposal site.

- (b) Any instruction issued by an official of the Municipality or a person acting on behalf of the Municipality in charge of access control at the disposal site, shall be strictly complied with.
- (7) Every person who enters into a disposal site or other facility provided by the Municipality in respect of waste management, must comply to the instructions for use and conditions of entry.

Ownership of refuse

- 12. All refuse removed by the Municipality and all refuse on disposal sites 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 with such refuse.

Abandoned objects

- 13. Anything other than a vehicle deemed to have been left or abandoned anywhere in terms of road traffic legislation, which is, in the light of such factors as the place where it is found, the period it has been lying at such place and the nature and condition thereof, reasonably regarded by the Municipality as having been abandoned, may be removed and disposed of by the Municipality as it may deem fit.

Availability fees

- 14. (1) Basic minimum availability charges fixed by the Council of the Municipality by special resolution shall be payable to the Municipality by the owner of any property, with or without improvements, which is not connected to the Municipality's reticulation system for electricity, sewerage, refuse removal and water, but which in the opinion of the Municipality can reasonably be connected
- (2) The stipulations of the Tariff Policy of the Municipality is applicable.

Charges

- 15. (1) The Municipality shall fix from time to time the charges payable to it for the removal or disposal of refuse and waste and dumping or depositing of refuse and waste at the dumping site.
- (2) The charges as fixed by the Municipality shall be due and payable by the occupier of the premises who is supplied with the refuse removal service or failing which, by the owner of the premises;

- (3) The charges due shall be payable and recoverable in terms of the credit control and debt collection policy and By-law adopted by the Municipality from time to time.

16. Seizure and impoundment of vehicles

- (1) The authorised official may in the interest or safety of the public, human health or the environment, without prior written notice, seize and impound any vehicle where the vehicle was involved in:
 - (a) the disposal of hazardous waste, health care waste, bulky refuse or industrial refuse at any place other than a treatment or disposal facility or landfill site designated by the authorised authority as a treatment or disposal site;
 - (b) the disposal of refuse or waste at any place or facility not authorised to accept such waste;
 - (c) The disposal of builders' rubble at any place or facility other than an approved disposal site;
 - (d) The disposal of refuse or waste at a disposal site in contravention of the provisions of Section 11.
- (2) The authorised official must issue the driver / owner of the vehicle with a receipt for the vehicle being impounded, which must –
 - (a) state the physical non-mechanical condition of the vehicle clearly identifying any damage to the vehicle;
 - (b) state any accessories found in the vehicle at the time of impoundment;
 - (c) state the address of the impound depot where the vehicle will be kept;
 - (d) state the operating hours for the release of vehicles from the impound depot;

- (e) state the manner in which and the name and contact details of the Head of the depot to whom any enquiries including representations may be directed;
 - (f) set out the date and time by which representation must be made;
 - (g) state the costs involved regarding the impoundment fee and the manner in which representations may be made for reduction of an impound fee, which fee may only be reduced or withdrawn by a competent court having jurisdiction and subject to Section 16(12);
 - (h) state any other costs involved in addition to the impoundment fee, which includes but is not limited to towing services which is a once-off fee;
 - (i) inform the driver / owner of the vehicle of the maximum period of storage;
 - (j) provide information on the application process for the extension of the maximum period of storage;
 - (k) inform the driver / owner of the vehicle that the vehicle may be sold by the Municipality if not collected before the expiry of the maximum period of storage;
 - (l) state that the Municipality indemnifies itself against any damage to the vehicle and / or accessories that may be caused as a result of the impoundment of the vehicle, which indemnity must be signed by the driver / owner concerned.
- (3) The authorised official must retain a copy of the receipt issued to the driver / owner of the vehicle being impounded which shall serve as prima facie proof of the condition of the vehicle at the time of seizure.
- (4) Subject to Subsection 12, the owner / driver of the vehicle so impounded must pay the tariff prior to vehicle being released to the owner which tariff includes, but is not limited to the impoundment fee, the administrative fee and the towing services fee;
- (5) The Municipality may recover costs relating to impoundment, transport and storage of the vehicle in terms of its Customer Care, Credit Control, Debt Collection, Indigent and Tampering Policy and the Customer Care, Credit Control and Debt Collection By-law from the owner of the vehicle.

- (6) Owners of impounded vehicles will have a period of three (3) months from the date of impoundment within which to retrieve their vehicles so impounded;
- (7) The Municipality may, upon written application, extend the period of storage before the end of the three (3) month period provided that extension may not be granted more than twice;
- (8) After the three (3)-month period has lapsed, the Municipality must serve a notice on the registered owner and the person driving the vehicle at the time of seizure advising him or her –
 - (a) that the Municipality intends selling his or her impounded vehicle as a result of his or her failure to secure the release of such vehicle within the specified time;
 - (b) of the date, time and place where representations may be made by the registered owner and/or the person driving the vehicle at the time of seizure thereof as to why the Municipality should not sell his or her vehicle; and
 - (c) of the date, time and place of such sale should the representations referred in paragraph (b) prove unsuccessful.
- (8) In the event that the registered owner of the vehicle is not found and the vehicle is regarded as abandoned, the Municipality must, after the period referred to in Subsection 8 above, publish a notice of the intention to sell the vehicle so abandoned, which notice must be published in the local newspaper for a period of 14 days;
- (9) The Municipality may only sell the vehicle concerned once it is satisfied that the registered owner has received the notice as per subsection 8 above or the notice was published in the local newspaper as in subsection 9 above, the owner or titleholder not having been traced or fails to collect the vehicle for a period of three (3) months;
- (10) Once the vehicle is on auction, the Municipality must pay to such owner the proceeds of the sale less the impoundment and administrative fees or keep such remainder as unallocated funds after all fees and tariffs have been exhausted;

- (11) Vehicles which have been impounded by the Municipality may only be released to the registered owner of the vehicle, or the person who was driving the vehicle at the time of the seizure, upon proof of –
- (a) payment of all costs relating to the impoundment transport and storage of the vehicle;
 - (b) payment of a fine imposed as per the Section 23;
 - (c) criminal charges against the person have been withdrawn;
 - (d) the accused has been acquitted of all charges in this regard;
 - (e) where the accused is convicted of the offence charged, on payment to the Head of the depot the amount determined by Council, which is the tariff, which amount increases for the second and third conviction;
- (12) Prior to the release of any vehicle from an impound depot –
- (a) Valid proof of address of the owner of the vehicle must be submitted to the authorised official;
 - (b) The authorised official may only release an impounded vehicle to another person upon presentation of:
 - (i) letter of authorisation from the registered owner;
 - (ii) certified copy of the registered owner's identity document; and
 - (iii) certified copy of the identity document of the person collecting the vehicle.

Liability

17. (1) Where anything has been removed and disposed of by the Municipality, the person responsible shall be liable to pay the Municipality the charge fixed by it for such removal and disposal.
- (2) For the purposes of subsection (1), the person responsible shall be-
- (a) the owner of the object, including any person who is entitled to be in possession of the object by virtue of a hire-purchase agreement or an agreement of lease at the time when it was abandoned or put in the place from which it was so removed, unless he can prove that he was not involved in and did not know of its being put in such place, or
 - (b) any person by whom the object was put in the place aforesaid, or
 - (c) any person who knowingly permitted the object to be put in the said place.

Offences and penalties

18. Any person who contravenes any provisions of this By-law or fails or refuses to comply with, carry out or execute any order or notice issued by the Municipality in accordance with this By-law shall be guilty of an offence and on conviction be liable to-
- (a) a fine or imprisonment or to both such fine and such imprisonment;
 - (b) in the case of a continuing offence, to an additional fine or an additional period of imprisonment or to such additional imprisonment without the option of a fine or to both such additional fine and imprisonment for each day on which such offence is continued, and
 - (c) a further amount equal to any costs and expenses found by the court to have been incurred by the Municipality as result of such contravention or failure.

Domicilium citandi

19. For the purpose of the service of any notice, order or other document upon any consumer in terms of this By-law, the address registered for such consumer in the books of the Municipality shall be deemed to be his *domicilium citandi*, unless otherwise shown in any formal document.

Repeal

20. The provision of all the former By-laws relating to refuse removal and disposal are hereby repealed.

Short title and commencement

21. This By-law shall be known as the By-law relating to Refuse Removal of the Mossel Bay Municipality and shall come into operation on the date of publication thereof in the Provincial Gazette.

