

Hessequa, South Africa

Irrigation Water

Legislation as at 17 January 2014

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Hessequa South Africa

Irrigation Water By-law, 2008

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[Amended by Irrigation Water: Amendment on 17 January 2014]

Under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996 the Hessequa Municipality, enacts as follows:-

1. Definitions

“**dry erf**” means an erf other than a water erf;

“**municipality**” means the Municipality of Hessequa, established in terms of Section 12 of the Municipal Structures Act, 117 of 1998, and includes any political structure, political office bearer, councillor, duly authorized agent or any employee acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, councillor, agent or employee;

“**street**” means any street, road, cycle path, thoroughfare or any other place, including –

- (a) the verge of any such road, street or thoroughfare
- (b) any footpath, sidewalk or similar pedestrian portion of a road reserve;
- (c) any bridge, ferry or drift traversed by any such road, street or thoroughfare;
- (d) any other object belonging to such road, street or thoroughfare, which has at any time been –
 - (i) dedicated to the public;
 - (ii) used without interruption by the public for a period of at least thirty years;
 - (iii) declared or rendered such by the municipality or other competent authority, or
 - (iv) constructed by a local authority, and
- (v) any land, with or without buildings or structures thereon, which is shown as a street on –
 - (aa) any plan of subdivision or diagram approved by the municipality or other competent authority and acted upon, or
 - (bb) any general plan as defined in the Land Survey Act, 1927, registered or filed in a deeds registry or Surveyor General’s office;

unless such land is on such plan or diagram described as a private street;

“**water erf**” means an original water erf, which according to the conditions of sale was entitled to receive irrigation water;

“**water fiscal**” means a person appointed by the municipality to give effect to and to see to the proper administration and implementation of this by-law.

2. Purpose of by-law

The purpose of this by-law is to provide procedures and rules for the provision and management of irrigation water to those properties in Hessequa which are entitled thereto in terms of the conditions of sale thereof.

3. Distribution and availability of irrigation water

The municipality must-

- (a) divide the water erven into blocks for distribution purposes and such distribution will be subject to the availability of water for irrigation purposes;
- (b) compile a statement in writing for each water turn stating the days and hours during which each block shall be entitled to water for irrigation purposes and must post a copy of such statement on the notice board outside the municipal offices, for general information; and
- (c) employ a sufficient number of water fiscals to ensure the division and distribution of water and define the duties of the water fiscals.

4. Prohibited conduct

- (1) No person may:
 - (a) alter the division of water made by a water fiscal in accordance with the statement referred to in [section 3\(b\)](#);
 - (b) lead water out of an irrigation furrow other than during his turn of water leading;
 - (c) permit irrigation water to run or flow from any other irrigation furrow into or upon his erf or land except during his turn of water leading;
 - (d) obstruct a water fiscal in the execution of his or her duties;
 - (e) scoop or pump by manual or mechanical means water from any public irrigation furrow for the purpose of irrigating any dry erf;
 - (f) wash clothes in the town dam or irrigation furrows or pollute any water in the town dam or in any irrigation furrow;
 - (g) allow poultry or animals to be in any irrigation furrow; or
 - (h) allow water to run from his water erf or portion thereof over or into any street or road.
- (2) A person who contravenes a provision of this section commits an offence

5. Maintenance of infrastructure

- (1) All owners of water erven or any portion thereof must keep clean and in proper order his or her water furrow leading to and past his or her erf or portion thereof as far as it extends along such water furrow other than furrows abutting on streets.
- (2) The municipality must-
 - (a) maintain and keep clean the main furrows supplying water; and
 - (b) maintain and keep clean all irrigation furrows abutting on streets and roads.
- (3) The municipality shall not be responsible for any capital cost in regard to construction or re-construction, cement lining or piping of water furrows other than those contemplated in subsection 2(b);

6. Non-liability of municipality

- (1) The municipality shall not be liable for any damages resulting from -
 - (a) the non-deliverance of irrigation water for any cause whatsoever;
 - (b) the delivery of irrigation water to any water erf or portion thereof other than as set out in the statement referred to in [section 3\(b\)](#) hereof; or
 - (c) overflow from any irrigation furrow caused by stormwater flowing in such furrow.

7. Service charges

- (1) An annual service charge per water erf as determined in the municipality's Tariff Policy shall be payable to the municipality.
- (2) The annual service charge shall be divided between the owners of a subdivided water erf based on the proportionate share of the water right attached to each subdivided share.
- (3) Owners of water erven or portions thereof situated above the main furrow, and water erven or portions thereof so built upon as to be unable to lead water thereon, shall be exempt from the annual service charge;
- (4) Where a water erf is subdivided and the water rights attached to the subdivided erf is transported to the purchaser the seller of the subdivided part of the erf must inform the municipality in writing and provide proof of such subdivision in order to invoke the provisions of subsection (2).

[subsection (4) inserted by the [Amendment By-law, 2014](#)]

- (5) Where a seller contemplated in subsection (4) fails to notify the municipality, the service charge contemplated in subsection (1) will be levied from the seller until the notification contemplated in subsection (4) had been submitted.

[subsection (5) inserted by the [Amendment By-law, 2014](#)]

8. Appeal

A person whose rights are affected by a decision of the municipality may appeal against that decision by giving written notice of the appeal and the reasons therefore in terms of section 62 of the Local Government: Municipal Systems Act, [Act 32 of 2000](#) to the municipal manager within 21 days of the date of the notification of the decision.

9. Penalties

A person who has committed an offence in terms of this by-law is, on conviction, liable to a fine, or in default of payment, to imprisonment, or to both such fine and such imprisonment, and in the case of a successive or continuing offence, to an additional fine or in default of payment thereof, to additional imprisonment for each day on which such offence is continued.

10. Revocation of by-laws

The provisions of any by-laws previously promulgated by the municipality or by any of the disestablished municipalities now incorporated in the municipality, are hereby repealed as far as they relate to matters provided for in this by-law, and insofar as it has been made applicable to the municipality by the authorization for the execution of powers and functions in terms of section 84(3) of the Local Government: Municipal Structures Act, [Act 117 of 1998](#).

11. Short title and commencement

This by-law is known as the By-law relating to Irrigation Water, and commences on the date of publication thereof in the *Provincial Gazette*.