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 LIMPOPO PROVINSIE  
 XIFUNDZANKULU XA LIMPOPO  
 PROFENSE YA LIMPOPO  
 VUNDU LA LIMPOPO  
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**Provincial Gazette • Provinsiale Koerant • Gazete ya Xifundzankulu  
 Kuranta ya Profense • Gazethe ya Vundu**

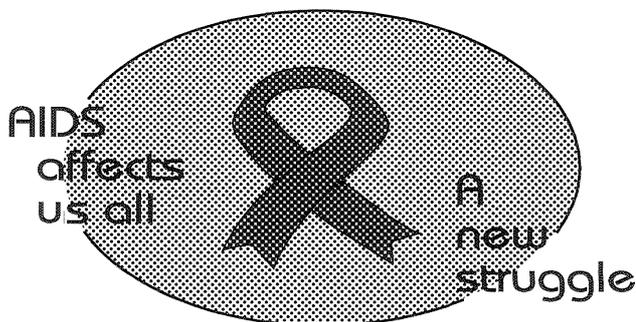
*(Registered as a newspaper) • (As 'n nuusblad geregistreer)*  
*(Yi rhijistariwile tanihi Nyuziphepha)*  
*(E ngwadisitšwe bjalo ka Kuranta)*  
*(Yo redzhistariwa sa Nyusiphepha)*

**Vol. 22**  
**Extraordinary**  
**Ku katsa na Tigazete to**  
**Hlawuleka hinkwato**

8 JUNE 2015  
 8 JUNIE 2015  
 8 KHOTAVUXIKA 2015  
 8 JUNE 2015  
 8 FULWI 2015

**No. 2517**  
**Buitengewoon**  
**Hu tshi katelwa na**  
**Gazethe dza Nyingo**

**We all have the power to prevent AIDS**



**Prevention is the cure**

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DEPARTMENT OF HEALTH

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**CONTENTS • INHOUD**

<i>No.</i>		<i>Page No.</i>	<i>Gazette No.</i>
<b>LOCAL AUTHORITY NOTICE</b>			
57	Municipal Systems Act (32/2000): Thulamela Municipality: Land Use Management and Building Regulation By-Law	3	2517
*	Draft Credit-Control and Debt Collection By-Law .....	22	2517
*	Draft tariff by-law 2015.....	29	2517
*	Draft Municipal Property Rates By-Law.....	36	2517
*	Thulamela Municipality: By-Law on Waste Management.....	40	2517
*	Cemeteries by-laws .....	61	2517
*	Heritage Resources and Cultural Institutions By-laws.....	85	2517
*	By-Laws for roads, traffic and safety .....	104	2517
*	The Spatial Planning and Land Use Management: By-laws Limpopo .....	168	2517

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## LOCAL AUTHORITY NOTICE

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### LOCAL AUTHORITY NOTICE 57 THULAMELA MUNICIPALITY LAND USE MANAGEMENT AND BUILDING REGULATION BY-LAW

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#### Land Use Management and Building regulation By-Law

The Municipal Manager of Thulamela Local Municipality hereby, section 156 of the Constitution of Republic of South Africa, 1996 read with section 13(a) in conjunction with section 75 (1) of the Municipal Systems Act, 2000 (Act No. 32 of 2000), as well as Spatial Planning and Land Use Management act 16 of 2003 publishes the Land Use management and Building regulation By-Law for the Thulamela Local Municipality, to be approved by the Council, as set out hereunder.

#### TABLE OF CONTENTS

1. Definitions
2. Application of by law
3. Purpose of by law
4. Construction of illegal structure/s on urban and rural areas and Procedures relating to the termination of Unauthorized Illegal structure/s.
5. Land use rights and acquiring of additional rights
6. Buildings design guidelines and building in the Central Business District
7. Design guidelines in Thohoyandou Unit D
8. Restriction on the erection of buildings within the one-in-fifty-year flood-line
9. Building Activities that need Approval from the Municipality
10. Construction of Unapproved Building Plans
11. Exemptions from Requiring Building Approval
12. Building Approval Requirements
13. Certificates of Occupancy
14. Penalties for Construction of Unapproved Building Plans
15. Penalties for Altering of Existing Structure Approval
16. Encroachment, advertising and illegal use of municipal land
17. Development of vacant stand
18. Densification allowances and option per township
19. Conflicting by law
20. Offences and penalties

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**THULAMELA MUNICIPALITY**  
**LAND USE MANAGEMENT AND BUILDING**  
**REGULATION BY-LAW**

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### 1. Definitions

(1) In this By-Law, any word or expression which has been defined in the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977), has that meaning and, unless the context otherwise indicates –

**Building** is a man-made structure with a roof and walls standing more or less permanently in one place.

**Central Business District** means central district of a city, usually typified by a concentration of retail and office buildings

**"Council"** means –

(a) the Municipality established by Provincial Notice No 6766 of 2000 dated 1 October 2000, as amended, exercising its legislative and executive authority through its municipal Council; or

(b) its successor in title; or

(c) a structure or person exercising a delegated power or carrying out an instruction, where any power in this By-Law 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); or

(d) a service provider fulfilling a responsibility under this By-Law, 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;

**"Encroachment"** means any physical object which intrudes on or over municipal property, or property which the Council has control over or other property in respect of which a servitude or other property right has been registered in favour of the Council;

**Illegal use of land-** use of land contrary to the provisions of laws, Land use Management Scheme, deed of grant and PTO and etc

**Illegal structure** –illegal structure is the one not included plans but fix to the building or structure that are constructed without authorization from the council.

**Mixed use development** -any urban, suburban or village development, or even a single building that blends a combination of residential, commercial, cultural, and institutional where those functions are physical and functionally integrated and that provides pedestrian connections.

**"Owner"** means -

**THULAMELA MUNICIPALITY**  
**LAND USE MANAGEMENT AND BUILDING**  
**REGULATION BY-LAW**

(a) the person who receives the rent or profits of land or property from a tenant or occupier of the land or property, or who would receive the rent or profits if the land or property were leased, whether for his or her own account or as an agent for a person entitled to the rent or profit;

(b) where the person in whom the legal title to premises is vested is insolvent or dead, or is under any form of legal disability whatsoever, the person in whom the administration and control of the premises is vested as curator, trustee, executor, administrator, judicial manager, liquidator or other legal representative; and

(c) in relation to -

(i) a piece of land delineated on a sectional plan registered in terms of the Sectional Titles Act, 1986 (Act 95 of 1986), the developer or the body corporate in respect of the common property; or

(ii) a section as defined in the Sectional Titles Act, 1986, the person in whose name the section is registered under a sectional title deed, and includes the lawfully appointed agent of such person;

**Occupier** – in relation to any premises means

(a) The person who actually occupies the premises

(b) The person who is legally entitled to occupy the premises

(c) The person in charge of the premises or responsible for managing the premises and includes the agent of the person when he or she is absent from the republic of South Africa or when his or her whereabouts are unknown.

**Piece of Land**" means -

(a) a piece of land registered in a deeds registry as an erf, stand, lot, plot or other area or as a portion or a subdivision portion of such *erf, stand, lot, plot* or other area; or (b) a defined portion, not intended as a public place, of a piece of land which is held under surface right permit or under mining title or which, being proclaimed land not held under mining title, is used for residential purposes or for purposes not incidental to mining operations;

**"Premises"** means a piece of land, the external surface boundaries of which are delineated on -

(a) a general plan or diagram registered in terms of the Land Survey Act, 1997 (Act 8 of 1997), or in terms of the Deeds Registries Act, 1937 (Act 47 of 1937); or

(b) a sectional plan registered in terms of the Sectional Titles Act, 1986

**"Prescribed"** means determined by resolution of the Council made 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;

**THULAMELA MUNICIPALITY  
LAND USE MANAGEMENT AND BUILDING  
REGULATION BY-LAW**

“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 or any section thereof 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;

(2) If any provision in this By-Law 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 must be read as a reference to the service provider or, where applicable, an employee of the service provider authorized by it.

**Rural** means an area that is located outside cities and towns.

**State of decay** is a process by which a building is in to a state of disrepair

**Urban** means an area characterized by higher population density and vast human features in comparison to the areas surrounding it. Urban areas may be cities, towns or conurbations, but the term is not commonly extended to rural settlements such as villages and hamlets.

## 2. Application of by-laws

(1) These By-laws apply to every unless otherwise stated to every land, development and building which falls under the jurisdiction of the Council,

(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-

(a) to ensure that the way in which the Council controls and manages land use management and buildings is environmentally sustainable, and is in the long-term interests of the whole community of Thulamela, including future generations; and (b) which clearly defines the rights and obligations of the public in relation to land use management and buildings.

**THULAMELA MUNICIPALITY**  
**LAND USE MANAGEMENT AND BUILDING**  
**REGULATION BY-LAW**

**4. Construction of illegal structure/s on urban and rural areas and procedures relating to the termination of illegal structure/s.**

(1) As soon as a determination of the status of an illegal structure/s has been made and within a reasonable period, the authorized representative or employee of the council must, visit the area and notify the occupants of the status of the illegal structure/s by means of a written notice hand-delivered to the transgressor.

(2) The written notice contemplated in subsection (1) must -

(a) Notify the occupants/workmen of the illegal structure that their occupation of the area and the site or stand on which it is situated is illegal; and

(b) Request the occupants/workmen of the area to vacate the area and remove any building materials and other personal property from the illegal structures within a period of 48 hours after receipt of the written notice.

(3) If the occupants/workmen notified in terms of subsection (1) cooperate and vacate the area and remove their building materials and other personal property from the site or stand in the unauthorized area, authorized representative or employee of the council must take such steps as he or she may deem appropriate to prevent a recurrence of any incident of land invasion or illegal land occupation on that site, stand or unauthorized activities and must regularly monitor the situation to ensure the non-recurrence of such land invasion or illegal land occupation.

(4) If the occupants/workmen notified in terms of subsection (1) fail to cooperate and vacate the area and remove their building materials and other personal property from the site or stand in the unauthorized area a second notice will be issued and after that, the municipality will within 48 hours evict, demolish, dispose building materials and other personal property of the illegal structures erected not in accordance with the provisions of these by laws and further handover all the notices to legal section for further action.

(5) Any costs incurred by the municipality for the purposes of executing the provisions of this By-Law must be borne by the Municipality in accordance with its approved budget.

**5. Land use rights and acquiring of additional rights**

(1) No person is allowed to use or develop the property not in accordance with its legal usage as prescribed in the Thulamela zoning scheme, deed of grant, Title deed and permission to occupy.

(2) No person/property owner is allowed to change existing land use rights, additional rights, removal of restrictions and etc. without written approval from the municipality.

**THULAMELA MUNICIPALITY**  
**LAND USE MANAGEMENT AND BUILDING**  
**REGULATION BY-LAW**

(3) As soon as a determination of the change of land use rights, acquiring of additional rights, removal of restrictions without following proper procedure and etc has been made and within a reasonable period, authorized representative or employee of the council must, visit the area and notify the property owner of the unauthorized change of land use by means of a written notice hand-delivered to the transgressor. If no cooperation from property owners, a second written notice will be issued. If transgressions continue the municipality will take legal action for such illegal structure to be demolition.

4). No person/property owner is allowed to change land use without approval .if a person is found to be conducting activity not in accordance to its zoning and without necessary approval a notice will be issued to the transgressor to comply and such process of rezoning must done within three months and failure to do so will resulted in the building being closed and further legal action being taken against the owner.

(4) If the transgression continues the authorized representative or employee of the council must immediately handover all the notices to legal section to institute the necessary legal procedures to obtain an order stopping the property owner to proceed with such operation and to follow proper procedure.

(5) All the proposal for Mixed used development in the Central Business District will be promoted if they are in line with council vision 2030.

**6. Building Design guidelines and Buildings regulations in Central Business District.**

(1) No hardware business rights will be allowed in the Central Business District. All hardware in the Central Business District will have to be relocated to the industrial area within a reasonable time as outline by council.

(2) No building in a state of decay will be allowed to operate in the Central Business District.

(3) As soon as determination of status of building in a state of decay has been made and within a reasonable time the authorized representative or employee of the council must write a letter to the owner of the building to improve their building within 6 months.

(4) If the owner of the building notified in terms of subsection (3) fail to cooperate with 6 months and renovate their buildings, authorized representative or employee of the council and other departments outside the municipality will issue the notice to the owner to stop operating until there is compliance.

(5) In order to maintain the required standard, only Professional Senior Architectural Technologist and Professional Architect drawings will be assessed for approval in accordance in the central business district and adjacent areas in terms of commercial development.

(6) Prior initiating a new or improvement application, individuals and business owners are encouraged to meet with members of the plan approval committee to discuss the municipality design guidelines and vision 2030 of the overall building.

(7) Building design should avoid large areas of blank wall space towards the street front façade.

(8) Continuous build out at the front building façade is important for the architectural concept in the CBD

(9) The overall architectural design and features of buildings and structures should be compatible with the 2030 vision

(10) The overall materials used on exterior surface of buildings and structures should be harmonious with other buildings in the CBD.

**THULAMELA MUNICIPALITY**  
**LAND USE MANAGEMENT AND BUILDING**  
**REGULATION BY-LAW**

- (11) The overall arrangement of buildings, parking areas and site structures should complement the CBD arrangements.
- (12) Roof – Roofs which are visible from streets and other public areas should present an attractive and organized appearance such that surfaces should be free of mechanical equipment, vents and other objects.
- (13) walls-Walls which are visible from the streets and public areas should present an attractive and organized appearance such that surfaces should be free of mechanical equipment, vents, air conditioners and other objects. Materials used should be suitable and compatible with the CBD materials predominant e.g, ( face bricks), (stock bricks) and plastered walls. There should be no use of block bricks, mud bricks in the CBD
- (14) windows-Windows which are visible from the streets and public areas should present an attractive and organized appearance such that glass should be clear, avoiding colours and plastic applique materials
- (15) Facades -Facades which are visible from the streets and public areas should present an attractive and organized appearance such that entrance doors frames should be painted or aluminum frames can be used to make the entrance more attractive, entrance should incorporate large glass areas whenever possible  
 Display windows, when used, should be large areas of clear glass  
 All exposed plumbing should be fully screened and not visible from the street.
- (16) No erection of fences and or wall will be allowed in the CBD without proper authorization, if no proper authorization has been obtained from the municipality and owners fail to remove the structures after notice has been issued, such structures will be removed without further notice.

**7. Design guidelines in Thohoyandou Unit D**

- (a) Washing lines should not be visible from the street, recommended to be erected at the roof top with the screen wall
- (b) All the designs should be aesthetically acceptable to the local authority including all phased designed.
- (c) The design of the dwelling unit and the entire stand should show a special sensitivity to the existing natural features, flora and topography of the area. Surrounding structures must be taken into account in the design process. If the Municipality finds that the design presented is not aesthetically acceptable, that building plan will not be approved.
- (d) In order to maintain the required standard, only Professional Senior Architectural Technologist and Professional Architect drawings will be assessed for approval. It is strongly recommended that the Architect employed by the owner consult the Local Authority prior design of the proposed house.
- (e) The design of the dwelling should complement the existing styles, and be in harmony with the existing theme and character of the existing houses.
- (f) No residential stand may be subdivided or rezoned for any other use than for a single dwelling.
- (g) The owner must ensure that the building contractor to be used to erect the building on the property, complies with the following criteria namely:
- (h) The building contractor has to be registered with the National Home Builders Registration Council (NHBC).
- (i) Request Inspection from the local authority and complete the inspection form required by the municipality.
- (j) The owners are to complete their houses as per the approved building plans, if there are changes the owner/architect should first consult and get approval from the municipality.
- (k) It is the owner's responsibility to ensure that all plans are submitted and approved by the municipality prior construction.
- (l) All exposed plumbing and washing lines should be fully screened and not visible from the street.
- (m) No dwelling may be smaller than 250m<sup>2</sup> (all building areas included).
- (n) No material to be stored or off loaded on the road at all times.
- (o) Provision of toilet facilities when constructing the building should be provided at all times.
- (p) No mud-bricks allowed.
- (q) The site is to be kept as clean as possible of building rubble and general cleaning.

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**THULAMELA MUNICIPALITY**  
**LAND USE MANAGEMENT AND BUILDING**  
**REGULATION BY-LAW**

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(r) No concrete, dagga, cement or such may be temporarily stored or mixed or prepared on any of the road ways, kerbs and pavements.

(s) No bottles on boundary walls will be allowed.

(t) Failure to comply with the above mentioned guideline will result in legal action taken against you.

#### **8. Restriction on the erection of buildings within the one-in-fifty-year flood-line**

(1) No building may without the express permission of the competent authority be erected so that the building is, at its nearest point to a natural watercourse, nearer to the centre of the natural watercourse than to a line indicating the maximum level likely to be reached every 100 years on average by flood water in the watercourse.

(2) For the purpose of subsection (1) the Municipality is the sole judge as to the position of the line and of the centre of the natural watercourse.

(3) For the purpose of this section, a natural watercourse means a topographic land depression that collects and conveys surface stormwater in a definite direction, and includes any clearly defined natural channel that conveys water in a definite course along a bed between visible banks, whether or not the channel's conformation has been changed by artificial means and whether or not the channel is dry during any period of the year, and such channel includes any river, spruit or stream.

#### **9. Building Activities that need Approval from the Municipality**

Generally building activity that needs approval of the Municipality includes the following:

- **constructing a new building** or other structures such as sheds, towers, temporary structures
- **extending** existing buildings
- **undertaking alterations** to an existing building including structural alterations, altering internal walls and partitions
- **Installing new or altering existing services** such as electrical or hydraulic works
- **demolishing or removing buildings**, engineering works or services.
- **installing** signs, antennas, some fences

All approved building plans will be valid for period of 24 months, if the approved plan is not constructed within 24 months a new application will have to be submitted to the municipality.

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**THULAMELA MUNICIPALITY**  
**LAND USE MANAGEMENT AND BUILDING**  
**REGULATION BY-LAW**

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#### **10. Construction without approved building plans**

Any proposed use or development on the erf requires the approval of the Municipality. This includes any construction or demolition of a building, carrying out of any internal alterations to a existing building, or the carrying out of works on the erf.

The Municipality is responsible for the following in accordance to these By-Law:

- Responsible for processing and approving building plans presented by individuals, the private sector, associations and Government Agencies
- Inspect building constructions from time to time and declare the building fit for occupations upon its completion.
- Control unapproved building construction/connection and prepare reports, issue notices and initiate legal action.
- Issue temporary permits for temporary building applications, work garage buildings, placement of construction materials, erecting tents, film shows and so on.
- Issue compounds for violations such as building stalls, temples and placement of building materials within public areas. Applications will not be assessed until all relevant plans, elevations and supporting information is submitted and the appropriate application fee is paid

The primary responsibility of the Municipality is to assess land use and development proposals against the requirements of the Land Use Plan.

#### **11. Exemptions from Requiring Building Approval**

There are numerous minor works that may not require formal building approval but will still require a minor work order.

Examples are:

- minor painting
- some minor landscaping works
- some minor repair and maintenance works
- Works that the Municipality deems to be minor.

**Advice is to be sought from the Municipality, who will liaise with the individual as to whether the proposed works are exempt. NO works are to commence until advice, is sought.**

#### **12. Building Approval Requirements**

An application for building approval is required to be lodged with the responsible Municipality official who will forward it with appropriate comment to the Manager Engineering Services. Generally this will require an application form to be

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**THULAMELA MUNICIPALITY**  
**LAND USE MANAGEMENT AND BUILDING**  
**REGULATION BY-LAW**

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completed, appropriate drawings and or details to be submitted depending on the extent of the works and payment of the application fee which is based on the cost of works. Prior to the building approval being issued, consent for the works must be issued by Municipality. Developer /applicant are required to notify the building control office when construction is to begin.

### **13. Certificates of Occupancy**

Before a building may be occupied or used a Certificate of Compliance for Occupancy/ Use is required to be obtained from the Municipality. This allows individual to legally occupy or use the building or works you have just completed.

### **14. Penalties for Construction of Unapproved Building Plans and deviations**

This land use management and Building Regulations By-Law gives authority to the responsible Municipality official to issue on-the spot fines for building activity undertaken without formal building approval and for new buildings occupied or used without a Certificate of Compliance as determined in the municipal tariffs.

### **15. Penalties for Altering of Existing Structure Approval**

It should be noted that heavy penalties exist for non-compliance with these By-Law. This land use management and building regulation By-Law gives authority to the responsible Municipality official to issue on-the spot fines for building activity undertaken without formal building approval and for new buildings occupied or used without a Certificate of Compliance as determined in the municipal tariffs.

### **16. Advertising and Encroachments/ illegal use of municipal land**

(1)No person is allowed to utilize any public road, parks, loading zones or any immovable property owned by or vested in the council for any other purpose except for which it has been intended for contrary to what they have been designed for without proper authorization or permission.

(2)Any person using public road, parks, loading zones or any immovable property owned by or vested in the council will be charged a penalty fee as determined by council and furthermore all material/goods found placed in municipal land without authorization will be immediately confiscated and put in a safe place and penalty fee will be imposed when such goods are collected.

(3) Such penalty fee will be charged on a monthly basis and will only be discontinued as and when council is satisfied that there is compliance.

**THULAMELA MUNICIPALITY**  
**LAND USE MANAGEMENT AND BUILDING**  
**REGULATION BY-LAW**

(4) No person is allowed to put or place an advert in any public road or any immovable property owned by or vested in the council without authorization.

(5) No person is allowed to paste any advert in any public road or any immovable property owned or vested in the council without authorization.

(6) If any advert is placed on public road or any immovable property owned or vested in the council without proper authorization such advert will be immediately removed from site and stored in municipal storage area and penalty fee will be charged when collecting the advertising boards. If such material are not collected within 30 days of storage council will auction the material.

#### 17. Development of vacant stands

(1) It is the responsibility of the owner to clean their stands on a regular basis and failure to do so will result in municipality cleaning the stand and charge penalty fee as determined by council in terms of tariffs on a monthly basis.

(2) All stands purchased from the council must be developed within two years of purchasing the site.

(3) If the site is not developed within two years from the date of purchase as stipulated in subsection (2) council impose will penalties and further repossess the site.

(4) All vacant stands purchased before the enforcement/ implementation of this by law must be developed within two years of the date of the implementation of this by law and if not developed within stipulated time council will impose penalties and further repossess the site.

(5) It is the responsibility of the owner to inform council when development has commenced on site so that penalty fee can be discontinued but the account must be up to date.

#### 18. Densification allowances and option per township

(1) Any land development applications to be submitted to the municipality for consideration will have to be subjected to the densification allowances and options listed in subsection 3.

(2) If the proposed application do not meet the requirements as stipulated in subsection 3 such application will not be considered.

(3) The next schedule shows the densification allowances and options which must be adhered to by the owner or any other agent acting on behalf of the owner.

<i>Township</i>	<i>Average size(m<sup>2</sup>)</i>	<i>Second dwelling</i>	<i>Subdivision</i>	<i>Residential 2</i>	<i>Residential 3</i>	<i>Comments</i>
<b>Makwarela A</b>	500	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Not applicable	Allowed through formal rezoning with a minimum stand size of 700m <sup>2</sup> .		
<b>Makwarela ext. 3</b>	700	Allowed on all	Subdivision allowed on	Allowed through formal		

**THULAMELA MUNICIPALITY**  
**LAND USE MANAGEMENT AND BUILDING**  
**REGULATION BY-LAW**

		Residential 1 zoned stands larger than 500m <sup>2</sup> .	all Residential 1 stands up to a minimum size of 1000m <sup>2</sup>	rezoning with a minimum stand size of 700m <sup>2</sup>		
<b>Makwarela ext. 4</b>	2000	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Subdivision allowed on all Residential 1 stands up to a minimum size of 1200m <sup>2</sup>	Allowed through formal rezoning on stands with a minimum stand size of 1200m <sup>2</sup> .		
<b>Malamulele A</b>	700	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Subdivision allowed on all Residential 1 stands up to a minimum size of 1000m <sup>2</sup>	Allowed through formal rezoning on stands with a minimum stand size of 700m <sup>2</sup> .		
<b>Malamulele B</b>	700	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Subdivision allowed on all Residential 1 stands up to a minimum size of 1000m <sup>2</sup>	Allowed through formal rezoning on stands with a minimum stand size of 700m <sup>2</sup> .		
<b>Malamulele B ext 1</b>	600	No second dwelling allowed.	Not applicable	Not applicable.		
<b>Malamulele C</b>	700	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Subdivision allowed on all Residential 1 stands up to a minimum size of 1000m <sup>2</sup>	Allowed through formal rezoning on stands with a minimum stand size of 700m <sup>2</sup> .		
<b>Malamulele D</b>	800	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Subdivision allowed on all Residential 1 stands up to a minimum size of	Allowed through formal rezoning on stands with a minimum stand size of 800m <sup>2</sup> .		

**THULAMELA MUNICIPALITY  
LAND USE MANAGEMENT AND BUILDING  
REGULATION BY-LAW**

			1000m <sup>2</sup>			
<b>Malamulele D ext 1</b>	1000	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Subdivision allowed on all Residential 1 stands up to a minimum size of 1000m <sup>2</sup>	Allowed through formal rezoning on stands with a minimum stand size of 900m <sup>2</sup> .		
<b>Thohoyandou -A</b>	1500	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Subdivision allowed on all Residential 1 stands up to a minimum size of 1100m <sup>2</sup>	Allowed through formal rezoning on stands with a minimum stand size of 1100m <sup>2</sup> .		
<b>Thohoyandou –A ext. 1</b>	600	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Subdivision allowed on all Residential 1 stands up to a minimum size of 1000m <sup>2</sup>	Allowed through formal rezoning on stands with a minimum stand size of 600m <sup>2</sup> .		
<b>Thohoyandou BA</b>		Not applicable	Not applicable	Not applicable		Mixed used development and high density development in line with vision 2030 will be promoted.
<b>Thohoyandou -C</b>	600	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Subdivision allowed on all Residential 1 stands up to a minimum size of 1000m <sup>2</sup>	Allowed through formal rezoning on stands with a minimum stand size of 700m <sup>2</sup> .		
<b>Thohoyandou C ext. 1</b>	600	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Subdivision allowed on all Residential 1 stands up to a minimum size of 1000m <sup>2</sup>	Allowed through formal rezoning on stands with a minimum stand size of 700m <sup>2</sup> .		
<b>Thohoyandou C ext. 2</b>	1100	Allowed on	Subdivision	Allowed		

**THULAMELA MUNICIPALITY**  
**LAND USE MANAGEMENT AND BUILDING**  
**REGULATION BY-LAW**

		all Residential 1 zoned stands larger than 500m <sup>2</sup> .	allowed on all Residential 1 stands up to a minimum size of 1000m <sup>2</sup>	through formal rezoning on stands with a minimum stand size of 1000m <sup>2</sup> .		
Thohoyandou C ext. 3	1100	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Subdivision allowed on all Residential 1 stands up to a minimum size of 1000m <sup>2</sup>	Allowed through formal rezoning on stands with a minimum stand size of 1000m <sup>2</sup> .		
Thohoyandou C ext. 4	2000	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Subdivision allowed on all Residential 1 stands up to a minimum size of 1000m <sup>2</sup>	Allowed through formal rezoning on stands with a minimum stand size of 1500m <sup>2</sup> .		
Thohoyandou C ext. 5	800	No second dwelling allowed.	Not applicable	Not applicable		
Thohoyandou D	1500	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Not applicable	Not applicable	Not applicable.	
Thohoyandou D ext. 1	1200	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Not applicable	Not applicable	Not applicable.	
Thohoyandou- E	800	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Subdivision allowed on all Residential 1 stands up to a minimum size of 1000m <sup>2</sup>	Allowed through formal rezoning on stands with a minimum stand size of 800m <sup>2</sup> .		

**THULAMELA MUNICIPALITY  
LAND USE MANAGEMENT AND BUILDING  
REGULATION BY-LAW**

Thohoyandou F	500	No second dwelling allowed	Not applicable	Allowed through formal rezoning on stands with a minimum stand size of 1000m <sup>2</sup> .		
Thohoyandou F ext. 1	600	No second dwelling allowed	Not applicable	Allowed through formal rezoning on stands with a minimum stand size of 1000m <sup>2</sup> .		
Thohoyandou G	600	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Not applicable	Allowed through formal rezoning on stands with a minimum stand size of 700m <sup>2</sup> .		
Thohoyandou G ext. 2	700	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Subdivision allowed on all Residential 1 stands up to a minimum size of 1000m <sup>2</sup>	Allowed through formal rezoning on stands with a minimum stand size of 700m <sup>2</sup> .		
Thohoyandou IA		Not applicable	Not applicable	Not applicable		Industrial area
Thohoyandou J	700	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Subdivision allowed on all Residential 1 stands up to a minimum size of 1000m <sup>2</sup>	Allowed through formal rezoning on stands with a minimum stand size of 700m <sup>2</sup> .		
Thohoyandou J ext. 1	800	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Subdivision allowed on all Residential 1 stands up to a minimum size of 1000m <sup>2</sup>	Allowed through formal rezoning on stands with a minimum stand size of 800m <sup>2</sup> .		
Thohoyandou K	600	No second	Not	Not applicable		

**THULAMELA MUNICIPALITY**  
**LAND USE MANAGEMENT AND BUILDING**  
**REGULATION BY-LAW**

		dwelling allowed.	applicable			
<b>Thohoyandou K portion</b>	600	No second dwelling allowed.	Not applicable	Not applicable.		
<b>Thohoyandou L</b>	800	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Subdivision allowed on all Residential 1 stands up to a minimum size of 1000m <sup>2</sup>	Allowed on stands with a minimum stand size of 800m <sup>2</sup> .		
<b>Thohoyandou L ext. 1</b>	700	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Subdivision allowed on all Residential 1 stands up to a minimum size of 1000m <sup>2</sup>	Allowed through formal rezoning on stands with a minimum stand size of 800m <sup>2</sup> .		
<b>Thohoyandou M</b>	800	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Subdivision allowed on all Residential 1 stands up to a minimum size of 1000m <sup>2</sup>	Allowed through formal rezoning on stands with a minimum stand size of 800m <sup>2</sup> .		
<b>Thohoyandou M ext. 1</b>	700	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Subdivision allowed on all Residential 1 stands up to a minimum size of 1000m <sup>2</sup>	Allowed through formal rezoning on stands with a minimum stand size of 700m <sup>2</sup> .		
<b>Thohoyandou N</b>	1500	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Subdivision allowed on all Residential 1 stands up to a minimum size of 1200m <sup>2</sup>	Allowed through formal rezoning on stands with a minimum stand size of 1200m <sup>2</sup> .		
<b>Thohoyandou N ext. 1</b>	800	Allowed on all Residential	Subdivision allowed on all	Allowed through formal rezoning on		

**THULAMELA MUNICIPALITY  
LAND USE MANAGEMENT AND BUILDING  
REGULATION BY-LAW**

		1 zoned stands larger than 500m <sup>2</sup> .	Residential 1 stands up to a minimum size of 1000m <sup>2</sup>	stands with a minimum stand size of 800m <sup>2</sup> .		
Thohoyandou P	800	Not applicable	Not applicable	Allowed through formal rezoning on stands with a minimum stand size of 800m <sup>2</sup> .		
Thohoyandou Q	1500	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Subdivision allowed on all Residential 1 stands up to a minimum size of 1000m <sup>2</sup>	Allowed on stands with a minimum stand size of 1100m <sup>2</sup> .		
Thohoyandou Q ext. 1	1500	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Subdivision allowed on all Residential 1 stands up to a minimum size of 1000m <sup>2</sup>	Allowed through formal rezoning on stands with a minimum stand size of 1100m <sup>2</sup> .		
Thohoyandou Q ext. 2	1500	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Subdivision allowed on all Residential 1 stands up to a minimum size of 1000m <sup>2</sup>	Allowed through formal rezoning on stands with a minimum stand size of 1100m <sup>2</sup> .		
Thohoyandou Q ext. 3	1500	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Subdivision allowed on all Residential 1 stands up to a minimum size of 1000m <sup>2</sup>	Allowed through formal rezoning on stands with a minimum stand size of 1100m <sup>2</sup> .		
Thohoyandou Q ext. 4	700	Allowed on all Residential 1 zoned	Subdivision allowed on all Residential 1	Allowed through formal rezoning on stands with a		

**THULAMELA MUNICIPALITY**  
**LAND USE MANAGEMENT AND BUILDING**  
**REGULATION BY-LAW**

		stands larger than 500m <sup>2</sup> .	stands up to a minimum size of 1000m <sup>2</sup>	minimum stand size of 700m <sup>2</sup> .		
Thohoyandou R	600	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Not allowed	Not allowed		
Thohoyandou S	600	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Not allowed	Not allowed.		Currently no stands developed.
Shayandima ext 1	700	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Subdivision allowed on all Residential 1 stands up to a minimum size of 1000m <sup>2</sup>	Allowed through formal rezoning on stands with a minimum stand size of 700m <sup>2</sup> .		
Shayandima ext 2	1500	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Subdivision allowed on all Residential 1 stands up to a minimum size of 1000m <sup>2</sup>	Allowed through formal rezoning on stands with a minimum stand size of 1200m <sup>2</sup> .		
Shayandima ext 3	700	Allowed on all Residential 1 zoned stands larger than 500m <sup>2</sup> .	Subdivision allowed on all Residential 1 stands up to a minimum size of 1000m <sup>2</sup>	Allowed through formal rezoning on stands with a minimum stand size of 700m <sup>2</sup> .		

#### 19. Conflicting by law

1. In the event of a conflict between this by law and any other by-law, this by law prevails and such other by-law become inoperative and unenforceable for as long as the conflict remains.

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**THULAMELA MUNICIPALITY**  
**LAND USE MANAGEMENT AND BUILDING**  
**REGULATION BY-LAW**

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2. Where possible, when considering an apparent conflict between this by law and any other by law, a reasonable interpretation that avoids a conflict must be preferred over any alternative interpretation that results in a conflict.

**20. Offences and penalties**

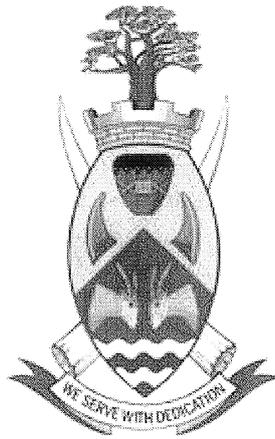
(1). Any person who –

(a) Contravenes or fails to comply with any provision of this By-Law

(b) Fails to comply with any notice issued in terms of this By-Law; or

(c) Fails to comply with any lawful instruction given in terms of this By-Law; or

(d) who obstructs or hinders any authorised representative or employee of the Council in the execution of his or her duties under this By-Law, 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 R2000, 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 and served on the person concerned requiring the discontinuance of such offence.



## **THULAMELA MUNICIPALITY**

### **DRAFT CREDIT CONTROL AND DEBT COLLECTION BY-LAW**

## PREAMBLE

WHEREAS section 156(2) of the Constitution of the Republic of South Africa, 1996 requires a municipality to make and administer by-laws for the effective administration of the matters which it has the right to administer.

AND WHEREAS section 98 of the Municipal Systems Act , 2000 requires a municipality to adopt by-laws to give effect to the municipality's credit control and debt collection policy, its implementation and enforcement.

AND WHEREAS section 6 of the Municipal Systems Act read with section 162 of the Constitution require a municipality to promulgate municipal by-laws by publishing them in the gazette of the relevant province.

AND WHEREAS section 96 of the Municipal Systems Act , 2000 requires a municipality to collect all monies due and payable to the municipality and to provide for the matters incidental thereto.

NOW THEREFORE BE IT ENACTED by the Council of the Thulamela Local Municipality, as follows:

### 1. DEFINITIONS

In this By-law, unless the context indicates otherwise-

**'Arrangement'** means a written agreement entered into between the Municipality and debtor where specific terms and conditions for the payment of a debt are agreed to;

**'Arrears'** means any amount due and payable to the Municipality and not paid by the due date;

**'Council'** means the Council of the Municipality;

**'Councillor'** means a member of the Council;

**‘Debt’** means any monies owing to the Municipality and includes monies owing in regard to property rates, refuse services, motor vehicle registration and licensing, leases and any other outstanding amounts, inclusive of any interest thereon, owing to the Municipality;

**‘Debtor’** means any person who owes a debt to the municipality;

**‘Due date’** means the final date on which payment, as shown on the debtor’s municipal account or in terms of a contract is due and payable;

**‘Indigent debtor’** means a debtor who meets certain criteria, as determined by the Municipality from time to time;

**‘Interest’** means a rate of interest, charged on overdue accounts as determined by Council on the Municipal Tarrifs;

**‘Municipality’** means the Thulamela Local Municipality and includes any duly delegated official or service provider of the Municipality;

**‘Official’** means an “*official*” as defined in section 1 of the Local Government: Finance Management Act, No.56 of 2003;

**‘Policy’** means the Municipality’s Credit control and debt collection policy;

**‘Service’** means “municipal service” as defined in section 1 of the Systems Act, and includes a function listed in Schedule 4B of the Constitution of the republic of South Africa, 1996 and any other service rendered by the Municipality;

**‘Systems Act’** means the Local Government: Municipal Systems Act, No 32 of 2000;

**‘Third party debt collector’** means any person or persons authorized to collect monies or institute legal proceeding against debt, on behalf of the Municipality;

**‘This By-law’** include the Credit Control and debt Collection Policy;

**‘User’** means a person who receives services that are rendered by the Municipality;

## **2. DUTY TO COLLECT DEBT**

All debt owing to the Municipality must be collected in accordance with this By-laws and the policy.

## **3. PROVISION OF SERVICES**

New applications for services and the provision of new services must be dealt with as prescribed in this By-laws and the policy.

## **4. PAYMENT AGREEMENT**

Except as otherwise determined in terms of this By-Law and the policy, no services may be supplied until an agreement has been entered into between the Municipality and the user for supply of a service.

## **5. DEPOSITS**

The municipality may determine and require the payment of deposits for provision specified services as per the approved municipal tariffs and may adjust the amount of any deposit annually.

## **6. INTEREST CHARGES**

The Municipality may charge and recover interest in respect of any arrear debt as prescribed in this By-law and policy. Where a debt is overdue for the part of a month, interest will be calculated for the month at a rate approved by the Council as per the Municipal Tarrifs.

## **7. ARRANGEMENTS TO PAY ARREARS**

7.1 The Municipality may make arrangements with a debtor to pay any arrear debt under conditions as prescribed in terms of this By-Law and the policy.

7.2 Should any dispute arise as to the amount of the arrear debt, the debtor must nevertheless continue to make regular payments, in terms of the arrangement, until such time as the dispute has been resolved.

## **8. AGREEMENT WITH A DEBTOR'S EMPLOYER**

8.1 The municipality may-

(a) with the consent of a debtor, enter into an agreement with that person's employer to deduct from the salary or wages of that debtor-

- (i) any outstanding amounts due by the debtor to the Municipality, or
- (ii) regular monthly amounts as may be agreed; and

(b) provide special incentive for-

- (i) employers to enter into such agreements; and
- (ii) debtors to consent to such agreements

8.2 The Municipal debt of officials or councillors of the Municipality shall be deducted from the salaries of such official or councillor if outstanding debt is more than one month in arrears.

## **9. RECOVERY OF DEBT**

The Municipality may, with regards to rates and refuse services rendered, and may with regard to other debt-

- (a) By legal action recover any debt from any person, and
- (b) Recover debt from any organ of state with due consideration of the provisions of Chapter 3 of the Constitution of the republic of South Africa, 1996 and may refer a debtor to the third party debt collection agencies and have such debtor placed on the National Credit Rating list.

## **10. RECOVERY OF COSTS**

The Municipality may recover the following costs, in instances where such costs are incurred by or on behalf of the Municipality.

- (a) Costs and administration fees where payments made to the Municipality by negotiable instruments are dishonoured by the banks when presented for payment.
- (b) Legal and administration costs, including attorney and client costs and tracing fees incurred in the recovery of debts.
- (c) Any collection commission incurred.

## **11. ATTACHMENT**

The Municipality may, in order to recover debt approach a competent court for an order to attach a debtor's movable property.

**12. CLAIM ON RENTAL FOR OUTSTANDING DEBT**

The Municipality may in terms of section 28 of the Municipal Property Rates Act, 2004 (Act No 6 of 2004), attach any rent due in respect of any rateable property, to recover in part or in full any amount in respect of outstanding rates after due date.

**13. FULL AND FINAL SETTLEMENT PAYMENTS**

Where an account is not settled in full, any lesser amount tendered to, and accepted by, the municipality shall not be a full and final settlement of such account despite the fact that the payment was tendered, in full and final settlement, unless the municipal manager or the authorized manager of the municipality's, expressly accepts it in writing as being in full and final settlement of the account in question.

**14. CONSOLIDATION OF DEBTOR'S ACCOUNTS**

The Municipality may-

- (a) Consolidate any separate accounts of a debtor;
- (b) Credit a payment by the debtor against any account of the debtor; and
- (c) Implement any measures provided for in these By-laws and the policy; in relation to any arrears on any of the accounts of such debtor.

**15. INDIGENTS**

A debtor, who can prove indigence, will be dealt with as prescribed in the policy.

**16. DELEGATION**

The Municipality may delegate its powers in terms of the By-law or the policy to any official or service provider of the Municipality.

## **17. OFFENCES AND PENALTIES**

Any Person who-

- (a) Obstructs or hinders any councillor or official of the Municipality in the execution of his or her duties under these By-laws or the policy;
- (b) Unlawfully uses or interferes with Municipal equipment or consumption of services supplied;
- (c) Fails to comply with a notice served in terms of this By-law of the policy;
- (d) Supplies false information regarding the supply of services or with regard to an application for assistance as an indigent;

shall be guilty of an offence and on conviction liable to the payment of a fine not exceeding one thousand rand or imprisonment for a period not exceeding 3 months or to such imprisonment without the option of a fine or both such fine and such imprisonment.

## **18. INDEMNIFICATION FROM LIABILITY**

Neither an employee of the Municipality nor any person, body, organisation or corporation acting on behalf of the municipality are liable for any damage arising from any omission or act done in good faith in the course of his or its duties.

## **19. OPERATIVE CLAUSE**

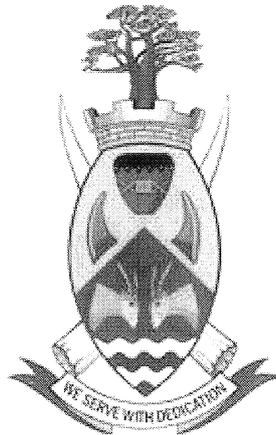
These by-laws will commence on publication thereof in the Provincial Gazette.

## **20. REPEAL OF BY-LAWS**

The provisions of any by-laws relating to credit control and debt collection by the municipality are hereby repealed in so far as they relate to the matters provided for in these by-laws and policy.

## **21. SHORT TITLE**

These By-Laws are called Credit Control and Debt Collection By-Laws of the Thulamela Local Municipality, 2015



# **THULAMELA MUNICIPALITY**

## **DRAFT TARRIF BY-LAW**

**2015**

**THULAMELA MUNICIPALITY - TARIFF BY-LAW**

To provide for the adoption and implementation of a tariff policy; for the general power to levy and recover fees, charges and tariffs and for matters incidental thereto.

**PREAMBLE**

**WHEREAS** section 229(1) of the Constitution authorizes a municipality to impose-

(a) rates on property and surcharges on fees for services provided by or on behalf of a municipality; and

(b) if authorised by national legislation, other taxes, levies and duties appropriate to local government or to the category of local government into which that municipality falls;

**WHEREAS** in terms of Section 75A of the Municipal Systems Act, a municipality may-

(a) levy and recover fees, charges or tariffs in respect of any function or service of the municipality; and

(b) recover collection charges and interest on any outstanding amount;

**WHEREAS** in terms of Section 74(1) of the Municipal Systems Act, a municipal council must adopt and implement a tariff policy on the levying of fees for municipal services provided by the municipality itself or by way of service delivery agreements, and which complies with the provisions of the Municipal Systems Act, the Municipal Finance Management Act and any other applicable legislation;

**WHEREAS** in terms of Section 75 of the Municipal Systems Act, a municipal council must adopt By-laws to give effect to the implementation and enforcement of its tariff policy;

**AND WHEREAS** the By-laws adopted in terms of section 75 of the Municipal Systems Act may differentiate between different categories of users, debtors, service providers, services, service standards and geographical areas as long as such differentiation does not amount to unfair discrimination.

**NOW THEREFORE** the Municipal Council of the Thulamela Local Municipality, acting in terms of section 156 of the Constitution of the Republic of South Africa, and read with section 11 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), hereby makes the following By-law:

## **TABLE OF CONTENTS**

### **CHAPTER 1**

#### **INTERPRETATION**

1. Definitions
2. Interpretation of By-law

### **CHAPTER 2**

#### **APPLICATION**

3. Adoption and Implementation of Tariff Policy
4. Tariff Policy
5. General power to Levy and Recover Fees, Charges and Tariffs
6. Enforcement of tariff Policy

### **CHAPTER 3**

#### **GENERAL MATTERS**

7. Short Title and Commencement

## CHAPTER 1 INTERPRETATION

### Definitions

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

**"Constitution"** means the Constitution of the Republic of South Africa;

**"Consumer"** means-

- (a) Any person who occupies premises to whom, and in respect of which, the council-
  - (i) Has agreed to provide municipal services; or
  - (ii) Is actually providing municipal services
  - (iii) Has entered into an agreement with the council for the provision of municipal services to or any premises
  
- (b) The owner of any premises to which the Council is providing a municipal service.

**"Credit Control and Debt Collection By-Laws"** means the municipality's Credit Control and Debt Collection By-Law;

**"MEC for local government"** means the MEC responsible for local government in Limpopo;

**"municipal council"** or **"council"** means the Thulamela municipal council, a municipal council referred to in section 157(1) of the Constitution;

**"Municipal Finance Management Act"** means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

**"municipal manager"** means a person appointed in terms of section 54A of the Municipal Systems Act as the head of administration of the municipal council; **"Municipal Systems Act"** means the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000);

**"Municipal service"** means a service that the Thulamela Local Municipality in terms of its powers and functions provides or may provide to or for the benefit of the local community;

**"municipality"** means Thulamela Local Municipality, envisaged in terms of section 155(1) of the Constitution

**"tariff"** means fees and charges levied by the municipality in respect of any function or service provided by the municipality to the local community, and includes a surcharge on such tariff but excludes the levying of rates by the Municipality in terms of the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004).

**"tariff policy"** means the Thulamela Local Municipality Tariff Policy as may be amended by Council from time to time.

“**premises**” means any piece of land, with or without any building or structure thereon

“**Systems Act**” means the Local Government: Municipal Systems Act, of 2000 (Act no 32);

### **Interpretation of the By-law**

2. These By-laws shall be applied and be read with any other applicable law

## **CHAPTER 2**

### **APPLICATION**

#### **Adoption and Implementation of Tariff Policy**

3.(1) The municipality must adopt and implement a tariff policy on the levying of fees for municipal services provided by the municipality itself or by way of service delivery agreements, and which complies with the provisions of the Municipal Systems Act, the Municipal Finance Management Act and any other applicable legislation.

(2) The municipality shall not be entitled to impose tariffs other than in terms of a valid tariff policy.

#### **Tariff Policy**

4.(1) The municipality's tariff policy applies to all tariffs imposed by the municipality.

(2) The tariff policy must reflect the principles referred to in the Municipal Systems Act, namely that-

(a) users of municipal services should be treated equitably in the application of tariffs;

(b) the amount individual users pay for municipal services should generally be in proportion to their use of that service;

(c) poor households must have access to at least basic services through-

(i) tariffs that cover only operating and maintenance costs;

(ii) special tariffs or life line tariffs for low levels of use or consumption of services or for basic levels of service;

(iii) any other direct or indirect method of subsidisation of tariffs for poor households;

(d) tariffs must reflect the costs reasonably associated with rendering the service, including capital, operating, maintenance, administration and replacement costs, and

interest charges;

(e) tariffs must be set at levels that facilitate the financial sustainability of the service, taking into account subsidisation from sources other than the service concerned;

(f) provision may be made in appropriate circumstances for a surcharge on the tariff for a service;

(g) provision may be made for the promotion of local economic development through special tariffs for categories of commercial and industrial users;

(h) the economical, efficient and effective use of resources, the recycling of waste, and other appropriate environmental objectives must be encouraged; and

(i) the extent of subsidisation of tariffs for poor households and other categories of users should be fully disclosed.

(3) The municipality's tariff policy must-

(a) specify the manner in which the principles referred to in subsection (2) are to be implemented;

(b) specify the basis of differentiation, if any, between different categories of users, debtors, service providers, services, service standards, geographical areas and other matters as long as the differentiation does not amount to unfair discrimination; and

(c) include any further enforcement mechanisms the municipality may wish to impose in addition to those contained in the Credit Control and Debt Collection By-law and Policy.

### **General Power to Levy and Recover Fees, Charges and Tariffs**

5.(1) The municipality has the power to-

(a) levy and recover fees, charges or tariffs in respect of any function or service of the municipality; and

(b) recover collection charges and interest on any outstanding amount.

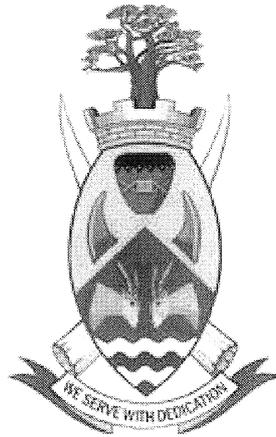
(2) Fees, charges and tariffs referred to in subsection (1) are levied by resolution passed by the municipal council with a supporting vote of a majority of its members.

**Enforcement of Tariff Policy**

- 6.(1) The municipality's tariff policy shall be enforced through-
- (a) its Credit Control and Debt Collection By-law and Policy; and
  - (b) any other enforcement mechanism stipulated in the Municipality's Tariff Policy.

**CHAPTER 4****GENERAL MATTERS****Short Title and Commencement**

7. This By-law is called the Thulamela Municipality: Tariff By-law 2015, and takes effect on the date of the publication thereof in the *Provincial Gazette* or as otherwise indicated in the notice thereto.



## **THULAMELA MUNICIPALITY**

# **DRAFT MUNICIPAL PROPERTY RATES BY-LAW**

## PREAMBLE

WHEREAS section 229(1) of the Constitution requires a municipality to impose rates on property and surcharge on fees for the services provided by or on behalf of the municipality.

AND WHEREAS section 6 of the Municipal Systems Act read with section 162 of the Constitution require a municipality to promulgate municipal by-laws by publishing them in the gazette of the relevant province.

AND WHEREAS section 6 of the Local Government: Municipal property Rates Act, 2004 requires a municipality to adopt by-law to give effect to the implementation of its property rates policy; the by-laws may differentiate between the different categories of properties and different categories of owners of properties liable for the payment of rates;

NOW THEREFORE BE IT ENACTED by the Council of the Thulamela Local Municipality, as follows:

### 1. DEFINITIONS

In the by-law, any word or expression to which a meaning has been assigned in the Local Government: Municipal property Rates act, 2004 (Act no.6 of 2004), shall bear the same meaning unless the context indicates otherwise.

**'Municipality'** means Thulamela Local Municipality

**'Property rates Act'** means the Local Government: Municipal Property Rates Act, 2004 (Act no 6 of 2004);

**'Rates policy'** means the policy on the levying of rates on rateable properties of Thulamela Local Municipality contemplated in chapter 2 of the Municipal property Rates Act.

## **2. OBJECTS**

The Object of this by-law is to give effect to the implementation of the Rates Policy as contemplated in section 6 of the Municipal Property Rates Act.

## **3. ADOPTION AND IMPLEMENTATION OF RATES POLICY**

- 3.1. The Municipality shall adopt and implement its Rates policy consistent with the Municipal Property Rates Act on the levying of rates on rateable property within the jurisdiction of the municipality: and
- 3.2. The Municipality shall not be entitled to levy rates other than in terms of its Rates policy.

## **4. CONTENTS OF RATES POLICY**

The rates Policy shall, inter alia:

- 4.1. Apply to all rates levied by the Municipality pursuant to the adoption of its Annual Budget;
- 4.2. Comply with the requirements for:
  - 4.2.1. the adoption and contents of rates policy specified in section 3 of the Act;
  - 4.2.2. the process of community participation specified in section 4 of the Act;and
- 4.2.3. the annual review of a Rates Policy specified in section 5 of the Act.
- 4.3. Provide for principles, criteria and implementation measures that are consistent with the Municipal Property rates Act for the levying of rates which the Council may adopt; and
- 4.4. Provide for enforcement mechanisms that are consistent with the Municipal Property Rates Act and the Local Government: Municipal Systems Act, 2000 (Act no. 32 of 2000).

## **5. ENFORCEMENT OF THE RATES POLICY**

The Municipality's Rates Policy shall be enforced through the Credit Control and Debt Collection Policy and any further enforcement mechanisms stipulated in the Act and the Municipality's Rates Policy.

## **6. SHORT TITLE AND COMMENCEMENT**

This By-law is called the Municipal Property Rates By-law, and takes effect on 1 July 2015

# THULAMELA MUNICIPALITY

## BY-LAW ON WASTE MANAGEMENT

The Thulamela Local Municipality (“the Municipality”) hereby publishes the Waste Management By-Laws set out below, promulgated by the municipality in terms of section 156(2) of the Constitution of the Republic of South Africa, 1996 and section 9(3) (a-d) of the National Environmental Management: Waste Act, 2008.

### TABLE OF CONTENT

Preamble

#### CHAPTER 1: DEFINITIONS, OBJECTIVES AND PRINCIPLES

1. Definitions
2. Objectives of the By Law
3. Scope of application
4. Principles
5. General duty of care

#### CHAPTER 2: PLANNING AND INSTITUTIONAL MATTERS

6. Integrated Waste Management Plan (IWMP)
7. Waste Management Officer (WMO)
8. Service Providers/ Contractors

#### CHAPTER 3: PROVISION OF WASTE SERVICES

9. Storage and receptacles of general waste
10. Collection and transportation
11. Waste transfer stations
12. Waste disposal

#### CHAPTER 4: RECYCLING OF WASTE

13. Storage, separation and collection of recyclable domestic waste

**CHAPTER 5: WASTE INFORMATION**

14. Registration and provision of waste information

**CHAPTER 6: PROVISION FOR REGISTRATION OF TRANSPORTERS**

15. Requirements for registration

**CHAPTER 7: LISTED WASTE MANAGEMENT ACTIVITIES**

16. Commencement, conducting or undertaking of listed waste management activities

**CHAPTER 8: GENERAL PROVISIONS**

17. Duty to provide facilities for litter

18. Prohibition of littering

19. Prohibition of nuisance

20. Burning of waste

21. Unauthorised disposal/dumping

22. Abandoned articles

23. Liability to pay applicable tariffs

24. On - site disposal

25. Storage, collection, composting and disposal of garden waste

26. Collection and disposal of bulky waste

27. Generation, storage, collection, reuse and disposal of building waste

28. Special industrial, hazardous and health care risk waste

**CHAPTER 9: ADMINISTRATIVE MATTERS, COMPLIANCE AND ENFORCEMENT**

29. Exemption

30. Notice of contravention

31. Appeals

32. Offences and penalties

33. Short title and commencement

34. Repeal of by laws

**WHEREAS** the Municipality has the Constitutional obligation to provide services including refuse removal, collection and disposal;

**AND WHEREAS** poor waste management practices can have adverse impact on the environment in and beyond Municipal boundaries;

**AND WHEREAS** the Municipality is committed to ensure that all residents, organisations, institutions, businesses, visitors or tourist and public bodies are able to access services from a legitimate waste service provider;

**AND WHEREAS** the Municipality wishes to regulate waste collection, separation, storage, processing, treatment, recycling, reuse and disposal of waste including littering and illegal dumping and the regulation of facilities used for the management of waste, with the ultimate aim of avoiding or minimising the generation and impact of waste;

**AND WHEREAS** the Municipality promotes the waste hierarchy approach as outlined in the National Waste Management Strategy.

## **CHAPTER 1: DEFINITIONS, OBJECTIVES AND PRINCIPLES**

### **1. Definitions**

In this By laws, any word or expression to which a meaning has been assigned in the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) and the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); and associated regulations shall have the meaning so assigned and, unless the context indicates otherwise.

“**building waste**” includes all waste produced during the construction, alteration, repair or demolition of any structure, and includes building rubble, earth, vegetation and rock displaced during such construction, alteration, repair or demolition;

“**bulky waste**” means business waste or domestic waste which by virtue of its mass, shape, size or quantity is inconvenient to remove in the routine door-to-door council service provided by the council or service provider;

“**by law**” means legislation passed by the municipality’s Council which is binding on persons who resides within, visiting the area of authority of the municipality or using municipal services;

“**Garden waste**” means organic waste which emanates from gardening or landscaping activities at residential, business or industrial premises including but not limited to grass cuttings, leaves, branches, and includes any biodegradable material and excludes waste products of animal origin and bulky waste.

“**health care risk waste**” means waste capable of producing any disease and includes but is not limited to the following:

- (a) laboratory waste;
- (b) pathological waste;
- (c) isolation waste;
- (d) genotoxic waste;
- (e) infectious liquids and infectious waste;
- (f) sharps waste;
- (g) chemical waste; and
- (h) pharmaceutical waste;

“**industrial waste**” means waste generated as a result of manufacturing, maintenance, fabricating, processing or dismantling activities, but does not include building waste, business waste, special industrial waste, hazardous waste, health care risk waste or domestic waste;

“**litter**” means waste, excluding hazardous waste, arising from activities in public areas that has not been deposited of in a public litter container;

“**municipality**” means the Thulamela Local Municipality established in terms of the provisions of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

**“Municipal Systems Act”** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

**“nuisance”** means any injury, harm, damage, inconvenience or annoyance to any person 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(s)”** 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 the registered owner, lessee or occupier of premises, or the person in charge or control of any premises or part thereof who is over 18 years of age, and any person who obtains a benefit from the premises or is entitled thereto;

**“receptacle”** means an approved container having a capacity for temporary storage of waste in terms of these By-laws;

**“service provider/contractor”** means the person, firm or company whose tender/quotation has been accepted by or on behalf of the Municipality and includes the contractor's heirs, executors, administrators, trustees, judicial managers or liquidators, as the case may be, but not, except with the written consent of the Municipality, any assignee of the contractor;

**“tariff”** means the prescribed charge determined by the Municipality in terms of any applicable legislation for any service rendered by the Municipality in terms of these by-laws.

## **2. Objectives of the By Laws**

- (1) The objectives of this By-Laws are to –
  - (a) give effect to the right contained in section 24 of the Constitution by regulating waste management within the area of the municipality's jurisdiction;
  - (b) provide, in conjunction with any other applicable law, an effective legal and administrative framework, within which the Municipality can manage and regulate waste management activities;
  - (c) ensure that waste is avoided, or where it cannot be altogether avoided, minimised, reused, recycled, recovered, and disposed of in an environmental sound manner; and
  - (d) promote and ensure an effective delivery of waste services.

## **3. Scope of application**

- (1) This by-law must be read with any applicable provisions of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008).
- (2) In the event of any conflict with any other by-law which directly or indirectly, within the jurisdiction of the municipality, regulates waste management, the provisions of this by-law shall prevail to the extent of the inconsistency.
- (3) The by-laws do not override any other national and provincial waste related legislation.

## **4. Principles**

- (1) Any person exercising a power in accordance with these by laws must, at all times, seek to promote the waste management hierarchy approach as outlined in the National Environmental Management Waste Act, 2008 (Act No. 59 of 2008) and the National Waste Management Strategy, which is promoting waste avoidance and minimisation, waste reuse, recycling and recovery, waste treatment and disposal.
- (2) The By Law seeks to promote sustainable development and environmental justice through fair and reasonable measures for the management of waste within the municipality's jurisdiction.

- (3) The By Laws promotes participation of all municipal residents in the promotion of responsible citizenship by ensuring sound waste management practices within residential and industrial environments.

### **5. General duty of care**

- (1) Every person has a duty to manage any waste generated by his activities or the activities of those persons working under his direction in such a manner that the waste does not cause harm to human health or damage to the environment. In particular, the person must ensure that:
- (a) waste generation is avoided and where such waste cannot be avoid, minimise the toxicity and amounts of waste;
  - (b) reduce, reuse, recycle and recover waste;
  - (c) where waste must be disposed of, ensure that the waste is treated and disposed in an environmentally sound manner;
  - (d) manage the waste in such a manner that it does not endanger health or the environment or cause a nuisance through noise, odour or visual impacts.
- (2) Any person subject to the duty imposed in subsection (1) may be required by the Municipality or an authorised official to take measures to ensure compliance with the duty.
- (3) The measures referred to in subsection (2) that a person may be required to undertake include –
- (a) investigation, assessment and evaluation of the impact that their activities, the process or a situation have on the environment;
  - (b) informing and educating employees about the environmental risks of their work and the manner in which their tasks must be performed in order to avoid causing damage to the environment;
  - (c) ceasing, modifying or controlling any act, process, situation or activity which causes damage to the environment;
  - (d) containing or preventing the movement of pollutants or other causes of damage to the environment;
  - (e) eliminating or mitigating any source of damage to the environment; or
  - (f) rehabilitating the effects of the damage to the environment.

## CHAPTER 2: PLANNING AND INSTITUTIONAL MATTERS

### 6. Integrated Waste Management Plan (IWMP)

- (1) The Municipality must prepare an Integrated Waste Management Plan (IWMP) which should be adopted by the Council, in which the plan must be incorporated in the Integrated Development Plan in accordance with the provisions of the National Environmental Management Waste Act, 2008 (Act No. 59 of 2008).
- (2) The Plan contemplated in subsection (1) may include but not limited to the following:
  - (a) Establishing a means of ensuring that waste is collected, reused, recycled or disposed of without causing harm to human health or damage to the environment and, in particular, without risk to water, air, soil, plants or animals; causing nuisance through noise or odours; or adversely affecting rural or urban areas or areas of special interest;
- (3) The Plan contemplated in sub section (1) must be establishing an integrated network of waste handling and waste disposal facilities to ensure that -
  - (a) comprehensive and adequate waste services are rendered within the Municipality;
  - (b) the disposal of waste occurs at accessible waste disposal facilities; and
  - (c) the most appropriate methods and technologies are used in order to ensure a high level of protection for and prevention of damage to the environment and harm to human health;
  - (d) encouraging the minimisation or reduction of waste;
  - (e) promoting the recovery of waste by means of recycling or reuse through proven alternative technology; and
  - (f) any other object which would enhance sustainable development.

### 7. Waste Management Officer (WMO)

- (1) The Municipality must, in accordance with section 10(3) of the National Environmental Management Waste Act, 2008 (Act No.59 of 2008), designate in writing a waste management officer from its administration to be responsible for coordinating matters pertaining to waste management.

- (2) In exercising the power contemplated in subsection (1), the Municipality may adhere to the guidelines set out by the provincial or national department responsible for waste management.

### **8. Service Providers/ Contractors**

- (1) The Municipality may discharge any of its obligations by entering into a service delivery agreement with a service provider or service providers in terms of the Municipal Systems Act, 2000.
- (2) Subject to the provisions of the Municipal Systems Act or any other legislation, the Municipality may assign to a service provider any power enjoyed by the Municipality under these By-laws: provided that the assignment is required for the service provider to discharge an obligation under its service delivery agreement.
- (3) Any reference in these By-laws to "Municipality or service provider" should be read as the "Municipality" if the Municipality has not entered into a service delivery agreement, and should be read as "service provider" if the Municipality has entered into a service delivery agreement.
- (4) Service providers must provide services in accordance with a customer charter which must be drawn up in consultation with the Municipality and which must-
  - (a) accord with the provisions of these By-laws;
  - (b) be accessible to the public;
  - (c) establish the conditions of the service including collection times; and
  - (d) provide for the circumstances in which Municipal services may be limited.

## **CHAPTER 3: PROVISION OF WASTE SERVICES**

### **9. Storage and receptacles for general waste**

- (1) Any person or owner of premises where general waste is generated must ensure that such waste is stored in a receptacle provided or approved by the Municipality.

- (2) Any person or owner of premises contemplated in sub section (1) must ensure that-
- (a) the receptacle is stored inside the yard where applicable, away from the public area when still waiting for collection;
  - (b) on agreed collection date, it should be placed outside the premises in an area accessible to the municipal officials or service providers;
  - (b) pollution and harm to the environment is prevented;
  - (c) waste cannot be blown away and that the receptacle is covered or closed;
  - (d) measures are in place to prevent tampering by animals;
  - (e) nuisance such as odour, visual impacts and breeding of vectors do not arise;
  - (f) suitable measures are in place to prevent accidental spillage or leakage;
  - (g) the receptacle is intact and not corroded or in any other way rendered unfit for the safe storage or transportation of the waste;
  - (h) that a receptacle(s) provided by the Municipality is not used for any other purpose other than storage of waste;
  - (i) in cases where a receptacle (s) is damaged or corroded, the owner or occupier must notify the Municipality and arrange for replacement as soon as it comes to their attention;
  - (j) waste is only collected by the Municipality or authorised service provider;
  - (k) in cases where an owner or occupier is not available on the day of collection, make necessary arrangements to ensure that waste is accessible for removal or collection.

## **10. Collection and transportation**

- (1) The Municipality may -
- (a) only collect waste stored in approved receptacles.
  - (b) set collection day of the week.
  - (c) collect waste outside the set schedule on request by any person and at a fixed tariff agreed to by both parties prior to collection.

- (2) Any person transporting waste within the jurisdiction of the Municipality must –
- (a) ensure that the receptacle or vehicle or conveyance is adequate in size and design for the type of waste transported;
  - (b) remove or transport the waste in a manner that would prevent any nuisance or escape of material;
  - (c) maintain the receptacle or vehicle or conveyance in a clean, sanitary condition at all times;
  - (d) not permit waste transported to become detached, leak or fall from the receptacle or vehicle or conveyance transporting it;
  - (e) ensure that waste is transported or deposited at a waste transfer station, recycling facility and/or disposal facility licensed to accept such waste;
  - (f) ensure that the vehicle is not used for other purposes whilst transporting waste; and
  - (g) apply to the Municipality to register as a transporter of waste in accordance with the requirements set out by the Municipality and adhere to all the conditions attached to the registration.

#### **11. Waste transfer stations**

- (1) Any holder of waste must –
- (a) utilise appropriate waste transfer stations as directed by the Municipality or service provider; and
  - (b) adhere to the operational procedures of a transfer station as set out by the Municipality.

#### **12. Waste disposal**

- (1) Waste generated in the municipal area must be disposed of at a waste disposal facility as directed by the Municipality.
- (2) In disposing of waste the operator of the site must comply with the provisions of any other legislation regulating the disposal of waste.
- (3) Any person disposing waste at a Municipal owned disposal site must adhere to the site operational procedures approved by the Municipality.

## CHAPTER 4: RECYCLING OF WASTE

### 13. Storage, separation and collection of recyclable domestic waste

- (1) Any person who is undertaking any activity involving reduction, re-use, recycling or recovery of waste including scrap dealers, buy-back centres and formalised recycling groups must before undertaking that activity, make sure that the activity is less harmful to the environment than the disposal of such waste and must notify the Municipality of an intention to undertake such an activity in writing.
- (2) Any person undertaking the activities contemplated in sub section (1) must adhere to the requirements set out in national or provincial legislation.
- (3) The Municipality may require any person or owner of premises to separate their waste and use different receptacles provided by the Municipality or service provider.
- (4) In cases where the Municipality, service provider or industry has provided separate receptacles for recyclable material, no person may use other receptacles for recyclable material.

## CHAPTER 5: WASTE INFORMATION

### 14. Registration and provision of waste information

- (1) Any person who conducts an activity which has been identified in terms of provincial and/or national waste information system must, upon request, present to the Municipality proof that such an activity is registered and reporting the required information.
- (2) The Municipality may, at its own discretion and as reasonably possible, require any facility, person of activity to register and report to the Municipality any other information for the purpose of facilitating effective waste management within its jurisdiction.

## **CHAPTER 6: PROVISION FOR REGISTRATION OF TRANSPORTERS**

### **15. Requirements for registration**

- (1) Any person who transport waste for gain must adhere to the requirements as set out in section 25 of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008).
- (2) The Municipality may, by notice in the provincial gazette, require any person or category of transporters to register and report to the Municipality information as set out in that notice. The notice may include but not limited to-
  - (a) the application forms;
  - (b) a prescribed fee;
  - (c) renewal intervals;
  - (d) list of transporters, types and thresholds of waste transported; and
  - (e) minimum standards or requirements to be complied with.

## **CHAPTER 7: LISTED WASTE MANAGEMENT ACTIVITIES**

### **16. Commencement, conducting or undertaking of listed waste management activities**

- (1) Any person conducting a listed waste management activity listed in terms of section 19 of the National Environmental Management Waste Act, 2008 (Act No. 59 of 2008), must upon request by an official of the Municipality, provide proof of compliance with the requirements of a licence issued by the competent authority.
- (2) Any person conducting or intending to conduct any activity contemplated in sub section (1) must, at least sixty (60) days before commencement, conducting or undertaking such activity, inform the Municipal waste management officer in writing of the intention.

## **CHAPTER 8: GENERAL PROVISIONS**

### **17. Duty to provide facilities for litter**

- (1) The Municipality, or owner of premises in the case of privately owned land, must take reasonable steps to ensure that sufficient and appropriate receptacles are provided for the discarding of litter by the public, in any place to which the public has access.

- (2) The Municipality, or owner of privately owned land, must ensure that all receptacles installed on the premises for the collection of litter are –
- (a) maintained in good condition;
  - (b) suitably weighted and anchored so that they cannot be inadvertently overturned;
  - (c) constructed in such a manner as to ensure that they are weatherproof and animal proof;
  - (d) of suitable size to contain all litter likely to be generated on the premises and by the users thereof;
  - (e) placed in locations convenient for the use by users or occupants of the premises to discourage littering or the unhealthy accumulation of waste; and
  - (f) emptied and cleansed periodically or when full. The emptying and cleansing of receptacles must be done frequently to ensure that no receptacle or its contents may become a nuisance or provide reasonable grounds for complaint.
- (3) In any public place where an receptacle has been placed for the depositing of litter, the Municipality may put up notices about littering.

### **18. Prohibition of littering**

- (1) No person may –
- (a) cause litter;
  - (b) sweep any waste into a gutter, onto a road reserve or onto any other public place;
  - (c) disturb anything in, or remove anything from any receptacle which has been placed for the purposes of collecting litter in such a manner as to cause the contents of the receptacle to spill or fall onto the ground around it; and
  - (d) allow any person under his control to do any of the acts contemplated in paragraphs a, b or c above.

- (2) Notwithstanding the provisions of subsection (1), the Municipality, or owner in the case of privately owned land to which the public has access, must within a reasonable time after any litter has been discarded, dumped or left behind, remove such litter or cause it to be removed.

### **19. Prohibition of nuisance**

- (1) Any person handling waste within the Municipality, either through storage, collection, transportation, recycling or disposal must-
- (a) take reasonable measures to prevent nuisance, injury, harm, damage, annoyance or inconvenience to any person and the environment; and
  - (b) take measures to remedy any spillages, harm, damage or nuisance referred to in section (a);
- (2) (a) the Municipality may, by written notice, instruct any holder of waste at their own cost; to clean any waste causing nuisance to any person or the environment;
- (b) failure to comply to the notice contemplated in sub section (2)(a); the Municipality may clean or remedy waste causing nuisance to any person or the environment, at the Municipality's cost and claim such cost from the offender.

### **20. Burning of waste**

- (1) No person may:-
- (a) dispose of waste by burning it, either in a public or private place.
  - (b) incinerate waste either in a public or private place except in an incinerator licensed by the relevant national or provincial authorities to do so, or at a place designated by the Municipality for such purpose.

### **21. Unauthorised disposal/dumping**

- (1) No person may –
- (a) except with the permission of the occupier, owner or of the person or authority having control thereof dump, accumulate, place, deposit, leave or cause or allow to be dumped, accumulated, placed, deposited or left any waste whatsoever, whether for gain or otherwise, on or in a public place; any drain, watercourse, flood prone areas, tidal or other water in or in the vicinity of any road, highway, street, lane, public footway or pavement, roadside or other open space to which the public have access; or private or municipal land.

**22. Abandoned articles**

- (1) Any article, other than a motor vehicle deemed to have been abandoned in terms of the Road Traffic Act, which, 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 of such article, is reasonably regarded by the Municipality as having been abandoned, may be removed and disposed of by the Municipality as it may deem fit.
- (2) The Municipality may remove and dispose of any article which is chained or fastened to any pole, parking meter or any other property belonging to the council, without authorisation as it may deem fit.

**23. Liability to pay applicable tariffs**

- (1) The owner of premises where the Municipality is rendering waste services contemplated in this By Law is liable for the payment of prescribed tariffs for such services, and is not exempted from or reduction of such tariffs due to non usage, partial or limited use of such services.
- (2) The Municipality reserves the right to review such tariffs contemplated in sub section (1) on an annual basis.
- (3) The Municipality may exempt any person or category of persons deemed to be falling in the indigent category from paying prescribed tariffs for waste management services as outlined in the Municipal Indigent Policy.

**24. On - site disposal**

- (1) The Municipality may, as it deem fit in an area where a municipal waste management service is not already provided, after consultation with the concerned community, declare an area(s) as demarcated for on-site disposal of general waste.
- (2) A declaration contemplated in subsection (1) must be published in a provincial gazette and may include but not limited to-
  - (a) time frames for such a declaration;
  - (b) minimum standards to be adhered to for on-site disposal;
  - (c) quantity of waste that may be disposed;

- (3) The Municipality has a right to inspect the areas contemplated in sub section (1) on a regular basis.

#### **25. Storage, collection, composting and disposal of garden waste**

- (1) The owner or occupier of the premises on which garden waste is generated may compost garden waste on the property, provided that such composting does not cause a nuisance or health risk.
- (2) The owner or occupier of the premises on which garden waste is generated and not composted must ensure that such waste is collected and disposed within a reasonable time after the generation thereof.
- (3) The Municipality may as far it is reasonably possible, direct any transporter of garden waste or any person providing garden maintenance services, to transport their garden waste to a designated transfer station or facility provided by the Municipality.
- (4) At the written request of the owner or occupier of premises the Municipality or service provider may, in its sole discretion, deliver an appropriate receptacle for the purpose of storing garden waste in addition to any approved receptacle delivered to the premises for the storage of domestic waste; at a prescribed additional tariff.

#### **26. Collection and disposal bulky waste**

- (1) Any person generating bulky waste must ensure that such waste is collected and recycled or disposed of at a designated facility and may not put such waste as part of the municipal routine collection.
- (2) At a request of the owner or occupier of any premises, the Municipality may remove bulky waste from premises at a prescribed tariff provided that the Municipality is able to do so with its refuse removal equipment.

**27. Generation, storage, collection, reuse and disposal of building waste**

- (1) The owner or occupier of premises on which building waste is generated and person conducting an activity which causes such waste to be generated must ensure that-
  - (a) until disposal, all building waste, together with the containers used for the storage, collection or disposal thereof, is kept on the premises on which the waste was generated;
  - (b) the premises on which the building waste is generated does not become unsightly or cause a nuisance as a result of accumulated building waste;
  - (c) any building waste which is blown off the premises is promptly retrieved; and
  - (d) pursuant to any instructions from the Municipality, any structure necessary to contain the building waste is constructed.
- (2) Any person may operate a building waste removal service subject to adherence to relevant legislation.
- (3) Should the Municipality provide such a service, it shall be done at a prescribed tariff.
- (4) The owner or occupier of premises may apply to the Municipality for written consent to place an appropriate receptacle for the storage and collection of building waste in the road reserve for the period of such consent.
- (5) Every receptacle, authorised in terms of subsection (3) and used for the removal of building waste, must –
  - (a) have a clearly marked name, address and telephone number of the person in control of such approved receptacle;
  - (b) be fitted with reflecting chevrons or reflectors which must completely outline the front and the back thereof; and
  - (c) be covered at all times other than when actually receiving or being emptied of such waste so that no displacement of its contents can occur.
- (6) The owner or occupier of premises on which building waste is generated must ensure that the waste is disposed of at a facility designated for that purpose by the Municipality.

- (7) For the purpose of reclamation of land, reuse or recycling, building waste may with written consent of the Municipality, be deposited at a place other than the Municipality's waste disposal sites.
- (8) A consent given in terms of subsection (7) shall be subject to the conditions as the Municipality may deem necessary.

#### **28. Special industrial, hazardous or health care risk waste**

- (1) Any waste generator who generates special industrial, hazardous or health care risk waste or an owner of premises where such waste is generated must contract with an accredited service provider to collect and dispose of such waste at a licensed hazardous waste disposal facility.
- (2) Subsection (1) does not apply to generators of waste who have the capacity to conduct the service.
- (3) Any person transporting industrial, hazardous or health care risk waste must ensure that the facility or place to which such waste is transported is authorised to accept such waste prior to offloading the waste from the vehicle.

### **CHAPTER 9: ADMINISTRATIVE MATTERS COMPLIANCE AND ENFORCEMENT**

#### **29. Exemptions**

- (1) Any person may by means of a written application, in which the reasons are given in full, apply to the Municipality for exemption from any provision of this by-law.
- (2) The Municipality may –
  - (a) grant an exemption in writing and the conditions in terms of which, if any, and the period for which such exemption is granted be stipulated therein;
  - (b) alter or cancel any exemption or condition in an exemption; or
  - (c) refuse to grant an exemption.
- (3) In order to consider an application in terms of sub-section (1), the municipality may obtain the input or comments of the owners or occupants of surrounding premises.

- (4) An exemption does not take effect before the applicant has undertaken in writing to comply with all conditions imposed by the municipality under subsection (2), however, if an activity is commenced before such undertaking has been submitted to the Municipality, the exemption lapses.
- (5) If any condition of an exemption is not complied with, the exemption lapses immediately.

### **30. Notice of contravention**

- (1) The Council may serve a notice of contravention on a person who has committed an offence in terms of these By-laws.
- (2) A notice of contravention must-
  - (a) specify, at the time when the notice is issued, the name and residential and postal address, if either or both of these be known, of the person on whom the notice is served;
  - (b) state the particulars of the contravention;
  - (c) specify the amount of the penalty payable in respect of that contravention and the place where the penalty may be paid; and
  - (d) inform the person that he or she must-
    - (i) within 28 calendar days of the date of service of the notice, pay the penalty; or
    - (ii) within 7 calendar days of the notice, inform Council in writing that he or she elects to be tried in court on a charge of having committed an offence.

### **31. Appeals**

A person whose rights are affected by a decision taken by the Municipality in terms of these By Laws, 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, 2000 (Act No. 32 of 2000) to the municipal manager or delegated official within 21 days of the date of the notification of the decision.

### **32. Offences and penalties**

- (1) Any person who –
- (a) obstructs or hinders the Municipality in exercising the powers or performance of functions or duties as outlined in this By Laws; or
  - (b) contravenes or fails to comply with any provision of these by-laws; or
  - (c) fails to comply with the terms of a notice served upon him or her in terms of these bylaws shall be guilty of an offence and liable upon conviction to a on conviction liable to a fine or in default of payment, to imprisonment, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment, and in the case of a successive or continuing offence, to a fine for every day such offence continues, or in default of payment thereof, to imprisonment.

### **33. Short title and commencement**

- (1) These By Laws are called Waste Management By Law of the Thulamela Local Municipality, and takes effect on the date determined by the Municipality in the provincial gazette.
- (2) Different dates may be so determined for different provisions of these By Laws.

### **34. Repeal 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 authorisation for the execution of powers and functions in terms of section 84(3) of the Local Government: Municipal Structures Act, Act 117 of 1998.

# THULAMELA MUNICIPALITY

## MUNICIPAL FACILITIES: CEMETERIES BY-LAWS

### TABLE OF CONTENTS

#### Contents

#### Section

1. Definition
2. Principles and objects
3. Application of by-laws
4. Legislative framework

#### *Chapter I: General*

5. Curator and burial notice
6. Interment and cremation
7. Interment free of charge
8. Hours of admission or visit for public
9. Children
10. Keeping to path
11. Entrance and exit to cemetery, office, fenced place or building
12. Distribution of tract or advertisement
13. Disrespect
14. Prohibited conduct within cemetery
15. Right of interest in ground

#### *Chapter II: Interment*

16. Application for, purchase and use of graves
17. Alteration of date of interment
18. Dimensions of grave openings
19. Depth of grave
20. Reserving of grave
21. Child's coffin too large
22. Construction material of coffin
23. Number of bodies in grave

24. Coffin to be covered with earth
25. Disturbance of human remains
26. Religious ceremony
27. Hearse and vehicle at cemetery
28. Exposal of body
29. Instruction of caretaker
30. Music inside cemetery
31. Interment attended by more than 300 people
32. Occupation of chapel or shelter
33. Days and hours of interment
34. Number of grave

*Chapter III: Exhumation of body and re-opening of grave*

35. Exhumation
36. Time of exhumation
37. Re-opening of grave

*Chapter IV: Care of grave*

38. Shrubs and flowers
39. Care of graves

*Chapter V: Erection and maintenance of memorial work*

40. Consent of Council
41. Position of memorial work
42. Repairs to memorial work
43. Supervision of work
44. Damaging of memorial work
45. Moving of memorial work
46. Bringing material into cemetery
47. Cleaning of memorial work by Council
48. Requirements for erection of memorial work
49. Conveying of memorial work
50. Vehicle and tools
51. Complying with Council's directions

52. Times for bringing in material and doing work
53. Inclement Weather
54. Production of written permission

#### *Chapter VI: Sections*

55. Council to determine sections
56. Memorial section
57. Garden of Remembrance
58. Heroes' Acre

#### *Chapter VII: Miscellaneous*

59. Authentication and service of order, notice or other document
60. Complaint
61. Notice of compliance and representations
62. Costs
63. Appeal
64. Charges
65. Notice of contravention
66. Penalties
67. Limitation of liability
68. Revocation of by-laws

### **1. Definitions**

In these by-laws, unless the context otherwise indicates –

“**adult**” (where the word is used to define a body) means a deceased person whose coffin will fit into the grave opening prescribed for adult in section 18;

“**aesthetic section**” means a cemetery or section of a cemetery which has been set aside by the Council wherein a headstone may only be erected and strips of garden will be provided by the Council;

“**berm**” means a concrete base laid by the Council at the head of a grave, in the Aesthetic Section;

“**body**” means the remains of a deceased person and includes a still-born child;

“**burial**” means burial in earth or any other form of sepulture and includes the cremation or any other mode of disposal of a body;

“**burial order**” means an order issued in terms of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992);

“**caretaker**” means the official whom the Council appoints from time to time in a supervisory capacity with regard to the Cemetery;

“**cemetery**” means a land or part thereof within the municipality duly set aside by the Council as cemetery;

“**child**” (where the word is used to define a body) means a deceased person whose coffin will fit into the grave opening prescribed for children in section 18;

“**columbarium**” means a structure containing rows of niches for the purpose of placing receptacles containing the ashes of cremated bodies therein;

“**contractor**” means the person who has paid or caused any of the charges prescribed in the tariff to be paid or who has obtained any of the rights set out in these by-laws or who has obtained the right to have a memorial work erected or constructed or who has obtained any other rights or interests referred to or mentioned in these by-laws.

## **2. Principles and objectives**

The Council, acting under the powers granted to it by national and provincial legislation, and aware of the dignity of its residents and the need to preserve that dignity, and aware that a dead body is to be granted respect, and that all its residents have the right to inter a body in a cemetery, hereby adopts these by-laws to make provision for the allocation of land for the purposes of the burial of human remains, to develop and maintain existing cemeteries, to permit its residents to dispose of a body by cremation and to provide space allowing the preservation of the remains of a cremation in a dignified manner.

### **3. Application of By-Laws**

These by-laws apply to all cemeteries within the Thulamela Municipal area.

### **4. Legislative framework**

These By-laws fall within the legislative framework of the:

- (a) Inquests Act, 1959 (Act No. 58 of 1959);
- (b) Births and Deaths Registration Act, 1992 (Act No. 51 of 1992);
- (c) Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);
- (d) Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000); and
- (e) Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).

## **CHAPTER I GENERAL**

### **5. Curator, and Burial order**

- (1) Council must appoint a curator for each cemetery to control and administer the cemetery.
- (2) The curator may not allow an interment to take place unless a burial order in, terms of section 20 of the Births and Deaths Registration Act, 1992 has been issued.
- (3) The curator must keep a record of all interments, and the record must contain:
  - (a) The particulars of the person who requested the interment;
  - (b) The particulars of the body to be interred, such as the name, address, and identification number;
  - (c) The number of the grave in which the body is interred; and
  - (d) The date of the interment.

### **6. Interment and cremation**

- (1) No person may dispose of a body in any other manner than by interring it in a cemetery, or having it cremated in a crematorium approved in terms of provincial legislation.

- (2) The remains of a body (hereinafter referred to as “the ashes”) cremated at a crematorium within or outside the boundaries of the municipality may be interred in a columbarium or in a grave, on payment of the charges prescribed in the tariff.
- (3) A person who contravenes subsection (1) commits an offence.

#### **7. Interment free of charge**

The Council may upon request inter a dead body free of charge in such grave and manner as is the responsibility of the Council in terms of the provisions of any other law.

#### **8. Hours of admission or visit for public**

- (1) Every cemetery is open to the public 7 days a week during the following hours: 08h00 and 17h00, however the Council may close to the public a cemetery or part thereof for such periods if it is in the interest of the public.
- (2) No person, excluding workers or persons with permission, may be in or remain in a cemetery or part thereof before or after the hours mentioned in subsection (1) or during a period when it is closed to the public.
- (3) A person who contravenes subsection (2) commits an offence.
- (4) Special permission must be obtained from the Caretaker for admission to the cemetery during non-official hours.

#### **9. Children**

- (1) No child under 12 years of age may enter a cemetery unless he or she is under the care of an adult person.
- (2) A person who allows a child to enter a cemetery in contravention of subsection (1), commits an offence.

#### **10. Keeping to path**

Except for purposes permitted by these by-laws, a person may only use a path provided in the cemetery, and failure to do so constitutes an offence.

- 11. Entrance and exit to cemeteries, office, fenced place or building**
- (1) No person may enter or leave a cemetery, except by a gate provided for the purpose.
  - (2) No person may enter an office, building or fenced place in a cemetery, except in connection with lawful business.
  - (3) A person who contravenes subsection (1) or subsection (2) commits an offence.
- 12. Distribution of tract or advertisement**
- (1) No person may solicit any business, order or exhibit, or distribute or leave a tract, business card or advertisement within a cemetery.
  - (2) A person who contravenes subsection (1) commits an offence.
- 13. Disrespect**
- (1) No person may treat a grave or memorial work with disrespect, such as climbing or sitting on a grave or memorial work.
  - (2) A person who contravenes subsection (1) commits an offence.
- 14. Prohibited conduct within cemetery**
- (1) No person may –
    - (a) commit or cause a nuisance within a cemetery;
    - (b) ride an animal or cycle within a cemetery;
    - (c) bring or allow an animal to wander inside a cemetery;
    - (d) plant, cut, pick or remove a tree, plant, shrub or flower without the permission of the caretaker;
    - (e) hold or take part in a demonstration in a cemetery;
    - (f) interrupt during the performance of his or her duties an official; workman or labourer employed by the Council in a cemetery;
    - (g) obstruct, resist or oppose the caretaker in the course of his or her duty or refuse to comply with an order or request which the caretaker is entitled under these by-laws to make;
    - (h) use a cemetery for an immoral purpose;

- (i) mark, draw, scribble, erect an advertisement or object on a wall, building, fence, gate, memorial work or other erection within a cemetery;
  - (j) use water for any form of gardening without the permission of the caretaker;
  - (k) plant trees, flowers or shrubs on or between graves;
  - (l) leave any rubbish, soil, stone, debris or litter within the cemetery, and
  - (m) in any way damage or deface any part of a cemetery or anything therein contained.
- (2) An animal found in a cemetery may be destroyed by the Council, without paying any compensation to the owner thereof.
- (3) A person who contravenes a provisions of subsection (1) commits an offence.

#### **15. Rights of interest in ground**

No person shall acquire any right to or interest in any ground or grave in a cemetery, other than such rights or interests as may be obtainable under these by-laws.

## **CHAPTER II INTERMENT**

#### **16. Application for, purchase and use of grave**

- (1) A person desiring to have a body interred in a grave must submit to the caretaker an application in writing in the form set out in Schedule A and the application must be signed by the nearest surviving relative of the person whose body will be buried in the grave or such other person as the nearest surviving relative may authorize to sign the application on his or her behalf.
- (2) If the caretaker is satisfied that the signature of the nearest surviving relative cannot be obtained timeously, or for another valid reason, he or she may in his or her discretion grant an application signed by any other interested person.
- (3) An application must be submitted to the caretaker at least one working day before the time of the interment and two working days in the case where the size of the grave exceeds the standard size.

- (4) The Council may on payment of the applicable charges prescribed in the tariff sell to a person the use of a grave in a section of a cemetery.
- (5) Not more than two interments are allowed in a grave in which a corpse had already been entombed, except where application is made in terms of subsection (1) and sections 20 and 23 and the charges prescribed in the tariff have been paid.
- (6) No person may inter a body without an application first having been approved.
- (7) A person who contravenes subsection (5) or subsection (6) commits an offence.

**17. Alteration of date of interment**

Should any alteration be made in the day or hour previously fixed for an interment, notice of the alteration must be given to the caretaker at the cemetery at least six hours before the time fixed for the interment, and failure to do so constitutes an offence.

**18. Dimensions of grave openings**

- (1) The standard dimensions of graves are as follows
  - (a) Adult
    - (i) Single grave: Length: 2200mm; Width: 900mm.
    - (ii) Double grave: Length: 2200mm; Width: 2700mm.
  - (b) Child
    - (i) Single grave: Length: 1500mm; Width: 700mm.
- (2) Any person requiring an aperture for an interment in an adult's grave of a size larger than the standard dimensions must, when submitting an application in the terms of section 16, specify the measurements of the coffin, and pay the charges prescribed in the tariff for enlarging the aperture.

**19. Depth of grave**

- (1) An adult's grave is 1900mm in depth and that of a child 1500mm in depth.
- (2) The lid of the coffin, or where one coffin has been buried on top of another coffin, the lid of the top coffin may not be less than 1200mm from the surface.

**20. Reserving of grave**

- (1) Any person desiring to reserve the use of a grave must apply therefore to the caretaker.
- (2) A restriction is placed on the reserving of graves, and reservations shall only be accepted for adult graves in the monumental section as stated in subsection (3), upon payment of the charges prescribed in the tariff.
- (3) In the event of an interment of a husband or wife in the monumental section, only one additional adjoining grave may be reserved for the survivor.
- (4) In the event of an interment of a husband or wife in the aesthetic section, an additional adjoining grave may not be reserved for the survivors, however, subject to the provisions of section 23, the interment of the survivors may be permitted in the same grave.

**21. Child's coffin too large**

Should a child's coffin be too large for the dimensions of a child's grave, it must be placed in an adult grave and the usual fee for an adult's interment must be paid by the person submitting an application in terms of section 16, and in the instance where a child's interred in a section intended for adults the tariff applicable to adults applies.

**22. Construction material of coffin**

- (1) A coffin interred in a grave must be constructed of wood or bio-degradable material.
- (2) A person who inters a coffin in contravention of subsection (1) commits an offence.

**23. Number of bodies in one grave**

Only where prior arrangements has been made in terms of section 16(5) and subject to section 37, may more than one body be buried in a single grave.

**24. Coffin to be covered with earth / concrete**

Every coffin must upon being placed in a grave, be covered with at least 300 mm of earth or concrete immediately without delay, and failure to do so constitutes an offence.

**25. Disturbance of mortal remains**

- (1) Subject to the provisions of an exhumation order given in terms of the Inquests Act, 1959 (Act No. 58 of 1959) or any other provision of any Act relating to the exhumation of bodies, no mortal remains or ground surrounding it in a cemetery may be disturbed.
- (2) A person who contravenes subsection (1) commits an offence.

**26. Religious ceremony**

The members of a religious denomination may conduct a religious ceremony in connection with an interment or memorial service.

**27. Hearse and vehicle at cemetery**

- (1) No hearse or other vehicle may enter a cemetery without the permission of the caretaker.
- (2) No hearse or other vehicle may use any other route to enter a cemetery than the routes set aside for the purpose.
- (3) A person who contravened subsection (1) or (2) commits an offence.

**28. Exposal of body**

- (1) No person may expose a dead body or a part thereof in a cemetery.
- (2) A person who contravenes subsection (1) commits an offence.

**29. Instructions of caretaker**

A person taking part in a funeral procession or ceremony in a cemetery must follow instructions by the caretaker, and failure to do so constitutes an offence.

**30. Music inside cemetery**

- (1) Only sacred singing is allowed in a cemetery, except in the case of a police or military funeral, in which case the prior permission of the caretaker must be obtained.
- (2) A person who contravenes subsection (1) commits an offence.

**31. Interment attended by more than three hundred people**

In any instance where it is probable that more than 300 people will be present at an interment, the person submitting an application in terms of section 16, must notify the fact to the caretaker the day before the funeral, and failure to do so constitutes an offence.

**32. Occupation of chapel or shelter**

- (1) No person may for the purpose of a funeral occupy a chapel or shelter in a cemetery for more than 45 minutes.
- (2) A person who contravenes subsection (1) commits an offence.

**33. Days and hours of interment**

- (1) Interments may take place between 09h00 and 16h00 on week days and between 09h00 and 12h00 on Saturdays only.
- (2) A person who contravenes subsection (1) commits an offence.

**34. Number of grave**

- (1) No person may inter a body in a grave on which a peg marked with the number of the grave has not been fixed.
- (2) A person who contravenes subsection (1) commits an offence.

**CHAPTER III****EXHUMATION OF BODY AND RE-OPENING OF GRAVE****35. Exhumation**

- (1) Subject to permission from the municipality, or the provisions of an exhumation order given in terms of section 3(4) of the Inquests Act, 1959 (Act No. 58 of 1959) or any other provision of any Act relating to the exhumation of

corpses, no person may without an Environmental Health Practitioner being present:

- (a) disturb a corpse or mortal remains or ground surrounding it in a cemetery; or
  - (b) remove a corpse from a grave.
- (2) Any person requesting for a corpse to be exhumed or a grave to be opened must provide the municipality with an affidavit certifying that he or she has the authority to do so, and such an affidavit must be accompanied by any supporting documentation that may be required in terms of any Act relating to the exhumation of corpses.
- (3) The prescribed fee for exhumation must be paid to the municipality at least two days before the date fixed for the exhumation or removal of the corpse.
- (4) A person who contravenes the provisions of subsection (1) commits an offence.

### **36. Time of exhumation**

- (1) No person may exhume or cause a corpse to be exhumed at any other time than that specified by the municipality.
- (2) A person who contravenes subsection (1) commits an offence.

### **37. Re-opening of grave**

- (1) No person may re-open a grave for the purpose of interring a second corpse in the same grave without permission of the municipality
- (2) When considering an application contemplated in subsection (1), the municipality may impose such conditions it may deem necessary.
- (3) The municipality may re-open a grave for the purpose of establishing the identity of the corpse.
- (4) In the event of a police investigation, a corpse may be exhumed on receipt of a written request from the investigating officer, provided that the provisions of the Inquests Act, 1959 (Act No. 58 of 1959) have been complied with.
- (5) A person who contravenes subsection (1) or any condition imposed in terms of subsection (2) commits an offence.

## CHAPTER IV CARE OF GRAVE

### 38. Shrubs and flowers

The Council may at any time prune, cut down, dig up or remove any shrub, plant, flower, foliage, wreath or adornment if it becomes unsightly, is damaged, or wilted.

### 39. Care of graves

- (1) The maintenance of a grave is the responsibility of the person contemplated in section 16(1).
- (2) The municipality may, on application by a person contemplated in section 16(1), and upon payment of a fee prescribed by the municipality, undertake to keep any grave in order for any period.

## CHAPTER V ERECTION AND MAINTENANCE OF MEMORIAL WORK

### 40. Consent of Council

- (1) No person may bring into a cemetery, erect, alter, paint, clean, renovate, decorate, remove or otherwise interfere with any memorial work or cut any inscription thereon in a cemetery without the written consent of the Council and of the contractor of a grave.
- (2) When erecting a memorial work, the following must be submitted:
  - (a) a sketch which gives an indication of the measurements and the position;
  - (b) specification of the material of which the memorial work is to be constructed; and
  - (c) the wording of the epitaph.
- (3) The sketch must be submitted 30 days before the erection commences, and must be accompanied by the charges prescribed in the tariff.
- (4) A person who contravenes subsection (1) commits an offence.

**41. Position of memorial work**

- (1) No person may erect a memorial work on a grave, before the position in which such memorial work is to be placed has been indicated by the Council.
- (2) Should the condition of subsection (1) not be complied with the Council has the right to alter the position of the memorial work and to recover the costs of the alteration from the contractor.

**42. Repairs to memorial work**

Should the contractor of a grave allow a memorial work to fall into such a state of disrepair that it may cause danger or deface the cemetery, the Council may cause a Notice of Compliance, as contemplated in section 61, to be served on the contractor.

**43. Supervisions of work**

A person engaged upon any work in a cemetery must effect the work under the supervision of the Council, and failure to do so constitutes an offence.

**44. Damaging of memorial work**

The Council under no circumstances accepts responsibility for any damage which may at any time occur to a memorial work, and which is not due to the negligence of the Council's employees.

**45. Moving of memorial work**

The Council may, after due notice, at any time change or alter the position of a memorial work in a cemetery and recover the cost thereof from the owner of the memorial work, however in an instance where a memorial work has originally been placed in a certain position with the express consent of Council or its employee, any alteration of the position in terms of the provisions of this section is executed at the expense of the Council.

**46. Bringing material into cemetery**

- (1) No person may bring into the cemetery any material for the purpose of constructing therewith any memorial work on any grave unless and until –

- (a) the provisions of section 40 have been complied with;
  - (b) all charges due in respect such grave have been duly paid; and
  - (c) the Council's written approval of the proposed work has been given to the applicant, which approval is only valid for six months, and in the event of the memorial work not being erected within the prescribed time a new application must be submitted.
- (2) The grave number must be neatly indicated in figures 30 mm in size, and failure to do so constitutes an offence.
- (3) A person who contravenes subsection (1) commits an offence.

#### **47. Cleaning of memorial work by Council**

A memorial work placed, built, altered, decorated, painted or otherwise dealt with in a cemetery in such manner that any provisions of these by-laws are contravened thereby, may be removed by the Council at the cost of the contractor after due notice, without payment of any compensation.

#### **48. Requirements for erection of memorial work**

- (1) A person erecting a memorial work must comply with the following:
- (a) He or she must be in possession of a plan approved by the Council;
  - (b) All work must be effected according to the provisions laid down by the Council;
  - (c) Proceedings must be of such a nature that no damage be caused to any structure or offence given;
  - (d) Where a memorial has a pedestal on ground level or on the berm, the pedestal may not be more than 900mm in length, 250 mm in width and 250 mm in height for a single grave, and not more than 2700 mm in length, 250 mm in width, and 250 mm in height for a double grave;
  - (e) With the contractor's permission, the name of the maker can be displayed on a memorial work, but no address or any other particulars may be added thereto, and the space utilized for it may not be larger than 40 x 100 mm; and

(f) Tiles in the Garden of Remembrance must be 240 mm x 300 mm large and must be manufactured out of non-corrosive metal.

(2) A person who does not comply with a provision in subsection (1) commits an offence.

**49. Conveying of memorial work**

(1) No person may convey any stone, brick or memorial work or a portion thereof within a cemetery upon a vehicle or truck, which may cause damage to the paths or grounds or structures of the cemetery.

(2) A person who contravenes subsection (1) commits an offence.

**50. Vehicle and tools**

Every person engaged with work upon a grave or plot must ensure that the vehicles, tools or appliances be of such a kind as not to contravene these by-laws and by no means block any road or roads, and failure to do so constitutes an offence.

**51. Complying with Council's directions**

A person carrying on work within a cemetery must in all respects comply with the directions of the Council, and failure to do so constitutes an offence.

**52. Times for bringing in material and doing work**

(1) No person may bring memorial work or material into or do any work, other than the dismantling of memorial work for burial purposes, within a cemetery except during the following hours: Mondays to Fridays: From 07h00 to 18h00.

(2) No person may engage in work, which may be disturbing when a funeral takes place and for the duration of the funeral.

(3) A person who contravenes subsections (1) or (2) commits an offence.

**53. Inclement Weather**

(1) No person may fix or place any memorial work during inclement weather or while the soil is in an unsuitable condition.

(2) A person who contravenes subsection (1) commits an offence.

**54. Production of written permission**

A person charged with a work or on his or her way to or from work within the cemetery, must upon demand from the Council or its authorized official, produce the written consent issued to him or her in terms of section 40, and failure to do so constitutes an offence.

## **CHAPTER VI SECTIONS**

### **55. Council to determine sections**

The Council determines the sections according to the provisions applicable.

### **56. Memorial section**

- (1) Memorial work may be erected upon the whole surface of the grave subject thereto that the provisions of section 48 must be complied with and that the following measurements may not be exceeded:
  - (a) Height: 2000 mm.
  - (b) Width: 900 mm in case of a single grave, and 2700 mm in case of a double grave.
  - (c) Thickness: 250 mm
- (2) The Council may in the course of time, level all graves and plant grass thereon.
- (3) Flowers, foliage, wreaths or any adornment may be placed upon the berm only of graves, except in the case of graves which have not yet been leveled.
- (4) A person commits an offence of he or she –
  - (a) exceeds the measurements stipulated in subsection (1); or
  - (b) contravenes section (3).

### **57. Garden of Remembrance**

- (1) This section contains only the columbarium with niches, and the containers may not exceed 300mm x 150mm x 150mm.
- (2) Plaques may be erected and must be of non-corrodible metal or masonry only and must be 150mm by 150mm in size.
- (3) Flowers and wreaths may be placed on the places provided therefore only.

- (4) Failure to comply with the requirements of this subsection constitutes an offence.

**58. Heroes' Acre**

- (1) A heroes' acre consists of a structure erected for the purpose and contains no body but is only a memorial.
- (2) No person may erect such memorial without the written approval of the Council and the Council decides upon the merits of such matters.
- (3) The size of the memorial work must be 500 mm x 300 mm and must be manufactured from a non-corrodible metal or masonry upon which inter alia, the contribution made by the person in question is mentioned.
- (4) A person who inter a body in contravenes of subsection (1) or contravenes subsection (2) or who fails to comply with the requirements of subsection (3) commits an offence.

**CHAPTER VII  
MISCELLANEOUS**

**59. Authentication and service of order, notice or other document**

- (1) An order, notice or other document requiring authentication by the Council must be sufficiently signed by the Municipal Manager or by a duly authorized officer of the Council, such authority being conferred by resolution of the Council or by a by-law or regulation, and when issued by the Council in terms of these by-laws shall be deemed to be duly issued if it is signed by an officer authorized by the Council.
- (2) Any notice or other document that is served on a person in terms of these by-laws, 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);
  - (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; or
  - (f) in the event of a body corporate, when it has been delivered at the registered office or the business premises of such body corporate.
- (3) Service of a copy shall be deemed to be service of the original.
- (4) Any legal process is effectively and sufficiently served on the municipality when it is delivered to the municipal manager or a person in attendance at the municipal manager's office.

#### **60. Complaint**

A person wishing to lodge a complaint must lodge the complaint, in writing, with the Municipal Manager.

#### **61. Notice of compliance and representations**

- (1) A notice of compliance must state –
- (a) the name and residential and postal address, if either or both of these be known, of the affected person;
  - (b) the nature of the state of disrepair;
  - (c) in sufficient detail to enable compliance with the notice, the measures required to remedy the memorial work;
  - (d) that the person must within a specified time period take the measures to comply with the notice, to diligently continue with the measures, and to complete the measures before a specific date;
  - (e) that failure to comply with the requirements of the notice within the period contemplated in paragraph (d) is an offence;
  - (f) that written representations, as contemplated in subsection (3) may, within the time period stipulated under paragraph (d) above, be made to Council at a specified place.

- (2) Council, when considering any measure or time period envisaged in subsection (1) (d) and (e), must have regard to –
  - (a) the principles and objectives of these By-laws;
  - (b) the state of disrepair;
  - (c) any measures proposed by the person on whom measures are to be imposed; and
  - (d) any other relevant factors.
- (3) A person may within the time period contemplated in paragraph (1) (f) make representations, in the form of a sworn statement or affirmation to Council at the place specified in the notice.
- (4) Representations not lodged within the time period will not be considered, except where the person has shown good cause and Council condones the late lodging of the representations.
- (5) Council must consider the representations and any response thereto by an authorized official or any other person, if there be such a response.
- (6) Council may, on its own volition, conduct any further investigation to verify the facts if necessary, and the results of the investigation must be made available to the person, who must be given an opportunity of making a further response if he or she so wishes, and Council must also consider the further response.
- (7) Council must, after consideration of the representations and response, if there be such a response, make an order in writing and serve a copy of it on the person.
- (8) The order must-
  - (a) set out the findings of Council;
  - (b) confirm, alter or set aside in whole or in part, the notice of compliance; and
  - (c) specify a period within which the person must comply with the order made by Council.
- (9) If the notice of compliance is confirmed, in whole or in part, or is altered but not set aside, Council will inform the person that he or she –
  - (a) must discharge the obligations set out in the notice; or
  - (b) may elect to be tried in court.
- (10) If the person elects to be tried in court he or she must, within seven calendar days, notify Council of his or her intention to be so tried.

- (11) If the person does not elect to be tried in court, he or she must, within the prescribed manner and time discharge his or her obligations under the order.
- (12) Where there has been no compliance with the requirements of a notice, the Council may take such steps as it deems necessary to repair the memorial work and the cost thereof must be paid to the Council in accordance with section 62.

#### **62. Costs**

Should a person fail to take the measures required of him or her by notice, the municipality may recover from such person all costs incurred as a result of it acting in terms of section 61(12).

#### **63. Appeal**

- (1) A person whose rights are affected by a decision of an official, may appeal against that decision 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 consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.
- (3) The municipal manager must commence with an appeal within six weeks and decide the appeal within a reasonable time.

#### **64. Charges**

- (1) The charges set forth in the tariff (as contained in Schedule B) in respect of the various items therein contained, must be paid to the Council.
- (2) Should a person fail to pay a tariff as prescribed in these by-laws, Council may act in accordance with the provisions of the Credit Control and Debt Collection By-laws, 2010.

#### **65. Notice of contravention**

- (1) The Council may serve a notice of contravention on a person who has committed an offence in terms of these by-laws.
- (2) A notice of contravention must –

- (a) specify at the time when the notice is issued, the name and residential and postal address, if either or both of these be known, of the person on whom the notice is served
  - (b) state the particulars of the contravention;
  - (c) specify the amount of the penalty payable in respect of that contravention and the place where the penalty may be paid; and
  - (d) inform the person that he or she may, within 28 calendar days of the date of service of the notice –
    - (i) pay the penalty;
    - (ii) inform Council in writing that he or she elects to be tried in court on a charge of having committed an offence.
- (3) If a person elects to be tried in a court he or she must, within seven calendar days, notify the Council of his or her intention.

#### **66. Penalties**

A person who contravenes any provision or fails to comply with any provision of this by-law commits an offence and shall on conviction be liable to-

- (a) a fine or imprisonment, or either such fine or imprisonment or to both such fine and imprisonment; and
- (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 Council as result of such contravention or failure.

#### **67. Limitation of liability**

The Council is not liable for any damage or loss caused by –

- (a) the exercise of any power or the performance of any duty in good faith under these By-laws;
- (b) the failure to exercise any power, or perform any function or duty in good faith under these By-laws.

**68. Revocation of by-laws**

**SCHEDULE**

**SCHEDULE A**

**APPLICATION FORM**

Name of applicant .....

Address of applicant .....

Name of diseased person to be interred .....

Particulars of deceased person .....

**SCHEDULE B**

**TARIFF OF CHARGES**

- 1. Section 6(2): R .....
- 2. Section 16(4): R .....
- 3. Section 16(5): R .....
- 4. Section 20(2): R .....
- 5. Section 35(3): R .....
- 6. Section 39(2): R .....
- 7. Section 40(3): R .....

# THULAMELA MUNICIPALITY

## HERITAGE RESOURCES AND CULTURAL INSTITUTIONS BY-LAWS

### TABLE OF CONTENTS

#### TABLE OF CONTENTS

1. Interpretation
2. Principles and objectives
3. Application
4. Legislation specifically referred to

#### CHAPTER 1: GENERAL PROVISIONS

5. Number of visitors
6. Admission to heritage and cultural facility
7. Entrance fees
8. Notice boards
9. Consent required for certain activities
10. Permit
11. Prescribed fees
12. Animals
13. Prohibited behaviour
14. Vehicles
15. Camping in heritage site
16. Certain provisions do not apply to official

#### CHAPTER II: HERITAGE RESOURCES

17. Interpretation
18. Principles of Chapter II
19. Powers of functions of Council
20. Procedure at meeting
21. Formal protection of privately owned heritage sites
22. Protection and management of protected areas, heritage areas and heritage objects

#### CHAPTER III: CULTURAL INSTITUTIONS

23. Interpretation
24. Principles and objectives of Chapter III
25. Council to establish and maintain cultural institutions
26. Cultural committee

## CHAPTER IV: MISCELLANEOUS PROVISIONS

27. Enforcement officials
28. Costs
29. Penalties
30. Authentication and service of notices and other documents
31. Appeal
32. Revocation of by-laws
33. Short title and commencement

### Schedules

#### 1. Interpretation

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

“**Council**” means the Thulamela Municipal Council;

“**cultural institution**” means a museum, Theatre, lecture room and similar institutions established in terms of section 25 of these By-laws;

“**heritage and cultural facility**” means a –

- (a) heritage site as defined in section 1 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999);
- (b) a place of cultural significance as identified by a badge or in a notice board contemplated in section X; and
- (c) cultural institution;

“**Official**” means a person appointed in accordance with the provisions of section 27, and other word or expression to which a meaning has been assigned in the Cultural Promotion Act, 1983 (Act No.35 of 1983), Cultural Affairs Act (House of Assembly), 1989 (Act No. 65 of 1989), National Arts Council Act, 1997 (Act No. 56 of 1997), Cultural Institutions Act, 1998 (Act No 119 of 1998), and National Heritage Resources Act, 1999 (Act No. 25 of 1999), carries that meaning.

#### 2. Principles and objectives

The Council, acting within framework of the principles, and striving to realize the objectives expressed in the Acts contemplated in section 4, hereby adopts these By-laws to protect, manage and control those sites and objects of the national estate, as set out in section 3 of the National Heritage Resources Act, 1999 (Act No. 25 of 1990), entrusted to it under section 26(1)(f) of said Act, and those cultural institutions established by the Council in terms of section 25 of these By-laws.

### **3. Applications**

These By-laws apply to those cultural institutions which the Council has established in terms of section 25, and those heritage resources, heritage sites and heritage objects to which powers and functions of a heritage resources authority were delegated in terms of section 29 (1) (f) of the Act, 1999 in respect of such Grades as contemplated in section 7, within the Makhado municipal area.

### **4. Legislation specifically referred to**

These By-laws refer specifically to the –

- (a) Cultural Promotion Act, 1983 (Act No. 35 of 1983);
- (b) Cultural Affairs Act (House of Assembly), 1989 (Act No. 65 of 1989);
- (c) Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);
- (d) National Arts Council Act, 1997 (Act No. 56 of 1997);
- (e) Cultural Institutions Act, 1998 (Act No. 119 of 1998); and
- (f) National Heritage Resources Act, 1999 (Act No. 25 of 1999)

## **CHAPTER 1: GENERAL PROVISIONS**

### **5. Number of visitors**

For the purpose of protecting and managing the heritage and cultural facilities and heritage objects contemplated in these By-laws, the Council may by resolution determine

- (a) the maximum number of persons who or, where applicable, vehicles which may be present at a specific time in or at a heritage and cultural facility; and
- (b) different numbers of persons or, where applicable, different classes of vehicles, as contemplated in paragraph (a), for different heritage and cultural facilities, in respect of those heritage resources of heritage site which the Council, in terms of the National Heritage Resources Act, 1999 (Act No. 25 of 1999) or any other law, may establish, protect or manage, and those cultural Institutions which the Council has established in terms of section 25 of these By-laws

### **6. Admission to heritage and cultural facility**

- (1) A heritage and cultural facility is open to the public at the times, dates and subjects to such conditions regarding the entry to and activities that may be undertaken upon the heritage and cultural facility, as determined by the Council by resolution in respect of different heritage

and cultural facilities, including conditions regarding the driving of a motor vehicle and different classes of motor vehicles in heritage sites

- (2) The Municipal Manager may from time to time grant to any person or persons, during such hours and for such period as he or she may deem fit, the exclusive use of a heritage and cultural facility.
- (3) The heritage authority or the Council may by resolution for reasons of maintenance, development, security, safety or public health, temporarily or permanently –
  - (a) close a heritage and cultural facility or a portion thereof; or
  - (b) suspend all or any activities thereon
- (4) Where a person in a heritage and cultural facility has committed an offence in terms of these By-laws or any other law, an official may order such person to leave the heritage and cultural facility, and a person so ordered to leave –
  - (a) must forthwith leave the heritage and cultural facility by the shortest route available to the public;
  - (b) may not enter any heritage and cultural facility during the period of six months immediately succeeding the relevant order, unless –
    - (i) the municipal Manager has authorized him or her thereto in writing; or
    - (ii) he or she has not, within three months of being so ordered, been prosecuted and found guilty of an offence similar to the offence contemplated above.
- (5) Where an official on reasonable grounds suspects that a person wishing to enter a heritage and cultural facility intends to commit an offence in terms of these By-laws or any other law in or at the heritage and cultural facility, he or she may refuse entry to such person.
- (6) A person who fails to obey an order issued in terms of subsection (4) commits an offence.

## **7. Entrance fee**

- (1) The heritage resource authority or the Council may by resolution levy different entrance fees and issue entrance tickets in respect of persons of different ages, groups of persons, or different classes of vehicles, which entitle such person. Groups or vehicles (the “ticket holder”) to enter upon a heritage and cultural facility, and grant concessions in respect of entrance fees payable.
- (2) An entrance fee is payable at the entrance to a heritage and cultural facility, except where another place is indicated in a notice board erected in terms of section 8 (1), and for each person, group or vehicle as contemplated in subsection (1).

- (3) An entrance ticket contemplated in subsection (1) is valid for the period, as contemplated in subsection (4) in respect of which an entrance fee has been paid.
- (4) An entrance fee contemplated in subsection (1) is payable in respect of each day or portion thereof during which a person, group or vehicle is or remains in a heritage and cultural facility, provided that no fee is payable in respect of the day on which such heritage and cultural facility is left, if heritage and cultural facility is left before 10:00 of such day and such day is not the day of arrival in such heritage and facility.
- (5) No fee contemplated in subsection (1) is repayable, however, where the whole or any portion of the period in respect of which such fee has been paid has not been or cannot be utilized, the fee which has been paid in respect of each full day which has not been utilized may, with the approval of the Municipal Manager, be repaid, and for the purposes of this subsection "full day" means a period of 24 hours commencing at 10:00 of any day.
- (6) An official may require any person in a heritage and cultural facility to produce forthwith to such official the entrance ticket issued to the person in terms of subsection (1), and a person who fails to produce such entrance ticket or a person who enters a heritage and cultural facility without having paid the entrance fee as contemplated in subsection (1) commits an offence.

## **8. Notice boards**

- (1) The heritage resource authority or, where applicable, the Council may erect a notice board at the entrance to or in the immediate vicinity of a heritage and cultural facility, on which any of the following are displayed:
  - (a) The times, dates and conditions contemplated in section 6(1);
  - (b) The fees payable in terms of section 7; and
  - (c) A notice relating to a resolution taken in terms of section 6(3), however, where no such notice board has been so erected, and subject to the provisions of section 9, no activities may be undertaken upon the heritage and cultural facility.
- (2) No person other than an official or other person authorized to do so in these By-laws or any other law may move or alter the contents of, and no person may deface or otherwise tamper with a notice board erected by the heritage resource authority or the Council in terms of these By-laws.
- (3) A notice posted by the heritage resource authority or the Council in terms of these subsection 8(1) –
  - (a) Must be clearly visible and readable;

- (b) Must be written in such language as the heritage authority or the Council may determine; and
  - (c) May contain a graphic representation to convey meaning.
- (4) A person who enters a heritage and cultural facility in contravention of the times, dates and conditions contemplated in subsection (1)(a) and a resolution contemplated in subsection (1)(c), as displayed on a notice board, or who undertakes an activity upon a heritage and cultural facility as contemplated in subsection (1), or who contravenes a provision of subsection (2) commits an offence.

## 9. Consent required for certain activities

- (1) No person may, without the written consent of the Municipal Manager first having been obtained at, in or upon a heritage and cultural facility –
- (a) arrange, hold, present or attend –
    - (i) a public entertainment;
    - (ii) a meeting;
    - (iii) a public gathering or precession, exhibition or performance; or
    - (iv) an auction;
  - (b) from the general public, collect money or any other goods for charity or any other purpose;
  - (c) display or distribute a pamphlet, placards, painting, book, handbill or a printed, written or painted work;
  - (d) conduct any trade, occupation or business;
  - (e) display, sell or rent out or present for sale or rent any wares or articles;
  - (f) tell fortunes for compensation;
  - (g) play any musical instruments or sing;
  - (h) have in his or her possession a firearm, air pistol, bow, knife, slingshot, or fireworks, or
  - (i) in any manner disturb such heritage and cultural facility.
- (2) No person may, without the written consent of the Municipal Manager first having been obtained bring into a heritage and cultural facility and alcoholic beverage, and a person who has obtained such consent may consume such beverage. At a designated area set aside for this purpose only.
- (3) No person may, without the written consent of the Municipal Manager first having been obtained cook, prepare or sell, in a heritage and cultural facility, food of any kind, and a person who has obtained such consent may cook, prepare or sell such food at a designated area set aside for this purpose only must ensure that the preparation and cooking of food is done in a clean and sanitary manner so as not to give rise to excessive smoke or other nuisance or entail any danger to health.

- (4) No person may, without the written consent of the Municipal Unit Manager first having been obtained, kindle a fire in a heritage and cultural facility, except for the purpose of barbecuing food, and a person who has obtained such consent may kindle such fire at a designated area set aside for this purpose only and may not leave any fire which he or she has kindled or used without completely extinguishing the fire or the embers thereof.
- (5) No person may, without the written consent of the Municipal Manager first having been obtained, erect or establish in or on a heritage and cultural facility any fence, structure, dam, shelter or anything else and a person who has obtained such consent may erect such fence, structure, dam, shelter or anything else, park such or pitch such tent at a designated area set aside for this purpose only.
- (6) No person may, without the written consent of the Municipal Manager first having been obtained, bring into, or have in his or her possession in a heritage and cultural facility a firearm.
- (7) A person who wishes to obtain the consent of the Municipal Manager as contemplated in subsection (1), (2), or 27(2)(f) of the Act, must complete and submit to the Municipal Manager a form in Schedule 1, which schedule refers, and the Municipal Manager may refuse consent, or grant consent, which consent will be indicated on the above form, subject to any such conditions as he or she deems necessary and subject to the prescribed fee as contemplated in section 11 having been paid, and a person who wishes to sell food must, in addition to the provisions of these By-laws, comply with the provisions of any and applicable by-laws in force in the Makhado municipal area relating to –
- (a) the licensing and control of undertakings that sell food to the public; or
  - (b) the hawking of food by street traders, vendors or pedlars.
- (8) A person who has been granted consent in terms of subsection (7) must at all times when undertaking an activity for which consent has been granted, keep the form in his or her possession, and must forthwith produce the form on request of an official.
- (9) A person who contravenes a provision of subsection (6) or (8) commits an offence.

## 10. Permits

- (1) Despite the provisions of section 5, 6(1), 6(3), and 7(1), the Municipal Manager may, on written application submitted to him or her in a form similar to the form in Schedule 2, free of charge –
- (a) to a group of people, such as, but not limited to, a group of bona fide students; or

- (b) to a person who is undertaking scientific, educational or similar research.
- (2) The holder of a permit issued in terms of subsection (10) or section 48 of the National Heritage Resources Act, 1999 must, on arrival at the heritage and cultural facility concerned, display such permit to the control official, and a person who fails to do so, commits an offence.
- (3) The holder of a permit who undertakes an activity in contravention of a condition imposed in him or her commits an offence.

#### **11. Prescribed fees**

The Council has determined the prescribed fees payable in terms of these By-laws, which fees are stipulated in the annual budget, and the Council may review such fees.

#### **12. Animals**

- (1) No person may in contravention of a notice board erected in terms of section 8(1) bring upon the heritage and cultural facility any animal.
- (2) A person who, in terms of a resolution taken in terms of section 6(1), is permitted to bring an animal upon heritage and cultural facility, must have direct and physical control over the animal by means of a leash or other device, and may not bath, wash or allow such animal to enter or remain in any pond, fountain or ornamental water.
- (3) A person who contravenes a provision of subsection (1) or (2) commits an offence.

#### **13. Prohibited behavior**

- (1) In addition to behavior which constitutes an offence in terms of section 51(5) of the Act, no person –
  - (a) may loiter or linger about in a heritage and cultural facility if he or she –
    - (i) leads the life of a loiterer;
    - (ii) lacks any determinable legal refuge;
    - (iii) leads a lazy, debauched or disorderly existence;
    - (iv) habitually sleeps in a public street, public place or on a private place; or
    - (v) habitually begs for money or goods or persuades others to beg for money or goods on his or her behalf;

- (b) may bring into a heritage an cultural facility any drugs as defined in section 1 of the Drugs and Drugs Trafficking Act, 1992 (Act No. 140 of 1992);
- (c) who –
- (i) is in state of intoxication or under the influence of any drug may enter or remain in, and such person shall not be admitted to a heritage an cultural facility;
  - (ii) knows that he or she is suffering from a communicable disease as defined in section 1 of the Health Act 63 of 1977, may enter upon or remain in a heritage and cultural facility;
- (d) may in or at a heritage an cultural facility –
- (i) break, damage, destroy, tamper with, misuse, disfigure or use in a manner contrary to a notice erected in respect of such heritage an cultural facility or heritage object, anything (whether movable or immovable), or remove such movable thing from the heritage and cultural facility, or fail to observe a notice which was erected by the Council in respect of such heritage and cultural facility or heritage object or fail to observe an instruction by a person permitted to manage and such heritage and cultural facility or heritage object;
  - (ii) throw or roll down a rock, stone or object from a mountain, koppie, slope or cliff;
  - (iii) pull out, pick, cut or damage any flora growing in the heritage and cultural facility, or have such flora in his or her possession;
  - (iv) walk on a flowerbed;
  - (v) walk, stand, sit or lie on grass;
  - (vi) write, paint, draw graffiti or a representation on a structure or path;
  - (vii) excavate soil, sand or stone or remove organic or inorganic objects;
  - (viii) interfere with water flow, obstruct water, divert a stream or drain a wetland;
  - (ix) deface or disfigure anything on the heritage and cultural facility by pasting or affixing in any way any bills, papers, place cards, notices or anything else;
  - (x) burn refuse so as to cause an unpleasant or offensive smell or the production of smoke nuisance;
  - (xi) except in a container provided for the purpose dump, discard, drop, leave or place any litter, refuse, rubble, stone, sand, soil material, bottles, wood, metal, manure, offal, fish, filth or any object or thing that may cause injure to any person or be prejudicial to the health of the inhabitants of the municipality, or permit it to be done;

- (xii) misuse, pollute or contaminate in any way a water source, water supply, a dam or river with fuel, oil, garbage, offal, bilge, sewerage, refuse, stone, sand, soil or rubble or any kind;
- (xiii) wash any crockery or laundry or hang out clothes except at places indicted by notice or that purpose;
- (xiv) use or try to use anything in such heritage an cultural facility for any purpose other than that for which it is designed or determined by notice;
- (xv) throw away any burning or smoldering object;
- (xvi) behave or conduct himself or herself in an improper, indecent or unbecoming manner such as by making an improper gesture, inciting or urging someone to perform a disorderly or indecent act;
- (xvii) cause a disturbance, use foul, lewd, dirty or indecent language, behave or conduct himself or herself in an unruly or violent manner, fight, shout , argue, beg, sing, play musical instruments, use loud speakers, radio reception devices, television sets, or similar equipment, or perform any act with the purpose of disturbing the good order or which may constitute a danger or nuisance to others;
- (xviii) defecate, urinate or undress, except in such building or on premises intended for that purpose;
- (xix) lie on a bench or seating place provided in the heritage and cultural facility or use it in such a manner that other users or potential users find it impossible to make use thereof;
- (xx) swim, walk or play in a fish-pond, fountain, dam, artificial feature or pond;
- (xxi) perform any act that may detrimentally affect the integrity of the heritage and cultural facility or of an heritage object;
- (xxii) enter or use a toilet facility intended or indicated as such by notice for members of the opposite sex;
- (xxiii) stay or sleep over night other than in terms of section 15;
- (xxiv) hunt, injure, disturb, kill, feed, hurt, follow, ill-treat or catch an animal, or displace, disturb, destroy or remove a bird, nest or egg, or skin or gut a live animal, except if authorized to do so under section 10(2)(a);
- (xxv) fire a firearm, air gun or air pistol, except if the necessary consent as contemplated in section 9(6) has been obtained, or discharge a bow, fireworks or use a slingshot or catapult;
- (xxvi) in any way whatsoever prejudice the safety, convenience or rights of other persons;
- (xxvii) obstruct or interfere with any official appointed by the Council in the proper execution of his or her official duties;

- (xxviii) play or conduct a game of any nature whatsoever;
- (xxix) expose his or her body or clothe indecently; or
- (xxx) discard of a burning or smoldering object;

- (e) may enter –
    - (i) or leave a heritage an cultural facility other than by way of the official entry an exit point;
    - (ii) a heritage an cultural facility without having paid the entrance fees as contemplated in section 7(1); or
  - (f) may release any wild animal, bird or flora into a heritage and cultural facility;
- (2) A person who contravenes a provision of subsection (1) commits an offence.

#### **14. Vehicles**

- (1) Where a person is permitted in terms of a resolution contemplated in section 6(1) to drive a vehicle in a heritage site or a position of a heritage site, he or she may not –
- (a) travel with the vehicle elsewhere than on a road constructed by the heritage resource authority;
  - (b) drive the vehicle or cause or permit it to be driven at a speed in excess of the speed indicated on a notice board erected by the heritage resource authority in terms of section 8(1); or
  - (c) wash, polish or repair a vehicle, except emergency repairs to a vehicle.
- (2) The provisions of sub-section (1) do not apply to an emergency vehicle while lawfully in use a such, or a vehicle used in an emergency, or a vehicle used by an official in the discharge of his or her duties.
- (3) A person who contravenes a provision of subsection (1) commits an offence.

#### **15. Camping in heritage site**

- (1) Where in terms of a resolution contemplated in section 6(1) a person is permitted to camp in a heritage site, the person may camp in a designated area set aside for that purpose only.
- (2) A person who contravenes a provision of subsection (1) commits an offence.

## **16. Certain provisions do not apply to official**

Those provisions in these By-laws that relate to the activities normally undertaken in a household, the contravention of which would otherwise constitute an offence in terms of these By-laws, do not apply to:

- (a) An official who lives on a heritage site;
- (b) A relation of the official who lives with or visits him or her at his or her home, however the Council may from time to time determine the maximum number of visits per year by a relation; and
- (c) A person who, at the request of the official, visits him or her in the heritage site, however the Municipal Manager may from time determine the maximum number of visits per year by a person.

## **CHAPTER II: HERITAGE RESOURCES**

### **17. Interpretation**

In this chapter, unless the context indicates otherwise, "Act" means the National Heritage Resources Act, 1999 (Act No. 25 of 1999), and any other word or expression has the meaning assigned to it in the Act.

### **18. Principles of Chapter II**

- (1) Those heritage resources of South Africa, and specifically falling within the Makhado Municipal area, which are of cultural significance or other special value for the present community and for future generations, are listed in subsection (2) and must be considered part of the national estate and fall within the sphere of operations of the Council as heritage resources authority.
- (2) Without limiting the generality of subsection (1), the national estate may include –
  - (a) places, buildings, structures and equipment of cultural significance;
  - (b) places to which oral traditions are attached or which are associated with living heritage;
  - (c) historical settlements and townscapes;
  - (d) landscapes and natural features of cultural significance;
  - (e) geological sites of scientific or cultural importance;
  - (f) archaeological and paleontological sites;
  - (g) graves and burial grounds, including –
    - (i) ancestral graves;
    - (ii) royal graves and graves of traditional leaders;

- (iii) graves of victims of conflict , including of persons connected with the liberation struggle and who died in exile or as a result of the action of State security forces or *agents provocateur*;
  - (iv) graves of individuals designated by the Minister by notice in the Gazette;
  - (v) historical graves and cemeteries; and
  - (vi) other human remains which are not covered in terms of the Human Tissue Act, 1983 (Act No. 65 of 1983;
  - (h) sites of significance relating to the history of slavery in South Africa;
  - (i) movable objects, including –
    - (i) objects recovered from the soil or waters of South Africa, including archaeological and paleontological objects and material, meteorites and rare geological specimens;
    - (ii) objects to which oral traditions are attached or which are associated with living heritage;
    - (iii) ethnographic art and objects;
    - (iv) military objects;
    - (v) objects of decorative or fine art;
    - (vi) objects of scientific or technological interest; and
    - (vii) books, records, documents, photographic positives and negatives, graphic, film or video material or sound recordings, excluding those that are public records as defined in section 1(xiv) of the National Archives of South Africa Act, 1996 (Act No. 43 of 1996).
- (3) Without limiting the generality of subsections (1) and (2), a place or object is to be considered part of the national estate if it has cultural significance or other special value because of –
- (a) its importance in the community, or pattern of South Africa's history;
  - (b) its possession of uncommon, rare or endangered aspects of South Africa's natural or cultural heritage;
  - (c) its potential to yield information that will contribute to an understanding of South Africa's natural or cultural heritage;
  - (d) its importance in demonstrating the principal characteristics of a particular class of South Africa's natural or cultural places or objects;
  - (e) its importance in exhibiting particular aesthetic characteristics valued by a community or cultural group;
  - (f) its importance in demonstrating a high degree of creative or technical achievement at a particular period;
  - (g) its strong or special association with a particular community or cultural group for social, cultural or spiritual reasons;
  - (h) its strong or special association with the life or work of a person, group or organization of importance in the history of South Africa; and
  - (i) sites of significance relating to the history of slavery in South Africa.

**19. Powers and functions of Council**

The council has –

- (a) all such powers and functions of a heritage resources authority as delegated to it in terms of section 26(1)(f) of the Act, 1999 in respect of such Grades as contemplated in section 7 of the Act, and such responsibilities and competence as contemplated in section 8 of the Act; and
- (b) such rights and duties as contemplated in section 9 of the Act.

**20. Procedure at meeting**

- (1) When the Council intends to take a decision regarding –
  - (a) the administration and management of the national estate, the administration and management of which has been assigned or delegated to the Council; or
  - (b) a responsibility which has been assigned to the Council under section 7 of the Act, 1999, including a decision as contemplated in section 10(1) of the Act, such decision must be taken in accordance with the general principles contemplated in subsection (2).
- (2)
  - (a) The decision must be consistent with the principles or policy set out in section 5 or prescribed in section 6 of the Act.
  - (b) A meeting at which a decision is to be taken, must be open to the public and the agenda and minutes must be available for public scrutiny, however, when there is good reason to do so, a matter may, by decision of a majority of members present, be declared confidential and the discussion and minutes may be excepted from public scrutiny.
  - (c) A person who may be affected by a decision has the right of appearance at the meeting.
  - (d) Written reasons must be given for any decision upon request.

**21. Protection and management of protected areas, heritage areas and heritage objects**

- (1) In the instance where a heritage site has not been put under the control of the Council in terms of the Act, the Council may formally protect the site in a manner contemplated in Part 1 of Chapter II of the Act, and may, with the consent of the owner of the site, make regulations with the aim of –
  - (a) safeguarding the site from destruction, damage, disfigurement, excavation or alteration;
  - (b) regulating the use of the site;
  - (c) imposing conditions for any development of the site; and

- (d) regulating the admission of members of the public to the site, and the fees payable for such admission.
- (2) the council may, by agreement with the owner of a heritage site -
- (a) conserve or improve the sit;
  - (b) construct fences, walls or gates around or on the site;
  - (c) acquire or construct and maintain an access road to the site over any land, and construct upon such land fences, walls or gates;
  - (d) erect signs on or near the site; or
  - (e) obtain all reproduction rights either in two or three dimensions.

## **22. Protection and management of protected areas, heritage areas and heritage objects**

- (1) The Council must make provision in its planning scheme to provide for the protection and management, and in these By-laws provide for the protection and management of –
- (a) a protected area, in accordance with section 28(5) and (6) of the Act;
  - (b) a heritage resource listed in terms of section 30(3) of the Act and subject to the provisions of said section;
  - (c) a heritage area designated in terms of section 31(5) of the Act; and
  - (d) heritage objects as contemplated in section 32 of the Act.
- (2) The Council shall protect and manage the areas, resources and objects contemplated in subsection (1) in accordance with the provisions of Chapter II of the Act, and may for these purposes enter into any heritage agreement contemplated in said Chapter, or issue any permit contemplated in Chapter III of the Act, and may provisionally protect a heritage source in accordance with the provisions of section 31 of the Act.

## **CHAPTER III: CULTURAL INSTITUTIONS**

### **23. Interpretation**

In this chapter, unless the context indicates otherwise –

"Acts" means the –

- (a) Cultural Promotion Act, 1983 (Act No 35 of 1983);
  - (b) Cultural Affairs Act (House of Assembly), 1989 (Act no 65 of 1989); and
  - (c) Cultural Institutions Act, 1998 (Act No 119 of 1998),
- And regulations made under said Acts;

**"living heritage"** has the meaning assigned to it in section 1 of the National Heritage Resources Act, 1999 (Act No 25 of 1999);

**"presentation"** has the meaning assigned to it in section 1 of the National Heritage Resources Act, 1999 (Act No 25 of 1999).

#### **24. Principles and objectives of Chapter III**

The Council, acting within the framework of, and in the spirit which pervades, and striving to realize the objectives which are expressed in the Cultural Promotion Act, 1983 (Act No 35 of 1983), Cultural Affairs Act (House of Assembly), 1989 (Act no 65 of 1989), National Arts Council Act, 1997 (Act No 56 of 1997) and the Cultural Institutions Act, 1998 (Act No 119 of 1998), adopts this Chapter with the aim of regulating such cultural institutions and activities as are falling within its competency, and further to –

- (a) preserve, develop, foster and extend cultural as it finds expression in the municipal area in particular by means of non-formal out-of-school education of adults and youthful person in the following fields:
  - (i) the visual arts, music and literary arts;
  - (ii) the acquisition, in popular fashion, knowledge of the applied, natural and human sciences;
  - (iii) the utilization of leisure, including physical recreation activities which are of such a nature as not to be courses of training with a view to participating in competitions;
  - (iv) such other fields as the minister may from time to time determine;
- (b) to provide, and encourage the provision of , opportunities for person to practice the arts;
- (c) to promote –
  - (i) appreciation, understanding and enjoyment of the arts;
  - (ii) the general application of the arts in the community;
  - (iii) and uphold the right of any person to freedom in the practice of the arts;
  - (iv) and facilitate national and international liaison between individuals and institutions in respect of the arts; and
  - (v) develop the arts and to encourage excellence in regard to these;
- (d) to foster the expression of a national identity consciousness by means of the arts;
- (e) to give the historically disadvantaged such additional help and resources as are required to give them greater access to the arts; and
- (f) to address historical imbalances in the provision of infrastructure for the promotion of the arts.

#### **25. Council to establish and maintain cultural institutions**

- (1) The Council may, in the spirit of the Act, by resolution –

- (a) establish, acquire, erect, construct, carry on assist or promote within the area under its jurisdiction, such cultural institutions as it may deem necessary to realize the objectives of said Acts, and must maintain such and existing cultural institutions; and
  - (b) maintain, establish, carry on, or contribute to bands and orchestras for musical performances in public places or municipal halls, and generally provide musical entertainment in such places or halls, and make charges in connection therewith, and hereby carries on, assists and promotes the cultural institutions stipulated in Schedule 4.
- (2) The Council, when incurring expenditure in respect of acting in terms of subsection (1), must do so within its budgetary limits.
- (3) The Council may at a cultural institution –
- (a) make presentations, give lectures or performances of cultural significance or otherwise, whether relating to the living heritage or not, and make charges therefore; and
  - (b) sell, let, distribute or in any other manner disposes of any catalogue, publication, reproduction, postcard, color slide, film, photo or any other item which is related to the activities of such cultural institution.

## **26. Cultural committee**

- (1) The Council must appoint a cultural committee, the membership and constitution of which is to be decided upon by the Council, to oversee the general management and control of cultural institutions contemplated in section 25.
- (2) When appointing the members of a cultural committee, the Council must have regard to the underlying principles and objectives of the Acts, and must appoint persons who have the necessary expertise, knowledge and who are suitably qualified to make a constructive input to the committee's discussions.
- (3) The official appointed in terms of section 27 must fulfill such functions and duties as assigned to him or her by the cultural committee, and must report to the cultural committee may by resolution decide.

## **CHAPTER IV : MISCELLANEOUS PROVISIONS**

### **27. Enforcement officials**

- (1) The Council must within its powers contemplated in section 19(a) appoint an official as heritage Inspector as contemplated in section 50 of the national Resources heritage Act, 1999, and such official has

such powers, duties and functions delegated to it in terms of said section.

- (2) The Council must appoint an official as Cultural Inspector, which inspector may be the same official appointed in terms of subsection (1), to implement and manage the powers of these By-laws and such official has such powers, duties and functions as delegated to him or her by the Council, and a person committed an offence if he or she –
- (a) assaults, resists, obstructs, hinders, delays or interferes with an official in the exercise of his or her powers or the performance of his duties or functions or in any other way attempt to prevent the exercise of such powers or the performance of such duties or functions;
  - (b) offers any inducement to an official or makes any threat, whether of violence or otherwise, in relation to such official or a member of his or her family or a person dependent on him or her or to his or her property in order to persuade or prevent such official from exercising any of his or her powers or performing any of his or her duties or functions;
  - (c) not being an official, by words, conduct or demeanour pretends that he or she is an official; or
  - (d) not being an official, wears a uniform or part of a uniform or an insignia designed and intended for use by an official of the Thulamela Municipality, or an imitation of such uniform or insignia.

## **28. Cost**

- (1) Should a person through his or her actions or activities in a cultural institution, including any appurtenances in the cultural institution, or on respect of anything contained in a cultural institution necessitate the Council to incur expenses, such as replacement or repair, for any damage in respect of such institution or thing, the Council may recover all costs incurred from that person, and if more than one person is liable for costs incurred, the liability must be apportioned as agreed among the persons concerned according to the degree to which each was responsible for the damage.
- (2) The costs recovered must be reasonable and may include, without being limited to, costs relating to labour, water equipment, administrative and overhead costs incurred by the Council.

## **29. Penalties**

- (1) A person who has committed an offence in terms of section 51 of the national heritage Resources Act, 1999 (Act No 25 of 1999), is on conviction liable to such penalty as stipulated in section 51 (2) or 3, whichever is applicable, of the Act.

- (2) A person who has committed an offence in terms of these By-laws is, on conviction, and subject to penalties prescribed in any other law, liable to a fine, or in default of payment, to imprisonment for a period not exceeding six months, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment, and in the case of a successive or continuing offence, to a fine for every day such offence continues, or in default of payment thereof, to imprisonment for a period not exceeding one month

### **30. Authentication and service of notices and other documents**

- (1) An order, notice or other document requiring authentication by the Municipality must be sufficiently signed.
- (2) Any notice or other document that is served on a person in terms of this by-law, is regarded as having been served when it is served in accordance with section 115(1) of the Local Government: Municipal Systems Act, Act 32 of 2000.
- (3) Service of a copy shall be deemed to be service of the original.
- (4) Any legal process is effectively and sufficiently served on the municipality when it is delivered to the municipal manager or a person in attendance at the municipal manager's office.

### **31. Appeal**

A person whose rights are affected by a decision delegated by 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.

### **32. 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 authorisation for the execution of powers and functions in terms of section 84(3) of the Local Government: Municipal Structures Act, Act 117 of 1998,

### **33. Short title and commencement**

This by-law shall be known as the Thulamela Municipality: Heritage Resources and Cultural Institutions By-laws and shall come into operation on the date of publication thereof in the Provincial Gazette.

# THULAMELA MUNICIPALITY

## BY-LAWS FOR ROADS, TRAFFIC AND SAFETY

### TABLE OF CONTENTS

1. Definitions
2. Principles and objectives

#### CHAPTER 1: GENERAL PROVISIONS RELATING TO USE OF ROADS

##### *Part 1 : Pedestrians*

3. Duties of pedestrians

##### *Part 2 : Traffic lanes*

4. Use of traffic lanes
5. Vehicle not to be driven on a sidewalk or footpath

##### *Part 3 : Parking*

6. Control of parking
7. Parking in a loading zone
8. Parking at a bus stop
9. Parking in a public road
10. Parking upon a traffic island
11. Parking by a dealer
12. Parking of a repaired vehicle
13. Parking of heavy vehicles and caravans
14. Exemption of medical practitioners from parking restrictions

##### *Part 4 : Obstruction on and work in public roads and public places, and water discharged onto public road*

15. Obstruction
16. Work in roads or public places
17. Norms, standards and guidelines
18. Discharge of water on a public road
19. Overflow of water into public roads and public places

##### *Part 5 : Escorting of abnormal vehicles, events, processions and shows*

20. Escort of abnormal vehicles
21. Races and sporting events
22. Processions and gatherings
23. Control of amusement shows and devices
24. Tariffs for assistance with racing events, sporting events, processions and other gatherings in general

##### *Part 6 : Animal, animal-drawn vehicles and push or pull carts*

25. Animals, animal-drawn vehicles and push or pull carts on public roads

##### *Part 7 : Collections and handbills*

26. Collections and distribution of handbills

##### *Part 8 : Trolleys*

27. Trolleys

##### *Part 9 : Wires and fencing*

28. Barbed wire, dangerous and electrical fencing

*Part 10 : Miscellaneous prohibitions*

29. Cleaning, repairing and cleanliness of a public road
30. Loitering and queuing on a public road
31. Poison in public roads or public places
32. Skating, games, and nuisances
33. Advertisements visible from a public road
34. Trees
35. Dumping of waste
36. Article placed in building facing a public road
37. Outspanning in a public road
38. Openings and doors on public roads
39. Miscellaneous prohibitions

*Part 11 : Closure and constructions and naming of public roads, numbering of premises, and direction of traffic*

40. Closure of public roads and public places
41. Construction, maintenance, naming and declaration of public roads and public places
42. Numbering of premises

## CHAPTER 2 : PARKING METERS

43. The municipality may install parking meters or use any other device to record the time parking
44. Method of parking
45. Payment for parking
46. The municipality may prevent parking at a parking bay
47. Tampering or interfering with a parking meter or device
48. Prescribed coin only to be deposited
49. Unlawful operation of a parking meter
50. Unlawful parking and clamping or removal of unlawfully parked vehicles
51. Exemptions

## CHAPTER 3 : PARKING GROUNDS

*Part 1 : General provisions*

52. The municipality not liable for loss or damage
53. Interference with an attendant
54. Payment of prescribed fee
55. Trading
56. Observance of signs
57. Parking and removal of a vehicle
58. Abandoned vehicle
59. Damage to notices
60. Negligent and dangerous driving
61. Entering or remaining in parking ground
62. Tampering with a vehicle
63. Defacing coupon
64. Defective vehicle
65. Cleaning of a vehicle
66. Refusal of admission
67. Parking hours and classes of vehicles
68. Reservation by the municipality

*Part 2 : Mechanically controlled parking ground*

- 69. Parking of a vehicle in a mechanically controlled parking ground
- 70. Removal of a vehicle from mechanically controlled parking ground

*Part 3 : Pay-and-display parking ground*

- 71. Parking of a vehicle in pay-and-display parking ground
- 72. Miscellaneous offences in respect of a pay-and-display parking ground

## CHAPTER 4 : PARKING ATTENDANTS

- 73. Prohibition
- 74. Registration of an organization by the municipality
- 75. Conditions
- 76. Registration fee payable
- 77. Garments and identification of parking attendants
- 78. Conduct of organisations
- 79. Conduct of parking attendants
- 80. Cancellation or suspension of registration
- 81. Vicarious responsibility and liability of an organization

## CHAPTER 5 : TAXIS AND BUSES

*Part 1 : Special parking places for taxis, permits and decals*

- 82. Establishment of, and permits for, special parking places for taxis
- 83. Application for a taxi-rank permit
- 84. Issuing of a taxi-rank permit
- 85. Renewing of a taxi-rank permit
- 86. Temporary substitution of a taxi-rank permit
- 87. Transfer of a taxi-rank permit
- 88. Issue, display and duplication of decals
- 89. Payment of a taxi-rank permit fees
- 90. Amendment of particulars of a taxi-rank permit
- 91. Outstanding payments
- 92. A taxi-rank permit for partnership
- 93. A taxi-rank permit to be produced on demand
- 94. Suspension or withdrawal of a taxi-rank permit
- 95. Procedure for proposed suspension or withdrawal of a taxi-rank permit
- 96. Change of address
- 97. Amendment of the particulars on a taxi-rank permit

*Part 2 : Taxi associations, taxi forums, and taxi facilities*

- 98. Taxi forums
- 99. Classes of taxi facilities
- 100. Taxi parking
- 101. Use of taxi ranks
- 102. Prohibition on parking of a taxi at a stopping place
- 103. Regulation and control of taxi facilities
- 104. Servicing and washing taxis at taxi facilities

*Part 3 : General use and operation of taxis*

- 105. Preventing engagement of taxis
- 106. Conveying dangerous or offensive articles on taxis
- 107. Disinfecting a taxi after conveying passengers with infectious or contagious diseases
- 108. Boarding and alighting of taxis

109. Queues at facilities
110. Payment of fares
111. Rights and duties of passengers when taxi becomes defective
112. Animals
113. Actions prohibited on a taxi
114. Behaviour prohibited at a taxi rank

*Part 4 : Metered taxis*

115. Taximeters and display of identification
116. Metered fares
117. Tariffs to be displayed on taxis
118. Position of meter
119. Operation of meter
120. Meter indicators
121. Starting of meter
122. Taxi called but not engaged
123. Meter seals to be kept intact
124. Meter tolerance
125. Interference with meter prohibited
126. Meters liable to be tested at any time
127. Charge for testing meters
128. Meters may be condemned
129. Taxi signs for meter taxis

*Part 5 : Bus facilities and permits, and operation of buses*

130. Establishment of bus facilities
131. Application and issue of bus permits, fees, display of decals, suspension and withdrawal of permit
132. General use and operation of buses
133. Distinguishing of demarcated stops and stands for buses
134. Duty of driver to stop
135. Boarding and alighting from a bus and passing of a school bus
136. Parking at stopping places for buses and destination signs

*Part 6 : Enforcement*

137. Permit to be produced on demand
138. Unauthorized handing over or abandonment of bus or taxi
139. Enforcement of right of entry

*Part 7 : Miscellaneous provisions*

140. Change of address of permit holder
141. Property left in passenger-carrying vehicles

**CHAPTER 6 : MISCELLANEOUS PROVISIONS**

142. Obeying and interfering with an officer
143. Appeal
144. Compliance notices and the recovery costs
145. Presumptions
146. Penalties
147. Saving and transitional provision
148. Repeal of by-laws
149. Short title and commencement

## 1. Definitions

(1) In these by-laws, unless the context otherwise indicates:

"**animal**" means any equine, bovine, sheep, goat, poultry, camel, dog, cat, or any other domestic animal or bird, or any wild animal, or reptile which is in captivity or under the control of a person, or insect, such as, but not limited to, bees which are kept are under control of a person;

"**approved**" means approved by the municipality and "**approval**" has a corresponding meaning;

"**authorized officer**" means an inspector of licences, examiner of vehicles, examiner for drivers licences, traffic warden or a traffic officer, and includes any other person whom the Minister, by regulation, has declared to be an authorized officer of the municipality;

"**authorized official**" means any employee of the municipality and who is acting within the scope of his or her duties on behalf of the municipality and who is in uniform or with distinctive badge and appointment certificate of office;

"**authorized person**" means a person nominated by an organization and authorized by the municipality;

"**balcony**" means a platform projecting from a wall, enclosed by a railing, balustrade or similar structure, supported by columns or cantilevered out and accessible from an upper-floor door or window;

"**bib**" or "**jacket**" means a garment which fits around the chest of a person, which garment has a recognizable insignia identifying the person as a parking attendant and which is approved by the municipality;

"**bridge**" means a bridge, as contemplated in the National Road Traffic Act, 1996 (Act 93 of 1996);

"**bus**" means a motor vehicle designed or lawfully adapted by a registered manufacturer in compliance with the National Road Traffic Act, 1996 (Act 93 of 1996), to carry more than 35 seated persons, excluding the driver, and includes a bus train;

"**bus facility**" means a stand or demarcated stopping place where passengers may board or alight from a bus for which a permit has been issued;

"**bus train**" means a bus which:

- (a) consists of two sections that connect to form a unit;
- (b) can swivel in a horizontal plane at the connections between such sections;
- (c) is designed or adapted solely or principally for the conveyance of the driver and at least 100 other persons: and
- (d) has a continuous passageway over its length;

"**caravan**" means any vehicle permanently fitted out for use by persons for living and sleeping purposes, whether or not such vehicle is a trailer;

"**cart**" means a cart other than the type described as a "soap box" cart and which is used for the transport of any goods or persons and which is pulled or pushed by any person. Or number of persons;

"**combined parking meter**" means an appliance in which more than one parking meter is contained;

"**coupon**" means anything whatsoever which, either by itself or in connection with any other thing entitles or purports to entitle the holder thereof to park any vehicle in a parking bay or parking ground, whether electronic or not and includes any device approved by the municipality from time to time;

"**dealer**" means a person who, for gain, carries on the business selling, buying, exchanging or garaging vehicles;

"**decals**" means a colour-coded sticker or other means of identification issued by the municipality to the holder of a taxi permit;

"**demarcated parking bay**" means a place referred to in section 80A of the National Road Traffic Act, 1996 (Act 93 of 1996), as a space laid out and marked in a public road or public place, the time and occupation by which a vehicle is intended to be recorded by a parking meter;

"**demarcated stopping place or stand**" means the stand for a bus as contemplated in section 134;

"**donation**" means any amount of money that a driver gives to a parking attendant on a voluntary basis for service rendered by the parking attendant;

"**driver**" has the meaning assigned to it by the National Road Traffic Act, 1996 (Act 93 of 1996);

"**examiner of vehicles**" means an examiner of vehicles registered and appointed in terms of Chapter II of the National Road Traffic Act, 1996 (Act 93 of 1996);

"**firearm**" means a firearm, as contemplated in the Firearms Control Act, 2000 (Act 60 of 2000);

"**footpath**" means that portion or lateral extremities of the public road which, although not actually defined or made, is habitually used by pedestrians as a sidewalk;

"**goods vehicle**" means a motor vehicle other than a motor car or bus, designed or adapted for the conveyance of goods on a public road and includes a truck, tractor, motor cycle or motor tricycle;

"**heavy motor vehicle**" means a motor vehicle or combination of motor vehicles the gross vehicle mass of which vehicle or combination of vehicles exceeds 3,500kg;

"**holding area**", in relation to a taxi, means a place, other than a rank, where a taxi remains until space for it is available at a rank or stopping place;

"**marshal**" means a person who arranges passenger and vehicle-related procedures at taxi facilities;

"**mechanically or otherwise controlled parking ground**" means a parking ground to which entry is controlled by a mechanism, such as a boom, which opens or is manually opened on presentation of proof that any payment was or is to be made as determined in the municipality's annual schedule of tariffs;

"**metered parking bay**" means a parking bay in respect of which a parking meter has been installed or in respect of which a hand held device or electronic payment system has been implemented;

"**metered parking ground**" means a parking ground or any part thereof where parking is controlled by means of a parking meter or meters;

"**metered taxi**" means a motor car designed for conveying not more than five people, including the driver, which must be fitted with a taximeter, as contemplated in Part 4 of Chapter 5;

"**midi-bus**" means a motor vehicle designed or lawfully adapted by a registered manufacturer in compliance with the National Road Traffic Act, 1996 (Act 93 of 1996), to carry from 19 to 35 seated persons, excluding the driver;

"**mini-bus**" means a motor vehicle designed or lawfully adapted by a registered manufacturer in compliance with the National Road Traffic Act, 1996 (Act 93 of 1996), to carry from nine to 18 seated persons, excluding the driver;

**"Minister"** means the Minister of Transport;

**"motor car"** means a motor vehicle, other than a motor cycle, motor tricycle or motor quadrocycle as defined in the National Road Traffic Act, 1996 (Act 93 of 1996), designed or lawfully adapted by a registered manufacturer in compliance with the Act to carry not more than eight persons, excluding the driver;

**"motor vehicle"** means any self-propelled vehicle and includes –

- (a) a trailer; and
- (b) a vehicle having pedals and an engine or an electric motor as an integral part thereof or attached thereto and which is designed or adapted to be propelled by means of such pedals, engine or motor, or both such pedals and engine, or motor, but does not include –
  - (i) a vehicle propelled by electrical power derived from storage batteries and which is controlled by a pedestrian; or
  - (ii) a vehicle with mass not exceeding 230 kilograms and specially designed and constructed, and not merely adapted, for the use of any person suffering from some physical defect or disability and used solely by such person;

**"municipality"** means the Thulamela Municipality, and includes any political structure, political office bearer, duly authorized agent 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 political structure, political office bearer, agent or employee;

**"operate"**, in relation to a vehicle, means to use or drive a vehicle, or to permit a vehicle to be used or driven on a public road, or to have or to permit a vehicle to be on a public road;

**"operator"** means a public transport operator, as defined in the National Road Traffic Act, 1996 (Act 93 of 1996), being a person carrying on the business of a public passenger road transport service;

**"organization"** means a group of people, company, association or body representing parking attendants that operates a parking attendant service in certain geographical areas as approved by the municipality;

**"owner"** in relation to a vehicle, means –

- (a) the person who has the right to the use and enjoyment of a vehicle in terms of common law or a contractual agreement with the titleholder of such vehicle;
- (b) a person referred to in paragraph (a), for any period during which such person has failed to return that vehicle to the titleholder in accordance with contractual agreement referred to in paragraph (a); and
- (c) a person who is registered as such in accordance with section 14 of the National Road Traffic Act, 1996 (Act 93 of 1996);

**"park"** means to keep a motor vehicle, whether occupied or not, stationary for longer than is reasonably necessary to actually load or unload people or goods, but does not include keeping a vehicle stationary owing to a cause beyond the control of the person in charge of this vehicle;

**"parking attendant"** meaning a person in the employ of an organization to render a parking attendant service to drivers in a public place or on a public road, and includes a car watcher;

**"parking bay"** means a demarcated area within which a vehicle is to be parked in terms of these by-laws, demarcated as such upon surface of a parking ground or a floor thereof;

**"parking grounds"** means any area of land or any building set aside by the municipality as a parking ground or garage for the parking of vehicles therein by members of the public, whether or not charges are prescribed by this by-law for the use thereof;

**"parking marshals"** means a person in the employ of an organization to render a parking management service to drivers in a public place or on a public road;

**"parking meter"** means a device commissioned in terms of this by-law, registering and visibly recording the parking time either by means of a meter affixed to the device, or on a parking meter ticket issued by the device, or any other device by which parking time can be recorded whether operated by an authorized official or a provider approved by the municipality;

**"parking period"** means the maximum continuous period during which a vehicle is permitted to park in a parking ground or parking bay as indicated by a road traffic sign;

**"particulars"** means any form of information of a person or business and includes the name, surname, company name, residential, business or e-mail address, telephone, cellular or fax number, or any other such information;

**"passenger"** means any person in or on a vehicle, but does not include the driver or the conductor;

**"passenger-carrying motor vehicle"** means a taxi or a bus used or designed to convey passengers for reward;

**"pay-and-display machine"** means a machine installed at a pay-and-display parking ground for the sale of coupons;

**"pay-and-display parking ground"** means a parking ground in which a parking coupon must be obtained from a parking coupon vending machine which is situated in or in close proximity of the parking ground;

**"prescribed"** means determined by resolution of the municipality, and in relation to a fee, means as set out in the tariff policy of the municipality;

**"prescribed coin"** means a coin of the Republic of South Africa being legal tender in terms of the South African Mint and Coinage Act, 1964 (Act 78 of 1964), of the denomination indicated on the parking meter concerned and includes debit or credit cards and any other method of payment as may be approved and prescribed by the municipality from time to time;

**"public place"** means any square, park, recreation ground, sport ground, sanitary lane or open space which has:

- (a) in connection with any subdivision or layout of land into erven, been provided, reserved or set apart for use by the public, or the owners, or occupiers of such erven, whether or not it is shown on a general plan, plan of subdivision or diagram;
- (b) at any time been dedicated to the public;
- (c) been used by the public without interruption for a period of at least 30 years; or
- (d) at any time been declared or rendered such by the municipality or other competent authority;

**"public road"** means any road, street, cycle path, thoroughfare or any other place, and includes:

- (a) the verge of any such public road;
- (b) any footpath, sidewalk or similar pedestrian portion of a road reserve;
- (c) any bridge, ferry or drift traversed by any such public road;

- (d) any other object belonging to such public road, which has at any time been –
- (i) dedicated to the public;
  - (ii) used without interruption by the public for a period of at least 30 years;
  - (iii) declared or rendered such by the municipality or other competent authority; or
  - (iv) constructed by a local authority;
- (e) any land, with or without buildings or structures thereon, which is shown as a public road on:
- (i) any plan of subdivision or diagram approved by the municipality or other competent authority and acted upon; or
  - (ii) any general plan as defined in the Land Survey Act, 1997 (Act 8 of 1997), 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 public road;

**"regulation"** means a regulation under the National Road Traffic Act, 1996 (Act 93 of 1996);

**"rank"**, in relation to a taxi, means a place upon a public road where a taxi may stand to ply for hire or to pick up passengers for their conveyance for reward;

**"security officer"** means a security officer, as defined in the Private Security Industry Regulation Act, 2001 (Act 56 of 2001);

**"security service provider"** means a security service provider, as defined in the Private Security Industry Regulation Act, 2001 (Act 56 of 2001);

**"semi-trailer"** means a trailer having no front axle and so designed that at least 15% of its tare is super-imposed on and borne by the vehicle drawing such trailer;

**"sidewalk"** means that portion of a public road between the outer boundary of the roadway of a road and the boundary lines of adjacent properties or buildings which is intended for the use of pedestrians;

**"skateboard"** means a device, which includes mainly a flat object mounted on wheels, which is designed in such a manner as to provide room for only one person to stand or squat and is as such propelled by means of either human power or gravitation or both;

**"special parking place"** means a rank or stand established by the municipality on a public road within the municipality for the parking or standing of passenger-carrying motor vehicles;

**"sporting event"** means any sporting contest, including, but not limited to, any foot, skateboard, wind-driven object, cycle, motor, boat, horse or any other animal race, and any other sporting contest, competition, tournament or game, whether usually attended by the public or not, and whether an entrance fee is charged or not;

**"stand"**, in relation to a bus, means the place where a bus route starts or ends;

**"stop"** in relation to a taxi stopping on a public road, means to keep a taxi, whether occupied or not, stationary for a period of time no longer that is reasonably necessary for the actual loading or unloading of persons or goods, but does not include any such stopping by reason of a cause beyond the control of the driver of such taxi;

**"stopping place"**, in relation to –

- (a) a taxi means the place designated by the municipality where a taxi may stop to pick up or drop off passengers; and

(b) a bus means a demarcated stop where a bus may stop to pick up or drop off passengers;

**"tare"**, in relation to a motor vehicle, means the mass of such a vehicle ready to travel on a road and includes the mass of:

(a) any spare wheel and of all other accessories and equipment supplied by the manufacturer as standard for the particular model of motor vehicle concerned;

(b) anything that is a permanent part of the structure of such vehicle;

(c) anything attached to such vehicle so as to form a structural alteration of a permanent structure; and

(d) the accumulators, if such vehicle is self-propelled by electrical power, but does not include the mass of –

(i) fuel; and

(ii) anything attached to such vehicle which is not the nature referred to in subsection (b) or (c);

**"taxi"** means a motor vehicle which plies for hire and is operated for reward, and includes –

(a) a mini-bus, a midi-bus, motor tricycle or motor quadrocycle; and

(b) a metered taxi;

**"taxi association"** means a taxi association recognized as such by the municipality and the Limpopo Province;

**"taxi facility"** means a holding area, special parking place, stopping place, rank, terminal and any other facility that is specifically identified and designated by the municipality for the exclusive use of taxis;

**"taxi operator"** means the person responsible for the use of the taxi, provided that in terms of Chapter IV of the National Road Traffic Act, 1996 (Act 93 of 1996), it means the person who has been registered as the operator of such vehicle;

**"taxi rank"** means a taxi facility identified by the municipality as a place where taxis stand to await passengers;

**"temporary taxi facility"** means a taxi facility contemplated in section 100(2);

**"trailer"** means a vehicle which is not self-propelled and designed or adapted to be drawn by a motor vehicle, but does not include a side-car fitted to a motor cycle;

**"tri-cycle"** means a three-wheeled cycle exclusively designed or prepared for the conveyance of goods and propelled solely by human power;

**"token"** in respect of a trolley, means a sign on which the name or trade name and the address of the owners appears;

**"trolley"** means any push trolley or push cart which is placed at the disposal of the public as buyers by any business undertaking or shop and which is used by the public to convey their purchases;

**"vehicle"** means a device designed or adapted mainly to travel on wheels, tyres or crawler tracks and includes such device which is connected with a draw-bar to a breakdown vehicle and is used as part of the towing equipment of a breakdown vehicle to support any axle or all the axles of a motor vehicle which is being salvaged, other than such a device which moves solely on rails;

**"veranda"** means a structure in the nature of a roof attached to or projecting from the facade of a building and support along its free edge by columns or posts;

**"watercourse"** means a watercourse, as defined in section 1 of the National Water Act, 1998 (Act 36 of 1998).

**"work"** means any work as defined in the operational manual, as contemplated in section 17;

- (2) In these by-laws, a word or expression that has been defined in the National Road Traffic Act, 1996 (Act 93 of 1996), has that meaning, unless the context otherwise indicates.

## **2. Principles and objectives**

The Thulamela Municipality, acting under the Constitution and relevant legislation, and being aware of its duty to control the use of roads, parking grounds, and to control motor vehicle attendants, taxis and busses within the area under its jurisdiction so as to provide a safe environment for all people within the municipal area, adopts these by-laws with the aim of controlling the use of roads and parking grounds within the area under jurisdiction.

## **CHAPTER 1 : GENERAL PROVISIONS RELATING TO USE OF ROADS**

### **Part 1 : Pedestrians**

#### **3. Duties of pedestrians**

- (1) Where a marked pedestrian crossing exists at an intersection, a pedestrian may only cross the intersection within the marked pedestrian crossing.
- (2) Where a traffic-control light signal ("robot"), which embodies pedestrian signals, operates at an intersection, a pedestrian may not commence to cross the roadway in a pedestrian crossing at the intersection while the red light of a pedestrian signal is displayed in the direction opposite to that in which he or she is proceeding.
- (3) Where no pedestrian signals are operating at an intersection, but such intersection is controlled by a traffic-control light signal, a pedestrian may not commence to cross the roadway in a pedestrian crossing at the intersection while the red light of the traffic-control light signal is displayed in the direction in the opposite to that in which he or she is proceeding.
- (4) Where a traffic-control light signal, which embodies pedestrian signals, are operating at a pedestrian crossing elsewhere than at an intersection, a pedestrian may only commence to cross the roadway in the pedestrian crossing when the green light of the pedestrian signal is displayed in the direction opposite to that in which he or she is proceeding.
- (5) A pedestrian, when crossing the roadway within a demarcated pedestrian crossing, whether at an intersection or otherwise, must walk on the left of the pedestrian crossing.
- (6) No person or persons may –
  - (a) sit or lie on a sidewalk, footpath or public road; or
  - (b) stand, congregate or walk so as to obstruct the movement of traffic or to the annoyance or inconvenience of the public.

- (7) No pedestrian may carelessly, negligently or recklessly disregard, or endanger his or her own safety, or the safety of another person or vehicle using a public road.
- (8) A person who contravenes a provision of this section commits an offence.

## **Part 2 : Traffic lanes**

### **4. Use of traffic lanes**

- (1) Where a roadway has been demarcated into traffic lanes, the driver of a vehicle –
  - (a) must drive so as to be entirely within a single traffic lane; and
  - (b) may not cause or permit his or her vehicle to encroach over a lane line which demarcates a traffic lane, except when moving from one lane into or across another.
- (2) Except when overtaking another vehicle proceeding in the same direction, or when making a right-hand turn at an intersection, or into a private driveway, the following vehicles must be driven in the left-hand traffic lane available for traffic or as close as practicable to the left edge of the roadway :
  - (a) a vehicle proceeding along a public road, which is demarcated into traffic lanes, at less than the normal speed of traffic at the time and place and under the conditions then existing;
  - (b) an animal-drawn vehicle;
  - (c) a bicycle; and
  - (d) a heavy motor vehicle.
- (3) No person may turn any vehicle that draws a semi-trailer, trailer or combination of vehicles at any crossing for the purpose of driving in the opposite direction.
- (4) A person who contravenes a provision of this section commits an offence.

### **5. Vehicle not to be driven on a sidewalk or footpath**

- (1) A person may not drive, draw or propel a vehicle, excluding a perambulator or invalid's chair, upon a footpath or sidewalk designed for use by pedestrians, except when it is necessary to do so to cross (by the shortest route) a footpath or sidewalk for the purpose of entering or leaving property abutting thereon.
- (2) A person who contravenes a provision of subsection (1) commits an offence.

## **Part 3 : Parking**

### **6. Control of parking**

- (1) Whenever the public or a number of persons are entitled or allowed to use, as a parking place, an area of land, including land which is not part of a public road or a public place, an authorized official may, in cases of emergency or when it is desirable in the public interest, direct and regulate traffic thereon.
- (2) The municipality may manage parking and collect any fees related to parking or appoint a service provider to manage parking and to collect any fees related to parking.

- (3) No person may without the prior written approval of the municipality erect or place any sign or notice in any position or place indicating that parking in any parking bay is either reserved for a person or a class of persons.
- (4) The municipality may operate a parking management system or appoint a service provider to operate a parking management system in areas and during times determined by the municipality from time to time.
- (5) A person who disregards an instruction of an authorized officer in terms of subsection (1) or who erects or places a sign or notice in contravention with subsection (3) or who contravenes subsection (4) commits an offence.

#### **7. Parking in a loading zone**

- (1) No person who operates or who is in charge of a vehicle on a public road may allow, subject to subsections (2) and (3), the vehicle to remain stationary in a loading zone –
  - (a) between the hours of 07:00 to 17:00 on Mondays to Fridays, except where such day is a Public Holiday;
  - (b) between the hours of 07:00 to 13:00 on Saturdays, except where such day is a Public Holiday; or
  - (c) between other restricted hours as may be specified in respect of a particular loading zone by a road traffic sign or marking.
- (2) No person who operates or who is in charge of a vehicle on a public road may allow a vehicle, other than goods vehicle, to remain stationary in a loading zone for more than five minutes continuously and only while actually loading or off-loading persons or goods and while a licensed driver is in attendance at the vehicle.
- (3) No person who operates or who is in charge of a vehicle on a public road may allow a goods vehicle to remain stationary in a loading zone for more than 30 minutes continuously and only while the vehicle is being actually loaded or unloaded.
- (4) The driver of a vehicle, other than a goods vehicle, stationary in a loading zone must immediately remove the vehicle from the loading zone upon being directed to do so by an authorized official, even if the vehicle has not been stationary therein for longer than the maximum period allowed in respect of a vehicle in that class.
- (5) A person who contravenes a provision of this section commits an offence.

#### **8. Parking at a bus stop**

- (1) No person who operates or who is in charges of a vehicle on a public road may, in the case of a vehicle other than a bus, allow the vehicle to remain stationary in a bus stop between the hours of 06:00 and 18:00.
- (2) A person who contravenes subsection (1) commits an offence.

#### **9. Parking in a public road**

- (1) No person who operates or who is in charge of a vehicle on a public road may park the vehicle in any public road within the municipal area for a period beyond that indicated on a road traffic sign relevant to the specific area.

- (2) No person may, without the written consent of the municipality, park a heavy motor vehicle designed, adapted or used for the conveyance of goods, between the hours of 21:00 and 06:00 anywhere in the municipal area, except on private land or in those areas where road traffic signs regulating such parking have been erected.
- (3) Application for consent must be made on the form provided for this purpose by the municipality.
- (4) A person who contravenes a provision of this section commits an offence.

#### **10. Parking upon a traffic island**

- (1) No person may park a vehicle upon a traffic island, unless directed or instructed to do so by an authorized official.
- (2) A person who parks a vehicle upon a traffic island in contravention of subsection (1), or who fails to comply with direction or instruction by an authorized official commits an offence.

#### **11. Parking by a dealer**

- (1) No dealer may park or allow to be parked in a public road within the municipal area, in the course of the dealer's business carried on by him or her, a vehicle which –
  - (a) has been placed in his or her custody;
  - (b) is under his or her control; or
  - (c) is in his or her possession for the purpose of sale, exchange or garaging.
- (2) Subsection (1) does not apply if at the time the vehicle is –
  - (a) being used for demonstration or testing purposes; or
  - (b) in the course of being delivered to the owner or purchaser thereof.
- (3) A dealer who contravenes a provision of subsection (1) commits an offence.

#### **12. Parking of a repaired vehicle**

- (1) No person responsible for the control of a business of recovering or repairing vehicles may park, cause or permit to be parked, in any public road or place within the municipal area any vehicle that is in an obvious state of disrepair, which has been placed in his or her charge in the course of the business of recovering or repairing.
- (2) A person who contravenes a provision of subsection (1) commits an offence.

#### **13. Parking of heavy vehicles and caravans**

- (1) No person may, for an uninterrupted period exceeding two hours, except on places reserved for the parking of heavy vehicles, park on a public road within the municipal area –
  - (a) a motor vehicle with a tare exceeding 3500kg;
  - (b) a trailer;
  - (c) a semi-trailer; or
  - (d) a caravan.

- (2) Whenever a vehicle is parked in contravention of subsection (1), it is deemed that the owner thereof has parked such vehicle, unless the contrary is proved.
- (3) A person who contravenes a provision of subsection (1) commits offence.

**14. Exemption of medical practitioners from parking restrictions**

- (1) (a) Registered general medical practitioners to whom a badge has been issued in terms of subsection (3)(a) are exempt from the provisions of any law, subject to paragraph (b), relating to parking in force in the municipality when using, on *bona fide* professional domiciliary visit, a motor vehicle on which is displayed a badge conforming with the requirements of subsection (2) issued to him or her by the municipality.
- (b) A person contemplated in paragraph (a) is not exempt from a provision prohibiting the stopping of a vehicle or the parking of a vehicle in a bus stop or across an entrance.
- (2) (a) The badge must be a windscreen sticker badge displaying on the face thereof –
  - (i) a serial number; and
  - (ii) the name of the person to whom it is issued.
- (b) The badge must be displayed on the lower left corner of the windscreen and must have a pocket in which the person contemplated in subsection (1) inserts a white card showing the address at which the holder of the badge is actually making a professional domiciliary visit at the time the motor vehicle to which it is affixed is parked, and the address shown on the card must be easily legible from outside the vehicle.
- (c) The address referred to in subsection (2)(b) must be in the same street or a street adjoining the place where the vehicle is parked.
- (3) (a) Written application for the issue of a badge must be made to the municipality and if the municipality approves the application, it must issue a badge bearing a registered serial number to the applicant.
- (b) The municipality must keep a register in which it records the serial number allocated by it of the badge, the issue of which has been authorized by it, and the name of the holder.
- (c) The municipality may issue a duplicate badge.
- (d) Where the municipality has reason to believe that any holder of a badge is abusing a privilege conferred by the badge, it may withdraw the badge from the holder and the privileges conveyed by the badge shall thereupon cease.
- (e) The municipality may charge a fee for the issuing of a badge or a duplicate thereof.
- (f) The municipality may prescribe the period for which a badge will be valid.
- (4) Application for a badge must be made on a form provided for this purpose by the municipality.
- (5) A person who displays a forged badge or a badge which was not issued by the municipality commits an offence.

**Part 4 : Obstruction on and work in public roads and public places,  
and water discharged onto public road**

**15. Obstruction**

No person may deposit, or cause to be deposited, or leave, or cause to be left sand, stone, earth, bricks, timber, lime, cement or other building or excavated material of whatever nature on a portion of a public road, sidewalk or footpath, unless it is deposited within an enclosure in respect of which the written consent of the municipality has first been obtained.

**16. Work in public roads or public places**

- (1) No person may undertake work in any public road, or public place, or on property belonging to the municipality without prior permission being obtained in terms of the operational manual as contemplated in section 17.
- (2) A person who contravenes subsection (1) commits an offence.

**17. Norms, standards and guidelines**

- (1) The municipality may determine and publish norms, standards and guidelines which describe appropriate measures for work in public roads, public places or other property belonging to the municipality, and such norms standards and guidelines must be kept in the form of an operational manual.
- (2) The norms, standards and guidelines contemplated in subsection (1) may differentiate between communities, geographical areas and different kinds of premises.

**18. Discharge of water on public a road**

- (1) No person may, without prior written permission of the municipality –
  - (a) lead or discharge water on, over or across a public road; or
  - (b) by any means whatever, raise the level of water in a river, dam or watercourse so as to cause interference with or endanger a public road.
- (2)
  - (a) A person who wishes to perform an action, as contemplated in subsection (1), must submit to the municipality an application which contains full technical details of the proposed action, and the municipality may refuse or grant permission.
  - (b) Should the municipality refuse permission, it must supply the person with the written reasons for the refusal.
  - (c) Should the municipality grant the permission, it may do so subject to such conditions, requirements or specifications which it may determine in each individual case.
- (3) The municipality may, subject to any law which may be applicable and after obtaining permission of the owner and the occupier of the land concerned, if any:
  - (a) deviate a watercourse, stream or river if the deviation is necessary for:

- (i) the protection of a public road or structure related to a public road; or
    - (ii) the construction of a structure connected with or belonging to a public road; and
  - (b) divert stormwater from or under a public road onto private property other than land containing buildings, other structures or improvements.
  - (4) The municipality must compensate the owner or occupier of the land for damage caused as a result of acting under subsection (3), with an amount agreed upon between the municipality and the owner or occupier.
  - (5) Application for permission must be made on a form provided for this purpose by the municipality.
  - (6) A person who contravenes subsection (1) or a condition, requirement or specification imposed or determined by the municipality in terms of subsection (2)(c) commits an offence.
- 19. Overflow of water into public roads and public places**
- (1) No person may cause or allow any water other than rainwater to flow into a public road or public place.
  - (2) A person who contravenes subsection (1) commits an offence.

#### **Part 5 : Escorting of abnormal vehicles, events, processions, and shows**

**20. Escort of abnormal vehicles**

- (1) Escort, by traffic officers, of a vehicle that is abnormally large, or that transports unsafe loads will be provided by the municipality on application.
- (2) Subject to section 24, escort tariffs are charged per hour or part thereof per authorized officer and are calculated from the time as stipulated on the prescribed form until completion of the escort, provided that 30 minutes before commencement and 30 minutes after completion are included.
- (3) Escorts will only be supplied if all the requirements of the National Road Traffic Act, 1996 (Act 93 of 1996) are complied with.
- (4) Application for escorting by traffic officers in terms of subsection (1) must be submitted to the municipality on a form provided for this purpose by the municipality at least 14 days prior to date on which the escorting is required.

**21. Races and sporting events**

- (1) No person may hold a race or sporting event on any public road without prior written permission of the municipality, and an application for permission to hold such a race sporting event must be submitted in writing by the organiser of the race or sporting event to the municipality on the form prescribed by it at least 60 days prior to the envisaged event.
- (2) Assistance by traffic offices will be provided by the municipality on application as contemplated in subsection (1).

- (3) The person contemplated in subsection (1) must pay to the municipality the required tariffs and deposit as contemplated in section 24 for the costs to be incurred during the race or sports event.
- (4) A person who holds a race or sporting event in contravention of subsection (1) commits an offence.

## **22. Processions and gatherings**

- (1) Subject to the provisions of subsection (7), no person may hold, organise, initiate or control a procession or gathering in a public road or public place, or dance, or sing, or play a musical instrument, or do anything which is likely to cause a gathering of persons or the disruption or obstruction of traffic in such public road or public place, or use any loudspeaker or other device for the reproduction or amplification of sound without the written permission of the municipality in terms of subsection (2) and (3).
- (2) Any person who intends to perform or carry out any one or more of the actions described in subsection (1) in any public place must apply to the municipality for permission on a form provided for this purpose by the municipality, which application must reach the municipality at least seven days before the date upon which any one or more of such actions is or are intended to be performed or carried out; however, persons who intend participating actively on a procession, or gathering in any public road need not apply to the municipality for permission thereto and it is not illegal for such persons to participate actively in such procession or gathering of the organiser, promoter or controller thereof has obtained the permission of the municipality.
- (3) An application made in terms of subsection (2) must contain the following:
  - (a) full details of the name, address and occupation of the applicant;
  - (b) full details of the public road or public place where or route along which any one or more of the actions prescribed in subsection (1) is or are intended to be performed or carried out, proposed starting and finishing times or any one or more of the aforesaid actions and, in the case of processions and gatherings, the number of persons expected to attend; and
  - (c) general details of the purpose of any one or more of the aforesaid actions intended to be performed or carried out.
- (4) Any application submitted in accordance with subsection (2) shall be considered by the municipality, and if any one or more of the actions to be performed or carried out as proposed in such application is or are not likely to be in conflict with the interests of public peace, good order or safety, the municipality may grant permission for the performance or carrying out of any one or more of such actions subject to such conditions as the municipality may deem necessary to uphold public peace, good order or safety.
- (5) The municipality may refuse to grant permission for the performance or carrying out of any one or more of the actions described in subsection (1), if the performance or carrying out of such actions is or are in conflict with the interests of public peace, good order or safety.

- (6) The municipality may withdraw any permission granted in terms of subsection (4), if, as a result of further information, the performance or carrying out of the action or action in question will be in conflict with the interests of public peace, good order or safety.
- (7) The provisions of this section do not apply to:
  - (a) wedding or funeral processions; and
  - (b) a gathering or demonstration as contemplated by the Regulation of Gatherings Act, 1993 (Act 205 of 1993), in which case the provisions of the Act will be applicable.
- (8) Assistance by traffic officers will be provided by the municipality on application, as contemplated in subsection (2).
- (9) The person contemplated in subsection (2) must pay, where applicable, to the municipality the required tariffs and deposit, as contemplated in section 24, for the costs to be incurred during the race or sports event.

### **23. Control of amusement shows and devices**

- (1) No person may set up or use in any public road or public place any circus, whirligig, roundabout or other side-show or device for the amusement or reaction of the public –
  - (a) except with the written permission of the municipality first having been obtained and subject to such conditions as may be determined by the municipality;
  - (b) unless suitable sanitary conveniences for both sexes of the staff have been provided; and
  - (c) if it is in any way dangerous or unsafe for public use.
- (2) An application for permission to act in terms of subsection (1) must be submitted in writing by the owner or organiser of the circus, whirligig, roundabout or other side-show or device to the municipality on the form provided for this purpose by the municipality at least 60 days prior to the date on which the circus, whirligig, roundabout or other side-show or device will be set up.
- (3) Assistance by traffic officers will be provided by the municipality on application as contemplated in subsection (2).
- (4) The person contemplated in subsection (2) must pay, where applicable, to the municipality the required tariffs and deposit as contemplated in section 24 for the costs to be incurred during the duration of the circus, whirligig, roundabout or other side-show or device.
- (5) An authorized official of the municipality must, for the purposes of inspection, at all reasonable times have free access to such circus, whirligig, roundabout or other side-show or device.
- (6) A person who contravenes subsection (1) commits an offence.

### **24. Tariffs for assistance with racing events, sporting events, processions and other gatherings in general**

- (1) The payment of deposits and tariffs to the municipality are subject to the following:
  - (a) the municipality may determine the estimated tariffs, and a deposit equal to these tariffs in respect, must be paid in cash or by bank-guaranteed cheque at the date of application as

- contemplated in section 20(4), 21(1), or (2), 22(2) or (8), or 23(3) or (4);
- (b) any mutual adjustment must be made after conclusion of the sporting event, procession or gathering, or the setting up for the circus, whirligig, roundabout or other side-show or device, as soon as the actual costs have been determined by the municipality;
  - (c) the municipality may, at its sole discretion, exempt an applicant from the payment of the tariffs and the deposit upon written reasons being provided to the municipality prior to the commencement of the escorting, race or sporting event, procession or gathering, or the set up of the circus, whirligig, roundabout or other side-show or device. However, in the event that the municipality is unable to grant exemption for whatever reason prior to the commencement of the escorting, race or sporting event, procession or gathering, or set up of the circus, whirligig, roundabout, or other side-show, or device the applicant must pay the tariffs, which shall, if exemption is granted thereafter, be refunded to the applicant;
  - (d) the municipality may approve the appointment of marshals and prescribe their responsibilities and attire to perform functions on public roads or public places; and
  - (e) the municipality shall prescribe the minimum number of marshals required to assist at a race or sporting event, procession or gathering, or the set up of the circus, whirligig, roundabout or other side-show, or device, racing event, sporting event, procession and a gathering in general.
- (2) Subsection (1) does not apply to a funeral procession.

#### **Part 6 : Animals, animal-drawn vehicles and push or pull carts**

##### **25. Animals, animal-drawn vehicles and push or pull carts on public roads**

- (1) No person may drive or cause to be driven an animal-drawn vehicle along or through public roads during the hours when it would be required of motor vehicles to have their lights switched on.
- (2) No person may drive or cause to be driven an animal-drawn vehicle along public roads with a gradient of 20° or more.
- (3) No person may push or pull any cart along or through public roads during the hours when it would be required of motor vehicles to have their lights switched on or along public roads with gradient of 20° or more.
- (4) No person may on a public road shoe, clean, dress, train, break-in or turn loose an animal.
- (5) No person who owns or who is in charge of an animal which is on a public road, may leave the animal on the public road if the animal is severely injured, feeble, emaciated, diseased or dying, except for the purpose of seeking assistance for the removal of the animal.

- (6) No person who owns or who is in charge of livestock may allow the livestock to be at large on a public road within the municipal area of the municipality, and an authorised official may take any such livestock to a place designated by the municipality.
- (7) No owner of an animal or person –
- (a) in charge of any wild or ferocious animal may allow such animal at any time to be insufficiently attended or at large in any public road or public place or may keep any such animal in such a manner as to be a danger or annoyance to the public;
  - (b) may allow, permit or cause any animal to graze or stray in or about any public road or public place; or
  - (c) may in any way obstruct the pedestrian traffic on a sidewalk by bringing or allowing to be brought thereon any animal.
- (8) No person may –
- (a) simultaneously drive or be in control of more than one animal-drawn vehicle in a public road or public place;
  - (b) drive or be in control of an animal-drawn vehicle in a public road or public place if he or she is under 16 years of age; or
  - (c) if he or she is in control of an animal-drawn vehicle in a public road, allow a person under 16 years of age to drive or be in control of such vehicle.
- (9) A person who contravenes a provision of this section commits an offence, and a person who contravenes subsection (6) is liable, in addition to payment of the penalty, to pay to the municipality the cost incurred by it through the authorised official acting accordance with subsection (6).

### **Part 7 : Collections and handbills**

#### **26. Collections and distribution of handbills**

- (1) No person may without the prior written permission of the municipality, and subject to such conditions determined by the municipality –
- (a) collect or attempt to collect money in a public road or public place or organise or in any way assist in the organisation of such collection;
  - (b) collect from door to door, beg or solicit or accept alms; or
  - (c) distribute a handbill or similar advertising material, or cause it to be distributed in any public road or public place, or place any handbill or similar advertising material, or cause it to be placed on or in any vehicle.
- (2) An application for permission in terms of subsection (1) must contain the following information and declarations :
- (a) the name, address and a recent photograph of the applicant and any other person being in full age who is or are singularly or jointly responsible for the organisation, conduct and control of any such activity as contemplated in subsection (1)(a) to (c);
  - (b) the day on which and the hours between which the activity contemplated in paragraph (a) is to be undertaken;
  - (c) the portion or portions of the municipality wherein the activity contemplated in paragraph (a) is to be undertaken;

- (d) the object or objects for which the activity contemplated in paragraph (a) is to be undertaken or any funds, where applicable, from the proceeds of the activity are to be applied;
  - (e) whether the entire amount of funds contemplated in paragraph (d) is to be handed over without deduction of any kind whatsoever;
  - (f) that no child under the age of 16 years will be employed or engaged in activity contemplated in paragraph (a);
  - (g) that no the activity contemplated in paragraph (a) is to be undertaken before 07:00 and after 18:00, unless prior written approval for the extension of these hours have been granted by the municipality; and
  - (h) if the activity relates to an activity contemplated in subsection (1)(a), proof that the organisation or person intending to hold the public road collection is authorised to collect a contribution in terms of the Non-profit Organisations Act, 1997 (Act 71 of 1997), or the Fund Raising Act, 1978 (Act 107 of 1978), as the case may be.
- (3) An application fee as determined by the municipality may be levied in respect of any application in terms of subsection 1(c).
- (4) Every organisation or person holding a public road collection is entitled to use its, his or her own identifiable collection boxes and if any organisation or person does not possess any boxes, the municipality's boxes may be used upon payment of the prescribed fee.
- (5) An organisation or person who contravenes subsection (1) or a condition contemplated in subsection (1), commits an offence.

## Part 8 : Trolleys

### 27. Trolleys

- (1) The owner of a trolley must affix an identifying token in a conspicuous position on the trolley.
- (2) The owner or the person who controls or has the supervision over a trolley, or who offers it to be used by a person, or who uses it for any purpose whatsoever, may not leave or abandon it or permit it to be left or abandoned on a public road.
- (3) A trolley that has been left or abandoned on a public road may be removed, or caused to be removed, by an official and be placed under the care of the official in charge of a municipal store which was established by the municipality for the purpose.
- (4) The official in charge of the store must store a trolley which has been placed under his or her care at the municipal store, and the municipality must publish once every month a notice in two newspapers circulating within the municipal area, which states –
- (a) the name of the owner of the trolley, if known;
  - (b) the number of trolleys of the owner being so stored;
  - (c) that the trolley may be claimed by the owner from the municipality on payment of the prescribed fee for storage and on proof of ownership; and

- (d) that a trolley that has not been claimed after a period of three months from the date of publication of the notice, may be sold by the municipality by public auction.
- (5) The proceeds of the public auction in terms of subsection (4)(d) is revenue in favour of the municipality for the following costs incurred by the municipality to defray expenses :
  - (a) the removal of such supermarket trolley;
  - (b) the keeping of the supermarket trolley;
  - (c) the endeavour to trace the owner; and
  - (d) the cost of the public auction, and the remainder, if any, will be refunded to the owner of the supermarket trolley.
- (6) The municipality is not liable for the theft, damage to or loss of any trolley while the trolley is stored in the municipal store or when sold by public auction.
- (7) A person who contravenes subsection (1) or (2) commits an offence.

### **Part 9 : Wires and fencing**

#### **28. Barbed wire, dangerous and electrical fencing**

- (1) No person may erect or cause or permit to be erected along a public road or public place, or may have along a public road or public place, an electrified fence, electrified railing or other electrified barrier, unless –
  - (a) the electrified fence, electrified railing or other electrified barrier is erected on top of a wall which may not be less than two metres high and built of brick, cement, concrete or similar material;
  - (b) the electrified fence, electrified railing, or other electrified barrier is designed and installed in accordance with a standard issued in terms of the Standards Act, 1993 (Act 29 of 1993); and
  - (c) the person has obtained the prior written consent of the municipality in terms of the National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977).
- (2)
  - (a) A person who wishes to erect an electrified fence, electrified railing or other electrified barrier as contemplated in subsection (1), must submit to the municipality an application for permission, which application contains full technical details of the proposed electrified fence, electrified railing or other electrified barrier, and the municipality may refuse or grant permission.
  - (b) Should the municipality refuse permission, it must supply the person in writing with the reasons for the refusal.
  - (c) Should the municipality grant permission, it may do so subject to conditions, requirements or specifications which it may determine in each individual case.
- (3) Subsection (1) and (2) apply to an owner or occupier of an agricultural holding or farm land as well.
- (4) No owner or occupier of land may erect, or cause, or permit to be erected along a public road or public place a barbed-wire fence, railing, paling, wall or other barrier which, by reason of –
  - (a) spikes or other sharp or pointed protrusions; or

- (b) the nature of its construction or design, is or may become a danger to a member of the public using the public road or public place.
- (5) Subsection (4) does not apply to an owner or occupier of an agricultural holding or farm land.
- (6) Application for permission must be made on a form provided for this purpose by the municipality.
- (7) A person who erects or causes or permits to be erected along a public road or public place, or who has along a public road or public place, an electrified fence, electrified railing or other electrified barrier without having first obtained the prior written consent of the municipality in terms of subsection (1)(c), or who does not comply with any specifications or conditions prescribed or imposed in terms of subsection (2)(c) or who contravenes subsection (4) commits an offence.

### **Part 10 : Miscellaneous prohibitions**

#### **29. Cleaning, repairing and cleanliness of public road**

- (1) No person may clean any part of a vehicle, or wash, dry or paint any vehicle or object on any public road.
- (2) No person may repair any part of any vehicle on any public road, except minor repairs necessitated by a temporary or sudden stoppage of the vehicle need to be done for the purpose of setting the vehicle in motion.
- (3) No person may spill, drop or place or permit to be spilled, dropped or placed, on any public road, or cause or is likely to cause annoyance, danger or accident to a person, animal, vehicle or other traffic using the public road.
- (4) A person who performs an action contemplated in subsection (3) must immediately remove or cause to be removed the matter or substance from the road, and if the person fails to remove the matter or substance, the municipality may remove the matter or substance and recover the cost of removal from the person.
- (5) A person who contravenes a provision of this section commits an offence.

#### **30. Loitering and queuing on public road**

- (1) No person may –
  - (a) lie or sit so as to obstruct traffic on a public road;
  - (b) loiter, or walk, or otherwise act on a public road in a manner that may obstruct traffic; or
  - (c) stand or congregate, except when forming part of a queue, on a public road within 20 metres of the entrance to a place of public entertainment so as to obstruct traffic or a person proceeding to, attending at, or departing from the place of entertainment.
- (2) A person performing any of the prohibited acts mentioned in subsection (1) must, upon instruction by an authorised official, discontinue to do so.
- (3) A person who contravenes subsection (1) or who fails to comply with an instruction by an authorised official commits an offence.

**31. Poison in public roads or public places**

- (1) No person other than an official of the municipality or an authorised person who administers legally approved weed-killers or poisons, may use, set or cast poison in any public road or public place.
- (2) A person who contravenes subsection (1) commits an offence.

**32. Skating, games, and nuisances**

- (1) No person may, except with the written permission of the municipality first having been obtained –
- (a) skate on roller skates or a skate board or a similar device in or on a public road or public place or in or upon an area where skating is prohibited by an applicable road traffic sign; or
  - (b) roll any hoop, or fly any kite, throw or hit stones or balls, or use any bow and arrow or catapult, or by any means discharge any missile upon, over, or across any public road.
- (2) No person may –
- (a) play cricket, or football, or any game, or indulge in any pastime whatsoever in or upon any public road, except on such places as the municipality may set apart for the purposes of a particular game, sport or pastime; or
  - (b) do anything in a public road or public place which may endanger the life or safety of any person, animal or thing or create a nuisance, obstruction or annoyance to the public.
- (3) Application for permission in terms of subsection (1) must be made on the form provided for this purpose by the municipality.
- (4) A person who contravenes a provision of subsection (1) or (2) commits an offence.

**33. Advertisements visible from the public road**

- (1) Subject to the municipality's regulations pertaining to the display of advertising signs, no person may display any advertisement, placard, poster or bill in a public road except with the written permission of the municipality and subject to such conditions as may be determined by the municipality.
- (2) A person who contravenes a provision of subsection (1) commits an offence.

**34. Trees**

- (1) No person may –
- (a) plant a tree or shrub in a public road or public place, cut down a tree or a shrub in a public road, or public place, or remove it there from, except with the written permission of the municipality.
  - (b) Climb, break or damage a tree growing in a public road or public place; or
  - (c) in any way mark or paint any tree growing in a public road or public place or, subject to the municipality's regulations pertaining to the display of advertising signs, attach any advertisement thereto.
- (2) Any tree or shrub planted in a public road or public place is the property of the municipality.

CONTINUES ON PAGE 130—PART 2



LIMPOPO PROVINCE  
 LIMPOPO PROVINSIE  
 XIFUNDZANKULU XA LIMPOPO  
 PROFENSE YA LIMPOPO  
 VUNDU LA LIMPOPO  
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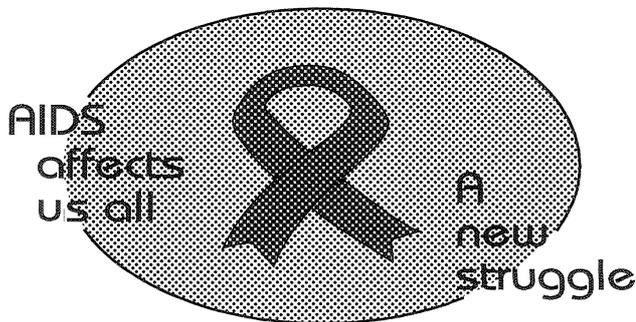
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**Vol. 22**  
**Extraordinary**  
 Ku katsa na Tigazete to  
*Hlawuleka* hinkwato

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 8 JUNIE 2015  
 8 KHOTAVUXIKA 2015  
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**PART 2 OF 2**



- (3) Whenever there is upon any property any tree or other growth which interferes with overhead wires or is a source of annoyance, damage, danger or inconvenience to persons using a public road or public place, the municipality may by notice in writing order the owner or occupier of such property to prune or remove such tree growth to the extent and within the period specified in such notice.
- (4) A person who contravenes a provision of subsection (1), or who fails to comply with a notice issued in terms of subsection (3) commits an offence.
- (5) If any person fails to comply with a notice in terms of subsection (3), the municipality may itself prune or remove the tree or growth at the expense of the person on whom the notice was served.

### **35. Dumping waste**

- (1) Subject to the municipality's waste management by-laws, no person, except with the written permission of the municipality and subject to such conditions as may be determined by the municipality, may –
  - (a) dump, leave or accumulate any garden refuse, motor vehicle wrecks, spare parts of vehicles, building or waste materials, rubbish or any other waste products in any public road or public place; or
  - (b) permit any such objects or substances to be dumped or placed in a public road or public place from premises owned or occupied by him or her.
- (2) A person who contravenes a provision of subsection (1) commits an offence.

### **36. Article placed in building facing public road**

- (1) No person may place in a building or other part of a building near a public road an article which, if it were to fall, is likely to cause injury or damage to a person or property, without taking all reasonable steps against it falling onto the public road.
- (2) A person who contravenes subsection (1) commits an offence.

### **37. Outspanning in public roads**

- (1) A person may outspan or allow to be outspanned in any public road or public place any vehicle drawn by animals, or detached or leave in any public place any trailer, caravan or vehicle which is not self-propelled, however, this provision does not apply when such vehicle is being loaded or unloaded.
- (2) A person who contravenes subsection (1) commits an offence.

### **38. Opening and doors on public roads**

- (1) No person may leave open –
  - (a) any entrance from a public road; or
  - (b) any vault, cellar, basement, or underground room without a sufficient fence or handrail to prevent persons from falling into

such vault or leave any door or other covering on such vault in a defective condition.

- (2) No person may leave any manhole or opening in an unsafe condition.
- (3) No person may open or remove any manhole cover without the written authority of the municipality or unless such opening or removal is in the executing of his duty.
- (4) A person who contravenes a provision of this section commits an offence.

### **39. Miscellaneous prohibitions**

- (1) No person may, in a public road or public place –
  - (a) sing an obscene or profane song;
  - (b) use profane, foul, indecent or obscene language;
  - (c) use threatening, abusive or insulting words, or make gestures, or behave in a manner with intent to cause a breach of the peace or whereby a breach of the peace is likely to be occasioned;
  - (d) erect a tent or place a chair or any article for the purpose of a funeral, party or any other event without the prior written permission of the municipality;
  - (e) use, or drive, or cause, or permit to be used or driven a cart of the type known as a "soap box cart" or any other cart of the like nature, otherwise than in the course of or for the purpose of business however the municipality may permit the use of a cart in connection with an organised sports event, game, or race;
  - (f) operate a motor vehicle in such a manner as to cause excess noise which can be avoided by the exercise of reasonable care on his or her part;
  - (g) or place on, under or across a public road or public place a rope, wire or pole, or hang or place anything whatsoever thereon without the prior written permission of the municipality;
  - (h) when travelling on a public road upon a pedal cycle, motor cycle, coaster or similar device, cling to or attach himself or herself or the pedal cycle, motor cycle, coaster or similar device to any other moving vehicle;
  - (i) appear unclothed or appear without being clothed in such a manner as decency demands;
  - (j) or in view of a public road, urinate, excrete, behave in an indecent manner by exposing his or her person, or make use of an indecent gesture or commit, solicit or provoke a person to commit a riotous, disorderly or indecent act;
  - (k) operate a rickshaw or similar carriage;
  - (l) ride on a pedal cycle or tri-cycle at night without being clearly visible from a distance of not less than 50m and such cycle must be equipped with a lamp emitting white light to the front and a lamp emitting red light to the back of such a cycle;
  - (m) use or permit to be used –
    - (i) any cycle excluding a tri-cycle, to carry goods exceeding 50kg in mass; or
    - (ii) any tri-cycle to carry goods exceeding 110kg in mass;

- (n) carry any other person upon the handlebars, frame or tank of a cycle or motorcycle, or ride in above manner upon any such vehicle;
  - (o) carry or convey through the carcass of an animal or any garbage, night soil, refuse, litter, rubbish, manure, gravel or sand, unless –
    - (i) it is properly covered; and
    - (ii) it is conveyed in such type of container or in such a manner as will not allow any offensive liquids or parts of the load to be spilt in the public road or public places;
  - (p) dry or spread washing on a fence on the boundary fence;
  - (q) beat or shake any carpet, rug or mat, except doormats shaken or beaten before 08:00 in the morning;
  - (r) carry any large bundle, or basket, or any pointed or edged tools not properly protected, or any ladder, plank or pole, or any bag of soot, lime or other offensive substance, or other package or thing calculated to obstruct, inconvenience, or annoy pedestrians upon any footpath, except for the purpose of loading or unloading any vehicle or when necessarily crossing the footpath;
  - (s) deface, damage or in any way interfere with any notice board, road traffic sign, public road name board or other similar sign or any hoarding which has been erected in a public road or public place by or with the permission of the municipality;
  - (t) sleep in a vehicle other than a motor vehicle parked in a taxi rank or on some other stand duly allocated by the municipality;
  - (u) erect any shelter;
  - (v) wash or dry clothes, blankets or any other domestic articles;
  - (w) fight or act in a riotous manner;
  - (x) discharge a firearm, airgun or air-pistol;
  - (y) annoy or inconvenience any other person by yelling, shouting or making any noise in any manner whatsoever;
  - (z) solicit or importune any person for the purpose of the prostitution or immorality;
  - (aa) engage in gambling;
  - (bb) use intoxicating liquor or drugs;
  - (cc) wash himself or herself; or
  - (dd) spit.
- (2) Application for permission in terms of subsection (1)(d), (e) and (g) must be made on the form provided for this purpose by the municipality.
- (3) A person who contravenes a position of subsection (1) commits an offence.

## **Part 11 : Closure and constructions and naming of public roads, numbering of premises, and direction of traffic**

### **40. Closure of public roads and public places**

- (1) No person may, without the approval of the municipality, close or barricade any public road or public place or restrict access thereto.

- (2) The municipality may permanently close or divert any public road or public place or part thereof or restrict access to any public road or public place.
- (3) When the municipality decides to act in terms of subsection (2), it must give notice of such intention in terms of its communication policy, and in the absence of such policy, the municipality must give notice of its intention in a local newspaper in at least two official languages.
- (4) Any objection against the intended action must be delivered in writing to the municipality within 30 days from the date of notification in terms of subsection (3).
- (5) The municipality may, without complying with the provisions of subsection (3) :
  - (a) temporarily close a public road or public place:
    - (i) for the purpose of or pending the construction, reconstruction, maintenance or repair of such public road or public place;
    - (ii) for the purpose of or pending the construction, erection, laying, extension, maintenance, repair or demolition of any building, structure, works or service alongside, on, across, through, over or under such public road or public place -
      - (aa) if such public road or public place is dangerous to traffic;
      - (bb) by reason of any emergency or public event which requires special measures for the control of traffic or special provision for the accommodation of crowds; or
    - (iii) for any other reason which renders the temporary closing of such public road necessary; and
  - (b) temporarily divert a public road which has been closed in terms of paragraph (a).
- (6) The municipality may in its discretion, for general information, place a notice of such temporary closure in terms of subsection (5) in a local newspaper.
- (7) A person who contravenes subsection (1) commits an offence.

#### **41. Construction, maintenance, naming and declaration of public roads and public places**

- (1) The municipality may –
  - (a) make, construct, alter and maintain a public road or public place; and
  - (b) name and re-name public roads or public places.
- (2) The municipality may –
  - (a) declare any land or portion of land under its control to public road, or any public road or portion thereof to be a public place;
  - (b) declare any private public road or portion thereof to be a public road, or any place or portion thereof to be a public place.
- (3) When the municipality decides to act in terms of subsection (1), it must give notice of such intention in terms of its communication policy, and in

the absence of such policy, the municipality must give notice of its intention in a local newspaper in at least two official languages.

- (4) Any objection against the intended action must be delivered in writing to the municipality within 30 days from the date of notification in terms of subsection (3).

#### **42. Numbering of premises**

- (1) The municipality may prescribe by notice in writing to the owner of any premises that a number allocated to such premises by the municipality must be displayed, and the owner of such premises must, within 30 days of the date of such notice, display the allocated number on the premises.
- (2) A number displayed as contemplated by subsection (1) must –
- (a) be displayed in a conspicuous position on the premises and must at all times be visible and legible from the adjacent public road; and
  - (b) be replaced by the owner of the premises as often as it gets obliterated, defaced or illegible.
- (3) The municipality may allocate and re-allocate numbers to properties abutting on public roads and public places.
- (4) A person who contravenes a provision of subsection (1) or (2) commits an offence.

### **CHAPTER 2 : PARKING METERS**

#### **43. The municipality may install parking meters or use any other device to record the time parked**

- (1) The municipality may install or cause to be installed or use or allow to be used in a public road or place in the municipal area –
- (a) a parking meter at a demarcated parking bay; or
  - (b) a combined parking meter at demarcated parking bays; or
  - (c) any other device by which parking time can be recorded and displayed.
- (2) The municipality may install a parking meter contemplated in subsection (1) upon the kerb, footpath or sidewalk which adjoins the parking bay or bays in respect of which it is installed or at any other place in close proximity that serves the parking bay.
- (3) In the instance where a parking meter is not automatically activated by the insertion of a prescribed coin, a notice, which indicates the kind of action to be taken in order to set the meter in operation once the prescribed coin has been inserted, must be clearly displayed on the parking meter.
- (4) In the instance where a meter is out of order, an authorised official may securely place over the meter a hood carrying in legible letters the words: "out of order " and in such instances a vehicle may be parked without payment of the prescribed amount.

**44. Method of parking**

- (1) No driver or person in charge of a vehicle may park the vehicle –
- (a) in a metered parking bay across a painted line marking the bay or in such a position that the vehicle is not entirely within the area demarcated as a metered parking bay;
  - (b) in a metered parking bay which is already occupied by another vehicle; or
  - (c) in a metered parking bay in contravention of a road traffic sign which prohibits the parking or stopping of vehicles in the public road or portion of the public road concerned.
- (2) A person who contravenes the provisions of subsection (1) commits an offence.

**45. Payment of parking**

- (1) (a) When a vehicle is parked in a parking bay, the driver or person in charge of the vehicle must –
- (i) immediately deposit or cause to be deposited in the parking meter which adjoins the parking bay or bays in respect of which it is installed the prescribed coins as indicated on the meter for the period of time during which he or she desires to park his or her vehicle in the bay, and must, where applicable, set the meter in operation either by inserting the prescribed coin in the appropriate slot of the parking meter, or where applicable, in accordance with the instructions appearing on the parking meter; or
  - (ii) effect payment by any other means prescribed by the municipality irrespective if the device used to record the time parked and irrespective whether payment is required at the beginning or end of the period so parked, and a driver or person in charge of a vehicle who fails to do so, commits an offence.
- (b) When a vehicle or a vehicle and a trailer is of such dimensions that it occupies more than one metered parking bay, the driver or person in charge of the vehicle must -
- (i) immediately deposit or cause to be deposited in the parking meter which adjoins the parking bay or bays in respect of which it is installed the prescribed coin or coins as indicated on the meter for the period of time during which he or she desires to park his or her vehicle in the bay, and must, where applicable, set the meter in operation either by inserting the prescribed coin in the appropriate slot of the parking meter, or where applicable, in accordance with the instructions appearing on the parking meter; or
  - (ii) effect payment by any other means prescribed by the municipality irrespective of the device used to record the time parked and irrespective whether payment is required at the beginning or end of the period so parked, and a

- driver or person in charge of a vehicle who fails to do so, commits an offence.
- (c) on completion of the actions prescribed in paragraph (a) and (b), the metered parking bay may be lawfully occupied by the vehicle during the period which is indicated on the parking meter, however, subject to paragraph (d), a driver or person in charge of a vehicle may, without payment, park the vehicle during such times (if any) as may be indicated on the parking meter as being unexpired from its previous use, provided that the municipality may cancel any paid time remaining on a meter after a vehicle for which the parking was paid for vacated the parking bay.
  - (d) Subsection (c) does not apply to any parking bay where unexpired time is not visibly displayed.
- (2) Subject to the provisions of subsection (3), the driver or person in charge of a vehicle may again, when the authorised period of parking has expired, immediately set the parking meter in operation as set out in subsection (1)(a), and after the meter has been set in operation, the vehicle may lawfully occupy the parking bay for the further period indicated on the parking meter.
- (3) No person may leave a vehicle parked in a parking bay for a continuous period exceeding the maximum permissible parking time as indicated on the meter or other device, and a person who leaves a vehicle parked in a parking bay for a continuous period exceeding the maximum permissible parking time as indicated on the meter, a sign or device, commits an offence.
- (4) Subject to the provisions hereof, no driver or person in charge of a vehicle may cause, allow, permit or suffer the vehicle to be or remain parked in a metered parking bay while the indicator of the parking meter shows that –
- (a) the time has expired; or
  - (b) that the parking meter has not been set in operation either by the insertion of the prescribed coin or, where applicable in accordance with the instructions appearing on the parking meter, and a driver or person in charge of a vehicle who contravenes a provision of this subsection commits an offence.
- (5) Where a parking meter cannot be set in operation despite compliance or attempted compliance with the procedure prescribed in subsection (1)(a), no driver or person in charge of a vehicle may cause, allow, permit or suffer the vehicle to be or remain parked in the parking bay for continuous period exceeding the period which was indicated by the indicator of the parking meter when such vehicle was parked in the said parking bay, however if -
- (a) the indicators shows that –
    - (i) the time has expired;
    - (ii) the parking meter has not been set in operation; or
  - (b) a hood has been placed over the parking meter as envisaged in section 43(4), no driver or person may cause, allow, permit or suffer the vehicle to be or remain parked in the parking bay, and a driver or person in charge of a vehicle who contravenes a provision of this subsection commits an offence.

**46. The municipality may prevent parking at a parking bay**

An officer authorised by the municipality to display road traffic signs may, whenever necessary or expedient to do so in the interests of the movement or control of traffic, place or erect a traffic sign or signs indication "No stopping" or "No parking" at a parking bay or bays, and no person may stop or park a vehicle or cause or permit a vehicle to be stopped or parked in such parking bay or bays –

- (a) while the sign is so placed or erected; or
- (b) during any period when the stopping or parking of a vehicle in the public road or portion of the public road concerned is prohibited in terms of such traffic sign,

and a person who contravenes a provisions of this section commits an offence.

**47. Tampering or interfering with a parking meter or device**

- (1) No person may misuse a parking meter or interfere, or tamper, or attempt to misuse, interfere or tamper with the working operation or mechanism of a parking meter.
- (2) No person may, without authority from the municipality, affix or attempt to affix or place a placard, advertisement, notice, list, document board or thing on a parking meter.
- (3) No person may paint, write upon or disfigure a parking meter.
- (4) No person may, without the consent of a parking marshal, remove or tamper with any device in the possession of such parking marshal.
- (5) A person who contravenes a provision of this section commits an offence.

**48. Prescribed coin only to be deposited**

- (1) No person may deposit or cause to be deposited in a parking meter anything whatsoever other than the prescribed coin or coins.
- (2) A person who contravenes subsection (1) commits an offence.

**49. Unlawful operation of a parking meter**

- (1) No person may operate or attempt to operate a parking meter by any means other than as prescribed in these by-laws.
- (2) A person who contravenes subsection (1) commits an offence.

**50. Unlawful parking and clamping or removal of unlawfully parked vehicles**

- (1) No person may cause, allow, permit or suffer any vehicle to be parked in a metered parking bay, except as permitted by the provisions of these by-laws.
- (2) Where any vehicle is found to have been parked in contravention of these by-laws, it is deemed to have been parked, or caused to be parked, or allowed to have been parked by the person in whose name the vehicle is registered unless and until he or she adduces evidence to the contrary.
- (3) The municipality may –
  - (a) attach a wheel clamp to any unlawfully parked vehicle;
  - (b) or cause an unlawfully parked vehicle to be removed to a public place designated by the municipality; and

- (c) charge a fee for the removal of a wheel clamp attached in terms of subsection (3)(a) or the release of a vehicle which was removed from in terms of subsection (3)(b), which fees will be payable upon removal of such wheel clamp or release of such vehicle.
- (4) A person who contravenes subsection (1) commits an offence.

#### **51. Exemptions**

- (1) Notwithstanding any other provision in these by-laws, the driver or person in charge of the following vehicles may, subject to the provisions of this section, park in a metered bay without payment of the prescribed fee –
  - (a) a vehicle used as an ambulance and being at the time used on urgent ambulance service;
  - (b) a vehicle used by a fire brigade for attendance at fires and being at the time used by the brigade in carrying out its duties; and
  - (c) a vehicle used by a member of the South African Police Service and being at the time used in connection with the execution of urgent police duties.
- (2) Subject to any time limits or restrictions regarding the stopping or parking of vehicles as are prescribed by any other law, or regulations, or by-laws made there under, a metered parking bay may be occupied without charge on –
  - (a) Sundays and Public Holidays;
  - (b) Saturdays after 13h00; and
  - (c) any other day of the week during the period from 17h00 to 08h00 on the following day.

### **CHAPTER 3 : PARKING GROUNDS**

#### **Part 1 : General provisions**

#### **52. The municipality not liable for loss or damage**

The municipality is not liable for any loss of or damage howsoever caused, to any vehicle, or any accessories or content of a vehicle which has been parked in a parking ground.

#### **53. Interference with an attendant**

- (1) No person may obstruct, hinder or in any manner interfere with an authorised official or a parking marshal employed by an appointed service provider to the municipality, who is the attendant of the parking grounds in the exercise of his or her duties under these by-laws.
- (2) A person who contravenes a provision of subsection (1) commits an offence.

#### **54. Payment of prescribed fee**

- (1) A person making use of a parking ground or parking bay must, where fees have been determined in respect of the parking ground or parking bay, pay the prescribed fee.

- (2) The municipality may in respect of a parking ground controlled by the issue of coupons, issue at the prescribed fee coupon which entitles the holder for one calendar month or any lesser period stated in the coupon to park a vehicle in the ground, if a parking bay is available, at the times stated in the coupon.
- (3) The municipality may issue to any of its officials a coupon which entitles the holder, when using a vehicle regarding the business of the municipality, to park the vehicle in a parking ground specified, if space in the parking ground is available.
- (4) A coupon issued under subsection (2) or (3) –
  - (a) may not, without the prior written consent of the municipality –
    - (i) be transferred to any other person; or
    - (ii) be used in respect of any vehicle other than the specified vehicle; and
  - (b) must be affixed by the holder of the coupon to the vehicle in respect of which it is issued in such manner and place that the written or printed text of the coupon is readily legible from the outside of the vehicle.
- (5) Application for consent contemplated in subsection (4)(a) must be made on a form provided for this purpose by the municipality.
- (6) A person who contravenes subsection (1), or who uses a parking ground or parking bay when the period for which a coupon was issued in terms of subsection (2) has elapsed, or who contravenes a provision of subsection (4) commits an offence.

#### **55. Trading**

- (1) No person may upon a parking ground carry on any business, trade or calling or perform any act in connection therewith.
- (2) A person who contravenes a provision of subsection (1) commits an offence.

#### **56. Observance of signs**

- (1) A person in a parking ground must observe and comply with any traffic or other sign, notice or surface marking which is placed or displayed on the parking ground for the purpose of directing and regulating vehicles using the parking ground or the entrance or exit to the parking ground.
- (2) A person who contravenes a provision of subsection (1) commits an offence.

#### **57. Parking and removal of vehicle**

- (1) No person may in any parking ground park a vehicle otherwise than in compliance with an instruction or direction given by an authorised official, or introduce or remove a vehicle otherwise than through an entrance or exit to the parking ground demarcated for that purpose.
- (2) Where parking bays have been demarcated in a parking ground, no person having control or charge of a vehicle may park the vehicle –
  - (a) in a place on the parking ground which is not a demarcated parking bay unless instructed to do so by the authorised attendant at the parking ground;

- (b) in a parking bay across a painted line marking the bay or in such position that the vehicle is not entirely within the area demarcated as a parking bay; or
  - (c) in a parking bay which is already occupied by another vehicle.
- (3) No person may park a vehicle on a sidewalk or a roadway within a parking ground.
  - (4) No person may in a parking ground park a vehicle in a manner which obstructs or inconveniences other users of the parking ground.
  - (5) No person may park, or cause, or permit a vehicle other than a vehicle as defined in the National Road Traffic Act, 1996 (Act 93 of 1996), to be parked or to be or remain in a parking ground.
  - (6) A person who contravenes a provision of this section commits an offence.

#### **58. Abandoned vehicle**

- (1) The municipality may remove, to the municipality's pound, a vehicle which has been left in the same place in a parking ground for a continuous period of more than seven days.
- (2) The municipality must take all reasonable steps to trace the owner of a vehicle which was removed in terms of subsection (1), and if the owner of the vehicle or the person entitled to possession of the vehicle cannot be found within a period of 90 days after the vehicle has been removed, the municipality may, subject to the provisions of subsection (3), sell the vehicle at a public auction.
- (3) The municipality must, 14 days before the auction contemplated in subsection (2), publish or cause to be published in at least two newspapers circulating within the municipal area, a notice of the auction, however, if the owner or the person entitled to possession of the vehicle claims the vehicle before the auction commences, the vehicle may not be sold at the auction, and the person must pay to the municipality all prescribed fees payable in terms of these by-laws and the applicable costs in terms of subsection (4).
- (4) The proceeds of a sale concluded in terms of this section must be applied first in payment of the fees referred to in subsection (3) and thereafter to defray the following :
  - (a) the costs incurred in endeavouring to trace the owner in terms of subsection (2);
  - (b) the costs removing the vehicle;
  - (c) the costs of publishing the notice of the auction;
  - (d) the costs of effecting the sale of the vehicle; and
  - (e) the costs, calculated at a rate determined by the municipality, of keeping the vehicle in the pound,And the balance, if any, of the proceeds must be paid, upon claim, to the owner of the vehicle or the person entitled to the vehicle if he or she can prove his or her right to the vehicle.
- (5) If no claim is established within one year of the date of the sale, the balance of the proceeds contemplated in subsection (4) is forfeited to the municipality.
- (6) No person may leave a vehicle in the same place in a parking ground for a continuous period of more than seven days, and a person who does so commits an offence.

**59. Damage to notices**

- (1) No person may remove, mutilate, obscure or in any manner damage or interfere with notice, notice-board, sign or other thing placed by the municipality on a parking ground.
- (2) A person who contravenes a provision of subsection (1) commits an offence.

**60. Negligent and dangerous driving**

- (1) No person may, on a parking ground, drive a vehicle negligently or in a manner dangerous to the public or to another vehicle.
- (2) A person who contravenes a provision of subsection (1) commits an offence.

**61. Entering or remaining in parking ground**

- (1) No person may enter, remain or be on a parking ground otherwise than for the purpose of parking on the parking ground a vehicle, or lawfully removing from the parking ground a vehicle, in respect of which he or she has paid the prescribed parking fee, however this section does not apply to a person in the company of a person who is parking or removing a vehicle.
- (2) A person who contravenes a provision of subsection (1) commits an offence.

**62. Tampering with vehicle**

- (1) No person may, on a parking ground, without reasonable cause or without the knowledge or consent of the owner or person in lawful charge of a vehicle, in any way interfere or tamper with the machinery, accessories, parts or contents of the vehicle, or enter or climb upon the vehicle, or set the machinery of the vehicle in motion.
- (2) A person who contravenes a provision of subsection (1) commits an offence.

**63. Defacing coupon**

- (1) No person may in a parking ground with intent to defraud the municipality forge, imitate, deface, mutilate, alter or make a mark upon a parking coupon issued in terms of these by-laws.
- (2) A person who contravenes a provision of subsection (1) commits an offence.

**64. Defective vehicle**

- (1) No person may park, or cause, or permit a vehicle which is mechanically defective or for any reason incapable of movement, to be parked or to be or remain in a parking ground.
- (2) If any vehicle, after having been parked in a parking ground, develops a defect which renders it immobile, the person in charge must take all reasonable steps to have the vehicle repaired if minor emergency repairs can be affected, or removed within a reasonable time.
- (3) A person who contravenes a provision of subsection (1) or subsection (2) commits an offence.

**65. Cleaning of vehicle**

- (1) No person may clean or wash a vehicle in a parking ground.
- (2) A person who contravenes a provision of subsection (1) commits an offence.

**66. Refusal of admission**

- (1) An authorised official may refuse to admit into a parking ground a vehicle which, together with its load, is longer than five metres, or is, by reason of its width or height, likely to cause damage to persons or property, or to cause an obstruction or undue inconvenience.
- (2) A person who disregards an authorised official's refusal of admission commits an offence.

**67. Parking hours and classes of vehicles**

- (1) The municipality may, subject to the provisions of these by-laws, permit the parking on a parking ground during the hours when the parking ground is open for parking of such classes of vehicles as it may determine.
- (2) The municipality must, in a notice posted at the entrance to the parking ground set out the classes of motor vehicles which may be parked in the parking ground, and the opening and closing hours of the parking ground.
- (3) The municipality may, notwithstanding a notice posted in terms of subsection (2), by notice exhibited on a parking ground, close the parking ground or a portion of a parking ground, either permanently or for a period stated in the notice, for the parking of vehicles.
- (4) No person may park a vehicle or allow a vehicle to remain parked on a parking ground or portion of a parking ground which has been closed under subsection (3), or at any time other than during the hours for the parking of vehicles on the parking ground as determined by the municipality from time to time.
- (5) No person may park on the parking ground a vehicle which is not of the class or classes which may use the parking ground for parking as set out in the notice erected at the entrance to the parking ground.
- (6) No person may, unless he or she is the holder of a parking coupon issued in terms of these by-laws authorising him or her to do so, park a vehicle or cause or permit it to be parked in a parking ground before the beginning or after the expiry of the parking period determined for the parking ground.
- (7) A person who contravenes a provision of subsection (4), (5) or (6) commits an offence.

**68. Reservation by the municipality**

- (1) The municipality may, by notice exhibited in the parking ground, reserve a portion of a parking ground for the parking of vehicles owned by the municipality or vehicles used by members of its staff on the business of the municipality.
- (2) A person who parks a vehicle in a portion reserved for the parking of vehicles owned by the municipality or for members of the municipality's staff commits an offence.

**Part 2 : Mechanically controlled parking ground****69. Parking of a vehicle in a mechanically controlled parking ground**

- (1) A person who –
- (a) wishes to park a vehicle;
  - (b) causes or permits a vehicle to be parked; or
  - (c) allows a vehicle to be parked,
- in a mechanically controlled parking ground must, when entering the parking ground and after the vehicle has been brought to a standstill and in accordance with the instruction which are displayed on the parking coupon vending machine, obtain a parking coupon which is issued by the machine.
- (2) A person contemplated in subsection (1) may not park a vehicle -
- (a) except in a parking bay and in compliance with such directions as may be given by an authorised official or where no such bay has been marked, except in a place indicated by the authorised official;
  - (b) after an authorised official has indicated to the person that the parking ground is full; or
  - (c) after the expiry of the parking period indicated on the parking coupon.
- (3) A parking coupon obtained in terms of subsection (1) is valid until the time of expiry thereof as indicated on the coupon, and a person may not allow the vehicle to remain in the parking ground after expiry of the parking period.
- (4) A person who does not obtain a coupon in accordance with subsection (1) or who contravenes a provision of subsection (2) or (3) commits an offence.

**70. Removal of a vehicle from a mechanically controlled parking ground**

- (1) No person may remove, or cause or permit the removal of, a vehicle in a parking ground, unless –
- (a) he or she has produced to the authorised official a coupon authorising him or her to park in the parking ground and which was issued to him or her by the parking coupon vending machine upon entering the parking ground; and
  - (b) he or she has paid to the authorised official the prescribed parking fee.
- (2) If a person fails to produce a coupon authorising him or her to park in the mechanically controlled parking ground, he or she is deemed to have parked a vehicle from the beginning of a period that the ground is open for parking until the time he or she wants to remove the vehicle, and he or she shall be charged accordingly.
- (3) A person may not, after he or she fails to produce a coupon, remove, or cause, or permit the removal of the vehicle parked in the parking ground until he or she has produced other proof to an authorised official of his or her right to remove the vehicle, and the authorised official –
- (a) must require the person to complete and sign an indemnity form as supplied by the municipality against claims of whatever nature by a person relating to the removal of that vehicle; and

- (b) may require the person to furnish such security as may be determined by the municipality.
- (4) Subsection (1)(a) does not apply where the prescribed parking fees were paid upon entering the parking ground and the person who paid such fees produces the required coupon to the authorised official on demand.
- (5) Where a vehicle has not been removed from a parking ground by the end of the parking period for which the prescribed fee has been paid, a further charge as may be determined by the municipality is payable for the next parking period.
- (6) A person who contravenes a provision of subsection (1), or who removes, or causes, or permits the removal of a vehicle in contravention of subsection (3), or who does not comply with a request made by an authorised official in terms of subsection (3)(a) or (b) commits an offence.

### **Part 3 : Pay-and display parking ground**

#### **71. Parking of a vehicle in a pay-and-display parking ground**

- (1) A person who –
  - (a) wishes to park a vehicle;
  - (b) causes or permits a vehicle to be parked; or
  - (c) allows a vehicle to be parked,In a pay-and-display parking ground must immediately, upon entering the parking ground, buy, in accordance with the instructions which are displayed on or in the vicinity of the parking coupon vending machine in the parking ground, a coupon which is issued by the machine, and a person who does not comply with this subsection commits an offence.
- (2) The following must be indicated on the parking coupon vending machine –
  - (a) the period during which a vehicle may be parked in the pay-and-display parking ground; and
  - (b) the coin or other prescribed object to be inserted in respect of the parking period into the pay-and-display machine.
- (3) The person must display the coupon by affixing it to the inside on the driver's side of the front windscreen of the vehicle in such a manner and place that the information printed on the coupon by the pay-and-display machine is readily legible from the outside of the vehicle.
- (4) No person may allow a vehicle to remain in a pay-and-display parking ground after the expiry of the departure time indicated on the parking coupon and, unless evidence to the contrary is produced, the date or day and time of departure as recorded by a parking coupon vending machine is taken, on the face of it, to be correct evidence of date or day or time.
- (5) No person may park a vehicle, cause, permit, or allow a vehicle to be parked in a pay-and-display parking ground if a parking coupon cannot be obtained from the parking coupon vending machine in the manner indicated thereon or when a notice displayed on the machine indicates that it is out of order.
- (6) If a vehicle is removed from a pay-and-display parking ground and returned to the pay-and-display parking ground within the period of validity of the parking coupon, the coupon continues to be valid.

- (7) Possession of a valid parking coupon in respect of a vehicle not within a parking bay does not guarantee the availability of a vacant parking bay.
- (8) A person who contravenes a provision of subsection (3), (4) or (5) commits an offence.

**72. Miscellaneous offences in respect of a pay-and-display parking ground**

A person commits an offence if he or she –

- (1) inserts or attempts to insert into a parking coupon vending machine –
  - (a) a counterfeit coin;
  - (b) where another kind of object is to be used, a false object;
  - (c) a coin which is not South African currency; or
  - (d) any object which is not meant to be inserted into the parking coupon vending machine;
- (2) jerks, knocks, shakes or in any way interferes or tampers with, or damages, or defaces a parking coupon vending machine or appurtenance thereto, or affix or attempt to affix or place a sign, placard, advertisement, notice, list, document, board or thing on, or paint, write upon or disfigure a parking coupon vending machine;
- (3) removes or attempts to remove a parking coupon vending machine or any part of the machine from its mounting.

**CHAPTER 4 : PARKING ATTENDANTS**

**73. Prohibition**

- (1) No person may act as, operate as or falsely hold himself or herself out to be a parking attendant on any public road or in any public place of the municipality –
  - (a) if he or she is not registered as a security officer in terms of the Private Security Industry Regulation Act, 2001 (Act 56 of 2001); and
  - (b) without the written permission of the municipality.
- (2) No organisation may organise the guarding of vehicles in public places or on public roads of the municipality through parking attendants without being registered as a security service provider in terms of the Private Security Industry Regulation Act, 2001 (Act 56 of 2001) and unless registered by the municipality as a parking attendant organization.
- (3) No person or organisation may act as, operate or organise the guarding of vehicles in public places or on public roads of the municipality through parking attendants in an area which is the subject of a Memorandum of Agreement between the municipality and a service provider for the provision of a parking management system.

**74. Registration of person or organisation by the municipality**

- (1) Before any organisation can be registered with the municipality, the organization must submit, together with its application for registration on a form supplied by the municipality, proof of indemnity or of public liability insurance regarding the actions of its parking attendants.

- (2) The municipality shall consider each application for registration and may register a person or an organization or refuse to register a person or an organization.
- (3) The municipality, on receipt of an application for registration, may call for documentary or other proof of the capacity of the organization to provide parking attendants, including information regarding the finances of the organization.
- (4) When approving a person or an organization's application for registration regarding a specified geographic area, the municipality must issue a permit prescribing the geographic areas within which the organization may operate and the period of time for which it is granted, and the permit issued is valid for a period not exceeding 12 months from the date of issue.

#### **75. Conditions**

- (1) Subject to the provisions of section 76 all persons and organizations must adopt and sign the Code of Conduct for parking Attendants as supplied by the municipality.
- (2) A person or an organization must keep detailed attendance and duty records reflecting the following in respect of him or herself or of its parking attendants –
  - (a) name of parking attendant;
  - (b) time at which the parking attendant goes on and off duty;
  - (c) place of assignment of the parking attendant; and
  - (d) incidents and occurrences.

#### **76. Registration fee payable**

The municipality may levy a registration tariff, the amount of which is determined by municipality and fixed in the registration, as a requirement for the registration of parking attendants, provided that where a Memorandum of Agreement exist between the municipality and the service provider for the provision of a parking management system, such a tariff will not be levied.

#### **77. Garments and identification of parking attendants**

- (1) Upon registration and subject to the payment of a registration tariff, the municipality will issue to the parking attendants –
  - (a) a bib or jacket; and
  - (b) an identification card,and a parking attendant must, before undertaking any duties, equip himself or herself with the such bib or jacket and identification card.
- (2) Every parking attendant must, while on duty and presenting himself or herself as available for service, be neatly dressed in a bib or jacket, and must ensure the identification card is visibly displayed.

#### **78. Conduct of organizations**

- (1) An organization must –
  - (a) register with the municipality;
  - (b) train parking attendants;
  - (c) supervise its parking attendants, preferably by means of direct radio contact with the organization's control office;

- (d) ensure that bibs or jackets and identification cards are in a good condition;
  - (e) resolve all parking disputes or differences that may arise in the assigned areas of the parking attendants;
  - (f) instruct all parking attendants under contract to comply with the Policies and Code of Conduct;
  - (g) ensure that the organization's officials make themselves available to attend meetings with the municipality as when requested to do; and
  - (h) establish a liaison forum with the SAPS and the Safety and Security Business Unit.
- (2) No organization may permit a person who has his or her permit cancelled or suspended to act as a parking attendant.

**79. Conduct of parking attendants**

- (1) No parking attendant may, when on duty –
- (a) tamper with, activate or operate a parking meter;
  - (b) wash, or clean, or offer to wash or clean a car on a public road or in a public place;
  - (c) interfere with the movement of traffic pedestrians;
  - (d) demand a donation or fee for guarding a driver's vehicle;
  - (e) fail to obey a lawful order from an authorised officer or an authorised official;
  - (f) harass or threaten driver, or damage a vehicle in any way;
  - (g) involve himself or herself in any form of criminal activity;
  - (h) be under the influence of alcohol, or any narcotic substance, or consume, or use any alcohol or narcotic substance;
  - (i) be untidily dressed;
  - (j) refuse to produce proof of his or her identity when requested to do so by an authorised officer or authorised official or a person who requires it for his or her information relating to the service rendered;
  - (k) behave abusively towards a member of the public;
  - (l) insert money into a parking meter; or
  - (m) inform or threaten the driver or person in charge of a motor vehicle that such a vehicle will or may be damaged or stolen unless it is left in his care or under his supervision or unless that parking attendant is remunerated for his services;
  - (n) act as a parking attendant or hold himself or herself out to be available to act as a parking attendant at any place other than the place allocated to him or her in writing by a registered organization and in accordance with the provision of this by-law.
- (2) No parking attendant may refuse to subject himself to a security check as prescribed by the Private Security Industry Regulation Act, Act 56 of 2001.

**80. Cancellation or suspension of registration**

- (1) The municipality may suspend registration on the grounds that a person or organization has allegedly committed an offence in terms of this by-law.
- (2) The municipality may instruct an organization to immediately suspend the services of a parking attendant, or the municipality may suspend the services of a parking attendant who does not belong to an organization, who :
  - (a) tampers with, or activates, or operates a parking meter;
  - (b) fails to observe or carry out the lawful instructions of an authorized officer;
  - (c) is intoxicated while performing his or her duties as parking attendant;
  - (d) cleans or washes any motor vehicle on a public road or in a public place;
  - (e) offers to clean or wash any motor vehicle on a public road or in a public place;
  - (f) interferes with the movement of vehicular traffic or the parking or vehicles;
  - (g) interferes with the movement of pedestrians;
  - (h) through intimidation, demands a donation or fee for guarding a vehicle;
  - (i) damages or threatens to damage a vehicle in any way for not receiving a donation or fee; or
  - (j) fails to produce the permit or an identification card on request;
  - (k) behaves abusively towards a member of the public;
  - (l) inserts money into a parking meter; or
  - (m) informs or threatens the driver or person in charge of a motor vehicle that such a vehicle will or may be damaged or stolen unless it is left in his or her care or under supervision or unless that parking attendant is remunerated for his or her services;

**81. Vicarious responsibility and liability of organization**

When a person who is a member of an organization acts illegally as a parking attendant or commits any other offence in terms of this Chapter, the directors of that organization are equally responsible and liable for the offence.

**CHAPTER 5 : TAXIS AND BUSES****Part 1 : Special parking places for taxis, permits and decals****82. Establishment of, and taxi rank permits for, special parking places for taxis**

- (1) The municipality may establish special parking places in the municipality for use by or the parking of a taxi belonging to a person to whom a permit to use the parking place or park a taxi rank permit has been issued by the municipality as provided for in section 84.
- (2) A taxi rank permit may be issued allocating a particular special parking place or subdivision of a special parking place to a particular person or motor vehicle for his, her or its exclusive use.

- (3) If no space is available in a special parking place at any particular time for the parking of a taxi by a taxi rank permit holder or for a taxi to which the taxi rank permit relates, the taxi must be parked at a holding area specified by a duly appointed marshal operating at the special parking place, as contemplated in section 103, until the marshal or any other duly appointed person summons and permits the person to park the taxi at the special parking place.
- (4) No person or motor vehicle other than the person or motor vehicle referred to in subsection (2) may, except by virtue of a taxi rank permit, use or be parked at the special parking place or its subdivision, and a person who contravenes this provision, or a person who parks a motor vehicle at a holding area other than the one contemplated in subsection (3) commits an offence.

### **83. Application for a taxi rank permit**

- (1) An application for the granting of a taxi rank permit referred to in section 82 must be lodged with the municipality on the particular form obtainable from the municipality and must be accompanied by the fee contemplated in section 84(4).
- (2) The applicant must answer all questions in the application form and in all other respects fully comply with all the requirements of the form.
- (3) The municipality may refuse a taxi rank permit, subject to the provisions of the National Road Traffic Act, 1996 (Act 93 of 1996) and the provisions of this by-law, on the grounds that there is insufficient ranking space in the municipal area.
- (4) A person who knowingly supplies incorrect information in the form contemplated in subsection (2) commits an offence.

### **84. Issuing of a taxi rank permit**

- (1) Where an application for a taxi rank permit is granted the taxi rank permit must, subject to subsections (2) and (3), be issued in a form determined by the municipality provided that the prescribed fee contemplated in section 83(1) had been paid.
- (2) The municipality shall not issue a taxi rank permit until the applicant provides the municipality with –
  - (a) a valid Certificate of Road Worthiness in respect of the motor vehicle concerned as required in terms of Regulation 138 of the Regulations in terms of the National Road Traffic Act, 1996 (Act 93 of 1996);
  - (b) a valid public road carrier permit issued under the Road Transportation Act, 1977 (Act 74 of 1977), authorizing the road transportation to be undertaken;
  - (c) proof of registration and licensing of the motor vehicle concerned in terms of Section 4 of the National Road Traffic Act, 1996 (Act 93 of 1996);
  - (d) a valid identification document or a valid temporary identity document issued by the Department of Home Affairs, of the owner or the operator thereof, however, in the event of a temporary identification document, it must be accompanied with a passport photo of the owner or the operator thereof; and

- (e) a letter of recommendation from the relevant taxi association.
- (3) Such a taxi rank permit shall be issued in terms of the conditions determined by the municipality.
- (4) The municipality may determine the fees for the issue of a taxi rank permit and such fees may be different for different facilities.
- (5) A taxi rank permit not collected within three months lapses, unless a written extension of time has been requested and granted by the municipality.
- (6) Any taxi rank permit issued contrary to the provisions of this by-law in an unlawful manner with or without the knowledge of the applicant, is void and the holder thereof must on demand by the municipality forthwith deliver such a taxi rank permit to the municipality.
- (7) The municipality is not obliged to issue a taxi rank permit, even if the applicant has a valid operating license or public road carrier permit.
- (8) No taxi rank permit will be issued unless the provisions of this section have been complied with.
- (9) A person who issues a taxi rank permit in a manner contemplated in subsection (6) commits an offence.

#### **85. Renewing of a taxi rank permit**

- (1) A taxi rank permit is valid for one year from the date of issue and must be renewed annually.
- (2) An application for the renewal of a taxi rank permit must be made before the taxi rank permit expires.
- (3) After a person applying to renew a taxi rank permit has submitted a duly completed application form to the municipality, together with the documents referred to in section 84(2) in respect of the motor vehicle, the taxi rank permit shall be renewed on payment of the prescribed fee, and subject to the good conduct of the person.
- (4) A person who knowingly supplies incorrect information in the form contemplated in subsection (3) commits an offence.

#### **86. Temporary substitution of a taxi rank permit**

- (1) Subject to subsection (2), a taxi rank permit issued in terms of section 84 for a motor vehicle does not authorize the taxi rank permit holder to park any other motor vehicle as a taxi under that taxi rank permit.
- (2) If the taxi to which a taxi rank permit relates has become defective or has been temporarily withdrawn from service owing to an accident, the taxi rank permit holder may substitute any other vehicle of the same passenger-carrying capability for that taxi for a maximum period of seven days, on condition that, whenever such other vehicle uses the taxi facilities, the taxi rank permit holder must ensure that -
  - (a) the taxi rank permit relating to the defective taxi is always kept in such other vehicle; and
  - (b) a decal is always displayed on the other vehicle as required by section 88(3).
- (3) A person who contravenes a provision of subsection (2) commits an offence.

**87. Transfer of a taxi rank permit**

- (1) If-
- (a) the taxi rank permit holder dies;
  - (b) the taxi rank permit holder's estate is provisionally or finally sequestered;
  - (c) the taxi rank permit holder is a company or a close corporation which is being liquidated; or
  - (d) the taxi rank permit holder becomes in any way incapable in law of carrying on business,
- the executor, trustee, liquidator or curator of property, as the case may be, may, on payment of the prescribed transfer fee, carry on the business undertaking for the unexpired period of the taxi rank permit.
- (2) No taxi rank permit may, subject to subsection (1), be transferred by the taxi rank permit holder to another person, and a taxi rank permit holder who does so commits an offence.

**88. Issue, display and duplication of decals**

- (1) A decal containing the particulars of the taxi rank permit is issued with every taxi rank permit, and must immediately be affixed to the taxi concerned as contemplated in subsection (3).
- (2) (a) A taxi rank permit holder may apply to use additional taxi facilities.  
(b) An additional decal or more decals may be issued to the taxi rank permit holder to identify additional taxi facilities allocated to that taxi rank permit holder.
- (3) On obtaining a decal or decals in terms of subsection (1) or (2), the taxi rank permit holder must immediately-
- (a) where the taxi concerned is fitted with a clear windscreen, affix the decal a conspicuous place on the left-hand front inside of the windscreen in an upright position, with the printed side facing to the front in such a way that the particulars on the decal are clearly legible to any person standing on the left front side of the taxi; and
  - (b) where the taxi is fitted with a tinted or smoked glass windscreen, display the decal in a watertight holder in a conspicuous place on the left-hand front outside of the windscreen in such a way that the particulars on the decal are clearly legible to any person standing on the left front side of the taxi.
- (4) The taxi rank permit holder must ensure that the decal or decals are kept displayed at all relevant times as contemplated in subsection (3).
- (5) (a) If a taxi rank permit holder-
- (i) satisfies the municipality by affidavit that the taxi rank permit or a decal has been lost destroyed; or
  - (ii) produces a taxi rank permit or decal that has been damaged to the extent that the letters and figures on it are no longer clearly legible, the municipality must, after the taxi rank permit holder has applied for a duplicate permit or decal on a form and has paid the prescribed fee, issue him or her with a duplicate that is clearly endorsed 'DUPLICATE'.
- (b) The taxi rank permit holder must immediately affix the duplicate decal to the vehicle concerned in accordance with subsection (3).

- (6) If a taxi is being operated without a decal, it is presumed that the taxi rank permit holder does not have a valid taxi rank permit until he or she proves to an authorized officer that he or she does have such a taxi rank permit or has applied for a duplicate decal.
- (7) A person commits an offence if he or she-
  - (a) unless he or she is authorized to do so, produces or duplicates a taxi rank permit or decal;
  - (b) affixes an unauthorized decal onto a taxi;
  - (c) operates a taxi on which a decal is in any way concealed, or obscured, or has become illegible, unless such concealment, obscurity or illegibility is temporary owing to a cause beyond the control of the person who operates the taxi; or
  - (d) contravenes subsection (4).

**89. Payment of a taxi rank permit fees**

- (1) The taxi rank permit fee payable for a taxi rank permit issued for less than one full year is reduced *pro rata* to the number of months out of 12 months of the taxi rank permit's validity.
- (2) All taxi rank permit fees and moneys must be paid at the relevant municipal office as determined by the municipality.
- (3)
  - (a) The payment of any amount in terms of these by-laws does not absolve a person from criminal liability arising from his or her failure to obtain a taxi rank permit.
  - (b) The conviction of a person for an offence under these by-laws does not relieve him or her of the liability to pay the fees in terms of these by-laws.

**90. Amendment of particulars of a taxi rank permit**

- (1) If the information contained in a taxi rank permit or decal is incorrect, the municipality may, notwithstanding anything to the contrary in these by-laws-
  - (a) notify the taxi rank permit holder concerned;
  - (b) require him or her to give a satisfactory explanation; and
  - (c) require him or her to return the taxi rank permit or decal for amendment not later than ten days after the date of notification.
- (2) If it comes to the notice of the taxi rank permit holder that the particulars on a taxi rank permit or decal are incorrect because they have changed or are incorrect for any other reason, the taxi rank permit holder must submit the taxi rank permit or decal to the municipality for amendment within ten days of this coming to his or her notice, however, a taxi rank permit holder may not, subject to subsection (3), substitute a different motor vehicle for the motor vehicle to which the taxi rank permit relates.
- (3) When a taxi rank permit or decal is surrendered for it to be amended in terms of this section, the municipality shall provide the taxi rank permit holder with a temporary taxi rank permit or decal, which is valid until the amended taxi rank permit or decal is returned to the taxi rank permit holder.
- (4) A person who contravenes subsection (1)(c) or (2) commits an offence.

**91. Outstanding payment**

All outstanding payments must be paid before a taxi rank permit is issued.

**92. A taxi rank permit for partnership**

- (1) A taxi rank permit issued to a partnership must specify the full name of each of the partners and the type of business that is being carried on.
- (2) If a member of a partnership ceases to be a partner for any reason whatsoever during the year for which the taxi rank permit is valid, the remaining partner or partners may, on submitting proof that a new partnership has come into existence and on payment of the prescribed transfer fee, carry on the business or undertaking for the unexpired period of the taxi rank permit.
- (3) A partner contemplated in subsection (2) who does not submit proof, commits an offence.

**93. A taxi rank permit to be produced on demand**

- (1) The holder of a taxi rank permit in terms of this by-law must:
  - (a) maintain such taxi rank permit in a good and legible condition; and
  - (b) keep it in the motor vehicle to which it relates at all relevant times when such vehicle is being operated as a taxi.
- (2) Any authorized official of the municipality may call upon the driver of any taxi to stop and may demand from him-
  - (a) to produce the taxi rank permit required under the provisions of this by-law; and
  - (b) to supply his full name and address and also the name and address of the owner or operator of such taxi.
- (3) No driver referred to in subsection (2) may, when called upon to do so by any authorized officer-
  - (a) refuse to stop;
  - (b) refuse to supply his or her full name and address;
  - (c) refuse to supply the correct name and address of the owner or operator of the vehicle in his or her charge;
  - (d) refuse to produce a taxi rank permit; or
  - (e) give a false name or address.
- (4) A person who contravenes subsection (1) or (3) or who fails to supply the information contemplated in subsection (2) commits an offence.

**94. Suspension or withdrawal of a taxi rank permit**

- (1) Where the owner, taxi rank permit holder or person in charge of a taxi has been found guilty of contravening these by-laws, and irrespective of whether any other penalty by a court of law has been imposed, the municipality may, subject to the provisions of section 95 and after all the circumstances of the case have been taken into consideration, act in terms of subsection (2).
- (2) The municipality may, after taking all the circumstances of the case into consideration, suspend the taxi rank permit for a taxi for a period or withdraw the taxi rank permit if-
  - (a) the owner of the taxi does not-
    - (i) comply with an instruction issued in terms of these by-laws; or

- (ii) maintain the taxi at all times in a clean state and in sound running condition and repair; or
- (b) an authorized officer inspects the taxi and finds that the taxi-
  - (i) is constructed in such a way or is in such a condition that the taxi is unsafe for the number of passengers that it is authorized to carry; or
  - (ii) does not comply with the conditions specified in these by-laws or the Act or regulations.
- (3) No person may use a vehicle as a taxi at a taxi facility or allow one to be used as a taxi at a taxi facility if the vehicle's taxi rank permit has been suspended or withdrawn.
- (4) A person who contravenes subsection (3) commits an offence.

**95. Procedure for proposed suspension or withdrawal of a taxi rank permit**

- (1) A taxi rank permit may not be suspended or withdrawn unless:
  - (a) the municipality has given the taxi rank permit holder and any taxi association of which the taxi rank permit holder is a member, at least 14 days written notice by certified mail of the municipality's intention to suspend or withdraw the taxi rank permit, and such a notice must give-
    - (i) the reasons for the proposed action and an adequate statement setting out the nature of the action;
    - (ii) the gist of the matter which could be prejudicial to the taxi rank permit holder, together with an invitation to make representation on the matter;
    - (iii) an address for the submission of a representation as contemplated in subsection (2); and
    - (iv) the date, time and place of a hearing, which may not be less than 28 days from the date of the notice, to consider the suspension or withdrawal, and an indication that the taxi rank permit holder may submit representations and appear at the hearing; and
  - (b) the taxi rank permit holder is given an opportunity to, either personally or through his or her duly authorized representative, appear at a hearing and to make representations, before the municipality or a committee of the municipality.
- (2) If a taxi rank permit holder who has received a notice referred to in subsection (1) wishes to appear and to oppose the proposed action, he or she must, within 14 days of receiving the notice or within a further period that the municipality may allow, submit representations in writing by hand or by certified mail to the address indicated in the notice.
- (3) After the hearing referred to in subsection (1), the municipality must give a ruling on whether or not to suspend or withdraw the taxi rank permit and must give the taxi rank permit holder its reasons for the ruling in writing not later than 14 days after the date of the conclusion of the hearing.
- (4) A record of the proceedings at the hearing referred to in subsection (1) must include-
  - (a) the evidence given, if any;
  - (b) any objection made to any evidence received or submitted; and

(c) the ruling given at the hearing.

**96. Change of address**

- (1) The holder of a taxi rank permit must give notice to the municipality in writing of any change of address within 14 working days thereof by pre-paid registered post, telefax or hand delivery.
- (2) A person who contravenes subsection (1) commits an offence.

**97. Amendment of the particulars on a taxi rank permit**

- (1) If the particulars reflected on a taxi rank permit are incorrect by virtue of a change in such particulars or for any other reason, the holder of such taxi rank permit must submit the taxi rank permit to the municipality for the amendment thereof.
- (2) A person who contravenes subsection (1) commits an offence.

**Part 2: Taxi associations, taxi forums, and taxi facilities**

**98. Taxi forums**

- (1) The municipality may establish a taxi forum to make recommendations to it on matters relevant to the taxi industry in general.
- (2) A taxi association may become a member of the taxi forum.

**99. Classes of the taxi facilities**

The municipality may designate any taxi facility in the municipality as-

- (a) a special parking place, such as a taxi rank or a stand;
- (b) a taxi stopping place; or
- (c) a taxi holding area.

**100. Taxi parking**

- (1) A driver may, subject to subsection (2)-
  - (a) park a taxi at a special parking place or taxi holding area only; or
  - (b) ply for hire, or pick up or drop off passengers only at a special parking place or a taxi stopping place provided.
- (2) In emergencies or at recreational and other similar functions, the municipality may set aside temporary taxi facilities identified by the municipality as suitable for the parking and stopping of taxis.
- (3) A person who contravenes a provision of subsection (1), or who parks or stops a taxi at a place other than a temporary taxi facility contemplated in subsection (2) commits an offence.

**101. Use of taxi ranks**

- (1) A driver-
  - (a) may, subsection (3), park a taxi at the taxi rank specified on the taxi permit concerned, if space is available; and
  - (b) must, if no space is available, remove and park the taxi at a holding area in accordance with the provisions of section 82.
- (2) The driver must, when plying for hire at a taxi rank, do so in a queue and must-

- (a) position his or her taxi in the first vacant place available in the queue immediately behind any other taxi already in front; and
  - (b) move his or her taxi forward as the queue moves forward.
- (3) When plying for hire at a taxi rank, a driver-
- (a) of any taxi which occupies the first, second or third position from the front of any queue at a rank must be in close and constant attendance of his or her taxi so long as it remains in such a position;
  - (b) may not position his or her taxi ahead of any taxi that arrived and took up a position in the queue before he or she did; and
  - (c) may, if his or her taxi is the first taxi in the queue, and any person calls for a taxi, respond to the call, unless the person clearly indicates his or her preference for a taxi not in front of the queue.
- (4) No person may park or stop a taxi which is not in good working order as required by the Act or the regulations, in a taxi rank, or cause or permit the taxi to remain in a rank.
- (5) No person may park or stop any vehicle in a taxi rank except a taxi for which a taxi permit and decal, specifying the rank, have been issued for the year in question, as contemplated in Part 1 to this Chapter.
- (6) A person who contravenes a provision of this section commits an offence.

#### **102. Prohibition on parking of a taxi at stopping place**

No taxi driver may park a taxi at a stopping place, and a taxi driver who does so, commits an offence.

#### **103. Regulation and control of taxi facilities**

- (1) Subject to subsections (2) and (3), a recognized taxi association may appoint marshals at taxi facilities to perform the duties set out in subsections (4) and (5), however, if a taxi facility or a portion of it has been allocated exclusively to a particular taxi association, only that association may appoint marshals in respect of that particular taxi facility or portion of it.
- (2) In the case of a dispute about which taxi association is entitled to appoint a marshal or marshals at a particular taxi facility, the taxi forum must decide on the issue.
- (3) The duties of a marshal regarding passengers are:
- (a) to regulate the queuing of passengers according to the appropriate priority and route destination systems;
  - (b) to ensure the orderly loading of passengers into appropriate vehicles;
  - (c) to control the appropriate number of passengers per vehicle to prevent overloading and ensure a higher level of service to passengers and equal opportunities for drivers;
  - (d) to direct passengers and to provide information about the activities of the taxis operating at that facility or other taxi facilities; and
  - (e) to inform drivers about expected passenger demand and any other related matters.
- (4) The duties of a marshal regarding taxis are-

- (a) to control the arrival of taxis at taxi facilities and specifically at loading areas in accordance with the provisions of sections 82 and 101;
  - (b) to allow only taxi permit holders in respect of taxi facilities in and out of the facilities;
  - (c) to coordinate the movement of taxis between loading and holding areas;
  - (d) to control taxi departures according to loading patterns; and
  - (e) to direct taxis to a holding area and to redirect them to a rank.
- (5) The municipality may, after consultation with the taxi forum, lay down a code of conduct for marshals at taxi facilities and amend the code from time to time.
- (6) No person may act as a marshal at a taxi facility unless the taxi association concerned has appointed him or her in writing.
- (7) A person who contravenes subsection (6) commits an offence.

**104. Servicing and washing taxis at taxi facilities**

- (1) No person may repair or maintain any motor vehicle in any way whatsoever at a taxi facility.
- (2) No person may wash any motor vehicle at a taxi facility, except at a wash bay at the facility that has been specially constructed for this purpose.
- (3) A person who contravenes a provision of this section commits an offence.

**Part 3: General use and operation of taxis**

**105. Preventing engagement of a taxi**

- (1) No person may, by using force, intimidation, threats or by any other means, prevent or try to prevent-
  - (a) any person from obtaining or engaging a taxi; or
  - (b) the driver of a taxi from taking on passengers.
- (2) A person who contravenes a provision of subsection (1) commits an offence.

**106. Conveying dangerous or offensive articles in taxis**

- (1) A person who is in charge of any person or thing may not knowingly convey that other person or thing or allow that other person or thing to be conveyed in a taxi, whether or not the taxi has been engaged, if that other person or thing-
  - (a) is not permitted to be conveyed in terms of an existing law; or
  - (b) has obviously been exposed to or contaminated by an infectious or contagious disease as contemplated in the Act or the regulations.
- (2) A person who contravenes a provision of subsection (1) commits an offence.

**107. Disinfecting a taxi after conveying passengers with infectious or contagious diseases**

- (1) The owner, driver or person in charge of a taxi must take immediate steps to have the taxi disinfected as soon as it has come to his or her knowledge that there has been conveyed in the taxi-

- (a) a passenger suffering from an obvious infectious or contagious disease;
  - (b) the body of a person who has died of an obvious infectious or contagious disease; or
  - (c) anything that has been exposed to or contaminated with the infection of an obvious infectious or contagious disease.
- (2) The owner, driver or other person in charge of the taxi may not convey any passengers in the taxi until the taxi has been disinfected.
  - (3) The owner, driver or other person in charge of the taxi must notify, and carry out all instructions of a municipal official with regard to the disinfection of a taxi referred to in subsection (1).
  - (4) No person suffering from a contagious disease may enter any taxi.
  - (5) A person who contravenes a provision of this section commits an offence.

#### **108. Boarding and alighting of taxis**

- (1) No person may board a taxi until all persons desiring to alight from the taxi have done so.
- (2) No person may insist on boarding a taxi which contains the total number of passengers which it is authorized to carry.
- (3) No person may board or alight or attempt to board or alight from any taxi whilst the taxi is in motion.
- (4) A person who contravenes a provision of this section commits an offence.

#### **109. Queues at facilities**

- (1) At any established taxi rank facility, the municipality may erect or cause to be erected a queue sign that consists of a notice board indicating the location and the manner in which persons waiting to enter a taxi will stop and form a queue, and such a sign may be supplemented by queuing barriers in the form of rails or lines marked on the surface of the area to be demarcated for the purpose of queuing.
- (2) All passengers intending to enter any taxi at an established ranking facility or stopping place must queue from the point at which it is indicated that such vehicle will leave.
- (3) Where no queue sign has been erected, passengers waiting to enter a taxi, must form themselves into a queue not exceeding two abreast, or in a single file when required to do so by an approved taxi marshal or authorized official of the municipality.
- (4) A passenger may only enter a taxi when he or she gets to the front of the queue.
- (5) Every passenger queuing must comply with all the instructions given by an approved taxi marshal, authorized officer or authorized official when on duty.
- (6) A person who contravenes subsection (2), (3), (4) or (5) commits an offence.

#### **110. Payment of fares**

- (1) A passenger must pay the determined fare for the journey on request.
- (2) A person who contravenes subsection (1) commits an offence.

**111. Rights and duties of passengers when a taxi becomes defective**

- (1) If a taxi becomes defective or, for any reason whatsoever, is unable to proceed, the passenger must, at the request of the driver, alight from the defective taxi and should the passengers have already paid their fares, they are entitled to a refund to the amount of their fares so paid.
- (2) Upon agreement with the driver of the defective taxi, passengers are allowed to travel with the next available taxi for the remainder of the distance in respect of their paid fares, at the cost of the defective taxi's owner.
- (3) A driver who refuses to refund a passenger, as contemplated in subsection (1), or who refuses to allow a passenger to travel in the manner as contemplated in subsection (2) commits an offence.

**112. Animals**

- (1) No passenger may enter a taxi with any animals other than a guide dog assisting a blind person.
- (2) A person who contravenes subsection (1) commits an offence.

**113. Actions prohibited on a taxi**

- (1) The following actions are prohibited on a taxi:
  - (a) smoking;
  - (b) playing offensive or excessively loud music;
  - (c) using obscene or offensive language;
  - (d) committing an offensive act;
  - (e) interfering with the comfort of any passenger;
  - (f) damaging any taxi or the fittings thereof;
  - (g) interfering with the equipment of the taxi in any way;
  - (h) forcibly causing the driver to deviate from his route;
  - (i) endangering the life of another person; and
  - (j) interfering with the actions of the driver.
- (2) A person who contravenes a provision of subsection (1) commits an offence and shall, in addition to incurring the penalty provided for in this by-law, forfeit his or her fare and be removed from the taxi immediately.

**114. Behaviour prohibited at a taxi rank**

A person who causes a disturbance or behaves in a riotous or indecent manner commits an offence in terms of this by-law and may be removed from queue, taxi rank or the vicinity of a taxi facility by any authorized officer or authorized official of the municipality.

**Part 4: Metered taxis****115. Taximeters and display of identification**

- (1) No person operating a motor vehicle contemplated in paragraph (b) of the definition of "taxi" shall be issued with a taxi permit, contemplated in section 82, for a metered taxi unless and until a taximeter has been fitted to the vehicle.
- (2) No taximeter may be used until it has been tested and sealed by an examiner of vehicles.

- (3) No person may operate a metered taxi or allow one to be operated unless it is fitted with a tested and sealed taximeter that is in working order.
- (4) No person may seal a taximeter unless it registers a fare in accordance with the tariff published by the municipality.
- (5) The use of a separate indicator to indicate to the passenger the charge for extras is permitted on condition that this indicator is part of the taximeter.
- (6) No person may operate a metered taxi unless the taxi permit contemplated in subsection (1) is visibly displayed together with the operator's coloured photograph and printed initials, surname and identity number on laminated paper with dimensions of not less than 140mm x 200mm.
- (7) A person who contravenes a provision of this section commits an offence.

**116. Metered fares**

- (1) The fares to be charged in respect of metered taxi must be in accordance with the tariff published by the municipality.
- (2) No driver of a metered taxi may charge, demand or attempt to obtain from a passenger a fare lower or higher than the tariff published by the municipality.
- (3) A person who contravenes a provision of this section commits an offence.

**117. Tariffs to be displayed on taxis**

- (1) The driver of a metered taxi must affix a sign on the left front door of the taxi so that the tariffs are plainly visible to the passenger, and this sign must show in legible characters-
  - (a) the appropriate tariff of fares;
  - (b) the number of passengers the metered taxi is permitted to carry;
  - (c) the registration number of the metered taxi; and
  - (d) the relevant portion of the taxi permit (decal) reference number.
- (2) A person who contravenes a provision of subsection (1) commits an offence.

**118. Position of meter**

- (1) The taximeter must be-
  - (a) fitted on the inside of the taxi in such a position that the recorded fare is plainly visible at all times by a passenger occupying the rear seat; and
  - (b) illuminated after dark.
- (2) The driver of a metered taxi who contravenes a provision of subsection (1) commits an offence.

**119. Operation of meter**

- (1) Except as provided for in sections 120 and 121, the taximeter must be operated electronically or mechanically either solely from the gearbox or left front wheel of the taxi or from another portion of the mechanism of the taxi or that the municipality may approve.
- (2) The driver of a metered taxi must ensure that the taximeter correctly indicates to the passenger the fare that may be charged by the driver in accordance with the tariff published by the municipality.

- (3) The driver of a metered taxi who operates a taxi, the taximeter of which does not comply with subsection (1), or who contravenes subsection (2) commits an offence.

**120. Meter indicators**

- (1) The owner of a metered taxi must ensure that-
- (a) the taximeter has an indicator which-
    - (i) is incorporated in the taximeter or attached to it;
    - (ii) has the words "For hire" on it when the taxi is available for hire; and
    - (iii) may be hand-operated;
  - (b) the indicator of a taximeter has a-
    - (i) "Pay" or "For hire" position, denoting that the taximeter is not in operation;
    - (ii) "Hired" or recording position, denoting the recording by the taximeter of the fare by a combination of time and distance; and
    - (iii) "Time not recording" position or light, denoting that the clock mechanism is not recording.
- (2) An owner of a metered taxi who does not comply with a provision of subsection (1) commits an offence.

**121. Starting of meter**

- (1) The driver of a metered taxi must-
- (a) on arrival at the passenger's departure point, and not sooner, start the taximeter in the "Hired" position and, on termination of the hiring, immediately stop the taximeter from recording; and
  - (b) stop the taximeter from recording for the duration of a stoppage if the stoppage is not caused by traffic congestion, or by the action of the passenger, or at the request of the passenger.
- (2) A driver who contravenes a provision of subsection (1) commits an offence.

**122. Taxi called but not engaged**

- (1) A person who calls for or summons a metered taxi and who, on its arrival, fails to engage it, must pay the fare at the tariff published by the municipality for the distance from the stand, rank or place from which the metered taxi had been dispatched to the place which the person had called or summoned the metered taxi.
- (2) If a metered taxi is kept waiting through no fault of the driver before the driver is told that the taxi's services are not required, the person who called for or summoned the taxi must, in addition to the normal fare, pay the driver waiting at the tariff published by municipality.
- (3) A person who does not pay the driver as contemplated in subsection (1) and (2) commits an offence.

**123. Meter seals to be kept intact**

- (1) The owner of a metered taxi must, at all times, keep intact and undamaged all seals that were affixed to a taximeter by an examiner of vehicles or an approved organization.

- (2) If the seal or seals of a taximeter are accidentally broken or defaced, the driver of the taxi must immediately, before the taxi is used as passenger – carrying vehicle, apply to the Municipality or an organization approved by the municipality to replace or renew the seal or seals.
- (3) A person who contravenes a provision of this section commits an offence.

#### **124. Meter tolerances**

The tolerance to be allowed on all taximeters when tested is as follows;

- (a) Road Test: No tolerance in deficiency or over-registration is allowed, but if the vehicle's tyres are obviously worn, a tolerance in deficiency of 10 meters per kilometer and a tolerance in excess of 50 meters per kilometer are allowed.
- (b) Time Test: A tolerance in deficiency of one second per minute and a tolerance in excess of two seconds per minute are allowed.

#### **125. Interference with meter prohibited**

- (1) No person may, so as to cause the taximeter to register anything other than the true fare chargeable by the driver in accordance with the tariffs published by the municipality-
  - (a) destroy, break or tamper with the seal affixed to a taximeter by the examiner of vehicles or by an organization approved by the municipality; or
  - (b) adjust or interfere or tamper with a taximeter or a connection of a taximeter, or any tyre or fitting of a taxi.
- (2) No driver or owner of a taxi may allow the taxi to be used as passenger-carrying vehicle if-
  - (a) the taximeter affixed to it does not register the true fare; or
  - (b) the tyres fitted to the taxi are not the same size as those which were on the vehicle when the taximeter was tested and sealed.
- (3) The driver or owner of a metered taxi-
  - (a) must ensure that the taxi is fitted with a speedometer and an odometer, both of which are in good and proper working order, and that the odometer, subject to the provisions of subsection (1), reflects the true distance travelled; and
  - (b) may not operate or allow the taxi to be operated unless the speedometer fitted to it works properly.
- (4) A person who contravenes subsection (1), or a driver or owner who contravenes subsection (2) or (3) commits an offence.

#### **126. Meters liable to be tested at any time**

- (1) An authorized officer may by written notice instruct the owner or driver of a metered taxi to present the taxi concerned to an examiner of vehicles for examination and testing of the taximeter at a time and place specified in the notice.
- (2) An owner or driver who does not comply with an instruction as contemplated in subsection (1) commits an offence.

#### **127. Charge for testing meters**

The prescribed fees must be paid to the municipality for every taximeter tested by the municipality in terms of section 126.

**128. Meters may be condemned**

- (1) If a taximeter affixed to a metered taxi is found not to be in order and not working satisfactory, an examiner of vehicles may condemn the taximeter and remove the seal or mark placed on it in terms of section 123.
- (2) No person may use a condemned taximeter in a taxi until the taximeter has been retested, approved and sealed by an examiner of vehicles, and a person who does so commits an offence.

**129. Taxi signs for metered taxis**

- (1) A metered taxi that is operated within the municipality must be fitted with an illuminated roof sign in accordance with the requirement set out by the municipality in any Schedule to these by-laws.
- (2) The illuminated roof sign must be properly maintained at all times.
- (3) A person who operates a metered taxi in contravention of subsection (1) or who fails to maintain a roof sign as contemplated in subsection (2) commits an offence.

**Part 5: Bus facilities and permits, and operation of buses****130. Establishment of bus facilities**

The provisions of section 82(1), (2) and (3) apply, with the necessary changes, to buses, and "special parking places" must, in relation to buses, be read as "demarcated stopping places or stands for buses" as contemplated in section 133.

**131. Application and issue of bus permits, fees, display of decals, suspension and withdrawal of permit**

- (1) The provisions of section 83, 84, 85, 86, 89, 90, 91, 92, 94, and 95 apply, with the necessary changes, to buses.
- (2) Except for the buses provided for in subsection (3), a bus may not use a public transport facility within the municipal area, unless the bus displays the necessary decal.
- (3) A bus operator who transports passengers for reward and who owns more than 20 buses, but who uses fewer than 20 buses within the municipality for transporting passengers, must pay the permit fees due to the municipality for his or her buses according to the following formula:  
The bus operator's maximum number of buses which on any day of the year is used for the above purposes, train buses excluded (for individual permits and decals need to be obtained), multiplied by the prescribed permit fee payable per bus.
- (4) The permit fees for the number of buses referred to in the formula in subsection (3) are determined according to that bus of the operator which is certified to carry the largest number of passengers and which is normally used within the municipality, and the permit fees is not linked to any specific bus.
- (5) The bus operator must-
  - (a) provide an audited certificate of the number of buses referred to in the formula above, together with his or her application to the Municipality; and

- (b) each year after that, provide an audited certificate, together with any other documents that the Municipality may reasonably demand.
- (6) The owner of a bus who uses or allows to be used a bus in contravention of subsection (2) commits an offence.

### **132. General use and operation of buses**

The provisions of sections 105 to 107 apply, with the necessary changes, to buses.

### **133. Distinguishing of demarcated stops and stands for buses**

Each demarcated stopping place or stand must be distinguished by the appropriate traffic sign to indicate the type of bus or, where applicable, the name of the concern entitled to use the stopping place or stand.

### **134. Duty of driver to stop**

- (1) If a bus operating on a bus route for the purpose of conveying passengers is carrying less than the maximum number of passengers that the bus is lawfully entitled to carry, and the driver of the bus sees a person waiting at demarcated stopping place, apparently intending to get on the bus, the driver must, subject to subsection (2), stop the bus at the stopping place, as close as possible to the kerb or edge of the public road, in order to enable the person to get on.
- (2) The driver of a bus that has a notice that it is an “express”, “limited stop” or “special vehicle” is not required to stop until reaching the destination specified by the notice.
- (3) No driver of a bus may stop the bus to pick up a passenger at a place that is not a demarcated stopping place or stand.
- (4) A conductor (if there is one) of a bus may not allow a person to get on a bus, and no person may get on a bus, at any place that is not a demarcated stopping place or stand.
- (5) The driver of a bus who contravenes subsection (1), (3) or (4) and a person who contravenes subsection (4) commits an offence.

### **135. Boarding and alighting from bus and passing of a school bus**

- (1) The provisions of section 108(1), (2) and (3) apply, with the necessary changes, where a passenger intends to board or alight from a bus.
- (2) The operator of a vehicle may not pass a school bus that has stopped to load or offload learners and must remain stationary behind such bus until the bus continues its journey, unless the bus has stopped in a demarcated place, leaving the road open for travel.
- (3) Any person who contravenes a provision of this section commits an offence.

### **136. Parking at stopping places for buses and destination signs**

- (1) No driver or person in charge of a bus may park the bus at any stopping place on the route or allow the bus to be parked at any stopping place.
- (2) A driver or person in charge of a bus must ensure that a destination sign is displayed in the bus.
- (3) A driver or a person in charge of a bus who contravenes a provision of this section commits an offence.

## Part 6: Enforcement

### 137. Permit to be produced on demand

- (1) The holder of a permit must-
  - (a) maintain the permit in a good and legible condition; and
  - (b) keep the permit in the motor vehicle to which it relates at all relevant times when the vehicle is being operated as a taxi or bus.
- (2) A traffic officer may call on the driver of a taxi or bus to stop and may demand that he or she-
  - (a) produce the permit; and
  - (b) give his or her full name and address and also the name and address of the owner of the taxi or bus.
- (3) A driver referred to in subsection (2) commits an offence if he or she -
  - (a) fails or refuses to stop;
  - (b) fails or refuses to give his or her full name and address;
  - (c) fails or refuses to give the correct name and address of the owner of the vehicle in his or her charge;
  - (d) gives a false name or address; or
  - (e) fails or refuses to produce a permit.

### 138. Unauthorized handing over or abandonment of bus or taxi

- (1) No driver of a taxi or bus may-
  - (a) abandon his or her vehicle; or
  - (b) allow any other person to drive the taxi or bus under his or her control without the consent of the holder of the public road transportation permit concerned.
- (2) A driver who contravenes a provision of subsection (1) commits an offence.

### 139. Enforcement of right of entry

- (1) An authorized officer may, in enforcing the provisions of this Chapter, at any reasonable time and without prior notice-
  - (a) enter a taxi or bus facility to inspect the facility; and
  - (b) make enquires from a person connected with the facility.
- (2) A person who interferes with an officer in the exercise of his or her power as contemplated in subsection (1) commits an offence.

## Part 7: Miscellaneous provisions

### 140. Change of address of permit holder

- (1) If the permit holder changes his or her address during the currency of the permit, he or she must notify the municipality in writing of the new address not later than seven days after the change of address, and this notice must be delivered by hand, facsimile machine or certified mail.
- (2) A permit holder who contravenes a provision of subsection (1) commits an offence.

**141. Property left in passenger-carrying vehicles**

- (1) The driver of a passenger-carrying vehicle must carefully examine the vehicle after a trip, and if a passenger has left behind any property in the vehicle, the driver must-
  - (a) deliver that property to the person who left it behind; or
  - (b) if he or she is unable to deliver that property to the person who left it behind, take the property, as soon as possible, to the lost property office of his or her employer or to the nearest police station and deposit it with the officer on duty and obtain a receipt for it.
- (2) A driver who contravenes a provision of subsection (1) commits an offence.

**CHAPTER 6: MISCELLANEOUS PROVISIONS****142. Obeying and interfering with an officer**

- (1) An authorized official may direct all traffic by means of visible or audible signals, and no person may disobey such signals.
- (2) No person may obstruct, hinder, abuse, or interfere with any authorized official in the exercise of the powers in terms of these by-laws.
- (3) A person who contravenes a provision of subsection (1) or (2) commits an offence.

**143. Appeal**

- (1) A person whose rights are affected by a decision made under these by-laws may appeal against that decision 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 consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.
- (3) When the appeal is against a decision taken by-
  - (a) a staff member other than the Municipal Manager, the Municipal Manager is the appeal authority; or
  - (b) the Municipal Manager, the Executive Mayoral Committee is the appeal authority;
- (4) The appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable time.

**144. Compliance notices and the recovery of costs**

- (1) Notwithstanding any other provisions of this by-law, the municipality may-
  - (a) where the permission of the municipality is required before a person may perform a certain action or build or erect anything, and such permission has not been obtained; and
  - (b) where any provision of this by-law is contravened under circumstances in which the contravention may be terminated by the removal of any structure, object, material or substance,serve a written notice on the owner of the premises or the offender, as the case may be, to terminate such contravention, or to remove the structure, object, material or substance, or to take such other steps as the

municipality may require to rectify such contravention within the period stated in such notice.

- (2) Any person who fails to comply with a notice in terms of subsection (1) commits an offence, and the municipality may, without prejudice to its powers to take action against the offender, take the necessary steps to implement such notice at the expense of the owner of the premises or the offender, as the case may be.

#### 145. Presumptions

- (1) For the purpose of these by-laws, the person in whose name a vehicle which is parked in a parking ground is licensed, is deemed to be the person having control or charge of the vehicle, unless and until he or she adduces evidence to the contrary.
- (2) Any motor vehicle which is found on a taxi or bus facility or that has stopped at a taxi or bus facility is presumed to be plying for hire, unless the contrary is proved.
- (3)
  - (a) Where in any prosecution in terms of the common law relating to the driving of a vehicle on a public road, or in terms of these by-laws it is necessary to prove who was the driver of such vehicle, it is presumed, in the absence of evidence to the contrary, that such vehicle was driven by the owner thereof.
  - (b) Whenever a vehicle is parked in contravention of any provision of these by-laws, it shall be presumed, in the absence of evidence to the contrary, that such vehicle was parked by the owner thereof.
  - (c) For the purposes of these by-laws it is presumed, in the absence of evidence to the contrary, that, where the owner of the vehicle concerned is a corporate body, such vehicle was driven or parked by a director or servant of the corporate body in the exercise of his or her powers or in the carrying out of his or her duties as such director or servant, or in furthering, or endeavouring to further interests of the corporative body.
- (4) In any prosecution in terms of these by-laws, the fact that any person purports to act or has purported to act as a traffic officer or peace officer is *prima facie* proof of his or her appointment and authority so to act, however, this section does not apply to a prosecution on a charge for impersonation.
- (5) Any person, who, by means of any motor vehicle, conveys passengers will be presumed to have conveyed such passengers for hire or reward, and such vehicle shall be presumed to be a taxi unless the contrary is proved.
- (6) A document which purports to be a receipt of prepaid registered post, a telefax transmission report or a signed acknowledgement of hand delivery, will on submission by a person being prosecuted under this by-law, be admissible in evidence and *prima facie* proof that it is such receipt, transmission report or acknowledgement.

#### 146. Penalties

A person who has committed an offence in terms of these by-laws is, on conviction, and subject to penalties prescribed in any other law, liable to a fine, or in default of payment, to imprisonment, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment, and in the case of a

successive or continuing offence, to a fine for every day such offence continues, or in default of payment thereof, to imprisonment.

**147. Saving and transitional provision**

A person on whose premises any fence contemplated in section 28 (1) is erected, is allowed a period of 12 calendar months from the date of commencement of these by-laws to make the necessary structural arrangements to comply with section 28(1).

**148. Repeal 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.

**149. Short title and commencement**

These by-laws are called the Thulamela Municipality By-laws for Roads, Traffic and Safety, and come into operation upon publication in the Provincial Gazette.

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# **THE SPATIAL PLANNING AND LAND USE MANAGEMENT BY-LAWS LIMPOPO**

## ARRANGEMENT OF SECTIONS

## CHAPTER 1

## DEFINITIONS, APPLICABILITY AND CONFLICT OF LAWS

## Sections

- 1 Definitions
- 2 Application of By-Law
- 3 Conflict of laws

## CHAPTER 2

## MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK

- 4 Municipal spatial development framework
- 5 Contents of municipal spatial development framework
- 6 Intention to prepare, amend or review municipal spatial development framework
- 7 Institutional framework for preparation, amendment or review of municipal spatial development framework
- 8 Preparation, amendment or review of municipal spatial development framework
- 9 Public participation
- 10 Local spatial development framework
- 11 Compilation, amendment or review of local spatial development framework
- 12 Effect of local spatial development framework
- 13 Record of and access to municipal spatial development framework
- 14 Deviation from municipal spatial development framework

## CHAPTER 3

## LAND USE SCHEME

- 15 Applicability of Act
- 16 Purpose of land use scheme
- 17 General matters pertaining to land use scheme
- 18 Development of draft land use scheme
- 19 Council approval for publication of draft land use scheme
- 20 Public participation
- 21 Incorporation of relevant comments
- 22 Preparation of land use scheme
- 23 Submission of land use scheme to Council for approval and adoption
- 24 Publication of notice of adoption and approval of land use scheme
- 25 Submission to Member of Executive Council
- 26 Records
- 27 Contents of land use scheme
- 28 Land use scheme register
- 29 Replacement and consolidation of amendment scheme

## CHAPTER 4

## INSTITUTIONAL STRUCTURE FOR LAND DEVELOPEMNT AND LAND USE MANAGEMENT

## DECISIONS

## Part A: Division of Functions

- 30 Division of functions between Municipal Planning Tribunal and Land Development Officer

## Part B: Assessment to establish Municipal Planning Tribunal

- 31 Municipal assessment prior to establishment of Municipal Planning Tribunal

## Part C: Establishment of Municipal Planning Tribunal for Local Municipal Area

- 32 Establishment of Municipal Planning Tribunal for local municipal area
- 33 Composition of Municipal Planning Tribunal for local municipal area
- 34 Nomination procedure
- 35 Submission of nomination
- 36 Initial screening of nomination by Municipality
- 37 Evaluation panel

- 38 Appointment of member to Municipal Planning Tribunal by Council  
 39 Term of office and conditions of service of members of Municipal Planning Tribunal for municipal area  
 40 Vacancy  
 41 Proceedings of Municipal Planning Tribunal for municipal area  
 42 Tribunal of record  
 43 Commencement date of operations of Municipal Planning Tribunal  
     Part D: Establishment of Joint Municipal Planning Tribunal
- 44 Agreement to establish joint Municipal Planning Tribunal  
 45 Status of decision of joint Municipal Planning Tribunal  
 46 Applicability of Part C, F and G to joint Municipal Planning Tribunal  
     Part E: Establishment of District Municipal Planning Tribunal
- 47 Agreement to establish district Municipal Planning Tribunal  
 48 Composition of district Municipal Planning Tribunals  
 49 Status of decision of district Municipal Planning Tribunal  
 50 Applicability of Part C, F and G to district Municipal Planning Tribunal  
     Part F: Decisions of Municipal Planning Tribunal
- 51 General criteria for consideration and determination of application by Municipal Planning Tribunal  
 52 Conditions of approval  
     Part G: Administrative Arrangements
- 53 Administrator for Municipal Planning Tribunal for municipal area

## CHAPTER 5

### DEVELOPMENT MANAGEMENT

#### Part A: Categories of Applications

- 54 Categories of land use and land development applications  
 55 Application for land development required  
     Part B: Establishment of Township or Extension of Boundaries of Township
- 56 Application for establishment of township  
 57 Division or phasing of township  
 58 Lodging of layout plan for approval with the Surveyor-General.  
 59 Compliance with pre-proclamation conditions  
 60 Opening of Township Register  
 61 Proclamation of an approved township.  
     Part C: Rezoning of land
- 62 Application for amendment of a land use scheme by rezoning of land  
     Part D: Removal, Amendment or Suspension of a Restrictive or Obsolete Condition, Servitude or  
     Reservation Registered Against the Title of the Land
- 63 Requirements for amendment, suspension or removal of restrictive conditions or obsolete condition,  
 servitude or reservation registered against the title of the land  
 64 Endorsements in connection with amendment, suspension or removal of restrictive conditions  
     Part E: Subdivision and Consolidation
- 65 Application for subdivision  
 66 Confirmation of subdivision  
 67 Lapsing of subdivision and extension of validity periods  
 68 Amendment or cancellation of subdivision plan  
 69 Exemption of subdivisions and consolidations  
 70 Services arising from subdivision  
 71 Consolidation of land units  
 72 Lapsing of consolidation and extension of validity periods

## Part F: Permanent Closure of Public

73 Closure of public places

## Part G: Consent Use

74 Application for consent use

## Part H: Traditional Use

75 Application for traditional use

## Part I: Temporary Use

76 Application for temporary use

## Part J: General Matters

77 Ownership of public places and land required for municipal engineering services and social facilities

78 Restriction of transfer and registration

79 First transfer

80 Certification by Municipality

81 National and Provincial Interest

## CHAPTER 6

## APPLICATION PROCEDURES

82 Applicability of Chapter

83 Procedures for making application

84 Information required

85 Application fees

86 Grounds for refusing to accept application

87 Receipt of application and request for further documents

88 Additional information

89 Confirmation of complete application

90 Withdrawal of application

91 Notice of applications in terms of integrated procedures

92 Notification of application in media

93 Serving of notices

94 Content of notice

95 Additional methods of public notice

96 Requirements for petitions

97 Requirements for objections, comments or representations

98 Amendments prior to approval

99 Further public notice

100 Cost of notice

101 Applicant's right to reply

102 Written assessment of application

103 Decision-making period

104 Failure to act within time period

105 Powers to conduct routine inspections

106 Determination of application

107 Notification of decision

108 Duties of agent of applicant

109 Errors and omissions

110 Withdrawal of approval

111 Procedure to withdraw an approval

112 Exemptions to facilitate expedited procedures

## CHAPTER 7

## ENGINEERING SERVICES AND DEVELOPMENT CHARGES

## Part A: Provision and Installation of Engineering Services

113 Responsibility for providing engineering services

114 Installation of engineering services

115 Engineering services agreement

- 116 Abandonment or lapsing of land development application
- 117 Internal and external engineering services
  - Part B: Development Charges
- 118 Payment of development charge
- 119 Offset of development charge
- 120 Payment of development charge in instalments
- 121 Refund of development charge
- 122 General matters relating to contribution charges

## CHAPTER 8

### APPEAL

#### PART A: MANAGEMENT OF AN APPEAL AUTHORITY

- 123 Presiding officer of appeal authority
- 124 Bias and disclosure of interest
- 125 Registrar of appeal authority
- 126 Powers and duties of registrar

#### PART B: APPEAL PROCESS

- 127 Commencing of appeal
- 128 Notice of appeal
- 129 Notice to oppose an appeal
- 130 Screening of appeal

#### PART C: PARTIES TO AN APPEAL

- 131 Parties to appeal
- 132 Intervention by Minister or MEC
- 133 Intervention by interested person

#### PART D: JURISDICTION OF APPEAL AUTHORITY

- 134 Jurisdiction of appeal authority
- 135 Appeal hearing by appeal authority
- 136 Written hearing by appeal authority
- 137 Oral hearing by appeal authority
- 138 Representation before appeal authority
- 139 Opportunity to make submissions concerning evidence

#### PART E: HEARINGS OF APPEAL AUTHORITY

- 140 Notification of date, time and place of hearing
- 141 Hearing date
- 142 Adjournment
- 143 Urgency and condonation
- 144 Withdrawal of appeal

#### PART F: ORAL HEARING PROCEDURE

- 145 Location of oral hearing
- 146 Presentation of each party's case
- 147 Witnesses
- 148 Proceeding in absence of party
- 149 Recording
- 150 Oaths
- 151 Additional documentation

#### PART G: WRITTEN HEARING PROCEDURE

- 152 Commencement of written hearing
- 153 Presentation of each party's case in written hearing
- 154 Extension of time

155 Adjudication of written submissions

PART H: DECISION OF APPEAL AUTHORITY

156 Further information or advice

157 Decision of appeal authority

158 Notification of decision

159 Directives to Municipality

PART I: GENERAL

160 Expenditure

CHAPTER 9

COMPLIANCE AND ENFORCEMENT

161 Enforcement

162 Offences and penalties

163 Service of compliance notice

164 Content of compliance notices

165 Objections to compliance notice

166 Failure to comply with compliance notice

167 Urgent matters

168 Subsequent application for authorisation of activity

169 Power of entry for enforcement purposes

170 Power and functions of authorised employee

171 Warrant of entry for enforcement purposes

172 Regard to decency and order

173 Court order

CHAPTER 10

TRANSITIONAL PROVISIONS

174 Transitional provisions

175 Determination of zoning

CHAPTER 11

GENERAL

176 Delegations

177 Repeal of by-laws

178 Short title and commencement

## CHAPTER 1 DEFINITIONS, APPLICABILITY AND CONFLICT OF LAWS

### 1 Definitions

In these By-Laws, unless the context indicates otherwise, a word or expression defined in the Act or provincial legislation has the same meaning as in these By-laws and -

“**Act**” means the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013);

“**appeal authority**” means the executive authority of the municipality or any other body or institution outside of the municipality authorised by that municipality to assume the obligations of an appeal authority for purposes of appeals lodged in terms of the Act;

“**approved township**” means a township declared an approved township in terms of section 61;

“**By-Laws**” mean these By-Laws and includes the schedules and forms attached hereto or referred to herein.

“**communal land**” means land under the jurisdiction of a traditional council determined in terms of section 6 of the Limpopo Traditional Leadership and Governance Act, (*Insert number and year*) and which was at any time vested in -

- (a) the government of the South African Development Trust established by section 4 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936), or
- (b) the government of any area for which a legislative assembly was established in terms of the Self-Governing Territories Constitution Act, 1971 (Act No. 21 of 1971);

“**consent**” means a land use right that may be obtained by way of consent from the municipality and is specified as such in the land use scheme;

“**consolidation**” means the joining of two or more pieces of land into a single entity;

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**Council**” means the municipal council of the Municipality;

“**diagram**” means a diagram as defined in the Land Survey Act, 1997 (Act No. 8 of 1997);

“**deeds registry**” means a deeds registry as defined in section 102 of the Deeds Registries Act, 1937 (Act No. 47 of 1937);

“**file**” means the lodgement of a document with the appeal authority of the municipality;

“**land**” means -

- (a) any erf, agricultural holding or farm portion, and includes any improvements or building on the land and any real right in land, and
- (b) the area of communal land to which a household holds an informal right recognized in terms of the customary law applicable in the area where the land to which such right is held is situated and which right is held with the consent of, and adversely to, the registered owner of the land;

“**land development area**” means an erf or the land which is delineated in a land development application submitted in terms of this By-law or any other legislation governing the change in land use and “land area” has a similar meaning;

“**Land Development Officer**” means an official who may consider and determine applications as contemplated in section 35(2) of the Act;

“**land use scheme**” means the land use scheme adopted and approved in terms of Chapter 3 and for the purpose of these By-laws include an existing scheme until such time as the existing scheme is replaced by the adopted and approved land use scheme.

“**Member of the Executive Council**” means the Member of the Executive Council responsible for local government in the Province;

“**municipal area**” means the area of jurisdiction of the (*insert the name of the local municipality*) in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);

“**Municipal Manager**” means the person appointed as the (*insert the name of the local municipality*) Municipal Manager in terms of appointed in terms of section 54A of the Municipal Systems Act and includes any person acting in that position or to whom authority has been delegated;

“**Municipal Planning Tribunal**” means the \_\_\_\_\_ Municipal Planning Tribunal established in terms of section 32;

“**Municipality**” means the Municipality of (*insert the name of the local municipality*) or its successor in title as envisaged in section 155(1) of the Constitution, established by Notice No (*insert number and year*) in terms of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998) and for the purposes of this By-law includes an employee or official acting in terms of a delegation issued under section 59 of the Municipal Systems Act;

“**objector**” means a person who has lodged an objection with the Municipality to a draft municipal spatial development framework, draft land use scheme or a land development and land use application;

“**Premier**” means the Premier of the Province of Limpopo;

“**previous planning legislation**” means any planning legislation that is repealed by the Act or the provincial legislation;

“**provincial legislation**” means legislation contemplated in section 10 of the Act promulgated by the Province;

“**Province**” means the Province of Limpopo referred to in section 103 of the Constitution;

“**Regulations**” means the Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters, 2015;

“**service provider**” means a person lawfully appointed by a municipality or other organ of state to carry out, manage or implement any service, work or function on behalf of or by the direction of such municipality or organ of state;

“**spatial development framework**” means the *(insert the name of the local municipality)* Spatial Development Framework;

“**subdivision**” means the division of a piece of land into two or more portions;

“**the 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, 2015 and any subsidiary legislation or other legal instruments issued in terms thereof;

“**township register**” means an approved subdivision register of a township in terms of the Deeds Registries Act;

“**traditional communities**” means communities recognised in terms of section 3 of the Limpopo Traditional Leadership and Governance Act, *(insert number and year)*.

## **2 Application of By-law**

(1) This By-law applies to all land within the geographical area of the Municipality, including land owned by the state.

(2) This By-law binds every owner and their successor-in-title and every user of land, including the state.

## **3 Conflict of laws**

(1) The provisions of the By-law is subject to the relevant provisions of the Act and the provincial legislation.

(2) When considering an apparent conflict between this By-law and another law, a court must prefer any reasonable interpretation that avoids a conflict over any alternative interpretation that results in a conflict.

(3) Where a provision of this By-law is in conflict with a provision of the Act or provincial legislation, the Municipality must institute the conflict resolution measures provided for in the Act or in provincial legislation, or in the absence of such measures, the measures provided for in the Intergovernmental Relations Framework Act, 2005 (Act No.13 of 2005); to resolve the conflict and until such time as the conflict is resolved, the provisions of this By-law shall prevail.

(4) Where a provision of the land use scheme is in conflict with the provisions of this By-law, the provisions of this By-law shall prevail.

(5) Where there is a conflict between this By-law and another By-law of the Municipality, this By-Law prevails over the affected provision of the other By-law in respect of any municipal planning matter.

## CHAPTER 2

### MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK

#### 4 Municipal spatial development framework

(1) The Municipality must draft a municipal spatial development framework in accordance with the provisions of sections 20 and 21 of the Act read with sections 23 to 35 of the Municipal Systems Act.

(2) A municipal spatial development framework does not confer or take away land use rights but guides and informs decisions to be made by the Municipality relating to land development.

(3) The provisions of this Chapter apply, with the necessary change, to the review or amendment of a municipal spatial development framework.

#### 5 Contents of municipal spatial development framework

(1) A municipal spatial development framework must provide for the matters contemplated in section 21 of the Act, section 26 of the Municipal Systems Act and provincial legislation, if any, and the Municipality may for purposes of reaching its constitutional objectives include any matter which it may deem necessary for municipal planning.

(2) Over and above the matters required in terms of subsection (1), the Municipality may determine any further plans, policies and instruments by virtue of which the municipal spatial development framework must be applied, interpreted and implemented.

(3) A municipal spatial development framework must make provision for transitional arrangements with regard to the manner in which the municipal spatial development framework is to be implemented by the Municipality.

#### 6 Intention to prepare, amend or review municipal spatial development framework

A Municipality which intends to prepare, amend or review its municipal spatial development framework -

- (a) may convene an intergovernmental steering committee and a project committee in accordance with section 7;
- (b) must publish a notice in two of the official languages of the Province most spoken in the municipal area of the Municipality of its intention to prepare, amend or review the municipal spatial development framework and the process to be followed in accordance with section 28(3) of the Municipal Systems Act in two newspapers circulating in the area concerned;
- (c) must inform the Member of the Executive Council in writing of -
  - (i) its intention to prepare, amend or review the municipal spatial development framework;
  - (ii) the process that will be followed in the drafting or amendment of the municipal spatial development framework including the process for public participation; and
- (e) must register relevant stakeholders who must be invited to comment on the draft municipal spatial development framework or draft amendment of the municipal spatial development framework as part of the process to be followed.

## **7 Institutional framework for preparation, amendment or review of municipal spatial development framework**

(1) The purpose of the intergovernmental steering committee contemplated in section 6(a) is to co-ordinate the applicable contributions into the municipal spatial development framework and to-

- (a) provide technical knowledge and expertise;
- (b) provide input on outstanding information that is required to draft the municipal spatial development framework or an amendment or review thereof;
- (c) communicate any current or planned projects that have an impact on the municipal area;
- (d) provide information on the locality of projects and budgetary allocations; and
- (e) provide written comment to the project committee at each of various phases of the process.

(2) The Municipality must, before commencement of the preparation, amendment or review of the municipal spatial development framework, in writing, invite nominations for representatives to serve on the intergovernmental steering committee from—

- (a) departments in the national, provincial and local sphere of government, other organs of state, community representatives, engineering services providers, traditional councils; and
- (b) any other body or person that may assist in providing information and technical advice on the content of the municipal spatial development framework.

(3) The purpose of the project committee contemplated in section 6(a) is to –

- (a) prepare, amend or review the municipal spatial development framework for adoption by the Council;
- (b) provide technical knowledge and expertise;
- (c) monitor progress and ensure that the drafting municipal spatial development framework or amendment of the municipal spatial development framework is progressing according to the approved process plan;
- (d) guide the public participation process, including ensuring that the registered key public sector stakeholders remain informed;
- (e) ensure alignment of the municipal spatial development framework with the development plans and strategies of other affected municipalities and organs of state as contemplated in section 24(1) of the Municipal Systems Act;
- (f) facilitate the integration of other sector plans into the municipal spatial development framework;
- (g) oversee the incorporation of amendments to the draft municipal spatial development framework or draft amendment or review of the municipal spatial development framework to address comments obtained during the process of drafting thereof;
- (i) if the Municipality decides to establish an intergovernmental steering committee—

- (i) assist the Municipality in ensuring that the intergovernmental steering committee is established and that timeframes are adhered to; and
  - (ii) ensure the flow of information between the project committee and the intergovernmental steering committee.
- (4) The project committee consists of –
- (a) the Municipal Manager;
  - (b) municipal employees from at least the following municipal departments:
    - (i) the integrated development planning office;
    - (ii) the planning department;
    - (iii) the engineering department;
    - (iv) the local economic development department; and
    - (v) the human settlement department.

## **8 Preparation, amendment or review of municipal spatial development framework**

(1) The project committee must compile a status quo document setting out an assessment of existing levels of development and development challenges in the municipal area and must submit it to the intergovernmental steering committee for comment.

(2) After consideration of the comments of the intergovernmental steering committee, the project committee must finalise the status quo document and submit it to the Council for adoption.

(3) The project committee must prepare a first draft of the municipal spatial development framework or first draft amendment or review of the municipal spatial development framework and must submit it to the intergovernmental steering committee for comment.

(4) After consideration of the comments of the intergovernmental steering committee, the project committee must finalise the first draft of the municipal spatial development framework or first draft amendment or review of the municipal spatial development framework and submit it to the Council, together with the report referred to in subsection (5), to approve the publication of a notice referred to in section 6(4) that the draft municipal spatial development framework or an amendment or review thereof is available for public comment.

(5) The project committee must submit a written report as contemplated in subsection (4) which must at least —

- (a) indicate the rationale in the approach to the drafting of the municipal spatial development framework;
- (b) summarise the process of drafting the municipal spatial development framework;
- (c) summarise the consultation process to be followed with reference to section 9 of this By-law;

- (d) indicate the involvement of the intergovernmental steering committee, if convened by the Municipality;
- (e) indicate the departments that were engaged in the drafting of the municipal spatial development framework;
- (f) the alignment with the national and provincial spatial development frameworks;
- (g) any sector plans that may have an impact on the municipal spatial development framework;
- (h) indicate how the municipal spatial development framework complies with the requirements of relevant national and provincial legislation, and relevant provisions of strategies adopted by the Council; and
- (i) recommend the adoption of the municipal spatial development framework for public participation as the draft municipal spatial development framework for the Municipality, in terms of the relevant legislation and this By-law.

(6) After consideration of the comments and representations, as a result of the publication contemplated in subsection (4), the project committee must compile a final municipal spatial development framework or final amendment or review of the municipal spatial development framework for adoption by the Council.

(7) If the final municipal spatial development framework or final amendment or review of the municipal spatial development framework, as contemplated in subsection (6), is materially different to what was published in terms of subsection (4), the Municipality must follow a further consultation and public participation process before it is adopted by the Council.

(8) The Council must adopt the final municipal spatial development framework or final amendment or review of the municipal spatial development framework, with or without amendments, and must within 14 days of its decision give notice of its adoption in the media and the Provincial Gazette.

(9) If no intergovernmental steering committee is convened by the Municipality, the project committee submits the draft and final municipal spatial development framework or amendment or review thereof directly to the Council.

## **9 Public participation**

(1) Public participation undertaken by the Municipality must contain and comply with all the essential elements of any notices to be placed in terms of the Act or the Municipal Systems Act.

(2) In addition to the publication of notices in the *Provincial Gazette* and newspapers as required in terms of this Chapter, the Municipality may use any other method of communication it may deem appropriate

(3) The Municipality may for purposes of public engagement on the content of the draft municipal spatial development framework arrange -

- (a) specific consultations with professional bodies, ward communities or other groups; and
- (b) public meetings.

(4) The notice contemplated in section 8(4) must specifically state that any person or body wishing to

provide comments shall-

- (a) do so within a period of 60 days from the first day of publication of the notice;
- (b) provide written comments; and
- (c) provide their contact details as specified in the definition of contact details.

#### **10 Local spatial development framework**

(1) The Municipality may adopt a local spatial development framework for a specific geographical area of a portion of the municipal area.

(2) The purpose of a local spatial development framework is to:

- (a) provide detailed spatial planning guidelines or further plans for a specific geographic area or parts of specific geographical areas and may include precinct plans;
- (b) provide more detail in respect of a proposal provided for in the municipal spatial development framework or necessary to give effect to the municipal spatial development framework and or its integrated development plan and other relevant sector plans;
- (c) address specific land use planning needs of a specified geographic area;
- (d) provide detailed policy and development parameters for land use planning;
- (e) provide detailed priorities in relation to land use planning and, in so far as they are linked to land use planning, biodiversity and environmental issues; or
- (f) guide decision making on land development applications;
- (g) or any other relevant provision that will give effect to its duty to manage municipal planning in the context of its constitutional obligations.

#### **11 Compilation, amendment or review of local spatial development framework**

(1) If the Municipality prepares, amends or reviews a local spatial development framework, it must draft and approve a process plan, including public participation processes to be followed for the compilation, amendment, review or adoption of a local spatial development framework.

(2) The municipality must, within 21 days of adopting a local spatial development framework or an amendment of local spatial development framework, publish a notice of the decision in the media and the Provincial Gazette.

#### **12 Effect of local spatial development framework**

(1) A local spatial development framework or an amendment thereof comes into operation on the date of publication of the notice contemplated in section 8(2).

(2) A local spatial development framework guides and informs decisions made by the Municipality relating to land development, but it does not confer or take away rights.

#### **13 Record of and access to municipal spatial development framework**

(1) The Municipality must keep, maintain and make accessible to the public, including on the

Municipality's website, the approved municipal or local spatial development framework and or any component thereof applicable within the jurisdiction of the Municipality.

(2) Should anybody or person request a copy of the municipal or local spatial development framework the Municipality must provide on payment by such body or person of the prescribed fee, a copy to them of the approved municipal spatial development framework or any component thereof.

#### **14 Deviation from municipal spatial development framework**

(1) For purposes of section 22(2) of the Act, site specific circumstances include –

- (a) a deviation that does not materially change the municipal spatial development framework;
- (b) .....
- (c) .....

(2) If the effect of an approval of an application will be a material change of the municipal spatial development framework, the Municipality may amend the municipal spatial development framework in terms of the provisions of this Chapter, prior to taking a decision which constitutes a deviation from the municipal spatial development framework.

### **CHAPTER 3 LAND USE SCHEME**

#### **15 Applicability of Act**

Sections 24 to 30 of the Act apply to any land use scheme developed, prepared, adopted and amended by the Municipality.

#### **16 Purpose of land use scheme**

In addition to the purposes of a land use scheme stipulated in section 25(1) of the Act, the Municipality must determine the use and development of land within the municipal area to which it relates in order to promote -

- (a) harmonious and compatible land use patterns;
- (b) aesthetic considerations;
- (c) sustainable development and densification; and
- (d) the accommodation of cultural customs and practices of traditional communities in land use management.

**17 General matters pertaining to land use scheme**

- (1) In order to comply with section 24(1) of the Act, the Municipality must -
  - (a) develop a draft land use scheme as contemplated in section 18;
  - (b) obtain Council approval for publication of the draft land use scheme as contemplated in section 19;
  - (c) embark on the necessary public participation process as contemplated in section 20;
  - (d) incorporate relevant comments received during the public participation process as contemplated in section 21;
  - (e) prepare the land use scheme as contemplated in section 22;
  - (f) submit the land use scheme to the Council for approval and adoption as contemplated in section 23;
  - (g) publish a notice of the adoption and approval of the land use scheme in the Provincial Gazette as contemplated in section 24; and
  - (h) submit the land use scheme to the Member of the Executive Council as contemplated in section 25.
- (2) The Municipality may, on its own initiative or on application, create an overlay zone for land.
- (3) Zoning may be made applicable to a land unit or part thereof and zoning need not follow cadastral boundaries.
- (4) The land use scheme of the Municipality must take into consideration:
  - (a) the Integrated Development Plan in terms of the Municipal Systems Act;
  - (b) the Spatial Development Framework as contemplated in Chapter 4 of the Act and Chapter 2 of this By-law, and
  - (c) provincial legislation.

**18 Development of draft land use scheme**

- (1) Before the Municipality commences with the development of a draft land use scheme, the Council must take resolve to develop and prepare a land use scheme, provided that in its resolution the Council must:
  - (a) adopt a process for drafting the land use scheme which complies with the Act, provincial legislation, this Chapter and any other applicable legislation;
  - (b) confirm over and above that which is contained in the applicable legislation the public participation to be followed;

- (c) determine the form and content of the land use scheme;
- (d) determine the scale and whether it should be available in an electronic media;
- (e) determine any other relevant issue that will impact on the drafting and final adoption of the land use scheme which will allow for it to be interpreted and or implemented; and
- (f) confirm the manner in which the land use scheme shall inter alia set out the general provisions for land uses applicable to all land, categories of land use, zoning maps, restrictions, prohibitions and or any other provision that may be relevant to the management of land use, which may or may not require a consent or permission from the Municipality for purposes of the use of land.

(2) After the resolution is taken by the Council, the department responsible for spatial planning and land use management in the Municipality must develop the draft land use scheme in accordance with the provisions of the Act, provincial legislation and this Chapter.

#### **19 Council approval for publication of draft land use scheme**

(1) Upon completion of the draft land use scheme, the department responsible for development planning in the Municipality must submit it to the Council for approval as the draft land use scheme.

(2) The submission of the draft land use scheme to the Council must be accompanied by a written report from the department responsible for development planning in the Municipality and the report must at least –

- (a) indicate the rationale in the approach to the drafting of the land use scheme;
- (b) summarise the process of drafting the draft land use scheme;
- (c) summarise the consultation process to be followed with reference to section 20 of this By-law;
- (d) indicate the departments that were engaged in the drafting of the draft land use scheme;
- (e) indicate how the draft land use scheme complies with the requirements of relevant national and provincial legislation, and relevant mechanism controlling and managing land use rights by the Municipal Council;
- (f) recommend the approval of the draft land use scheme for public participation in terms of the relevant legislation and this By-law.

(3) The Council must approve the draft land use scheme and authorise the public participation thereof in terms of this By-law and the relevant legislation referred to in section 15.

## 20 Public participation

(1) The public participation process must contain and comply with all the essential elements of any notices to be placed in terms of this By-law and in the event of an amendment of the land use scheme, the matters contemplated in section 28 of the Act.

(2) Without detracting from the provisions of subsection (1) above the Municipality must -

- (a) publish a notice in the Provincial Gazette once a week for two consecutive weeks; and
- (b) publish a notice in two local newspapers that is circulated in the municipal area of the municipality in two languages commonly spoken in the area, once a week for two consecutive weeks; and
- (c) use any other method of communication it may deem appropriate and the notice contemplated in subparagraph (b) must specifically state that any person or body wishing to provide comments and or objections shall:
  - (i) do so within a period of 60 days from the first day of publication of the notice; and
  - (ii) provide written comments; and
  - (iii) provide their contact details as specified in the definition of contact details.

(3) The Municipality may for purposes of public engagement arrange -

- (a) specific consultations with professional bodies, ward communities or other groups; and
- (b) public meetings.

(4) The Municipality must inform the Member of the Executive Council in writing of the intention to draft a land use scheme and provide him or her with a copy of the draft land use scheme after it has been approved by the Council as contemplated in section 18.

## 21 Incorporation of relevant comments

(1) After the public participation process outlined in section 20 the department responsible for development planning in the Municipality must –

- (a) review and consider all submissions made in writing or during any engagements; and
- (b) prepare a report including all information they deem relevant, on the submissions made; provided that:
  - (i) for purposes of reviewing and considering all submissions made, the Municipal Manager may elect to hear the submission through an oral hearing process;
  - (ii) all persons and or bodies that made submissions shall be notified of the time, date and place of the hearing as may be determined by the Municipality not less than 30 days prior to the date determined for the hearing, by means of registered mail;
  - (iii) for purposes of the consideration of the submissions made on the land use scheme the Municipality may at any time prior to the submission of the land use scheme to the Council, request further information or elaboration on the submissions made from any person or body.

(2) The department responsible for development planning in the Municipality must for purposes of proper consideration provide comments on the submissions made which comments must form part of the documentation to be submitted to the Council as contemplated in section 8.

## **22 Preparation of land use scheme**

The department responsible for development planning in the Municipality must, where required and based on the submissions made during public participation, make final amendments to the draft land use scheme, provided that; if such amendments are in the opinion of the Municipality materially different to what was published in terms of section 19(2), the Municipality must follow a further consultation and public participation process in terms of section 19(2) of this By-law, before the land use scheme is adopted by the Council.

## **23 Submission of land use scheme to Council for approval and adoption**

(1) The department responsible for development planning in the Municipality must submit the proposed land use scheme and all relevant supporting documentation to the Council with a recommendation for adoption.

(2) The Council must consider and adopt the land use scheme with or without amendments.

## **24 Publication of notice of adoption and approval of land use scheme**

(1) The Council must, within 60 days of its decision referred to in section 22, give notice of its decision to all persons or bodies who gave submissions on the land use scheme, and publish such notice in the media and the *Provincial Gazette*.

(2) The date of publication of the notice referred to in subsection (1), in the *Provincial Gazette*, is the date of coming into operation of the land use scheme unless the notice indicates a different date of coming into operation.

## **25 Submission to Member of Executive Council**

After the land use scheme is published in terms of section 24 the Municipality must submit the approved land use scheme to the Member of the Executive Council for cognisance.

## **26 Records**

(1) The Municipality may in hard copy and an electronic media and or data base keep record of the land use rights in relation to each erf or portion of land and which information shall be regarded as part of its land use scheme.

(2) The Municipality must keep, maintain and make accessible to the public, including on the Municipality's website, the approved land use scheme and or any component thereof applicable within the municipal area of the Municipality.

(3) Should anybody or person request a copy of the approved land use scheme, the Municipality must provide on payment by such body or person of the prescribed fee, a copy to them of the approved land use scheme or any component thereof: Provided that if the Municipality is of the opinion that in order to provide the said copy it will take officials unreasonably away from their substantive duties such request for a copy can be dealt with in terms of the Promotion of Access to Information Act, 2000.

## **27 Contents of land use scheme**

(1) The contents of a land use scheme developed and prepared by the Municipality must include all the essential elements contemplated in Chapter 5 of the Act and provincial legislation and must contain –

- (a) a zoning for all properties within the geographic area of the Municipality in accordance with a category of zoning as contemplated in Annexure 1 of this By-law;
- (b) land use regulations including specific conditions, limitations, provisions or prohibitions relating to the exercising of any land use rights or zoning approved on a property in terms of the approved land use scheme or any amendment scheme, consent, permission or conditions of approval of a land development application on a property;
- (c) provisions for public participation that may be required for purposes of any consent, permission or relaxation in terms of an approved land use scheme;
- (d) provisions relating to the provision of engineering services, which provisions must specifically state that land use rights may only be exercised if engineering services can be provided to the property to the satisfaction of the Municipality;
- (e) servitudes for municipal services and access arrangements for all properties;
- (f) provisions applicable to all properties relating to storm water;
- (g) provisions for the construction and maintenance of engineering services including but not limited to bodies established through the approval of land development applications to undertake such construction and maintenance;
- (h) zoning maps as prescribed in Schedule X that depicts the zoning of every property in Municipality's geographical area as updated from time to time in line with the land use rights approved or granted; and
- (i) transitional arrangements with regard to the manner in which the land use scheme is to be implemented.

(2) The land use scheme may –

- (a) determine the components of the land use scheme for purposes of it being applied, interpreted and implemented; and
- (b) include any matter which it deems necessary for municipal planning in terms of the constitutional powers, functions and duties of a municipality; and

**28 Land use scheme register**

The Municipality must keep and maintain a land use scheme register in a hard copy and electronic format as approved by the Council and may contain the following but is not limited to:

- (a) Date of application
- (b) Name and contact details of applicant
- (c) Type of Application
- (d) Township/Farm name
- (e) Erf or farm number
- (f) Portion / Remainder
- (g) Property Description
- (h) Existing Zoning
- (i) Square Metres Granted
- (j) Density
- (k) FAR
- (l) Height (storeys/meters)
- (m) Coverage
- (n) Building Line
- (o) Parking Requirements
- (p) Amendment scheme no
- (q) Annexure Number
- (r) Item No
- (s) Item Date
- (t) Decision (Approved/Not Approved)
- (u) Decision Date

**29 Replacement and consolidation of amendment scheme**

(1) The Municipality may of its own accord in order to replace or consolidate an amendment scheme or several amendment schemes, map(s), annexure(s) or schedule(s) of the approved land use scheme, of more than one property, prepare a certified copy of documentation as the Municipality may require, for purposes of replacing or consolidating the said amendment scheme(s), which consolidated or replacement amendment scheme shall from the date of the signing thereof, be in operation; provided that:

- (a) such replacement and consolidation shall not take away any land use rights granted in terms of an approved land use scheme, for purposes of implementation of the land use rights and may include a provision for consolidation of property for purposes of consolidating land use schemes; provided that if a consolidation is required, the Municipality only do so after consultation with the owner(s).
- (b) after the Municipality has signed and certified a consolidation or replacement amendment scheme, it must publish it in the *Provincial Gazette*.

(2) Where as a result of a repealed legislation, the demarcation of municipal boundaries or defunct processes it is necessary in the opinion of the Municipality for certain areas where land use rights are governed through a process, other than a land use scheme; the Municipality may for purposes of including such land use rights into a land use scheme prepare an amendment scheme and incorporate it into the land use scheme.

(3) The provisions of sections 15 to 28 apply, with the necessary changes, to the review or amendment of an existing land use scheme other than a rezoning or similar application relating to a property or properties or multiple portions thereof, which in the opinion of the Municipality is dealt with as a land development application.

## CHAPTER 4

### INSTITUTIONAL STRUCTURE FOR LAND USE MANAGEMENT DECISIONS

#### Part A: Division of Functions

#### **30 Division of functions between Municipal Planning Tribunal and Land Development Officer**

(1) For purposes of section 35(3) of the Act, the following categories of applications defined in section 54 of these By-laws must be considered and determined -

- (a) by the Municipal Planning Tribunal:
  - (i) All category 1 applications; and
  - (ii) all opposed category 2, 3 and 4(a) applications;
- (b) by the Land Development Officer:
  - (i) All category 2 applications that are not opposed;
  - (ii) all category 4(b) applications

(2) For the purposes of subsection (1), an opposed application means an application on which negative comments or objections were received after the public participation process from persons, internal municipal departments, ward councillors, service providers and organs of state.

#### Part B: Assessment to establish Municipal Planning Tribunal

#### **31 Municipal assessment prior to establishment of Municipal Planning Tribunal**

- (1) The decision of a municipality to –
  - (a) establish a joint Municipal Planning Tribunal as contemplated in section 34(1) of the Act; or
  - (b) agree to the establishment of a Municipal Planning Tribunal by a district municipality as contemplated in section 34(2) of the Act; or
  - (c) establish a Municipal Planning Tribunal for its municipal area,

must be preceded by an assessment of the factors referred to in subregulation (2).

- (2) The assessment referred to in subregulation (1) includes, amongst others, the following factors -
  - (a) the impact of the Act on the municipality's financial, administrative and professional capacity;
  - (b) the ability of the municipality to effectively implement the provisions of the Act;
  - (c) the average number of applications dealt with by the municipality annually in terms of existing planning legislation; and
  - (d) the development pressures in the municipal area.

### **Part C: Establishment of Municipal Planning Tribunal for Local Municipal Area**

#### **32 Establishment of Municipal Planning Tribunal for local municipal area**

(1) Subject to the provisions of Part D and E of this Chapter, the \_\_\_\_\_ Municipal Planning Tribunal is hereby established for the municipal area of (*insert name of municipality*), in compliance with section 35 of the Act.

(2) The provisions of subsection (1) do not apply if, after the assessment contemplated in section 31, the municipality decides to establish a joint Municipal Planning Tribunal or a district Municipal Planning Tribunal.

#### **33 Composition of Municipal Planning Tribunal for local municipal area**

- (1) The Municipal Planning Tribunal consists of at least 13 members made up as follows
  - (a) three officials in the full-time service of the Municipality;
  - (b) two persons registered as a professional with the South African Council for the Planning Profession in terms of the Planning Profession Act, 2002 (Act No. 36 of 2002);
  - (c) two persons registered as a professional with the Engineering Council of South Africa in terms of the Engineering Profession Act, 2000 (Act No. 46 of 2000);
  - (d) two persons with financial experience relevant to land development and land use and who is registered with a recognised voluntary association or registered in terms of the Auditing Profession Act, 2005 (Act No. 26 of 2005);
  - (e) two persons either admitted as an attorney in terms of the Attorneys Act, 1979 (Act No. 53 of 1979) or admitted as advocate of the Supreme Court in terms of the Admission of Advocates Act, 1964 (Act No. 74 of 1964);
  - (f) an environmental assessment practitioner registered with a voluntary association; and
  - (g) any other person who has knowledge and experience of spatial planning, land use management and land development or the law related thereto.

(2) The officials referred to in subsection (1)(a) must have at least five years' experience in the field in which they are performing their services.

- (3) The persons referred to in subsection (1)(b) to (g) must –
- (a) demonstrate knowledge of spatial planning, land use management and land development of the law related thereto;
  - (b) have at least five years' practical experience in the discipline within which they are registered or in the case of a person referred to in subsection (1)(g) in the discipline in which he or she is practising;
  - (c) demonstrate leadership in his or her profession or vocation or in community organisations.

### 34 Nomination procedure

- (1) The Municipality must -
- (a) in the case of the first appointment of members to the Municipal Planning Tribunal, invite and call for nominations as contemplated in Part B of Chapter 2 of the Regulations as soon as possible after the approval of the Regulations by the Minister; and
  - (b) in the case of the subsequent appointment of members to the Municipal Planning Tribunal, 90 days before the expiry of the term of office of the members serving on the Municipal Planning Tribunal, invite and call for nominations as contemplated in Part B of the Regulations.

(2) The invitation to the organs of state and non-governmental organisations contemplated in regulation 3(2)(a) of the Regulations must be addressed to the organs of state and non-governmental organisations and must be in the form contemplated in Schedule X together with any other information deemed necessary by the Municipality.

(3) The call for nominations to persons in their individual capacity contemplated in regulation 3(2)(b) of the Regulations must be in the form contemplated in Schedule X and –

- (a) must be published in one local newspaper that is circulated in the municipal area of the Municipality in two languages commonly spoken in the area;
- (b) may be submitted to the various professional bodies which registers persons referred to in section 33(1) with a request to distribute the call for nominations to their members and to advertise it on their respective websites;
- (c) may advertise the call for nominations on the municipal website; and
- (d) utilise any other method and media it deems necessary to advertise the call for nominations.

### 35 Submission of nomination

- (1) The nomination must be in writing and be addressed to the Municipal Manager.
- (2) The nomination must consist of –
- (a) the completed declaration contained in the form contemplated in Schedule X and all pertinent information must be provided within the space provided on the form;

- (b) the completed declaration of interest form contemplated in Schedule X;
- (c) the motivation by the nominator contemplated in subsection (3)(a); and
- (d) the summarised curriculum vitae of the nominee contemplated in subsection (3)(b).

(3) In addition to the requirements for the call for nominations contemplated in regulation 3(6) of the Regulations, the nomination must request –

- (a) a motivation by the nominator for the appointment of the nominee to the Municipal Planning Tribunal which motivation must not be less than 50 words or more than 250 words; and
- (b) a summarised curriculum vitae of the nominee not exceeding two A4 pages.

### **36 Initial screening of nomination by Municipality**

(1) After the expiry date for nominations the Municipality must screen all of the nominations received by it to determine whether the nominations comply with the provisions of section 35.

(2) The nominations that are incomplete or do not comply with the provisions of section 35 must be rejected by the Municipality.

(3) Every nomination that is complete and that complies with the provisions of section 35 must be subjected to verification by the Municipality.

(4) If, after the verification of the information by the Municipality, the nominee is ineligible for appointment due to the fact that he or she –

- (a) was not duly nominated;
- (b) is disqualified from appointment as contemplated in section 38 of the Act;
- (c) does not possess the knowledge or experience as required in terms of section 33(3); or
- (d) is not registered with the professional councils or voluntary bodies contemplated in section 33(1), if applicable,

the nomination must be rejected and may not be considered by the evaluation panel contemplated in section 36.

(5) Every nomination that has been verified by the Municipality and the nominee found to be eligible for appointment to the Municipal Planning Tribunal, must be considered by the evaluation panel contemplated in section 37.

(6) The screening and verification process contained in this section must be completed within 30 days from the expiry date for nominations.

### **37 Evaluation panel**

(1) The evaluation panel contemplated in regulation 3(1)(g) read with regulation 3(11) of the Regulations, consists of five officials in the employ of the Municipality appointed by the Municipal Manager.

(2) The evaluation panel must evaluate all nominations within 30 days of receipt of the verified nominations and must submit a report with their recommendations to the Council for consideration.

**38 Appointment of members to Municipal Planning Tribunal by Council**

- (1) Upon receipt of the report, the Council must consider the recommendations made by the evaluation panel and thereafter appoint the members to the Municipal Planning Tribunal.
- (2) After appointment of the members to the Municipal Planning Tribunal, the Council must designate a chairperson and a deputy chairperson from the members so appointed.
- (3) The Municipal Manager must, in writing, notify the members of their appointment to the Municipal Planning Tribunal and, in addition, to the two members who are designated as chairperson and deputy chairperson, indicate that they have been appointed as such.
- (4) The Municipal Manager must, when he or she publishes the notice of the commencement date of the operations of the first Municipal Planning Tribunal contemplated in section 43, publish the names of the members of the Municipal Planning Tribunal and their term office in the same notice.

**39 Term of office and conditions of service of members of Municipal Planning Tribunal for municipal area**

- (1) A member of the Municipal Planning Tribunal appointed in terms of this Chapter is appointed for a term of five years, which is renewable once for a further period of five years.
- (2) The office of a member becomes vacant if that member -
  - (a) is absent from two consecutive meetings of the Municipal Planning Tribunal without the leave of the chairperson of the Municipal Planning Tribunal;
  - (b) tenders his or her resignation in writing to the chairperson of the Municipal Planning Tribunal;
  - (c) is removed from the Municipal Planning Tribunal under subsection (3); or
  - (d) dies.
- (3) The Council may remove a member of the Municipal Planning Tribunal if -
  - (a) sufficient reasons exist for his or her removal;
  - (b) a member contravenes the code of conduct contemplated in Schedule X;
  - (c) a member becomes subject to a disqualification as contemplated in section 38(1) of the Act.after giving the member an opportunity to be heard.
- (4) An official of a municipality contemplated in section 32(2)(a) who serves on the Municipal Planning Tribunal -
  - (a) may only serve as member of the Municipal Planning Tribunal for as long as he or she is in the full-time employ of the municipality;
  - (b) is bound by the conditions of service determined in his or her contract of employment and is not entitled to additional remuneration, allowances, leave or sick leave or any other employee benefit as a result of his or her membership on the Municipal Planning Tribunal;

- (c) who is found guilty of misconduct under the collective agreement applicable to employees of the Municipality shall immediately be disqualified from serving on the Municipal Planning Tribunal.

(5) A person appointed by a municipality in terms of section 32(2)(b) to (g) to the Municipal Planning Tribunal -

- (a) is not an employee on the staff establishment of that municipality;
- (b) if that person is an employee of an organ of state as contemplated in regulation 3(2)(a) of the Regulations, is bound by the conditions of service determined in his or her contract of employment and is not entitled to additional remuneration, allowances, leave or sick leave or any other employee benefit as a result of his or her membership on the Municipal Planning Tribunal;
- (c) performs the specific tasks allocated by the chairperson of the Municipal Planning Tribunal to him or her for a decision hearing of the Municipal Planning Tribunal ;
- (d) sits at such meetings of the Municipal Planning Tribunal that requires his or her relevant knowledge and experience as determined by the chairperson of the Municipal Planning Tribunal;
- (e) in the case of a person referred to in regulation 3(2)(b) of the Regulations is entitled to a seating and travel allowance for each meeting of the Municipal Planning Tribunal that he or she sits on determined annually by the municipality in accordance with the Act;
- (f) is not entitled to paid overtime, annual leave, sick leave, maternity leave, family responsibility leave, study leave, special leave, performance bonus, medical scheme contribution by municipality, pension, motor vehicle or any other benefit which a municipal employee is entitled to.

(6) All members of the Municipal Planning Tribunal shall sign the Code of Conduct contain in Schedule X before taking up a seat on the Municipal Planning Tribunal.

(7) All members serving on the Municipal Planning Tribunal shall adhere to ethics adopted and applied by the Municipality and shall conduct themselves in a manner that will not bring the name of the Municipality into disrepute.

(8) The members of the Municipal Planning Tribunal in the execution of their duties shall comply with the provisions of the Act, provincial legislation, these By-laws and the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

#### **40 Vacancy**

(1) A vacancy on the Municipal Planning Tribunal must be filled by the Council in terms of section 33(2).

(2) A member who is appointed by virtue of subsection (1) holds office for the unexpired portion of the period for which the member he or she replaces was appointed.

#### 41 Proceedings of Municipal Planning Tribunal for municipal area

(1) The Municipal Planning Tribunal must operate in accordance with the operational procedures determined by the Municipality.

(2) A quorum for a meeting of the Municipal Planning Tribunal or its committees is a majority of the members appointed for that decision meeting.

(3) Decisions of the Municipal Planning Tribunal are taken by resolution of a majority of all the members present at a meeting of Municipal Planning Tribunal, and in the event of an equality of votes on any matter, the person presiding at the meeting in question will have a deciding vote in addition to his or her deliberative vote as a member of the Municipal Planning Tribunal.

(4) Meetings of the Municipal Planning Tribunal must be held at the times and places determined by the chairperson of the Municipal Planning Tribunal in accordance with the operational procedures of the Municipal Planning Tribunal but meetings must be held at least once per month, if there are applications to consider.

(5) The chairperson may arrange multiple Municipal Planning Tribunal meetings on the same day constituted from different members of the Municipal Planning Tribunal and must designate a presiding officer for each of the meetings.

#### 42 Tribunal of record

(1) The Municipal Planning Tribunal is a Tribunal of record and must record all proceedings, but is not obliged to provide the in -committee discussions to any member of the public or any person or body.

(2) The Municipality must make the record of the Municipal Planning Tribunal available to any person upon payment of any fees prescribed in terms of the Municipal Systems Act.

#### 43 Commencement date of operations of Municipal Planning Tribunal for local municipal area

(1) The Municipal Manager must within 30 days of the first appointment of members to the Municipal Planning Tribunal -

(a) obtain written confirmation from the Council that it is satisfied that the Municipal Planning Tribunal is in a position to commence its operations; and

(b) after receipt of the confirmation referred to in paragraph (a) publish a notice in the *Provincial Gazette* of the date that the Municipal Planning Tribunal will commence with its operation together with the information contemplated in section 38(4).

(2) The Municipal Planning Tribunal may only commence its operations after publication of the notice contemplated in subsection (1).

### Part D: Establishment of Joint Municipal Planning Tribunal

#### 44 Agreement to establish joint Municipal Planning Tribunal

(1) If, after the assessment contemplated in section 31, the Municipality decides to establish a joint Municipal Planning Tribunal, it must, as soon as possible, commence discussions with the other Municipalities that have indicated that they would be party to a joint Municipal Planning Tribunal.

(2) The parties to the discussion contemplated in subsection (1) must, as soon as practicable, conclude an agreement that complies with the requirements of the Act.

(3) The Municipality must, within 30 days after signing the agreement, publish the agreement as contemplated in section 34(3) of the Act.

#### **45 Status of decision of joint Municipal Planning Tribunal**

A decision of a joint Municipal Planning Tribunal is binding on both the applicant and the Municipality in whose area of jurisdiction the land relating to the land development application is located as if that decision was taken by a Municipal Planning Tribunal for a local municipal area.

#### **46 Applicability of Part C, F and G to joint Municipal Planning Tribunal**

The provisions of Part C, Part F and G apply, with the necessary changes, to a joint Municipal Planning Tribunal.

### **Part E: Establishment of District Municipal Planning Tribunal**

#### **47 Agreement to establish district Municipal Planning Tribunal**

(1) If requested by a district municipality and after the assessment contemplated in section 31, the Municipality decides to establish a district Municipal Planning Tribunal, it must, as soon as possible, commence discussions with the other Municipalities in the district and conclude the necessary agreement that complies with the requirements of the Act.

(2) The Municipality must, within 30 days after signing the agreement, publish the agreement as contemplated in section 34(3) of the Act.

#### **48 Composition of district Municipal Planning Tribunals**

(1) A district Municipal Planning Tribunal must consist of -

- (a) at least one official of each participating municipality in the full-time service of the municipalities; and
- (b) persons who are not municipal officials and who have knowledge and experience of spatial planning, land use management and land development or the law related thereto appointed from a list of service providers maintained by the district municipality to serve on the district Municipal Planning Tribunal.

(2) No municipal councillor of a participating municipality may be appointed as a member of a district Municipal Planning Tribunal.

#### **49 Status of decision of district Municipal Planning Tribunal**

A decision of a district Municipal Planning Tribunal is binding on both the applicant and the Municipality in whose area of jurisdiction the land relating to the land development application is located as if that decision was taken by a Municipal Planning Tribunal for a local municipal area.

#### **50 Applicability of Part C, F and G to district Municipal Planning Tribunal**

The provisions of Part C, Part F and Part G apply, with the necessary changes, to a joint Municipal Planning Tribunal.

**Part F: Decisions of Municipal Planning Tribunal****51 General criteria for consideration and determination of application by Municipal Planning Tribunal**

- (1) When the Municipal Planning Tribunal considers an application it must have regard to the following:
  - (a) the application submitted in terms of this By-law;
  - (b) the procedure followed in processing the application;
  - (c) the desirability of the proposed utilisation of land and any guidelines issued by the member of the Executive Council regarding proposed land uses;
  - (d) the comments in response to the notice of the application and the comments received from organs of state and internal departments;
  - (e) the response by the applicant to the comments referred to in paragraph (d);
  - (f) investigations carried out in terms of other laws which are relevant to the consideration of the application;
  - (g) a written assessment by a professional planner registered in terms of the Planning Profession Act, 2002, in respect of the following applications:
    - (i) a rezoning;
    - (ii) a subdivision of more than 20 cadastral units;
    - (iii) a removal, suspension or amendment of a restrictive condition, if it relates to a change of land use.
    - (iv) an amendment, deletion or additional conditions in respect of an existing approval, listed in this paragraph;
    - (v) an approval of an overlay zone as provided in the land use scheme;
    - (vi) a phasing, amendment or cancellation of a plan of subdivision or a part thereof;
    - (vii) a determination of a zoning as contemplated in section 175;
    - (viii) a closure of a public place or part thereof;
  - (h) the integrated development plan and municipal spatial development framework;
  - (i) the applicable local spatial development frameworks adopted by the Municipality;
  - (j) the applicable structure plans;
  - (k) the applicable policies of the Municipality that guide decision-making;
  - (l) the provincial spatial development framework;
  - (m) where applicable, the regional spatial development framework;

- (n) the policies, principles, planning and development norms and criteria set by national and provincial government;
- (o) the matters referred to in section 42 of the Act;
- (p) the relevant provisions of the land use scheme.

(2) A municipality must approve a site development plan submitted to the Municipality for approval in terms of applicable development parameters or conditions of approval if the site development plan—

- (a) is consistent with the development rules of the zoning;
- (b) is consistent with the development rules of the overlay zone;
- (c) complies with the conditions of approval; and
- (d) complies with this By-law.

(3) When a site development plan is required in terms of development parameters or conditions of approval—

- (a) the municipality may not approve a building plan if the site development plan has not been approved; and
- (b) the municipality may not approve a building plan that is inconsistent with the approved site development plan.

## **52 Conditions of approval**

(1) When the Municipal Planning Tribunal approves an application subject to conditions, the conditions must be reasonable conditions and must arise from the approval of the proposed utilisation of land.

(2) Conditions imposed in accordance with subsection (1) may include conditions relating to—

- (a) the provision of engineering services and infrastructure;
- (b) the cession of land or the payment of money;
- (c) the provision of land needed for public places or the payment of money in lieu of the provision of land for that purpose;
- (d) the extent of land to be ceded to the Municipality for the purpose of a public open space or road as determined in accordance with a policy adopted by the Municipality;
- (e) settlement restructuring;
- (f) agricultural or heritage resource conservation;
- (g) biodiversity conservation and management;
- (h) the provision of housing with the assistance of a state subsidy, social facilities or social infrastructure;
- (i) energy efficiency;
- (j) requirements aimed at addressing climate change;

- (k) the establishment of an owners' association in respect of the approval of a subdivision;
- (l) the provision of land needed by other organs of state;
- (m) the endorsement in terms of section 31 of the Deeds Registries Act in respect of public places where the ownership thereof vests in the municipality or the registration of public places in the name of the municipality, and the transfer of ownership to the municipality of land needed for other public purposes;
- (n) the implementation of a subdivision in phases;
- (o) requirements of other organs of state.
- (p) the submission of a construction management plan to manage the impact of a new building on the surrounding properties or on the environment;
- (q) agreements to be entered into in respect of certain conditions;
- (r) the phasing of a development, including lapsing clauses relating to such phasing;
- (s) the delimitation of development parameters or land uses that are set for a particular zoning;
- (t) the setting of validity periods, if the Municipality determined a shorter validity period as contemplated in this By-law;
- (u) the setting of dates by which particular conditions must be met;
- (v) requirements relating to engineering services as contemplated in Chapter 7;
- (w) requirements for an occasional use that must specifically include –
  - (i) parking and the number of ablution facilities required;
  - (ii) maximum duration or occurrence of the occasional use; and
  - (iii) parameters relating to a consent use in terms of the land use scheme;

(3) If a Municipal Planning Tribunal imposes a condition contemplated in subsection (2)(a), an engineering services agreement must be concluded between the municipality and the owner of the land concerned before the construction of infrastructure commences on the land.

(4) A condition contemplated in subsection (2)(b) may require only a proportional contribution to municipal public expenditure according to the normal need therefor arising from the approval, as determined by the municipality in accordance with norms and standards, as may be prescribed.

(5) Municipal public expenditure contemplated in subsection (3) includes but is not limited to municipal public expenditure for municipal service infrastructure and amenities relating to—

- (a) community facilities, including play equipment, street furniture, crèches, clinics, sports fields, indoor sports facilities or community halls;

- (b) conservation purposes;
- (c) energy conservation;
- (d) climate change; or
- (e) engineering services.

(6) Except for land needed for public places or internal engineering services, any additional land required by the municipality or other organs of state arising from an approved subdivision must be acquired subject to applicable laws that provide for the acquisition or expropriation of land.

(7) A Municipal Planning Tribunal may not approve a land development or land use application subject to a condition that approval in terms of other legislation is required.

(8) Conditions which require a standard to be met must specifically refer to an approved or published standard.

(9) No conditions may be imposed which affect a third party or which are reliant on a third party for fulfilment.

(10) If the Municipal Planning Tribunal approves a land development or use application subject to conditions, it must specify which conditions must be complied with before the sale, development or transfer of the land.

(11) The Municipal Planning Tribunal may, on its own initiative or on application, amend, delete or impose additional conditions after due notice to the owner and any persons whose rights may be affected.

### **Part G: Administrative Arrangements**

#### **53 Administrator for Municipal Planning Tribunal for municipal area**

(1) The Municipal Manager must designate an employee as the administrator for the Municipal Planning Tribunal.

(2) The person referred to in subsection (1) must—

- (a) liaise with the relevant Municipal Planning Tribunal members and the parties in relation to any application or other proceedings filed with the Municipal Planning Tribunal;
- (b) maintain a diary of hearings of the Municipal Planning Tribunal;
- (c) allocate meeting dates and application numbers to applications;
- (d) arrange the attendance of meetings by members of the Municipal Planning Tribunal;
- (e) arrange venues for Municipal Planning Tribunal meetings;
- (f) administer the proceedings of the Municipal Planning Tribunal;
- (g) perform the administrative functions in connection with the proceedings of the Municipal Planning Tribunal;

- (h) ensure the efficient administration of the proceedings of the Municipal Planning Tribunal, in accordance with the directions of the chairperson of the Municipal Planning Tribunal;
- (i) arrange the affairs of the Municipal Planning Tribunal so as to ensure that time is available to liaise with other authorities regarding the alignment of integrated applications and authorisations;
- (j) notify parties of orders and directives given by the Municipal Planning Tribunal;
- (k) keep a record of all applications submitted to the Municipal Planning Tribunal and the outcome of each, including—
  - (i) decisions of the Municipal Planning Tribunal;
  - (ii) on-site inspections and any matter recorded as a result thereof;
  - (iii) reasons for decisions; and
  - (iv) proceedings of the Municipal Planning Tribunal; and
- (l) keep records by any means as the Municipal Planning Tribunal may deem expedient.

## CHAPTER 5

### DEVELOPMENT MANAGEMENT

#### Part A: Categories of Applications

#### 54 Categories of land use and land development applications

(1) The categories of land development and land use management for the Municipality, as contemplated in section 35(3) of the Act, are as follows -

- (a) Category 1: Land Development Applications;
  - (b) Category 2: Land Use Applications;
  - (c) Category 3: Traditional Use Applications; and
  - (d) Category 4: Temporary Use Applications.
- (2) Land development applications are applications for -
- (a) the establishment of a township or the extension of the boundaries of a township;
  - (b) the amendment of an existing scheme or land use scheme by the rezoning of land;
  - (c) subject to subsection (3), the removal, amendment or suspension of a restrictive or obsolete condition, servitude or reservation registered against the title of the land;
  - (d) the amendment or cancellation in whole or in part of a general plan of a township;

- (e) the subdivision and consolidation of any land other than a subdivision and consolidation which is provided for as a Category 2 application;
  - (f) permanent closure of any public place;
  - (g) all applications for the restriction of access to a public road in terms of the Rationalization of Local Government Affairs Act, 1998 (Act No. 10 of 1998);
  - (h) any consent or approval required in terms of a condition of title, a condition of establishment of a township or condition of an existing scheme or land use scheme;
  - (i) instances where the Municipality acting on its own accord wishes to remove, amend a restrictive or obsolete condition, servitude or reservation registered against the title deed of a property or properties which may also arise out of a condition of establishment of a township or any other legislation;
  - (j) any consent or approval provided for in a provincial law.
- (3) Land use applications are applications for:
- (a) the subdivision of any land where such subdivision is expressly provided for in a land use scheme;
  - (b) the consolidation of any land;
  - (c) the simultaneous subdivision, under circumstances contemplated in paragraph (a) and consolidation of land;
  - (d) the consent of the municipality for any land use purpose or departure or deviation in terms of a land use scheme or existing scheme which does not constitute a land development application;
  - (e) the removal, amendment or suspension of a restrictive title condition relating to the density of residential development on a specific erf where the residential density is regulated by a land use scheme in operation.
- (4) Traditional use applications relate to communal land and are applications for:
- (a) the amendment of the use of land in instances where such amendment will have a high impact on the community; and
  - (b) any other amendment of the use of land determined by the Council by resolution.
- (5) Temporary use applications are applications that do not result in an amendment of the land use scheme and are:
- (a) prospecting rights granted in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);
  - (b) any other application for temporary use submitted in accordance with the by-laws of the Municipality.

(6) The division of functions as contemplated in section 35(3) of the Act between a Land Development Officer and a Municipal Planning Tribunal is set out in section 30.

#### **55 Application for land development required**

(1) No person may commence with, carry on or cause the commencement with or carrying on of land development without the approval of the Municipality in terms of subsection (3).

(2) No person may commence with, carry on or cause the commencement with or carrying on of a land use activity which is permitted in the land use scheme but not exercised by the owner of the land.

(3) When an applicant or owner exercises a use right granted in terms of an approval he or she must comply with the conditions of the approval and the applicable provisions of the land use scheme.

(4) In addition to the provisions of this Chapter, the provisions of Chapter 6 apply to any application submitted to the Municipality in terms of this Chapter.

#### **Part B: Establishment of Township or Extension of Boundaries of Township**

#### **56 Application for establishment of township**

(1) An applicant who wishes to establish a township on land or for the extension of the boundaries of an approved township must apply to the Municipality for the establishment of a township or for the extension of the boundaries of an approved township in the manner provided for in Chapter 6.

(2) The Municipality must, in approving an application for township establishment, set out:

- (a) the conditions of approval in a statement of conditions;
- (b) the statement of conditions shall be known as conditions of establishment for the township;  
and
- (c) the statement of conditions must, in the opinion of the Municipality, substantially be in accordance with this By-law.

(4) The statement of conditions must, read with directives that may be issued by the Registrar of Deeds, contain the following:

- (a) Specify those conditions that must be complied with prior to the opening of a township register for the township with the Registrar of Deeds;
- (b) the conditions of establishment relating to the township that must remain applicable to the township;
- (c) conditions of title to be incorporated into the title deeds of the erven to be created for purposes of the township;
- (d) third party conditions as required by the Registrar of Deeds;
- (e) the conditions to be incorporated into the land use scheme by means of an amendment scheme.

- (f) if a non-profit company is to be established for purposes of maintaining or transfer of erven within the township to them the conditions that must apply;
- (g) any other conditions and or obligation on the township owner, which in the opinion of the Municipality deemed necessary for the proper establishment, execution and implementation of the township.

(5) After the applicant has been notified that his or her application has been approved, the Municipality or at the applicant's request may, after consultation with the applicant, amend or delete any condition imposed in terms of subsection (4) or add any further condition, provided that if the amendment is in the opinion of the Municipality so material as to constitute a new application, the Municipality may not exercise its powers in terms hereof and must require the applicant to submit an amended or new application and in the sole discretion of the Municipality to re-advertise the application in accordance with section 90.

(6) After the applicant has been notified that his or her application has been approved, the Municipality or at the applicant's request may, after consultation with the applicant and the Surveyor General, amend the layout of the township approved as part of the township establishment: Provided that if the amendment is in the opinion of the Municipality so material as to constitute a new application, the Municipality may not exercise its powers in terms hereof and require the applicant to submit an amended or new application in the opinion of the Municipality and re-advertise the application in the sole discretion of the Municipality in accordance with section 90.

(7) Without detracting from the provisions of subsection (5) and (6) the municipality may require the applicant or the applicant of his or her own accord, amend both the conditions and the layout plan of the township establishment application as contemplated therein.

#### **57 Division or phasing of township**

(1) An applicant who has been notified in terms of section 107 that his or her application has been approved may, within a period of eight months from the date of the notice, or such further period as the Municipality may allow, apply to the Municipality for the division of the township into two or more separate townships.

(2) On receipt of an application in terms of subsection (1) the Municipality must consider the application and may for purposes of the consideration of the application require the applicant to indicate whether the necessary documents were lodged with the Surveyor-General or provide proof that he or she consulted with the Surveyor General.

(3) Where the Municipality approves an application it may impose any condition it may deem expedient and must notify the application in writing thereof and of any conditions imposed.

(4) The applicant shall, within a period of 3 months from the date of the notice contemplated in subsection (3), submit to the Municipality such plans, diagrams or other documents and furnish such information as may be required in respect of each separate township.

(5) On receipt of the documents or information contemplated in subsection (4) the Municipality must notify the Surveyor-General, and the registrar in writing of the approval of the application and such notice must be accompanied by a copy of the plan of each separate township.

#### **58 Lodging of layout plan for approval with the Surveyor-General.**

(1) An applicant who has been notified in terms of section 107 that his or her application has been approved, shall, within a period of 12 months from the date of such notice, or such further period as the Municipality may allow, lodge for approval with the Surveyor-General such plans, diagrams or other documents as the Surveyor-General may require, and if the applicant fails to do so the application shall lapse.

(2) For purposes of subsection (1), the Municipality must provide to the applicant a final schedule as contemplated in section 56(3) and (4) of the conditions of establishment together with a stamped and approved layout plan.

(3) The Municipality may for purposes of lodging the documents contemplated in subsection (1) determine street names and numbers on the layout plan.

(4) Where the applicant fails, within a reasonable time as may be determined by the Municipality after he or she has lodged the plans, diagrams or other documents contemplated in subsection (1), to comply with any requirement the Surveyor-General may lawfully determine, the Surveyor-General shall notify the Municipality that he or she is satisfied, after hearing the applicant, that the applicant has failed to comply with any such requirement without sound reason, and thereupon the application shall lapse.

(5) After an applicant has been notified that his or her application has been approved, the municipality may:

- (a) where the documents contemplated in subsection (1) have not yet been lodged with the Surveyor General;
- (b) where the documents contemplated in subsection (1) have been lodged with the Surveyor General, after consultation with the Surveyor General;

consent to the amendment of such documents, unless the amendment is, in its opinion, so material as to constitute a new application for the establishment of a township.

#### **59 Compliance with pre-proclamation conditions**

(1) The applicant shall provide proof to the satisfaction of the Municipality within the timeframes as prescribed in terms of this By-law, that all conditions contained in the schedule to the approval of a township establishment application have been complied with.

(2) The Municipality shall certify that all the conditions that have to be complied with by the applicant or owner as contemplated in section 56(3) and (4) have been complied with including the provision of guarantees and payment of monies that may be required.

(3) The Municipality must at the same time notify the Registrar of Deeds and Surveyor General of the certification by the Municipality in terms of subsection (2).

(4) The municipality may agree to an extension of time as contemplated in subsection (1), after receiving a written application from the applicant for an extension of time: Provided that such application provides motivation for the extension of time.

#### **60 Opening of Township Register**

(1) The applicant shall lodge with the Registrar of Deeds the plans and diagrams contemplated in section 58 as approved by the Surveyor-General together with the relative title deeds for endorsement or registration, as the case may be.

(2) For purposes of subsection (1) the Registrar shall not accept such documents for endorsement or registration until such time as the Municipality has certified that the applicant has complied with such conditions as the Municipality may require to be fulfilled in terms of section 56(3).

(3) The plans, diagrams and title deeds contemplated in subsection (1) shall be lodged within a period of 12 months from the date of the approval of such plans and diagrams, or such further period as the Municipality may allow.

(4) If the applicant fails to comply with the provisions of subsections (1), (2) and (3), the application lapses.

(5) Having endorsed or registered the title deeds contemplated in subsection (1), the Registrar shall notify the Municipality forthwith of such endorsement or registration, and thereafter the Registrar shall not register any further transactions in respect of any land situated in the township until such time as the township is declared an approved township in terms of section 61.

#### **61 Proclamation of approved township.**

After the provisions of sections 57, 58, 59 and 60 have been complied with and the Municipality is satisfied that the township is in its area of jurisdiction, the Municipality or the applicant, if authorized in writing by the Municipality, shall, by notice in the *Provincial Gazette*, declare the township an approved township and it shall, in an Annexure to such notice, set out the conditions on which the township is declared an approved township.

### **Part C: Rezoning of land**

#### **62 Application for amendment of a land use scheme by rezoning of land**

(1) An applicant, who wishes to rezone land, must apply to the Municipality for the rezoning of the land in the manner provided for in Chapter 6.

(2) A rezoning approval lapses after a period of five years, or a shorter period as the municipality may determine, from the date of approval or the date that the approval comes into operation if, within that five year period or shorter period—

- (a) the zoning is not utilised in accordance with the approval thereof; or
- (b) the following requirements are not met:

(i) the approval by the Municipality of a building plan envisaged for the utilisation of the approved use right; and

(ii) commencement with the construction of the building contemplated in subparagraph (i).

(3) The Municipality may grant extensions to the periods contemplated in subsection (2), which period together with any extensions that the Municipality grants, may not exceed 10 years.

(4) If a rezoning approval lapses, the zoning applicable to the land prior to the approval of the rezoning applies, or where no zoning existed prior to the approval of the rezoning, the Municipality must determine a zoning as contemplated in section 175.

**Part D: Removal, Amendment or Suspension of a Restrictive or Obsolete Condition, Servitude or Reservation Registered Against the Title of the Land**

**63 Requirements for amendment, suspension or removal of restrictive conditions or obsolete condition, servitude or reservation registered against the title of the land**

(1) The Municipality may, of its own accord or on application by notice in the *Provincial Gazette* amend, suspend or remove, either permanently or for a period specified in the notice and either unconditionally or subject to any condition so specified, any restrictive condition.

(2) An applicant who wishes to have a restrictive condition amended, suspended or removed must apply to the municipality for the amendment, suspension or removal of the restrictive condition in the manner provided for in Chapter 6.

(3) In addition to the procedures set out in Chapter 6, the owner must—

(a) submit the original title deed to the Municipality or a certified copy thereof; and

(b) submit the bondholder's consent to the application, where applicable.

(4) The Municipality must cause a notice of its intention to consider an application under subsection (1) to be served on—

(a) all organs of state that may have an interest in the title deed restriction;

(b) every holder of a bond encumbering the land;

(c) a person whose rights or legitimate expectations will be materially and adversely affected by the approval of the application; and

(d) all persons mentioned in the title deed for whose benefit the restrictive condition applies.

(5) When the Municipality considers the removal, suspension or amendment of a restrictive condition, the Municipality must have regard to the following:

(a) the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement;

(b) the personal benefits which accrue to the holder of rights in terms of the restrictive condition;

- (c) the personal benefits which will accrue to the person seeking the removal of the restrictive condition, if it is removed;
- (d) the social benefit of the restrictive condition remaining in place in its existing form;
- (e) the social benefit of the removal or amendment of the restrictive condition; and
- (f) whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.

#### **64 Endorsements in connection with amendment, suspension or removal of restrictive conditions**

(1) The applicant shall, after the amendment, suspension or removal of a restrictive condition by notice in the *Provincial Gazette* as contemplated in section 63(1), submit the following to the Registrar of Deeds:

- (a) the original title deed;
- (b) the original letter of approval; and
- (c) a copy of the notification of the approval.

(2) The Registrar of Deeds and the Surveyor-General must, after the amendment, suspension or removal of a restrictive condition by notice in the *Provincial Gazette*, as contemplated in section 63(1), make the appropriate entries in and endorsements on any relevant register, title deed, diagram or plan in their respective offices or submitted to them, as may be necessary to reflect the effect of the amendment, suspension or removal of the restrictive condition.

### **Part E: Subdivision and Consolidation**

#### **65 Application for subdivision**

(1) No person may subdivide land without the approval of the Municipality, unless the subdivision is exempted under section 69.

(2) An applicant who wishes to subdivide land must apply to the Municipality for the subdivision of land in the manner provided for in Chapter 6.

(3) No application for subdivision involving a change of zoning may be considered by the Municipality, unless the land concerned is zoned for such subdivision.

(4) The Municipality must impose appropriate conditions relating to engineering services for an approval of a subdivision.

(5) If a Municipality approves a subdivision, the applicant must submit a general plan or diagram to the Surveyor-General for approval, including proof to the satisfaction of the Surveyor-General of—

- (a) the Municipality's decision to approve the subdivision;
- (b) the conditions of approval contemplated in subsection (3) and section 58; and
- (c) the approved subdivision plan.

(6) If the Municipality approves an application for a subdivision, the applicant must within a period of five years or the shorter period as the Municipality may determine, from the date of approval of the subdivision or the date that the approval comes into operation, comply with the following requirements:

- (a) the approval by the Surveyor-General of the general plan or diagram contemplated in subsection (4);
- (b) completion of the installation of engineering services in accordance with the conditions contemplated in subsection (3) or other applicable legislation;
- (c) proof to the satisfaction of the Municipality that all relevant conditions contemplated in section 56 for the approved subdivision in respect of the area shown on the general plan or diagram and that must be complied with before compliance with paragraph (d) have been met; and
- (d) registration of the transfer of ownership in terms of the Deeds Registries Act of the land unit shown on the diagram or of at least one new land unit shown on the general plan.

(7) A confirmation from the Municipality in terms of subsection (6)(c) that all conditions of approval have been met, which is issued in error, does not absolve the applicant from complying with the obligations imposed in terms of the conditions or otherwise complying with the conditions after confirmation of the subdivision.

#### **66 Confirmation of subdivision**

(1) Upon compliance with section 65(5), the subdivision or part thereof is confirmed and cannot lapse.

(2) Upon confirmation of a subdivision or part thereof under section 65(5), the zonings indicated on the approved subdivision plan as confirmed cannot lapse.

(3) The Municipality must in writing confirm to the applicant or to any other person at his or her written request that a subdivision or a part of a subdivision is confirmed, if the applicant has to the satisfaction of the Municipality submitted proof of compliance with the requirements of section 65(5) for the subdivision or part thereof.

(4) No building or structure may be constructed on a land unit forming part of an approved subdivision unless the subdivision is confirmed as contemplated in section 65(5) or the Municipality approved the construction prior to the subdivision being confirmed.

#### **67 Lapsing of subdivision and extension of validity periods**

(1) An approved subdivision or a portion thereof lapses if the applicant does not comply with subsection 65(5).

(2) An applicant may apply for an extension of the period to comply with subsection 65(5) or must comply with subsection (5).

(3) An extension contemplated in subsection (2) may be granted for a period not exceeding five years and if after the expiry of the extended period the requirements of subsection 65(5) has not been complied with, the subdivision lapses and subsection (6) applies.

(4) The Municipality may grant extensions to the period contemplated in subsection (2), which period together with any extensions that the Municipality grants, may not exceed 10 years.

(5) If only a portion of the general plan, contemplated in subsection 65(5)(a) complies with subsection 65(5)(b) and (c), the general plan must be withdrawn and a new general plan must be submitted to the Surveyor-General.

(6) If an approval of a subdivision or part thereof lapses under subsection (1) —

(a) the Municipality must—

- (i) amend the zoning map and, where applicable, the register accordingly; and
- (ii) notify the Surveyor-General accordingly; and

(b) the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the notification that the subdivision has lapsed.

#### **68 Amendment or cancellation of subdivision plan**

(1) The Municipality may approve the amendment or cancellation of a subdivision plan, including conditions of approval, the general plan or diagram, in relation to land units shown on the general plan or diagram of which no transfer has been registered in terms of the Deeds Registries Act.

(2) When the Municipality approves an application in terms of subsection (1), any public place that is no longer required by virtue of the approval must be closed.

(3) The Municipality must notify the Surveyor-General of an approval in terms of subsection (1), and the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the amendment or cancellation of the subdivision.

(4) An approval of a subdivision in respect of which an amendment or cancellation is approved in terms of subsection (1), remains valid for the remainder of the period contemplated in section 65(5) applicable to the initial approval of the subdivision, calculated from the date of approval of the amendment or cancellation in terms of subsection (1).

#### **69 Exemption of subdivisions and consolidations**

(1) The subdivision or consolidation of land in the following circumstances does not require the approval of the Municipality:

- (a) if the subdivision or consolidation arises from the implementation of a court ruling;
- (b) if the subdivision or consolidation arises from an expropriation;
- (c) a minor amendment of the common boundary between two or more land units if the resulting change in area of any of the land units is not more than 10 per cent;

- (d) the registration of a servitude or lease agreement for the provision or installation of—
  - (i) water pipelines, electricity transmission lines, sewer pipelines, gas pipelines or oil and petroleum product pipelines by or on behalf of an organ of state or service provider;
  - (ii) telecommunication lines by or on behalf of a licensed telecommunications operator;
  - (iii) the imposition of height restrictions;
- (e) the exclusive utilisation of land for agricultural purposes, if the utilisation—
  - (i) requires approval in terms of legislation regulating the subdivision of agricultural land; and
  - (ii) does not lead to urban expansion.
- (f) the subdivision and consolidation of a closed public place with an abutting erf; and
- (g) the granting of a right of habitation or usufruct.

(2) The Municipality must, in each case, certify in writing that the subdivision has been exempted from the provisions of this Chapter.

(3) The Municipality must indicate on the plan of subdivision that the subdivision has been exempted from the provisions of sections 65 to 68.

## **70 Services arising from subdivision**

Subsequent to the granting of an application for subdivision in terms of this By-law the owner of any land unit originating from the subdivision must—

- (a) allow without compensation that the following be conveyed across his or her land unit in respect of other land units:
  - (i) gas mains;
  - (ii) electricity cables;
  - (iii) telephone cables;
  - (iv) television cables;
  - (v) other electronic infrastructure;
  - (vi) main and other water pipes;
  - (vii) foul sewers;
  - (viii) storm water pipes; and
  - (ix) ditches and channels;

- (b) allow the following on his or her land unit if considered necessary and in the manner and position as may be reasonably required by the Municipality:
  - (i) surface installations such as mini-substations;
  - (ii) meter kiosks; and
  - (iii) service pillars;
- (c) allow access to the land unit at any reasonable time for the purpose of constructing, altering, removing or inspecting any works referred to in paragraphs (a) and (b); and
- (d) receive material or permit excavation on the land unit as may be required to allow use of the full width of an abutting street and provide a safe and proper slope to its bank necessitated by differences between the level of the street as finally constructed and the level of the land unit, unless he or she elects to build retaining walls to the satisfaction of and within a period to be determined by the Municipality.

#### **71 Consolidation of land units**

(1) No person may consolidate land without the approval of the Municipality, unless the consolidation is exempted under section 69.

(2) A copy of the approval must accompany the diagram which is submitted to the Surveyor-General's office.

(3) If the Municipality approves a consolidation, the applicant must submit a diagram to the Surveyor-General for approval, including proof to the satisfaction of the Surveyor-General of—

- (a) the decision to approve the subdivision;
- (b) the conditions of approval contemplated in section 58; and
- (c) the approved consolidation plan.

(4) If the Municipality approves a consolidation, the Municipality must amend the zoning map and, where applicable, the register accordingly.

#### **72 Lapsing of consolidation and extension of validity periods**

(1) If a consolidation of land units is approved but no consequent registration by the Registrar of Deeds takes place within five years of the approval, the consolidation approval lapses, unless the consolidation of land units form part of a land use application which has been approved for a longer period.

(2) An applicant may apply for an extension of the period to comply with subsection (1).

(3) An extension contemplated in subsection (2) may be granted for a period not exceeding five years and if after the expiry of the extended period the requirements of subsection (1) has not been complied with, the consolidation lapses and subsection (5) applies.

(4) If the Municipality may grant extensions to the period contemplated in subsection (2), which period together with any extensions that the Municipality grants, may not exceed 10 years.

- (5) If an approval of a consolidation lapses under subsection (1) the Municipality must—
- (a) amend the zoning map and, where applicable, the register accordingly; and
  - (b) notify the Surveyor-General accordingly; and
  - (c) the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the notification that the subdivision has lapsed.

#### **Part F: Permanent Closure of Public Place**

### **73 Closure of public places**

(1) The Municipality may on own initiative or on application close a public place or any portion thereof in accordance with the procedures in Chapter 6.

(2) An applicant who wishes to have a public place closed or a portion of a public place closed must apply to the municipality for the closure of the public place or portion thereof in the manner provided for in Chapter 6.

(3) If any person lodges a claim against the Municipality for loss or damage that he or she has allegedly suffered as a result of the wrong doing on the part of the Municipality as a result of the closure of a public place, the authorised employee must—

- (a) require proof of negligence on the part of the Municipality which resulted in the loss or damage; and
- (b) before any claim is paid or settled, obtain a full technical investigation report in respect of the circumstances that led to the closure of the public place to determine whether or not there has been negligence on the part of the Municipality.

(4) The Municipality may pay a claim if—

- (a) the circumstances of loss or damage reveal that the Municipality acted negligently;
- (b) the circumstances of the loss are not inconsistent with this By-law;
- (c) the claimant has proved his or her loss or damage;
- (d) the claimant has provided the proof of a fair and reasonable quantum;
- (e) no claim has been made and paid by personal insurance covering the same loss; and
- (f) any other relevant additional information as requested by the authorised employee has been received.

(5) The ownership of the land comprised in any public place or portion thereof that is closed in terms of this section continues to vest in the Municipality unless the Municipality determines otherwise.

(6) The municipal manager may, without complying with the provisions of this Chapter temporarily close a public place—

- (a) for the purpose of or pending the construction, reconstruction, maintenance or repair of the public place;

- (b) for the purpose of or pending the construction, erection, laying, extension, maintenance, repair or demolition of any building, structure, works or service alongside, on, across, through, over or under the public place;
- (c) if the street or place is, in the opinion of the municipal manager, in a state dangerous to the public;
- (d) by reason of any emergency or public event which, in the opinion of the municipal manager, requires special measures for the control of traffic or special provision for the accommodation of crowds, or
- (e) for any other reason which, in the opinion of the municipal manager, renders the temporary closing of the public place necessary or desirable.

(7) The Municipality must notify the Surveyor-General of an approval in terms of subsection (1), and the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the closure of the public place.

#### **Part G: Consent Use**

##### **74 Application for consent use**

(1) An applicant may apply to the Municipality for a consent use provided for in the land use scheme in the manner provided for in Chapter 6.

(2) Where the development parameters for the consent use that is being applied for are not defined in an applicable land use scheme, the Municipality must determine the development parameters that apply to the consent use as conditions of approval contemplated in section 56.

(3) A consent use may be granted permanently or for a specified period of time in terms of conditions of approval contemplated in section 58.

(4) A consent use granted for a specified period of time contemplated in subsection (3) must not have the effect of preventing the property from being utilised in the future for the primary uses permitted in terms of the zoning of the land.

(5) A consent use contemplated in subsection (1) lapses after a period of five years or the shorter period as the Municipality may determine from the date that the approval comes into operation if, within that five year period or shorter period—

- (a) the consent use is not utilised in accordance with the approval thereof; or
- (b) the following requirements are not met:
  - (i) the approval by the Municipality of a building plan envisaged for the utilisation of the approved use right; and
  - (ii) commencement with the construction of the building contemplated in subparagraph (i).

(6) The Municipality may grant extensions to the period contemplated in subsection (5), which period together with any extensions that the Municipality grants, may not exceed 10 years.

### **Part H: Traditional Use**

#### **75 Application for traditional use**

(1) An applicant who wishes to amend the use of communal land such amendment will have a high impact on the community must apply to the Municipality for the amendment of the land use in the manner provided for in Chapter 6.

(2) For the purpose of this section, "high impact" means a land use .....

### **Part I: Temporary Use**

#### **76 Application for temporary use**

(1) An applicant may apply to the Municipality-

- (a) for a departure from the development parameters of a zoning; or
- (b) to utilise land on a temporary basis for a purpose for which no provision is made in the land use scheme in respect of a particular zone for a period not exceeding 5 years or such shorter period as may be necessary,

in the manner provided for in Chapter 6.

(2) A departure contemplated in subsection (1)(a) lapses after a period of five years or the shorter period as the municipality may determine from the date that the approval comes into operation if, within that five year period or shorter period, the departure is not utilised in accordance with the approval thereof.

(3) The Municipality may grant extensions to the period contemplated in subsection (2), which period together with any extensions that the Municipality grants, may not exceed 10 years.

(4) The Municipality may approve a departure contemplated in subsection (1)(b) for a period shorter than 5 years, provided that, the period may not, together with any extension approved in accordance with section 66, exceed five years;

(5) A temporary departure contemplated in subsection (1)(b) may not be granted more than once in respect of a particular use on a specific land unit.

(6) A temporary departure contemplated in subsection (1)(b) may not include the improvement of land that is not temporary in nature and which has the effect that the land cannot, without further construction or demolition, revert back to its previous lawful use upon the expiry of the period contemplated in subsection (1)(b).

### **Part J: General Matters**

#### **77 Ownership of public places and land required for municipal engineering services and social facilities**

(1) The ownership of land that is earmarked for a public place as shown on an approved subdivision plan vest in the Municipality upon confirmation of the subdivision or a part thereof.

(2) The Municipality may in terms of conditions imposed in terms of section 52 determine that land designated for the provision of engineering services, public facilities or social infrastructure on an approved subdivision plan, be transferred to the Municipality upon confirmation of the subdivision or a part thereof.

#### **78 Restriction of transfer and registration**

(1) Notwithstanding the provisions contained in this By-law or any conditions imposed in the approval of any land development application, the owner shall, at his or her cost and to the satisfaction of the Municipality, survey and register all servitudes required to protect the engineering services provided, constructed and installed as contemplated in Chapter 7.

(2) No Erf/Erven and/or units in a land development area, may be alienated or transferred into the name of a purchaser nor shall a Certificate of Registered Title be registered in the name of the owner, prior to the Municipality certifying to the Registrar of Deeds that:

- (a) All engineering services have been designed and constructed to the satisfaction of the Municipality, including guarantees for services having been provided to the satisfaction of the Municipality as may be required; and
- (b) all engineering services and development charges have been paid; and
- (c) all engineering services have been or will be protected to the satisfaction of the Municipality by means of servitudes; and
- (d) all conditions of the approval of the land development application have been complied with or that arrangements have been made to the satisfaction of the Municipality for the compliance thereof within 3 months of having certified to the Registrar in terms of this section that registration may take place; and
- (e) that the Municipality is in a position to consider a final building plan; and
- (f) that all the properties have either been transferred or shall be transferred simultaneously with the first transfer or registration of a newly created property or sectional title scheme.

#### **79 First transfer**

(1) Where an owner of land to which a land development application relates is required to:

- (a) transfer land to the Municipality;
- (b) a non-profit company

by virtue of a condition set out in the conditions to the approval of a land development application contemplated in section 52, the land shall be so transferred at the expense of the applicant, within a period of 6 months from the date of the land use rights coming into operation in terms of section 52, or within such further period as the Municipality may allow, but in any event prior to any registration or transfer of any erf, portion, opening of a sectional title scheme or unit within the development.

#### **80 Certification by Municipality**

(1) A person may not apply to the Registrar of Deeds to register the transfer of a land unit, unless the Municipality has issued a certificate in terms of this section.

(2) The Municipality may not issue a certificate to transfer a land unit in terms of any law, or in terms of this By-law, unless the owner furnishes the Municipality with—

- (a) a certificate of a conveyancer confirming that funds due by the transferor in respect of land, have been paid;
- (b) proof of payment of any contravention penalty or proof of compliance with a directive contemplated in Chapter 9;
- (c) proof that the land use and buildings constructed on the land unit comply with the requirements of the land use scheme;
- (d) proof that all common property including private roads and private places originating from the subdivision, has been transferred; and
- (e) proof that the conditions of approval that must be complied with before the transfer of erven have been complied with.

#### **81 National and provincial interest**

(1) In terms of section 52 of the Act an applicant shall refer any application which affects national or provincial interest respectively to the Minister and the Member of the Executive Council for comments, which comments are to be provided within 21 days as prescribed in subsection 52(5) of the Act.

(2) Where any application in terms of this By-law, which in the opinion of the Municipal Manager affects national or provincial interest as defined in section 52 of the Act, is submitted, such application must be referred to the Minister or the Member of the Executive Council respectively and the provisions of subsections 52(5) to 52(7) of the Act, apply with the necessary changes.

(3) The Municipal Planning Tribunal or Land Development Officer as the case may be, as contemplated in this By-law and the Act, may direct that an application before it, be referred to the Minister and the Member of the Executive Council, if such an application in their opinion affects national or provincial interest and the provisions of subsections 52(5) to 52(7) apply with the necessary changes.

(4) Subsections (1) to (3) shall be read with subsection 33(1) of the Act in that the national and or provincial departments becomes parties to the application that affects national or provincial interest, but the Municipality remains the decision maker of first instance.

### **CHAPTER 6**

#### **GENERAL APPLICATION PROCEDURES**

##### **82 Applicability of Chapter**

This Chapter applies to all applications submitted to the Municipality in terms of Chapter 5.

##### **83 Procedures for making application**

An applicant must comply with the procedures in this Chapter and, where applicable, the specific procedures provided for in Chapter 5 of this By-law.

**84 Information required**

- (1) An application must be accompanied by the following documents:
- (a) an approved application form, completed and signed by the applicant;
  - (b) if the applicant is not the owner of the land, a power of attorney authorising the applicant to make the application on behalf of the owner;
  - (c) if the owner of the land is a company, closed corporation, trust, body corporate or home owners' association, proof that the person is authorised to act on behalf of the company, closed corporation, trust, body corporate or a home owners' association;
  - (d) the relevant bondholder's consent, if required by the Municipality;
  - (e) a written motivation for the application based on the criteria for consideration of the application;
  - (f) a copy of the Surveyor-General's diagram of the subject property or if it does not exist, an extract from relevant general plan;
  - (g) a locality plan and site development plan, when required, or a plan showing the proposal in its cadastral context;
  - (h) in the case of an application for the subdivision of land, copies of the subdivision plan showing the following:
    - (i) the location of the proposed land units;
    - (ii) the proposed zonings in respect of the proposed land units;
    - (iii) all existing structures on the property and abutting properties;
    - (iv) the public places and the land needed for public purposes;
    - (v) the existing access points;
    - (vi) all servitudes;
    - (vii) contours with at least a one meter interval or such other interval as may be approved by the Municipality;
    - (viii) the street furniture;
    - (ix) the light, electrical and telephone poles;
    - (x) the electrical transformers and mini substations;
    - (xi) the storm water channels and catch pits;
    - (xii) the sewerage lines and connection points;
    - (xiii) any significant natural features; and
    - (xiv) the scale and all distances and areas.
  - (i) any other plans, diagrams, documents or information that the Municipality may require;

- (j) the proof of payment of application fees;
- (k) a full copy of the title deeds indicating all existing title conditions in current and historic title deeds; and
- (l) if required by the Municipality, a certificate of a conveyancer indicating that no restrictive condition in respect of the application is contained in such title deeds.; and
- (m) in the case of a Category 3 traditional use application referred to in section 54, community approval granted as a result of a community participation process conducted in terms of Customary Law.

(2) The Municipality may make guidelines relating to the submission of additional information and procedural requirements.

#### **85 Application fees**

(1) An applicant must pay the application fees determined by the Municipality prior to submitting an application in terms of this By-law.

(2) Application fees that are paid to the Municipality are non-refundable and proof of payment of the application fees must accompany the application.

#### **86 Grounds for refusing to accept application**

The Municipality may refuse to accept an application if—

- (a) the municipality has already decided on the application;
- (b) there is no proof of payment of fees;
- (c) the application is not in the form required by the Municipality or does not contain the documents required for the submission of an application as set out in section 84.

#### **87 Receipt of application and request for further documents**

The Municipality must—

- (a) record the receipt of an application in writing or by affixing a stamp on the application on the day of receipt;
- (b) notify the applicant in writing of any outstanding or additional plans, documents, other information or additional fees that it may require within 30 days of receipt of the application or the further period as may be agreed upon, failing which it is regarded that there is no outstanding information or documents; and
- (c) if the application is complete, notify the applicant in writing that the application is complete within 30 days of receipt of the application.

#### **88 Additional information**

(1) The applicant must provide the Municipality with the information or documentation required for the completion of the application within 30 days of the request therefor or within the further period agreed to between the applicant and the Municipality.

(2) The Municipality may refuse to consider the application if the applicant fails to provide the information within the timeframes contemplated in subsection (1).

(3) The Municipality must notify the applicant in writing of the refusal to consider the application and must close the application.

(4) An applicant has no right of appeal to the Appeal Authority in respect of a decision contemplated in subsection (3) to refuse to consider the application.

(5) If an applicant wishes to continue with an application that the Municipality refused to consider under subsection (3), the applicant must make a fresh application and pay the applicable application fees.

#### **89 Confirmation of complete application**

(1) The Municipality must notify the applicant in writing that the application is complete within 21 days of receipt of the additional plans, documents or information required by it or if further information is required as a result of the furnishing of the additional information.

(2) If further information is required, section 88 applies to the further submission of information that may be required.

#### **90 Withdrawal of application**

(1) An applicant may, at any time prior to a decision being taken, withdraw an application on written notice to the Municipality.

(2) The owner of land must in writing inform the Municipality if he or she has withdrawn the power of attorney that authorised another person to make an application on his or her behalf.

#### **91 Notice of applications in terms of integrated procedures**

(1) The Municipality may, on prior written request and motivation by an applicant, determine that—

(a) a public notice procedure carried out in terms of another law in respect of the application constitutes public notice for the purpose of an application made in terms of this By-law; or

(b) notice of an application made in terms of this By-law may be published in accordance with the requirements for public notice applicable to a related application in terms other legislation;

(2) If a Municipality determines that an application may be published as contemplated in subsection (1)(b) an agreement must be entered into by the Municipality and the relevant organs of state to facilitate the simultaneous publication of notices.

(3) The Municipality must, within 30 days of having notified the applicant that the application is complete, simultaneously—

(a) cause public notice of the application to be given in terms of subsection 92(1); and

(b) forward a copy of the notice together with the relevant application to every municipal department, service provider and organ of state that has an interest in the application,

unless it has been determined by the Municipality that a procedure in terms of another law, as determined in subsection (1), is considered to be public notice in terms of this By-law.

(4) The Municipality may require the applicant to give the required notice of an application in the media.

(5) Where an applicant has published a notice in the media at the request of a Municipality, the applicant must provide proof that the notice has been published as required.

## **92 Notification of application in media**

(1) The Municipality must cause notice to be given in the media, in accordance with this By-law, of the following applications:

- (a) an application for a rezoning or a rezoning on the initiative of the Municipality;
- (b) the subdivision of land larger than five hectares inside the outer limit of urban expansion as reflected in its municipal spatial development framework;
- (c) the subdivision of land larger than one hectare outside the outer limit of urban expansion as reflected in its municipal spatial development framework;
- (d) if the Municipality has no approved municipal spatial development framework, the subdivision of land larger than five hectares inside the physical edge, including existing urban land use approvals, of the existing urban area;
- (e) if the Municipality has no approved municipal spatial development framework, the subdivision of land larger than one hectare outside the physical edge, including existing urban land use approvals, of the existing urban area;
- (f) the closure of a public place;
- (g) an application in respect of a restrictive condition;
- (h) other applications that will materially affect the public interest or the interests of the community if approved.

(2) Notice of the application in the media must be given by—

- (a) publishing a notice of the application, in newspapers with a general circulation in the area concerned in at least two of the official languages of the Province most spoken in the area concerned; or
- (b) if there is no newspaper with a general circulation in the area, posting a copy of the notice of application, for at least the duration of the notice period, on the land concerned and on any other notice board as may be determined by the Municipality.

## **93 Serving of notices**

(1) Notice of an application contemplated in section 92(1) and subsection (2) must be served—

- (a) in accordance with section 115 of the Municipal Systems Act;

- (b) in at least two of the official languages of the Province most spoken in the area concerned; and
- (c) on each person whose rights or legitimate expectations will be affected by the approval of the application.

(2) When the Municipality intends to consider any of the following, it must at least cause a notice to be served as contemplated in section 92 of its intention:

- (a) a determination of a zoning;
- (b) a land use application for subdivision or the amendment or cancellation of a subdivision contemplated in sections 65 and 68, respectively;
- (c) a land use application for consolidation contemplated in section 71; or
- (d) the imposition, amendment or waiver of a condition.

(3) The Municipality may require the serving of a notice as contemplated in this section for any other application made in terms of this By-law.

(4) The Municipality may require notice of its intention to consider all other applications not listed in subsection (2) to be given in terms of section 95.

(5) The Municipality may require the applicant to attend to the serving of a notice of an application contemplated in subsection (1).

(6) Where an applicant has served a notice at the request of a Municipality, the applicant must provide proof that the notice has been served as required.

(7) The date of notification in respect of a notice served in terms of this section—

- (a) when it has been served by certified or registered post is the date of registration of the notice; and
- (b) when it has been delivered to that person personally is the date of delivery to that person;
- (c) 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 is the date on which it has been left with that person; or
- (d) when it has been posted in a conspicuous place on the property or premises to which it relates is the date that it is posted in that place.

#### **94 Content of notice**

When notice of an application must be given in terms of section 92 or served in terms of section 93, the notice must contain the following information:

- (a) the details of the applicant;
- (b) identify the land or land unit to which the application relates by giving the property description and the physical address;

- (c) state the intent and purpose of the application;
- (d) state that a copy of the application and supporting documentation will be available for viewing during the hours and at the place mentioned in the notice;
- (e) state the contact details of the relevant municipal employee;
- (f) invite members of the public to submit written comments, objections or representations together with the reasons therefor in respect of the application;
- (g) state in which manner comments, objections or representations may be submitted;
- (h) state the date by when the comments, objections or representations must be submitted which may not be less than 30 days from the date on which the notice was given;
- (i) state that any person who cannot write may during office hours attend at an address stated in the notice where a named staff member of the Municipality will assist that person to transcribe that person's objections, comments or representations.

#### **95 Additional methods of public notice**

(1) If the Municipality considers notice in accordance with sections 92 or 93 to be ineffective or the Municipality decides to give notice of any application in terms of this By-law, the Municipality may on its own initiative or on request require an applicant to follow one or more of the following methods to give additional public notice of an application:

- (a) to display a notice contemplated in section 92 of a size of at least 60 cm by 42 cm on the frontage of the erf concerned or at any other conspicuous and easily accessible place on the erf, provided that—
  - (i) the notice must be displayed for a minimum of 30 days during the period that the public may comment on the application;
  - (ii) the applicant must, within 21 days from the last day of display of the notice, submit to the Municipality—
    - (aa) a sworn affidavit confirming the maintenance of the notice for the prescribed period; and
    - (bb) at least two photos of the notice, one from nearby and one from across the street.
- (b) to convene a meeting for the purpose of informing the affected members of the public of the application;
- (c) to broadcast information regarding the application on a local radio station in a specified language;

- (d) to hold an open day or public meeting to notify and inform the affected members of the public of the application;
- (e) to publish the application on the Municipality's website for the duration of the period that the public may comment on the application; or
- (f) to obtain letters of consent or objection to the application.

(2) Where an applicant has given additional public notice of an application on behalf of a Municipality, the applicant must provide proof that the additional public notice has been given as required.

#### **96 Requirements for petitions**

(1) All petitions must clearly state—

- (a) the contact details of the authorised representative of the signatories of the petition;
- (b) the full name and physical address of each signatory; and
- (c) the objection and reasons for the objection.

(2) Notice to the person contemplated in subsection (1)(a), constitutes notice to all the signatories to the petition.

#### **97 Requirements for objections, comments or representations**

(1) A person may, in response to a notice received in terms of sections 92, 93 or 95, object, comment or make representations in accordance with this section.

(2) Any objection, comment or representation received as a result of a public notice process must be in writing and addressed to the person mentioned in the notice within the time period stated in the notice and in the manner set out in this section.

(3) The objection must state the following:

- (a) the name of the person or body concerned;
- (b) the address or contact details at which the person or body concerned will accept notice or service of documents;
- (c) the interest of the body or person in the application;
- (d) the reason for the objection, comment or representation.

(4) The reasons for any objection, comment or representation must be set out in sufficient detail in order to—

- (a) indicate the facts and circumstances which explains the objection, comment or representation;
- (b) demonstrate the undesirable effect which the application will have on the area;
- (c) demonstrate any aspect of the application which is not considered consistent with applicable policy.

(5) The Municipality may refuse to accept an objection, comment or representation received after the closing date.

#### **98 Amendments prior to approval**

(1) An applicant may amend his or her application at any time after notice of the application has been given in terms of this by-laws and prior to the approval thereof—

- (a) at the applicant's own initiative;
- (b) as a result of objections and comments made during the public notification process; or
- (c) at the request of the Municipality.

(2) If an amendment to an application is material, the Municipality may require that further notice of the application be given in terms of this By-law and may require that the notice and the application be resent to municipal departments, organs of state and service providers.

#### **99 Further public notice**

(1) The Municipality may require that fresh notice of an application be given if more than 18 months has elapsed since the first public notice of the application and if the application has not been considered by the Municipality.

(2) The Municipality may, at any stage during the processing of the application—

- (a) require notice of an application to be republished or to be served again; and
- (b) an application to be resent to municipal departments for comment,

if new information comes to its attention which is material to the consideration of the application.

#### **100 Cost of notice**

The applicant is liable for the costs of giving notice of an application.

#### **101 Applicant's right to reply**

(1) Copies of all objections, comments or representations lodged with a Municipality must be provided to the applicant within 14 days after the closing date for public comment together with a notice informing the applicant of its rights in terms of this section.

(2) The applicant may, within a period of 30 days from the date of the provision of the objections, comments or representations, submit written reply thereto with the Municipality and must serve a copy thereof on all the parties that have submitted objections, comments or representations.

(3) The applicant may before the expiry of the 30 day period referred to in subsection (2), apply to the Municipality for an extension of the period with a further period of 14 days to lodge a written reply.

(4) If the applicant does not submit comments within the period of 30 days or within an additional period 14 of days if applied for, the applicant is considered to have no comment.

(5) If as a result of the objections, comments or representations lodged with a Municipality, additional information regarding the application are required by the Municipality, the information must be supplied within the further period as may be agreed upon between the applicant and the Municipality.

(6) If the applicant does not provide the information within the timeframes contemplated in subsection (5), section 88(2) to (5) with the necessary changes, applies.

#### **102 Written assessment of application**

(1) An employee authorised by the Municipality must in writing assess an application in accordance with section 51 and recommend to the decision-maker whether the application must be approved or refused.

(2) An assessment of an application must include a motivation for the recommendation and, where applicable, the proposed conditions of approval.

#### **103 Decision-making period**

(1) When the power to take a decision is delegated to an authorised employee and no integrated process in terms of another law is being followed, the authorised employee must decide on the application within 60 days of the closing date for the submission of comments, objections or representations.

(2) When the power to take a decision is not delegated to an authorised employee and no integrated process in terms of another law is being followed, the Municipal Planning Tribunal must decide on the application within 120 days of the closing date for the submission of comments, objections or representations.

#### **104 Failure to act within time period**

If no decision is made by the Municipal Planning Tribunal within the period required in terms of the Act, it is considered undue delay for purposes of these By-Laws and the applicant or interested person may report the non-performance of the Municipal Planning Tribunal or Land Development Officer to the municipal manager, who must report it to the municipal council and mayor.

#### **105 Powers to conduct routine inspections**

(1) An employee authorised by the Municipality may, in accordance with the requirements of this section, enter land or a building for the purpose of assessing an application in terms of this By-law and to prepare a report contemplated in section 102.

(2) When conducting an inspection, the authorised employee may—

- (a) request that any record, document or item be produced to assist in the inspection;
- (b) make copies of, or take extracts from any document produced by virtue of paragraph (a) that is related to the inspection;
- (c) on providing a receipt, remove a record, document or other item that is related to the inspection; or
- (d) inspect any building or structure and make enquiries regarding that building or structure.

(3) No person may interfere with an authorised employee who is conducting an inspection as contemplated in subsection (1).

(4) The authorised employee must, upon request, produce identification showing that he or she is authorised by the Municipality to conduct the inspection.

(5) An inspection under subsection (1) must take place at a reasonable time and after reasonable notice has been given to the owner or occupier of the land or building.

#### **106 Determination of application**

The Municipality may in respect of any application submitted in terms of this Chapter -

- (a) approve, in whole or in part, or refuse any application referred to it in accordance with this By-law;
- (b) on the approval of any application, impose any reasonable conditions, including conditions related to the provision of engineering services and the payment of any development charges;
- (c) make an appropriate determination regarding all matters necessary or incidental to the performance of its functions in terms of this By-law and provincial legislation;
- (d) conduct any necessary investigation;
- (e) give directions relevant to its functions to any person in the service of a Municipality or municipal entity;
- (f) decide any question concerning its own jurisdiction;
- (g) appoint a technical adviser to advise or assist in the performance of the Municipal Planning Tribunal's functions in terms of this By-law;

#### **107 Notification of decision**

(1) The Municipality must, within 21 days of its decision, in writing notify the applicant and any person whose rights are affected by the decision of the decision and their right to appeal if applicable.

(2) If the owner has appointed an agent, the owner must take steps to ensure that the agent notifies him or her of the decision of the Municipality.

#### **108 Duties of agent of applicant**

(1) An applicant who is not the owner of the land concerned must ensure that he or she has the contact details of the owner of the property.

- (2) The agent must ensure that all information furnished to the Municipality is accurate.
- (3) The agent must ensure that no misrepresentations are made.
- (4) The provision of inaccurate, false or misleading information is an offence.

#### **109 Errors and omissions**

(1) The Municipality may at any time correct an error in the wording of its decision provided that the correction does not change its decision or results in an alteration, suspension or deletion of a condition of its approval.

(2) The Municipality may, of its own accord or on application by an applicant or interested party, upon good cause being shown, condone an error in the procedure provided that such condonation does not have material adverse impact on or unreasonably prejudice any party.

#### **110 Withdrawal of approval**

(1) The Municipality may withdraw an approval granted for a consent use or temporary departure if the applicant or owner fails to comply with a condition of approval.

(2) Prior to doing so, the Municipality must serve a notice on the owner—

- (a) informing the owner of the alleged breach of the condition;
- (b) instructing the owner to rectify the breach within a specified time period;
- (c) allowing the owner to make representations on the notice within a specified time period.

#### **111 Procedure to withdraw an approval**

(1) The Municipality may withdraw an approval granted—

- (a) after consideration of the representations made in terms of section 110(2)(c); and
- (b) if the Municipality is of the opinion that the condition is still being breached and not being complied with at the end of the period specified in terms of section 110(2)(b).

(2) If the Municipality withdraws the approval, the Municipality must notify the owner of the withdrawal of the approval and instruct the owner to cease the activity immediately.

(3) The approval is withdrawn from date of notification of the owner.

#### **112 Exemptions to facilitate expedited procedures**

The Municipality may in writing -

- (a) exempt a development from compliance with the provisions of this By-law to reduce the financial or administrative burden of—
  - (i) integrated application processes as contemplated in section 91;
  - (ii) the provision of housing with the assistance of a state subsidy; or
  - (iii) incremental upgrading of existing settlements;
- (b) in an emergency situation authorise that a development may depart from any of the provisions of this By-law

### **CHAPTER 7**

#### **ENGINEERING SERVICES AND DEVELOPMENT CHARGES**

##### **Part A: Provision and Installation of Engineering Services**

#### **113 Responsibility for providing engineering services**

(1) Every land development area must be provided with such engineering services as the Municipality may deem necessary for the appropriate development of the land.

(2) An applicant is responsible for the provision and installation of internal engineering services required for a development at his or her cost when a land development application is approved.

(3) The Municipality is responsible for the installation and provision of external engineering services, unless the engineering services agreement referred to in section 115 provides otherwise.

#### **114 Installation of engineering services**

(1) The applicant shall provide and install the internal engineering services in accordance with the conditions of establishment and to the satisfaction of the Municipality, and for that purpose the applicant shall lodge with the Municipality such reports, diagrams and specifications as the Municipality may require.

(2) The Municipality shall have regard to such standards as the Minister/MEC may determine for streets and storm water drainage, water, electricity and sewage disposal services in terms of the Act.

(3) If an engineering service within the boundaries of the land development area is intended to serve any other area within the municipal area, such engineering service and the costs of provision thereof must be treated as an internal engineering service to the extent that it serves the land development and as an external engineering service to the extent that it serves any other development.

#### **115 Engineering services agreement**

(1) An applicant of a land development application and the Municipality must enter into an engineering service agreement if the Municipality requires such agreement.

(2) The engineering services agreement must –

- (a) classify the services as internal engineering services or external engineering services (private?);
- (b) be clear when the applicant and the Municipality are to commence construction of internal engineering services and external engineering services, at which rate construction of such services is to proceed and when such services must be completed;
- (c) provide for the inspection and handing over of internal engineering services to the Municipality;
- (d) determine the date on which all risk and ownership in respect of such services shall pass to the Municipality;
- (e) require the applicant and the Municipality to take out adequate insurance cover in respect of such risks as are insurable for the duration of the land development; and
- (f) provide for the following responsibilities after the internal services have been handed over to the Municipality:
  - (i) when normal maintenance by the relevant authority must commence;
  - (ii) the responsibility of the applicant for the rectification of defects in material and workmanship; and
  - (iii) the rights of the relevant authority if the applicant fails to rectify any defects within a reasonable period after having been requested to do so;

- (g) if any one of the parties is to provide and install an engineering service at the request and at the cost of the other, such service must be clearly identified and the cost or the manner of determining the cost of the service must be clearly set;
- (h) determine whether additional bulk services are to be provided by the Municipality and, if so, such services must be identified;
- (i) determine which party is responsible for the installation and provision of service connections to residential, business, industrial, community facility and municipal erven, and the extent or manner, if any, to which the costs of such service connections are to be recovered;
- (j) define the service connections to be made which may include all service connections between internal engineering services and the applicable erf or portion of the land and these include –
  - (i) a water-borne sewerage pipe terminating at a sewer connection;
  - (ii) a water-pipe terminating at a water meter; and
  - (iii) an electricity house connection cable terminating on the relevant erf; and
- (k) clearly identify the level and standard of the internal engineering services to be provided and installed and these include, amongst others –
  - (i) water reticulation;
  - (ii) sewerage reticulation, sewage treatment facilities and the means of disposal of effluent and other products of treatment;
  - (iii) roads and storm-water drainage;
  - (iv) electricity reticulation (high and low tension);
  - (v) street lighting.

(2) The engineering services agreement may –

- (a) require that performance guarantees be provided, or otherwise, with the provision that -
  - (i) the obligations of the parties with regard to such guarantees are clearly stated;
  - (ii) such guarantee is irrevocable during its period of validity; and
  - (iii) such guarantee is transferable by the person to whom such guarantee is expressed to be payable; and
- (b) provide for the manner in which the parties are to finance their relative responsibilities in terms of the engineering services agreement and where appropriate, either party may undertake to provide bridging finance to the other party.

(3) Where only basic services are to be provided initially, the timeframes and the responsibility of the parties for the upgrading (if any) of services must be recorded in the engineering services agreement.

### **116 Abandonment or lapsing of land development application**

Where a land development application is abandoned by the applicant or has lapsed in terms of any provision in terms of the Act, provincial legislation or conditions or this By-law, the engineering services agreement referred to in section 115 lapses and if the applicant had installed any engineering services before the lapsing of the application in terms of the engineering services agreement, he or she shall have no claim against the Council with regard to the provision and installation of any engineering services of whatsoever nature.

### **117 Internal and external engineering services**

For the purpose of this Chapter:

- (a) **"external engineering services"** has the same meaning as defined in section 1 of the Act and consist of both "bulk services" and "link services";
- (b) **"bulk services"** means all the primary water, sewerage, waste disposal, sewage treatment facilities and means of disposal of effluent and other products of treatment, electricity and storm-water services, as well as the road network in the system to which the internal services are to be linked;
- (c) **"link services"** means all new services necessary to connect the internal services to the bulk services; and
- (d) **"internal engineering services"** has the same meaning as defined in section 1 of the Act and includes any link services linking such internal services to the external engineering services.

### **Part B: Development Charges**

#### **118 Payment of development charge**

(1) The Municipality must develop a policy for development charges and may levy a development charge in accordance with the policy, for the provision of -

- (a) the engineering services contemplated in this Chapter where it will be necessary to enhance or improves such services as a result of the commencement of the amendment scheme; and
- (b) open spaces or parks where the commencement of the amendment scheme will bring about a higher residential density.

(2) If a land development application is approved by the Municipal Planning Tribunal subject to, amongst others, the payment of a development charge or an amendment scheme comes into operation, the applicant or owner of the land to which the scheme relates, must, subject to section 119, pay the development charge to the Municipality.

(3) An applicant or owner who is required to pay a development charges in terms of this By-law shall pay such development charges to the Municipality before:

- (a) a written statement contemplated in section 118 of the Municipal System Act is furnished in respect of the land;
- (b) a building plan is approved in respect of:
  - (i) the proposed alteration of or addition to an existing building on the land;
  - (ii) the erection of a new building on the land, where that building plan, were it not for the commencement of the amendment scheme, would have been in conflict with the land use scheme in operation;
- (c) the land is used in a manner or for a purpose which, were it not for the commencement of the amendment scheme, would have been in conflict with the land use scheme in operation.

#### **119 Offset of development charge**

(1) An agreement concluded between the Municipality and the applicant in terms of section 49(4) of the Act, to offset the provision of external engineering services against the applicable development charge, must be in writing and must include the estimated cost of the installation of the external engineering services.

(2) The applicant or the owner must submit documentary proof of the estimated cost of the installation of the external engineering services.

(3) The amount to be offset against the applicable development charge must be determined by the Municipality.

(4) if the cost of the installation of the external engineering services exceed the amount of the applicable development charge, the Municipality may refund the applicant or the owner if there are funds available in the Municipality's approved budget.

(5) This section does not oblige the Municipality to offset any costs incurred in the provision of external engineering services other than that which may have been agreed upon in the engineering services agreement contemplated in section 115.

#### **120 Payment of development charge in instalments**

The Municipality may -

- (a) in the circumstances contemplated in subparagraph (b) or (c), allow payment of the development charge contemplated in section 118 in instalments over a period not exceeding three months;
- (b) in any case, allow payment of the development charge contemplated in section 118 to be postponed for a period not exceeding three months where security for the payment is given to its satisfaction;
- (c) in exercising the power conferred by subparagraphs (a) or (b), impose any condition, including a condition for the payment of interest.

**121 Refund of development charge**

No development charge paid to the Municipality in terms of section 118 or any portion thereof shall be refunded to an applicant or owner: Provided that where the owner paid the applicable charge prior to the land use rights coming into operation and the application is abandoned in terms of section 116 the Municipality may, on such terms and conditions as it may determine, authorise the refund of development charges or any portion thereof.

**122 General matters relating to contribution charges**

(1) Notwithstanding any provision to the contrary, where a development charge or contribution for open space is paid to the Municipality, such funds must, in terms of the provisions of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003), be kept separate and only applied by the Municipality towards the improvement and expansion of the services infrastructure or the provision of open space or parking, as the case may be, to the benefit and in the best interests of the general area where the land area is situated or in the interest of a community that occupies or uses such land area.

(2) The Municipality must annually prepare a report on the development charges paid to the Municipality together with a statement of the expenditure of such amounts and the purposes of such expenditure and must submit such report and statement to the Premier.

**CHAPTER 8****APPEAL PROCEDURES****PART A: MANAGEMENT OF AN APPEAL AUTHORITY****123 Presiding officer of appeal authority**

The presiding officer of the appeal authority is responsible for managing the judicial functions of that appeal authority.

**124 Bias and disclosure of interest**

(1) No presiding officer or member of an appeal authority may sit at the hearing of an appeal against a decision of a Municipal Planning Tribunal if he or she was a member of that Municipal Planning Tribunal when the decision was made or if he or she was the official contemplated in section 35(2) of the Act and he or she made the decision that is the subject of the appeal.

(2) A presiding officer or member of an appeal authority who has or appears to have a conflict of interest as defined in subregulations (5) and (6) must recuse himself or herself from the appeal hearing.

(3) A party may in writing to the appeal authority request the recusal of the presiding officer or member of that appeal authority on the grounds of conflict of interest and the presiding officer must decide on the request and inform the party of the decision in writing.

(4) A decision by a presiding officer or member to recuse himself or herself or a decision by the appeal authority to recuse a presiding officer or member, must be communicated to the parties concerned by the registrar.

(5) For the purpose of this Chapter “conflict of interest” means any factor that may impair or reasonable give the appearance of impairing the ability of a member of an appeal authority to independently and impartially adjudicate an appeal assigned to the appeal authority.

(6) A conflict of interest arises where an appeal assigned to an appeal authority involves any of the following:

- (a) A person with whom the presiding officer or member has a personal, familiar or professional relationship;
- (b) a matter in which the presiding officer or member has previously served in another capacity, including as an adviser, counsel, expert or witness; or
- (c) any other circumstances that would make it appear to a reasonable and impartial observer that the presiding officer’s or member’s participation in the adjudication of the matter would be inappropriate.

#### **125 Registrar of appeal authority**

(1) The municipal manager of a municipality is the registrar of the appeal authority.

(2) Notwithstanding the provisions of subregulation (1), a municipal council may appoint a person or designate an official in its employ, to act as registrar of the appeal authority and if it so appoints or designates a person or an official, that person or official has delegated authority as contemplated in section 56 of the Act.

(3) Whenever by reason of absence or incapacity any registrar is unable to carry out the functions of his or her office, or if his or her office becomes vacant, the municipal council may, after consultation with the presiding officer of the appeal authority, authorise any other competent official in the public service to act in the place of the absent or incapacitated registrar during such absence or incapacity or to act in the vacant office until the vacancy is filled.

(4) Any person appointed under subsection (2) or authorised under subsection (3) may hold more than one office simultaneously.

#### **126 Powers and duties of registrar**

(1) The registrar is responsible for managing the administrative affairs of the appeal authority and, in addition to the powers and duties referred to in this Chapter, has all the powers to do what is necessary or convenient for the effective and efficient functioning of the appeal authority and to ensure accessibility and maintenance of the dignity of the appeal authority.

(2) The duties of the registrar include –

- (a) the determination of the sitting schedules of the appeal authority;
- (b) assignment of appeals to the appeal authority;
- (c) management of procedures to be adhered to in respect of case flow management and the finalisation of any matter before the appeal authority;
- (d) transmit all documents and make all notifications required by the procedures laid down in the provincial spatial planning and land use management legislation;

- (e) the establishment of a master registry file for each case which must record –
  - (i) the reference number of each appeal;
  - (ii) the names of the parties;
  - (iii) all actions taken in connection with the preparation of the appeal for hearing;
  - (iv) the dates on which any document or notification forming part of the procedure is received in or dispatched from his or her office;
  - (v) the date of the hearing of the appeal;
  - (vi) the decision of the appeal authority;
  - (vii) whether the decision was unanimous or by majority vote; and
  - (viii) any other relevant information.

(3) The presiding officer of the appeal authority may give the registrar directions regarding the exercise of his or her powers under this Chapter.

(4) The registrar must give written notice to the presiding officer of all direct or indirect pecuniary interest that he or she has or acquires in any business or legal person carrying on a business.

## **PART B: APPEAL PROCESS**

### **127 Commencing of appeal**

An appellant must commence an appeal by delivering a Notice of Appeal specified in Annexure A to the registrar of the relevant appeal authority within 21 days as contemplated in section 51 of the Act.

### **128 Notice of appeal**

- (1) A Notice of Appeal must clearly indicate:
  - (a) whether the appeal is against the whole decision or only part of the decision and if only a part, which part;
  - (b) where applicable, whether the appeal is against any conditions of approval of an application and which conditions;
  - (c) the grounds of appeal including any findings of fact or conclusions of law;
  - (d) a clear statement of the relief sought on appeal;
  - (e) any issues that the appellant wants the appeal authority to consider in making its decision; and
  - (f) a motivation of an award for costs.

(2) An appellant may, within seven days from receipt of a notice to oppose an appeal amend the notice of appeal and must submit a copy of the amended notice to the appeal authority and to every respondent.

### **129 Notice to oppose an appeal**

A notice to oppose an appeal must clearly indicate:

- (a) whether the whole or only part of the appeal is opposed and if only a part, which part;
- (b) whether any conditions of approval of an application are opposed and which conditions;
- (c) whether the relief sought by the appellant is opposed; and
- (d) the grounds for opposing the appeal including any finding of fact or conclusions of law in dispute;
- (e) a clear statement of relief sought on appeal.

**130 Screening of appeal**

(1) When the appeal authority receives a Notice of Appeal, it must screen such Notice to determine whether:

- (a) It complies with the form specified in Annexure A;
- (b) it is submitted within the required time limit; and,
- (c) the appeal authority has jurisdiction over the appeal.

(2) If a Notice of Appeal does not comply with the form specified in Annexure A, the appeal authority must return the Notice of Appeal to the appellant, indicating what information is missing and require that information to be provided and returned to the appeal authority by the appellant within a specific time period.

(3) If the Notice of Appeal is not provided and returned to the appeal authority with the requested information within the specified time period, the appellant's appeal will be considered abandoned and the appeal authority must notify the parties in writing accordingly.

(4) If the Notice of Appeal is received by the appeal authority after the required time limit has expired, the party seeking to appeal is deemed to have abandoned the appeal and the appeal authority will notify the parties in writing.

(5) If the appeal relates to a matter that appears to be outside the jurisdiction of the appeal authority, it must notify the parties in writing.

(6) The appeal authority may invite the parties to make submissions on its jurisdiction and it will then determine, based on any submissions received, if it has jurisdiction over the appeal and must notify the parties in writing of the decision.

**PART C: PARTIES TO AN APPEAL****131 Parties to appeal**

(1) The parties to an appeal before an appeal authority are:

- (a) the appellant who has lodged the appeal with the appeal authority;
- (b) the Municipal Planning Tribunal that or the official authorised by the municipality as contemplated in section 35(2) of the Act who made the decision;
- (c) if the Minister or MEC intervenes in the proceeding under regulation 9, the Minister or the MEC, as the case may be; and
- (d) any other person who has been made a party to the proceeding by the appeal authority after a petition to the appeal authority under section 45(2) of the Act to be granted intervener status.

**132 Intervention by Minister or MEC**

(1) The Minister or the MEC may, on behalf of the national or provincial sphere of government, intervene in a proceeding before the appeal authority and must request to the appeal authority in writing to be added as a party to the appeal.

(2) The appeal authority may after due consideration of the request contemplated in subregulation (1), in its own discretion, make the Minister or the MEC a party to the appeal.

(3) Where the Minister or the MEC intervenes under subregulation (1) in an appeal proceeding, the Minister or the MEC may authorise the payment to a party to the proceeding by the department concerned of such costs as he or she considers were reasonably incurred by that party in relation to the proceeding as a result of that intervention.

### 133 Intervention by interested person

(1) Where an appeal has been lodged by an appellant to the appeal authority, an interested person referred to in section 45(2) of the Act may, at any time during the proceedings, petition the appeal authority in writing on the form referred to in Annexure B to be granted intervener status on the grounds that his or her rights may have been affected by the decision of the Municipal Planning Tribunal or official referred to in section 34(2) of the Act and might therefore be affected by the judgement of the appeal authority.

(2) The petitioner must submit together with the petition to be granted intervener status an affidavit stating that he or she –

- (a) does not collude with any of the appellants; and
- (b) is willing to deal with or act in regard to the appeal as the appeal authority may direct.

(3) The registrar must determine whether the requirements of this regulation have been complied with and must thereafter transmit a copy of the form to the parties of the appeal.

(4) The presiding officer of the appeal authority must rule on the admissibility of the petitioner to be granted intervener status and the decision of the presiding officer is final and must be communicated to the petitioner and the parties by the registrar.

(5) The presiding officer may, in his or her discretion or on request of one of the parties to the appeal, require security for that party's costs of appeal from the petitioner, in the form and manner determined by him or her, by delivering a notice setting forth the grounds on which the security is claimed and the amount demanded.

(6) If one of the parties request security for costs and only the amount of security is contested, the registrar must determine the amount to be given and his or her decision is final.

(7) If the person from whom security is demanded contests his or her liability to give security or if he or she fails or refuses to furnish security in the amount demanded or the amount fixed by the registrar within ten days of the demand or the registrar's decision, the other party may apply to the appeal authority for an order that such security be given and that the proceedings be stayed until such order is complied with.

(8) The appeal authority may, if security is not given within the time determined in the order, dismiss any petition for intervener status.

(9) An "interested person" for the purpose of this Part means a person who -

- (a) does not have a direct or indirect pecuniary or proprietary interest in the land affected by the decision of the Municipal Planning Tribunal or Land Development Officer referred to in section 34(2) of the Act and might therefore be affected by the judgement of the appeal authority; and

- (b) who submitted written comments or made oral representations during the decision-making process of the Municipal Planning Tribunal or Land Development Officer referred to in paragraph (a).

#### **PART D: JURISDICTION OF APPEAL AUTHORITY**

##### **134 Jurisdiction of appeal authority**

An appeal authority may consider an appeal on one or more of the following:

- (a) the administrative action was not procedurally fair as contemplated in the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000); and
- (b) the merits of the land development or land use application.

##### **135 Appeal hearing by appeal authority**

- (1) An appeal may be heard by an appeal authority by means of -

- (a) an oral hearing; or
- (b) a written hearing.

##### **136 Written hearing by appeal authority**

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.

##### **137 Oral hearing by appeal authority**

- (1) 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.
- (2) If appropriate in the circumstances, the oral hearing may be held by electronic means.

##### **138 Representation before appeal authority**

At the hearing of an appeal before an appeal authority, a party to the proceeding may appear in person or may be represented by another person.

##### **139 Opportunity to make submissions concerning evidence**

The appeal authority must ensure that every party to a proceeding before the appeal authority is given a reasonable opportunity to present his or her case and, in particular, to inspect any documents to which the appeal authority proposes to have regard in reaching a decision in the proceeding and to make submissions in relation to those documents.

**PART E: HEARINGS OF APPEAL AUTHORITY****140 Notification of date, time and place of hearing**

(1) The appeal authority must notify the parties of the date, time and place of a hearing at least five days before the hearing commences.

(2) The appeal authority will provide notification of the hearing to the appellant at the appellant's address for delivery.

**141 Hearing date**

A hearing will commence within 15 days after the completed Notice of Appeal has been delivered to the appeal authority, unless the parties and the presiding officer of the appeal authority consent to a later date.

**142 Adjournment**

(1) If a party requests an adjournment more than one day prior to the hearing, the party must obtain the written consent of the other party and the presiding officer of the appeal authority.

(2) The party requesting an adjournment must deliver to the appeal authority a completed form including reasons for the request.

(3) The appeal authority will notify the parties in writing of the decision of the presiding officer of the appeal authority.

(4) If the presiding officer of the appeal authority or the other party does not consent to the request for an adjournment, the hearing will not be adjourned.

(5) If a party requests an adjournment within one day prior to the hearing, the request must be made to the appeal authority at the hearing and may be made notwithstanding that a prior request was not consented to.

**143 Urgency and condonation**

(1) The registrar may –

(a) on application of any party to an appeal, direct that the matter is one of urgency, and determine such procedures, including time limits, as he or she may consider desirable to fairly and efficiently resolve the matter;

(b) on good cause shown, condone any failure by any party to an appeal to comply with these Regulations or any directions given in terms hereof, if he or she is of the opinion that such failure has not unduly prejudiced any other person;

(2) Every application for condonation made in terms of this regulation must be –

(a) served on the registrar;

(b) accompanied by a memorandum setting forth the reasons for the failure concerned; and

(c) determined by the presiding officer in such manner as he or she considers proper.

(3) Where a failure is condoned in terms of subregulation (1)(b), the applicant for condonation must comply with the directions given by the registrar when granting the condonation concerned.

**144 Withdrawal of appeal**

An appellant or any respondent may, at any time before the appeal hearing, withdraw an appeal or opposition to an appeal and must give notice of such withdrawal to the registrar and all other parties to the appeal.

**PART F: ORAL HEARING PROCEDURE****145 Location of oral hearing**

An oral hearing must be held in a location within the area of jurisdiction of the municipality where the land affected by the decision is located, but may not be held in the office of the Municipal Planning Tribunal or the Land Development Officer authorised in terms of section 35(2) of the Act whose decision is under appeal.

**146 Presentation of each party's case**

- (1) Each party has the right to present evidence and make arguments in support of that party's case.
- (2) The appellant will have the opportunity to present evidence and make arguments first, followed by the Municipal Planning Tribunal or the Land Development Officer.

**147 Witnesses**

- (1) Each party may call witnesses to give evidence before the panel.
- (2) A witness may not be present at the hearing before giving evidence unless the witness is:
  - (a) an expert witness in the proceedings;
  - (b) a party to the appeal; or
  - (c) a representative of a party to the appeal.

**148 Proceeding in absence of party**

- (1) If a party does not appear at an oral hearing, the appeal authority may proceed in the absence of the party if the party was notified of the hearing.
- (2) Prior to proceeding, the appeal authority must first determine whether the absent party received notification of the date, time and place of the hearing.
- (3) If the notice requirement was not met, the hearing cannot proceed and the presiding officer of the appeal authority must reschedule the hearing.

**149 Recording**

Hearings of the appeal authority may be recorded.

**150 Oaths**

Witnesses (including parties) are required to give evidence under oath or confirmation.

**151 Additional documentation**

- (1) Any party wishing to provide the appeal authority with additional documentation not included in the appeal record should provide it to the appeal authority at least three days before the hearing date.
- (2) The registrar must distribute the documentation to the other party and the members of the appeal authority.
- (3) If the party is unable to provide the additional documentation to the appeal authority at least 3 days prior to the hearing, the party may provide it to the appeal authority at the hearing.

(4) The party must bring copies of the additional documentation for the members of the appeal authority and the other party.

(5) If the additional documentation brought to the hearing is substantive or voluminous, the other party may request an adjournment from the appeal authority.

#### **PART G: WRITTEN HEARING PROCEDURE**

##### **152 Commencement of written hearing**

The written hearing process commences with the issuance of a letter from the appeal authority to the parties establishing a submissions schedule.

##### **153 Presentation of each party's case in written hearing**

(1) Each party must be provided an opportunity to provide written submissions to support their case.

(2) The appellant will be given seven days to provide a written submission.

(3) Upon receipt of the appellant's submission within the timelines, the appeal authority must forward the appellant's submission to the Municipal Planning Tribunal or the Land Development Officer.

(4) The Municipal Planning Tribunal or the Land Development Officer has seven days in which to provide a submission in response.

(5) If no submission is received by a party in the time established in the submissions schedule, it will be deemed that the party declined the opportunity to provide a submission.

##### **154 Extension of time**

(1) If a party wishes to request an extension of the time established to provide a written submission, this request must be in writing to the appeal authority in advance of the date on which the submission is due.

(2) Any request for an extension must be accompanied by the reasons for the request.

(3) Following receipt of a request for an extension of time, the appeal authority will issue a decision in writing to the parties.

##### **155 Adjudication of written submissions**

(1) Following receipt of any written submissions from the parties, the registrar must forward the appeal record, which includes the written submissions, to the appeal authority for adjudication.

(2) If no written submissions are received from the parties, the registrar will forward the existing appeal record to the appeal authority for adjudication.

(3) Any submission received after the date it was due but before the appeal authority for adjudication has rendered its decision will be forwarded to the presiding officer of the appeal authority to decide whether or not to accept the late submission.

(4) The appeal authority must issue a decision in writing to the parties and, if the submission is accepted, the other party will be given seven days to provide a written submission in response.

**PART H: DECISION OF APPEAL AUTHORITY****156 Further information or advice**

After hearing all parties on the day of the hearing, the appeal authority –

- (a) may in considering its decision request any further information from any party to the appeal hearing or conduct any investigation which it considers necessary;
- (b) may postpone the matter for a reasonable period to obtain further information or advice, in which case it must without delay make a decision as contemplated by paragraph (c);
- (c) must within 21 days after the last day of the hearing, issue its decision on the appeal together with the reasons therefor.

**157 Decision of appeal authority**

(1) The appeal authority may confirm, vary or revoke the decision of the Municipal Planning Tribunal or Land Development Officer and may include an award of costs.

(2) The presiding officer must sign the decision of the appeal authority and any order made by it.

**158 Notification of decision**

The registrar must notify the parties of the decision of the appeal authority in terms of regulation 34, together with the reasons therefor within seven days after the appeal authority handed down its decision.

**159 Directives to municipality**

(1) The appeal authority must, in its decision, give directives to the municipality concerned as to how such a decision must be implemented and which of the provisions of the Act and the Regulations have to be complied with by the municipality as far as implementation of the decision is concerned.

(2) Where an appeal authority upholds a decision on a development application, the Municipal Manager must, within 21 days of the decision, take the necessary steps to have the decision published in the *Provincial Gazette*.

**PART I: GENERAL****160 Expenditure**

Expenditure in connection with the administration and functioning of the appeal authority must be defrayed from moneys appropriated by the applicable municipality.

**CHAPTER 9****COMPLIANCE AND ENFORCEMENT****161 Enforcement**

The Municipality must comply and enforce compliance with—

- (a) the provisions of this By-law;
- (b) the provisions of a land use scheme;
- (c) conditions imposed in terms of this By-law or previous planning legislation; and
- (d) title deed conditions.

**162 Offences and penalties**

(1) Any person who—

- (a) contravenes or fails to comply with section 56 and subsection (2);
- (b) fails to comply with a compliance notice issued in terms of section 163;
- (c) utilises land in a manner other than prescribed by the land use scheme of the Municipality;
- (d) upon registration of the first land unit arising from a subdivision, fails to transfer all common property, including private roads and private places originating from the subdivision, to the owners' association;
- (e) supplies particulars, information or answers in an application or in an appeal to a decision on a land development application, knowing it to be false, incorrect or misleading or not believing them to be correct;
- (f) falsely professes to be an authorised employee or the interpreter or assistant of an authorised employee; or
- (g) hinders or interferes an authorised employee in the exercise of any power or the performance of any duty of that employee,

is guilty of an offence and is liable upon conviction to a fine or imprisonment not exceeding a period of 20 years or to both a fine and such imprisonment.

(2) An owner who permits land to be used in a manner set out in subsection (2)(c) and who does not cease that use or take reasonable steps to ensure that the use ceases, or who permits a person to breach the provisions of the land use scheme of the Municipality, is guilty of an offence and liable upon conviction to a fine or imprisonment for a period not exceeding 20 years or to both a fine and such imprisonment.

(3) A person convicted of an offence under this By-law who, after conviction, continues with the action in respect of which he or she was so convicted, is guilty of a continuing offence and liable upon conviction to imprisonment for a period not exceeding three months or to an equivalent fine or to both such fine and imprisonment, in respect of each day on which he or she so continues or has continued with that act or omission.

(4) A Municipality must adopt fines and contravention penalties to be imposed in the enforcement of this By-law.

**163 Service of compliance notice**

(1) The Municipality must serve a compliance notice on a person if it has reasonable grounds to suspect that the person or owner is guilty of an offence contemplated in terms of section 162.

(2) A compliance notice must direct the occupier and owner to cease the unlawful land use or construction activity or both, forthwith or within the time period determined by the Municipality and may include an instruction to—

- (a) demolish unauthorised building work and rehabilitate the land or restore the building, as the case may be, to its original form within 30 days or such other time period determined by the Municipal Manager; or
- (b) submit an application in terms of this By-law within 30 days of the service of the compliance notice and pay the contravention penalty.

(3) A person who has received a compliance notice with an instruction contemplated in subsection (2)(a) may not submit an application in terms of subsection (2)(b).

(4) An instruction to submit an application in terms of subsection (2)(b) must not be construed as an indication that the application will be approved.

(5) In the event that the application submitted in terms of subsection (2)(b) is refused, the owner must demolish the unauthorised work.

(6) A person who received a compliance notice in terms of this section may lodge representations to the Municipality within 30 days of receipt of the compliance notice.

#### **164 Content of compliance notices**

(1) A compliance notice must—

- (a) identify the person to whom it is addressed;
- (b) describe the activity concerned and the land on which it is being carried out;
- (c) state that the activity is illegal and inform the person of the particular offence contemplated in section 162 which that person allegedly has committed or is committing through the carrying on of that activity;
- (d) the steps that the person must take and the period within which those steps must be taken;
- (e) anything which the person may not do, and the period during which the person may not do it;
- (f) provide for an opportunity for a person to lodge representations contemplated in terms of section 163 with the contact person stated in the notice;
- (g) issue a warning to the effect that—
  - (i) the person could be prosecuted for and convicted of an offence contemplated in section 162;
  - (ii) on conviction of an offence, the person will be liable for the penalties as provided for;
  - (iii) the person could be required by an order of court to demolish, remove or alter any building, structure or work illegally erected or constructed or to rehabilitate the land concerned or to cease the activity;
  - (iv) in the case of a contravention relating to a consent use or temporary departure, the approval could be withdrawn;
  - (v) in the case of an application for authorisation of the activity or development parameter, that a contravention penalty including any costs incurred by the Municipality, will be imposed;

(2) Any person who receives a compliance notice must comply with that notice within the time period stated in the notice unless the Municipality has agreed to suspend the operation of the compliance notice in terms of section 165.

#### **165 Objections to compliance notice**

(1) Any person or owner who receives a compliance notice in terms of section 163 may object to the notice by making written representations to the Municipal Manager within 30 days of receipt of the notice.

(2) Subject to the consideration of any objections or representations made in terms of subsection (1) and any other relevant information, the Municipal Manager—

- (a) may suspend, confirm, vary or cancel a notice or any part of the notice; and
- (b) must specify the period within which the person who received the notice must comply with any part of the notice that is confirmed or modified.

#### **166 Failure to comply with compliance notice**

If a person fails to comply with a compliance notice the Municipality may—

- (a) lay a criminal charge against the person;
- (b) apply to the High Court for an order restraining that person from continuing the illegal activity, to demolish, remove or alter any building, structure or work illegally erected or constructed without the payment of compensation or to rehabilitate the land concerned; or
- (c) in the case of a temporary departure or consent use, the Municipality may withdraw the approval granted and then act in terms of section 163.

#### **167 Urgent matters**

(1) In cases where an activity must be stopped urgently, the Municipality may dispense with the procedures set out above and issue a compliance notice calling upon the person or owner to cease immediately.

(2) If the person or owner fails to cease the activity immediately, the Municipality may apply to the High Court for an urgent interdict or any other relief necessary.

#### **168 Subsequent application for authorisation of activity**

(1) If instructed to rectify or cease an unlawful land use or building activity, a person may make an application to the Municipality for any land development contemplated in Chapter 5, unless the person is instructed under section 163 to demolish the building work.

(2) The applicant must, within 30 days after approval is granted, pay to the Municipality a contravention penalty in the amount determined by the Municipality.

**169 Power of entry for enforcement purposes**

(1) An authorised employee may, with the permission of the occupier or owner of land, at any reasonable time, and without a warrant, and without previous notice, enter upon land or enter a building or premises for the purpose of ensuring compliance with this By-law.

(2) An authorised employee must be in possession of proof that he or she has been designated as an authorised employee for the purposes of this By-law.

(3) An authorised employee may be accompanied by an interpreter, a police official or any other person who may be able to assist with the inspection.

**170 Power and functions of authorised employee**

(1) In ascertaining compliance with this By-law as contemplated in section 161, an authorised employee may exercise all the powers and must perform all the functions granted to him or her under section 32 of the Act.

(2) An authorised employee may not have a direct or indirect personal or private interest in the matter to be investigated.

**171 Warrant of entry for enforcement purposes**

(1) A magistrate for the district in which the land is situated may, at the request of the Municipality, issue a warrant to enter upon the land or building or premises if the—

- (a) prior permission of the occupier or owner of land cannot be obtained after reasonable attempts; or
- (b) purpose of the inspection would be frustrated by the prior knowledge thereof.

(2) A warrant referred to in subsection (1) may be issued by a judge of a High Court or by a magistrate who has jurisdiction in the area where the land in question is situated, and may only be issued if it appears to the judge or magistrate from information on oath that there are reasonable grounds for believing that—

- (a) an authorised employee has been refused entry to land or a building that he or she is entitled to inspect;
- (b) an authorised employee reasonably anticipates that entry to land or a building that he or she is entitled to inspect will be refused;
- (c) there are reasonable grounds for suspecting that a contravention contemplated in section 162 has occurred and an inspection of the premises is likely to yield information pertaining to that contravention; or
- (d) the inspection is reasonably necessary for the purposes of this By-law.

(3) A warrant must specify which of the acts mentioned in section 162 may be performed under the warrant by the person to whom it is issued and authorises the Municipality to enter upon the land or to enter the building or premises and to perform any of the acts referred to in section 162 as specified in the warrant 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 grounds of urgency.

**172 Regard to decency and order**

The entry of land, a building or structure under this Chapter must be conducted with strict regard to decency and order, which must include regard to—

- (a) a person's right to respect for and protection of his or her dignity;
- (b) the right to freedom and security of the person; and
- (c) the right to a person's personal privacy.

**173 Court order**

Whether or not a Municipality has instituted proceedings against a person for an offence contemplated in section 161, the Municipality may apply to the High Court for an order compelling that person to—

- (a) demolish, remove or alter any building, structure or work illegally erected or constructed;
- (b) rehabilitate the land concerned;
- (c) compelling that person to cease with the unlawful activity; or
- (d) any other appropriate order.

**CHAPTER 10  
TRANSITIONAL PROVISIONS**

**174 Transitional provisions**

(1) Any land development application or other matter in terms of any provision of National or Provincial legislation dealing with land development applications that are pending before the Municipality on the date of the coming into operation of this By-law, shall be dealt with in terms of that legislation or if repealed in terms of its transitional arrangements or in the absence of any other provision, in terms of this By-law, read with section 2(2) and section 60 of the Act;

(2) Where on the date of the coming into operation of an approved land use scheme in terms of section 26(1) of the Act, any land or building is being used or, within one month immediately prior to that date, was used for a purpose which is not a purpose for which the land concerned has been reserved or zoned in terms of the provisions of a land use scheme in terms of this By-law read with section 27 of the Act, but which is otherwise lawful and not subject to any prohibition in terms of this By-law, the use for that purpose may, subject to the provisions of this subsection (3), be continued after that date read with the provisions of a Town Planning Scheme or land use scheme.

- (3) The right to continue using any land or building by virtue of the provisions of subsection (2) shall;
  - (a) where the right is not exercised in the opinion of the Municipality for a continuous period of 15 months, lapse at the expiry of that period;
  - (b) lapse at the expiry of a period of 15 years calculated from the date contemplated in subsection (2);

- (c) where on the date of the coming into operation of an approved land use scheme -
  - (i) a building, erected in accordance with an approved building plan, exists on land to which the approved land use scheme relates;
  - (ii) the erection of a building in accordance with an approved building plan has commenced on land and the building does not comply with a provision of the approved land use scheme, the building shall for a period of 15 years from that date be deemed to comply with that provision.
- (d) where a period of 15 years has, in terms of subsection (3), commenced to run from a particular date in the opinion of the Municipality in respect of any land or building, no regard shall, for the purposes of those subsections, be had to an approved scheme which comes into operation after that date.
- (e) within one year from the date of the coming into operation of an approved land use scheme -
  - (i) the holder of a right contemplated in subsection (2) may notify the Municipality in writing that he is prepared to forfeit that right;
  - (ii) the owner of a building contemplated in subsection (3)(c) may notify the Municipality in writing that he is prepared to forfeit any right acquired by virtue of the provisions of that subsection;

(4) Where at any proceedings in terms of this By-law it is alleged that a right has lapsed in terms of subsection (2)(a), such allegation shall be deemed to be correct until the contrary is proved.

(5) Where any land use provisions are contained in any title deed, deed of grant or 99 year leasehold, which did not form part of a town planning scheme, such land use provisions shall apply as contemplated in subsection (2).

(6) If the geographic area of the Municipality is demarcated to incorporate land from another municipality then the land use scheme or town planning scheme applicable to that land remains in force until the Municipality amends, repeals or replaces it.

#### **175 Determination of zoning**

(1) Notwithstanding the provisions of section 174(2) and (3), the owner of land or a person authorised by the owner may apply to the Municipality for the determination of a zoning for land referred to in section 26(3) of the Act

(2) When the Municipality considers an application in terms of subsection (1) it must have regard to the following:

- (a) the lawful utilisation of the land, or the purpose for which it could be lawfully utilised immediately before the commencement of this By-law if it can be determined;
- (b) the zoning, if any, that is most compatible with that utilisation or purpose and any applicable title deed condition;

- (c) any departure or consent use that may be required in conjunction with that zoning;
- (d) in the case of land that was vacant immediately before the commencement of this By-law, the utilisation that is permitted in terms of the title deed conditions or, where more than one land use is so permitted, one of such land uses determined by the municipality; and
- (e) where the lawful utilisation of the land and the purpose for which it could be lawfully utilised immediately before the commencement of this By-law, cannot be determined, the zoning that is the most desirable and compatible with any applicable title deed condition, together with any departure or consent use that may be required.

(3) If the lawful zoning of land contemplated in subsection (1) cannot be determined, the Municipality must determine a zoning and give notice of its intention to do so in terms of section 92.

(4) A land use that commenced unlawfully, whether before or after the commencement of this By-law, may not be considered to be the lawful land use.

## CHAPTER 11 GENERAL PROVISIONS

### 176 Delegations

Any power conferred in this By-law on the Municipality may be delegated by the municipality subject to section 56 of the Act and section 59 of the Local Government: Municipal Systems Act.

### 177 Repeal of by-laws

The *(insert the name of the applicable by-laws)* are hereby repealed.

### 178 Short title and commencement

(1) This By-law is called the By-law on Municipal Land Use Planning.

(2) This By-law comes into operation on the date that the Act comes into operation in the municipal area of the Municipality.

## SCHEDULE X

### INVITATION TO NOMINATE A PERSON TO BE APPOINTED AS A MEMBER TO THE - \_\_\_\_\_ MUNICIPAL PLANNING TRIBUNAL

In terms of the Spatial Planning and Land Use Management Act, 16 of 2013, the \_\_\_\_\_ Municipality hereby invites nominations for officials or employees of the *(insert name of organ of state or non-governmental organisation contemplated in regulation (3)(2)(a) of the Regulations)* to be appointed to the \_\_\_\_\_ Municipal Planning Tribunal for its first term of office.

The period of office of members will be five years calculated from the date of appointment of such members by the \_\_\_\_\_ Municipality.

Nominees must be persons registered with the professional bodies contemplated in section 33(1)(b) – (f) of the By-law on Municipal Land Use Planning, 2015, who have leadership qualities and who have knowledge and experience of spatial planning, land use management and land development or the law related thereto.

Each nomination must be in writing and must contain the following information:

- (a) The name, address and identity number of the nominee;
- (b) The designation or rank of the nominee in the organ of state or non-governmental organisation;
- (c) A short curriculum vitae of the nominee (not exceeding two pages);
- (d) Certified copies of qualifications and registration certificates indicating registration with the relevant professional body or voluntary association.

Nominations must be sent to:

The Municipal Manager

\_\_\_\_\_ Municipality

P.O. Box \_\_\_\_\_

\_\_\_\_\_

For Attention: \_\_\_\_\_

For Enquiries: \_\_\_\_\_

Tel \_\_\_\_\_

\_\_\_\_\_  
 \* I, .....(full names of nominee),

ID No (of nominee) .....,

hereby declare that –

- (a) I am available to serve on \_\_\_\_\_ Municipal Planning Tribunal and I am willing to serve as chairperson or deputy chairperson should the Council designate me OR I am not willing to serve a chairperson or deputy chairperson (*delete the option not applicable*);
- (b) there is no conflict of interest OR I have the following interests which may conflict with the \_\_\_\_\_ Municipal Planning Tribunal which I have completed on the declaration of interest form (*delete the option not applicable*);
- (c) I am not disqualified in terms of section 38 of the Spatial Planning and Land Use Management Act, 16 of 2013 to serve on the \_\_\_\_\_ Municipal Planning Tribunal and I authorise the \_\_\_\_\_ Municipality to verify any record in relation to such disqualification or requirement.
- (d) I undertake to sign, commit to and uphold the Code of Conduct applicable to members of the \_\_\_\_\_ Municipal Planning Tribunal.

No nominations submitted after the closing date will be considered.

**CLOSING DATE: (INSERT DATE)**

\_\_\_\_\_  
Signature of Nominee

\_\_\_\_\_  
Full Names of Nominee

\_\_\_\_\_  
Signature of Person signing on behalf of the Organ of State or Non-Governmental Organisation

\_\_\_\_\_  
Full Names of Person signing on behalf of the Organ of State or Non-Governmental Organisation

**SCHEDULE X****CALL FOR NOMINATIONS FOR PERSONS TO BE APPOINTED AS MEMBERS TO THE -  
\_\_\_\_\_ MUNICIPAL PLANNING TRIBUNAL****CLOSING DATE: (INSERT DATE)**

In terms of the Spatial Planning and Land Use Management Act, 16 of 2013, the \_\_\_\_\_ Municipality hereby call for nominations for members of the public to be appointed to the \_\_\_\_\_ Municipal Planning Tribunal for its first term of office.

The period of office of members will be five years calculated from the date of appointment of such members by the \_\_\_\_\_ Municipality.

Nominees must be persons registered with the professional bodies contemplated in section 33(1)(b) – (f) of the By-law on Municipal Land Use Planning, 2015, who have leadership qualities and who have knowledge and experience of spatial planning, land use management and land development or the law related thereto.

Each nomination must be in writing and must contain the following information:

- (a) The name and address of the nominator, who must be a natural person and a person may nominate himself or herself;
- (b) The name, address and identity number of the nominee;
- (d) Motivation by the nominator for the appointment of the nominee to the \_\_\_\_\_ Municipal Planning Tribunal (no less than 50 words and no more than 250 words);
- (e) A short curriculum vitae of the nominee (not exceeding two pages);
- (f) Certified copies of qualifications and registration certificates indicating registration with the relevant professional body or voluntary association.

Please note that failure to comply with the above requirements may result in the disqualification of the nomination.

Nominations must be sent to:

The Municipal Manager

\_\_\_\_\_ Municipality

P.O. Box \_\_\_\_\_

\_\_\_\_\_

For Attention: \_\_\_\_\_

For Enquiries: \_\_\_\_\_

Tel \_\_\_\_\_

\* I, .....(full names of nominee),

ID No (of nominee) .....,

hereby declare that –

- (a) I am available to serve on \_\_\_\_\_ Municipal Planning Tribunal and I am willing to serve as chairperson or deputy chairperson should the Council designate me / I am not willing to serve a chairperson or deputy chairperson (*delete the option not applicable*);
- (b) there is no conflict of interest OR I have the following interests which may conflict with the \_\_\_\_\_ Municipal Planning Tribunal and which I have completed on the declaration of interest form (*delete the option not applicable*);
- (c) I am not disqualified in terms of section 38 of the Spatial Planning and Land Use Management Act, 16 of 2013 to serve on the \_\_\_\_\_ Municipal Planning Tribunal and I authorise the \_\_\_\_\_ Municipality to verify any record in relation to such disqualification or requirement;

(d) I undertake to sign, commit to and uphold the Code of Conduct applicable to members of the \_\_\_\_\_ Municipal Planning Tribunal.

No nominations submitted after the closing date will be considered.

\_\_\_\_\_  
Signature of Nominee

\_\_\_\_\_  
Full Names of Nominee

**SCHEDULE X  
DISCLOSURE OF INTERESTS FORM**

I, the undersigned,

Full names: \_\_\_\_\_  
Identity Number: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

do hereby declare that -

- (a) the information contained herein fall within my personal knowledge and are to the best of my knowledge complete, true and correct, and
- (b) that there is no conflict of interest between myself and the \_\_\_\_\_ Municipal Planning Tribunal; or
- (c) I have the following interests which may conflict or potentially conflict with the interests of the \_\_\_\_\_ Municipal Planning Tribunal;

CONFLICTING INTERESTS	

- (d) the non-executive directorships previously or currently held and remunerative work, consultancy and retainership positions held as follows:

1. NON-EXECUTIVE DIRECTORSHIP	
Name of Company	Period
1.	
2.	
3.	
4.	
5.	

2. REMUNERATIVE WORK, CONSULTANCY & RETAINERSHIPS			
Name of Company & Occupation	Type of Business	Rand amount per month	Period
1.			
2.			
3.			
4.			
5.			

3. CRIMINAL RECORD	
Type of Offence	Dates/Term of Sentence
1.	

- (e) I am South African citizen or a permanent resident in the Republic
- (f) I am not a member of Parliament, a provincial legislature, a Municipal Council or a House of Traditional Leaders;
- (g) I am not an un-rehabilitated insolvent;
- (h) I have not been declared by a court of law to be mentally incompetent and have not been detained under the Mental Health Care Act, 2002 (Act No. 17 of 2002);
- (i) I have not at any time been convicted of an offence involving dishonesty;
- (j) I have not at any time been removed from an office of trust on account of misconduct;
- (k) I have not previously been removed from a tribunal for a breach of any provision of the Spatial Planning and Land Use Management Act, 2013 or provincial legislation or the Land Use Planning By-Laws, 2015 enacted by the \_\_\_\_\_ Municipality.;

- (l) I have not been found guilty of misconduct, incapacity or incompetence; or
- (m) I have not failed to comply with the provisions of the Spatial Planning and Land Use Management Act, 2013 or provincial legislation or the Land Use Planning By-Laws, 2015 enacted by the \_\_\_\_\_ Municipality.

**Signature of Nominee:** \_\_\_\_\_

**Full Names:** \_\_\_\_\_

**SWORN** to and **SIGNED** before me at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_.

The deponent having acknowledged that he knows and understands the contents of this affidavit, that the contents are true, and that he or she has no objection to taking this oath and that he or she considers the oath to be binding on his or her conscience.

\_\_\_\_\_  
**COMMISSIONER OF OATHS**

FULL NAMES: \_\_\_\_\_

DESIGNATION: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

**SCHEDULE X  
 CODE OF CONDUCT OF MEMBERS OF THE MUNICIPAL PLANNING TRIBUNAL**

I, the undersigned,

Full names: \_\_\_\_\_  
 Identity Number: \_\_\_\_\_  
 Residing at: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

do hereby declare that I will uphold the Code of Conduct of the \_\_\_\_\_ Municipal Planning Tribunal contained hereunder:

**General conduct**

1. A member of the Municipal Planning Tribunal must at all times—
  - (a) act in accordance with the principles of accountability and transparency;
  - (b) disclose his or her personal interests in any decision to be made in the planning process in which he or she serves or has been requested to serve;
  - (c) abstain completely from direct or indirect participation as an advisor or decision-maker in any matter in which he or she has a personal interest and leave any chamber in which such matter is under deliberation unless the personal interest has been made a matter of public record and the municipality has given written approval and has expressly authorised his or her participation.

2. A member of the Municipal Planning Tribunal may not—
- (a) use the position or privileges of a member of the Municipal Planning Tribunal or confidential information obtained as a member of the Municipal Planning Tribunal for personal gain or to improperly benefit another person; and
  - (b) participate in a decision concerning a matter in which that member or that members' spouse, partner or business associate, has a direct or indirect personal interest or private business interest.

#### Gifts

3. A member of the Municipal Planning Tribunal may not receive or seek gifts, favours or any other offer under circumstances in which it might reasonably be inferred that the gifts, favours or offers are intended or expected to influence a person's objectivity as an advisor or decision-maker in the planning process.

#### Undue influence

4. A member of the Municipal Planning Tribunal may not—
- (a) use the power of any office to seek or obtain special advantage for private gain or to improperly benefit another person that is not in the public interest;
  - (b) use confidential information acquired in the course of his or her duties to further a personal interest;
  - (c) disclose confidential information acquired in the course of his or her duties unless required by law to do so or by circumstances to prevent substantial injury to third persons; and
  - (d) commit a deliberately wrongful act that reflects adversely on the Municipal Planning Tribunal, the Municipality, the government or the planning profession by seeking business by stating or implying that he or she is prepared, willing or able to influence decisions of the Municipal Planning Tribunal by improper means.

Signature of Nominee: \_\_\_\_\_

Full Names: \_\_\_\_\_

Date: \_\_\_\_\_