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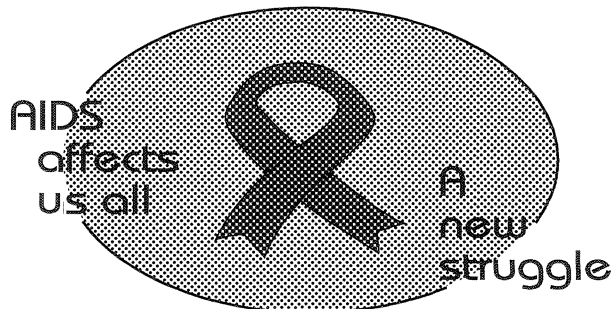
# Provincial Gazette Igazethi Yephondo Provinsiale Koerant

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KING WILLIAM'S TOWN, 31 JANUARY 2014

**No. 3113**  
(Extraordinary)

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**CONTENTS • INHOUD**

No.

Page  
No. Gazette  
No.**LOCAL AUTHORITY NOTICES**

1	Local Government: Municipal Systems Act (32/2000): and Constitution of the Republic of South Africa (108/1996): Mbhashe Local Municipality: Credit Control and Debt Collection By-laws .....	3	3113
2	do.: do.: Traffic By-laws .....	26	3113
3	do.: do.: Abattoir By-laws .....	38	3113
4	do.: do.: Advertising Signs and Disfigurement of the Fronts or Frontages of Streets By-laws .....	51	3113
5	do.: do.: Aerial Systems By-laws .....	71	3113
6	do.: do.: By-laws for the Control of Disposal Sites .....	76	3113
7	do.: do.: By-laws Relating to Hairdressers and Beauticians.....	81	3113
8	do.: do.: Fireworks By-laws.....	87	3113
9	do.: do.: Fresh Produce Market By-laws .....	91	3113
10	do.: do.: Parking Grounds, Parking Attendants and Car Watchers By-laws .....	113	3113
11	do.: do.: Public Amenities By-laws.....	133	3113
12	do.: do.: Regulation of Parks and Open Spaces By-laws .....	141	3113
13	do.: do.: Child-care Facilities By-laws.....	154	3113
14	do.: do.: Cemeteries and Crematoria By-laws.....	168	3113
15	do.: do.: Fences and Fencing By-laws .....	189	3113
16	do.: do.: Financial By-laws.....	199	3113
17	do.: do.: Foodhandling By-laws .....	219	3113

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## **LOCAL AUTHORITY NOTICES**

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**No. 1**

### **MBHASHE LOCAL MUNICIPALITY**

## **CREDIT CONTROL AND DEBT COLLECTION BY-LAWS**

## **MBHASHE LOCAL MUNICIPALITY NOTICE**

Notice is hereby given in terms of section 13 of the Local Government Municipal Systems Act, 2000(Act 32 of 2000), as amended, read with sections 156 and 162 of the Constitution of the Republic of South Africa, 108 of 1996 as amended, that Mbashe Local Municipality in terms of resolution number 3.2.1 dated 31 October 2012, resolved to adopt the following Credit Control and Debt Collection By-Laws

### **BY-LAWS**

To ensure that all monies due and payable to the Municipality are collected; to provide for customer management, credit control procedures and mechanisms and debt collection procedures and mechanisms; to provide for indigents in a way that is consistent with rates and tariff policies and any national policy on indigents; to provide for extension of time for payment of accounts; to provide for charging of interest on arrears, where appropriate; to provide for termination of services or the restriction of the provision of services when payments are in the arrears; and to provide for matters relating to unauthorised consumption of services, theft and damages within the municipal area and to provide for matters incidental thereto.

**PREAMBLE** WHEREAS Mbashe has adopted a Credit Control and Debt Collection Policy;

AND WHEREAS section 98 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), requires a Municipal Council to adopt By-Laws to give effect to the Municipality's credit control and debt collection policy;

BE IT THEREFORE ENACTED by Mbashe Municipal Council, as follows:

### **TABLE OF CONTENTS**

#### **SUBJECT SECTION**

1. Definitions
2. Objective of By-Laws
3. Application of By-laws
4. Responsibility of Council
5. Responsibility of Mayor
6. Responsibility of Municipal Manager
7. Responsibility of Communities, Ratepayers and Residents
8. Responsibilities of Ward Councillors
9. Responsibilities of all councillors
10. Responsibilities of all municipal staff members
11. Responsibilities of Municipal Entities
12. Responsibility for customer care
13. Accounts
14. Account Information
15. Account Management
16. Queries, Complaints or appeals in respect of an Account
17. Actions to secure payments
18. Arrear Accounts

19. Accounts Outstanding for longer than 60 days
20. Agreement for the Payment of Arrears in Instalments
21. Dispute as to Amount Owing
22. Power to restrict or terminate supply of municipal services
23. Reconnection of municipal services
24. Interest charges
25. Cost to remind debtors of arrears
26. Cost for the termination of municipal services
27. Full and final settlement of debt
28. Agents, attorneys and other collection agents
29. Legal fees
30. Fraud, theft and other criminal activity
31. Dishonoured cheques
32. Debtors other than consumer debtor
33. Writing off of bad debts
34. Credit bureau listing
35. Repeal of By-Laws
36. Short title

## DEFINITIONS

1. In these By-Laws, any word or expression to which a meaning has been assigned in the Act, must bear the same meaning in these By-Laws, and unless the context indicates otherwise —

“**Act**” means the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), as amended from time to time;

“**Authorised Officer**” means any official of the Municipality who has been authorised by it to administer, implement and enforce the provisions of these By-Laws;

“**billing**” means formal notification by means of a statement of account to persons liable for payments of amounts levied for assessment rates and other taxes by the and the charges of fees for municipal services, indicating the net accumulated balance of the account;

“**By-Laws**” means By-Laws adopted by the Council;

“**collection charges**” means collection charges which may be recovered by the Municipality in terms of section 75A of the Act, and includes the cost —

- (a) to remind debtors of arrears;
- (b) for the termination and reconnection of services; and
- (c) all legal costs, including attorney and own client costs incurred in the recovery of arrear amounts;
- (d) all debt collection costs.

“**Council**” means —

- (a) the Municipal Council of Mbhashe Local Municipality exercising its legislative and executive authority through the Municipality ;
- (b) its successor in title; or
- (c) a structure or person exercising a delegated power or carrying out an instruction, where any power in these By-Laws has been delegated or sub delegated or an instruction given, as referred to in section 59 of the Act; or
- (d) a service provider fulfilling a responsibility under these By-Laws, assigned to it in terms of section 81(2) of the Act, or any other By-law, as the case may be;

**“credit control and debt collection”** means the functions relating to the collection of money that is due and payable to the ;

**“customer”** means any occupier of any premises to which the has agreed to supply or is actually supplying municipal services, or if there is no occupier, the owner of the premises;

**“law”** includes any By-Laws;

**“municipal account”** means a formal notification by means of a statement of account to persons liable for payments for which they are billed by the Municipality or a municipal entity, as the case may be, and includes levies or charges in respect of the following municipal services and taxes:

- (a) electricity consumption;
- (b) water consumption;
- (c) refuse removal;
- (d) sewerage municipal services;
- (e) rates and taxes;
- (f) interest; and
- (g) miscellaneous and sundry charges;

**“municipal entity”** means a municipal entity of which the Municipality is the parent ;

**“** means Mbhashe established in terms of Section 12 of the Municipal Structures Act, 117 of 1998;

**“Municipality”** means Mbhashe Local Municipality and its legal successors, and when referred to as-

- (a) a legal entity, means Mbhashe Local Municipality as described in section 2 of the Local Government: Municipal Systems Act, (Act No. 32 of 2000); and
- (b) a geographic area, means the municipal area of the Mbhashe Local Municipality as determined from time to time in terms of the Local Government : Municipal Demarcation Act, 1998 (Act No 27 of 1998);

**“Municipal Manager”** means the person appointed by the Council as the Municipal Manager of the Municipality in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), and includes any person-

- (a) acting in such position; and
- (b) to whom the Municipal Manager has delegated a power, function or duty;

**“occupier”** means any person who occupies any premises or part thereof, without any regard to the title under which he or she so occupies;

**“owner”** —

- (a) in relation to a property referred to in paragraph (a) of the definition of “property”, means a person in whose name ownership of the property is registered;
- (b) in relation to a right referred to in paragraph (b) of the definition of “property”, means a person in whose name the right is registered;
- (c) in relation to a land tenure right referred to in paragraph (c) of the definition of “property”, means a person in whose name the right is registered or to whom it was granted in terms of legislation; or
- (d) in relation to public service infrastructure referred to in paragraph (d) of the definition of “property”, means the organ of state which owns or controls that public service infrastructure as envisaged in the definition of “publicly controlled”, but a person mentioned below may for the purpose of these By-Laws be regarded by the Municipality as the owner of a property in the following cases:
  - (i) A trustee, in the case of a property in a trust excluding state trust land;
  - (ii) An executor or administrator, in the case of a property in a deceased estate;
  - (iii) A trustee or liquidator, in the case of a property in an insolvent estate or in liquidation;
  - (iv) A judicial manager, in the case of a property in the estate of a person under judicial management;

- (v) A curator, in the case of a property in the estate of a person under curatorship;
- (vi) A person in whose name a usufruct or other personal servitude is registered, in the case of a property that is subject to a usufruct or other personal servitude;
- (vii) A lessee, in the case of a property that is registered in the name of the Municipality and is leased by it; or
- (viii) A buyer, in the case of a property that was sold by the Municipality and of which possession was given to the buyer pending registration of ownership in the name of the buyer;

**“property”** means —

- (a) immovable property registered in the name of a person, including, in the case of a sectional title scheme, a sectional title unit registered in the name of a person;
- (b) a right registered against immovable property in the name of a person, excluding a mortgage bond registered against the property;
- (c) a land tenure right registered in the name of a person or granted to a person in terms of legislation; or
- (d) public service infrastructure;

**“prescribed”** means determined by Council by resolution;

**“premises”** includes any 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, 1927 (Act 9 of 1927), or in terms of the Deeds Registry Act, 1937 (Act 47 of 1937); or
- (b) a sectional plan registered in terms of the Sectional Titles Act, 1986 (Act 95 of 1986), which is situated within the area of jurisdiction of the Council;

**“rateable property”** means property on which the Municipality is empowered to impose rates.

## **OBJECTIVES OF THE BY-LAWS**

2. The objectives of these By-Laws are to —

- (a) ensure that all monies due and payable to the Municipality are collected;



- (b) provide for customer management, credit control procedures and mechanisms and debt collection procedures and mechanisms;
- (c) provide for indigents in a way that is consistent with rates and tariff policies and any national policy on indigents;
- (d) provide for extension of time for payment of accounts;
- (e) provide for charging of interest on arrears, where appropriate
- (f) provide for termination of services or the restriction of the provision of services when payments are in the arrears;
- (g) provide for matters relating to unauthorised consumption of services, theft and damages.

### **APPLICATION OF BY-LAW**

3. (1) These By-Laws apply to money due and payable to the Municipality for –

- (a) rates;
- (b) fees, surcharges on fees, charges and tariffs in respect of municipal services, such as —
  - (i) the provision of water;
  - (ii) refuse removal;
  - (iii) sewerage;
  - (iv) the removal and purification of sewerage;
  - (v) electricity consumption;
  - (vi) interest which has accrued or will accrue in respect of money due and payable to the Municipality;
  - (vii) collection charges in those cases where the Municipality is responsible for —
    - (aa) the rendering of municipal accounts in respect of any one or more of the municipal services;
    - (bb) the recovery of amounts due and payable in respect thereof, whether the municipal services, or any of them, are provided by the Municipality itself or by a service utility with which it has concluded a service provider agreement to provide a service on the Municipality's behalf;

(viii) Rates and taxes levied on the property; and

(ix) all other related costs for services rendered in terms of the property

(2) These By-Laws also apply to –

- (a) municipal services provided through prepaid meters.
- (b) any municipal entity of which the is the parent

## **RESPONSIBILITY/ ACCOUNTABILITY FOR CREDIT CONTROL AND DEBT COLLECTION**

### **Responsibilities of Council**

4. (1) The responsibilities of the Council are to –

- (a) approve a budget consistent with the needs of communities, ratepayers and residents;
- (b) impose rates and taxes and to determine service charges, fees and penalties to finance the budget;
- (c) facilitate sufficient funds to give access to basic services for the poor;
- (d) provide for a bad debt dispensation, in line with the payment record of the community, ratepayers and residents, as reflected in the financial statements of the;
- (e) set an improvement target for debt collection, in line with acceptable accounting ratios and the ability of the Municipality;
- (f) approve a reporting framework for credit control and debt collection.
- (g) consider and approve policies and By-Laws to give effect to the Municipality's policies.
- (h) monitor the performance of the Mayor's supervising authority regarding credit control and debt collection.
- (i) revise the budget should Municipality's targets for credit control and debt collection not be met.
- (j) take disciplinary and legal action where necessary, against councillors, officials and agents who do not execute Council policies and By-Laws, or act improperly in terms of such policies.

- (k) approve a panel of attorneys that will act for Municipality in all legal matters relating to debt collection.
- (l) delegate the required authorities to monitor and execute the credit control and debt collection policy to the Mayor and Municipal Manager and service provider respectively.
- (m) provide sufficient capacity in the Municipality's Financial Department for credit control and debt collection, or, alternatively to appoint a service provider, or debt collection agent.
- (n) assist the Municipal Manager in the execution of his or her duties, if and when required.
- (o) provide funds for the training of staff.

### **Responsibilities of the Mayor**

5. The responsibilities of the Mayor are to –

- (1) ensure that Municipality's budget, cash flow and targets for debt collection are met and executed in terms of the policy and relevant By-Laws.
- (2) Monitor the performance of the Municipal Manager in implementing policies and By-Laws.
- (3) Monitor the performance of Councillors in holding quarterly meetings in their constituencies and monthly with ward meetings on Municipalities budget and implementation of policies and By-laws.
- (4) Review and evaluate the policies and By-Laws in order to improve the efficiency of Municipality's credit control and debt collection procedures, mechanisms and processes.
- (5) Report to Council.

### **Responsibilities of the Municipal Manager as Accounting Officer**

6. (1) The Municipal Manager, as Accounting Officer of the Municipality, must take all reasonable steps to ensure –

- (a) that the Municipality has effective revenue collection systems consistent with section 95 of the Act and these By-Laws;
- (b) that revenue due to the Municipality is calculated on a monthly basis;
- (c) that accounts for municipal tax and charges for municipal services are prepared on a monthly basis, or less often as may be where monthly accounts are uneconomical;

- (d) that all money received is promptly deposited according to these By-Laws into the Municipality's primary and other bank accounts;
- (e) that the Municipality has, and maintains a management, accounting and information system which-
  - (i) recognises revenue when it is earned;
  - (ii) accounts for debtors; and
  - (iii) accounts for receipts of revenue;
- (f) that the Municipality has and maintains a system of internal control in respect of debtors and revenue, as may be prescribed;
- (g) that the Municipality charges interest on arrears, except where the Municipality has granted exemptions in accordance with its budget related policies and within a prescribed framework;
- (h) that all revenue received by the Municipality, including revenue received by any collecting agent on its behalf, is reconciled at least on a weekly basis;

(9) The Municipal Manager must immediately inform the National Treasury of any payments due by an organ of state to the Municipality in respect of municipal tax or for municipal services, if such payments are regularly in arrears for periods of more than 30 days.

### **Responsibilities of communities, ratepayers and residents**

7. The responsibilities of communities, ratepayers and residents are –

- (a) to fulfil certain responsibilities, as brought about by the privilege and or right to use and enjoy public facilities and municipal services;
- (b) to pay deposits, service fees, rates on property and other taxes, levies and duties imposed by the Municipality ;
- (c) to observe the mechanisms and processes of the Municipality in exercising their rights;
- (d) to allow municipal officials reasonable access to their property to execute municipal functions at a time that is agreeable by the consumer and municipal officials;
- (e) to comply with these By-Laws and other legislation of the Municipality ;
- (f) to refrain from tampering with municipal services and property.

**Responsibilities of ward councillors**

8. The responsibilities of the Councillors are to-

- (a) hold quarterly ward meetings.
- (b) to adhere to, and convey council policies and By-laws to residents and ratepayers monthly.
- (c) to adhere to the Code of Conduct for Councillors.
- (d) to act in terms of roles and functions as approved by Council.

**Responsibilities of all councillors regarding credit control and debt collection**

9. (1) A councillor may not be in arrears to the Municipality for rates and services charges for a period longer than 3 months;

(2) The Municipality may deduct any outstanding amounts from a councillor's allowance after this period;

(3) Normal credit control procedures also be applied to any arrear account of a councillor

**Responsibilities of all Municipal staff**

10. (1) A staff member of a may not be in arrears to the Municipality for rates and services charges for a period longer than 3 months, and a Municipality may deduct any outstanding amounts from a staff member's salary after this period.

(2) The normal credit control procedures also be applied to any arrear account of an municipal staff member

**Responsibilities of municipal entities**

11. (1) The directors of municipal entities must-

- (a) provide effective, transparent, accountable and coherent corporate governance and conduct effective oversight of the affairs of the municipal entity;
- (b) ensure that it and the municipal entity comply with all applicable legislation and agreements;
- (c) communicate openly and promptly with the parent Municipality of municipal entity; and
- (d) deal with the Municipality in good faith;

(2) Accounting officer of municipal entity must take reasonable steps to ensure that —

- (a) all revenue due to the entity is collected;

- (b) the municipal entity has effective revenue collection systems consistent with those of the parent Municipality ; and
- (c) the municipal entity has and a with the necessary changes a similar system of internal control in respect of debtors and revenue, as may be prescribed.

## **RESPONSIBILITY FOR CUSTOMER CARE**

### **12. The Municipality must-**

- (a) take the following steps to ensure a sound Customer Management System that aims to create a positive and reciprocal relationship between persons liable for payments and the Municipality;
- (b) establish mechanisms for users of services and ratepayers to provide feedback to the Municipality or other service provider regarding the quality of the services and the performance of the service provider;
- (c) take reasonable steps to ensure that users of services are informed of the costs involved in service provision, the reasons for the payment of service fees, and the manner in which monies raised from the service are utilised;
- (d) where the consumption of services have to be measured, take reasonable steps to ensure that the consumption by individual users of services is measured through accurate and verifiable metering systems;
- (e) ensure that persons liable for payments receive regular and accurate accounts and indicate the basis for calculating the amounts due;
- (f) provide accessible mechanisms for those persons to query or verify accounts and metered consumptions, and appeal procedures which allow such persons to receive prompt redress for inaccurate accounts;
- (g) provide accessible mechanisms for dealing with complaints from such persons, together with prompt replies and corrective action by the Municipality ;
- (h) provide mechanisms to monitor the response time and efficiency in complying with the above point; and
- (i) provide accessible pay points and other mechanisms for settling accounts, for making prepayments and payments for services.

## **ACCOUNT ADMINISTRATION**

### **Accounts**

13. (1) Accounts must be rendered and administered in accordance with the requirements of these By-Laws.

(2) Failure by the Municipality to render an account does not relieve a customer of the obligation to pay any amount that is due and payable.

(3) The Municipality may, in accordance with the provisions of section 102 of the Act—

- (a) consolidate any separate accounts of debtors liable for payments to the Municipality ;
- (b) Credit any payment by such debtor against any account of that debtor;
- (c) implement any of the debt collection and credit control measures provided for in these By-Laws in relation to any arrears on any of the accounts of such a debtor; and
- (d) credit any payment by such debtor to any debt of the debtor

(4) The amount due and payable by a customer constitutes a consolidated debt, and any payment made by a consumer of an amount less than the total amount due will be allocated in reduction of the consolidated debt in the order determined by the Municipality.

#### **Account information**

14. (1) Accounts must –

- (a) show the following —
  - (i) the consumption or estimated consumption or assumed consumption as determined for the measuring and/or consumption period;
  - (ii) the measuring or consumption period;
  - (iii) applicable tariff;
  - (iv) the amount due in terms of the consumption;
  - (v) the amount due and payable for any other service rendered in terms of these By-Laws by the Municipality;
  - (vi) the amount in arrears, if any;
  - (vii) the interest payable on any arrears, if any;
  - (viii) the final date for payment;
- (b) the methods, places and approved agents where payment may be made; and
- (c) state that-

- (i) the customer may conclude an agreement with the Municipality for payment of the arrears amount in instalments, at the Municipality's offices before the final date for payment, if a consumer is unable to pay the full amount due and payable;
- (ii) if no such agreement is entered into, the Municipality may terminate or limit the services after sending a final demand notice to the customer;
- (iii) legal action may be instituted against any consumer for the recovery of any amount 30 days in arrears;
- (iv) the defaulting consumers name may be made public;
- (v) the account may be handed over to a debt collector or attorney for collection;
- (vi) proof of registration as an indigent consumer in terms of section 30 must be handed in before the final date for payment; and
- (vii) an indigent consumer is only entitled to basic services and that an indigent consumer will be liable for payment in respect of services used in excess of the quantity of basic services.

#### **Account management**

15. (1) The Municipality must endeavour to ensure —

- (a) accurate metering of consumption at fixed intervals with the minimum delay between service connection and first and subsequent billing;
- (b) accurate up-to-date information in accounts;
- (c) accurate monthly billing with the application of the appropriate and correct tariffs and service charges;
- (d) the timely dispatch of accounts;
- (e) adequate provision and the efficient operation of pay facilities throughout the Municipality;
- (f) arrangements with third party institutions to accept payments on behalf of the Municipality, but the responsibility to ensure that payments are correctly reflected on an account is vested with the debtor;
- (g) appropriate hours of business in order to facilitate account payments.

(2) Where no reading of consumption can be obtained, interim estimations of consumption may be charged.



(3) The Municipality may –

- (a) consolidate any separate accounts of persons liable for payments to the Municipality ;
- (b) credit a payment by such a person against any account of that person; and
- (c) implement any of the debt collection and credit control measures provided for in Act 32 of 2000 in relation to any arrears on any of the accounts of such a person.

(4) Subsection (1) does not apply where there is a formal dispute between the Municipality and a person referred to in that subsection concerning any specific amount claimed by the Municipality from that person.

#### **Queries, complaints and appeals in respect of an account**

16. (1) A consumer may lodge a query or complaint in respect of the accuracy of the amount due and payable in terms of an account rendered to him or her or it.

(2) A query or complaint must be lodged with the Municipality before, or on the due date for payment of the account, or as soon as reasonably possible thereafter.

(3) Where a query or complaint is lodged after the due date of the account queried or complained about, such query or complaint must be accompanied by the payment of at least an amount equal to the average amount that was due and payable during the preceding three months.

(4) The Municipality must register the query or complaint and provide the consumer with a reference number.

(5) The Municipality must —

- (a) investigate or cause the query or complaint to be investigated within 14 days, or as soon as possible after the query or complaint was registered; and
- (b) inform the consumer, in writing, of its finding as soon as possible thereafter, whereupon any arrears found to be due are payable must be paid within seven days from the date on which the consumer is notified of the amount found to be due and payable.

(6) A consumer may lodge an appeal in terms of section 62 of the Act against a decision referred to in subsection (5), within 21 days of the date of the notification of the decision, and the Municipal Manager must promptly submit the appeal to the appropriate authority referred to in section 62(4) of the Act.

**Actions to secure payment**

17. (1) The Municipality or its duly appointed agents may, in addition to the normal civil legal steps to secure payment of accounts that are in arrears, take the following action to secure payment for municipal rates and municipal services, namely-

- (a) termination and/or restriction of the provision of municipal services in accordance with paragraph (b); and
- (b) allocating of a portion of a payment of an account, or a portion of a prepayment for future accounts, as payment for arrear service charges.

(2) The Municipality may also take the steps referred to in section 104(1)(f)(ii) and (iv) of the Municipal Systems Act, subject to the regulations made or guidelines issued in terms of that Act, if any, and any intended seizure of property must be in terms of approved By-Laws, policies and/or such directives which the Council deems necessary under the circumstances.

(c) The Municipality may, at the cost of the consumer, install prepaid meters on the failure of the consumer to make regular payments to the Municipality for services consumed.

**Arrear accounts**

18. (1) If a consumer fails to pay the amount due and payable on or before the final date for payment, the unpaid amount is in arrears and a final demand notice may be sent and may be hand delivered or posted, per mail, to the most recent recorded address of the consumer.

(2) Failure to deliver or send a final demand notice does not relieve a consumer from paying such arrears.

(3) The final demand notice must contain the following-

- (a) the amount in arrears and any interest payable, and the date by which such arrears and interest must be paid;
- (b) that the consumer may conclude an agreement with the Municipality for payment of the arrears amount in instalments within 14 days of the date of the final demand notice;
- (c) that if no such agreement is entered into within the stated period that the water services will be discontinued or limited and that legal action may be instituted against any consumer for the recovery of any amounts 30 days or more in arrear, without further notice;
- (d) that the consumers name may be made public, and may be listed with a credit bureau or any other equivalent body as a defaulter; or
- (c) that the account may be handed over to a debt collector or attorney for collection.

(3) Proof of registration as an indigent consumer in terms of section 30 must

be handed in to the Municipality on or before the date for payment referred to in subsection (2).

(4) An indigent consumer is only entitled to basic water services and will be liable for payment in respect of water services used in excess of the quantity of basic services.

(5) The consumer must be given an opportunity to make representation in writing, on or before the date of payment contemplated in paragraph (a).

(6) An additional deposit may be levied when an account is in default for a period longer than 30 days as determined by Municipality.

(7) If representations made by a consumer are unsuccessful either wholly or in part, a final demand notice must be given to the consumer in the manner provided for in subsection (1), stipulating that no further representations may be made.

#### **Accounts outstanding for longer than 60 days**

19. (1) Where an account rendered to a consumer remains outstanding for more than 60 days

- (a) the defaulting consumer's name may be made public, and may be listed with a credit bureau or any other equivalent body as a defaulter; and
- (b) may be handed over to a debt collector or an attorney for collection.

(2) A consumer is liable for any administration fees, costs incurred in taking action for the recovery of arrears and any penalties, including the payment of a higher deposit

(3) Where a body corporate is responsible for the payment of any arrears amount to the Municipality in respect of a sectional title development, the liability of the body corporate must be extended to the members thereof, jointly in proportion to the participation quota of each sectional title unit

(4) No action taken in terms of this section due to non-payment will be suspended or withdrawn, unless the arrears, any interest thereon, administration fee, additional charges, costs incurred in taking legal action and any penalty, including the payment of a higher deposit, which are payable, are paid in full.

(5) Subject to the provisions of section 4(3) of the Water Services Act, an agreement for payment of the arrears amount in instalments, entered into after the municipal services were discontinued, will not result in the services being restored until the arrears, any interest thereon, administration fees, costs incurred in taking legal and any penalty, including payment of a higher deposit, are paid in full.

(6) Prepaid meters may be installed at the cost of a customer for any service of a consumer that is in arrears.

**Agreement for the payment of arrears in instalments**

20.(1) Only a customer with positive proof of identity or a person authorised, in writing, by that consumer, will be allowed to enter into an agreement for the payment of arrears in instalments.

(2) The amount due and payable by a consumer constitutes a consolidated debt, and any payment made by a consumer of an amount less than the total amount due, must be allocated reduction of the consolidated debt in the order determined by the Municipality.

(3) A consumer may be required to complete a debit order for the payment of arrears.

(4) No agreement for the payment of arrears will be longer than 36 months, unless the circumstances referred to in subsection (5) prevail.

(5) The Municipality may, on an individual basis, allow a longer period than 36 months for the payment of arrears, if —

- (a) special circumstances prevail, which in the opinion of the Municipality warrants such an extension, and which the consumer could not reasonably prevent or avoid;
- (b) documentary proof of any such special circumstances has been furnished by the consumer on request by the Municipality;
- (c) approval has been obtained by the Chief Financial Officer or his or her delegate in terms of prescribed procedures; and
- (d) this extension of the repayment period may not be for a period longer than an additional 36 months.

(6) The Municipality must, in exercising its discretion under subsection (5) consider a consumer's —

- (a) credit record;
- (b) consumption;
- (c) level of service;
- (d) previous breaches of agreements for the payment of arrears in instalments; and
- (e) any other relevant factors.

(7) A copy of the agreement must, on request, be made available to the consumer.

(8) If a consumer fails to comply with an agreement for the payment of arrears in instalments, the total of all outstanding amounts, including the arrears, any interest thereon, any administration fee, costs incurred in taking legal action, and penalty, including payment of a

higher deposit, will be immediately due and payable, without further notice or correspondence.

(9) If a consumer fails to comply with an agreement for the payment of arrears in instalments entered into after receipt of a discontinuation notice, access to water services must be discontinued without further notice or correspondence, in addition to any other actions taken against or that may be taken against such a consumer.

(10) No consumer is permitted to enter into an agreement for the payment of arrears in instalments, where that consumer failed to honour a previous agreement for the payment of arrears in instalments, unless the Municipality otherwise decides.

(11) Once an agreement has been concluded, the amount in arrears must be reflected as a current amount, and no further interest must be added.

(12) A copy of the agreement must, on request, be made available to the consumer.

(13) If a consumer fails to comply with an agreement for the payment of arrears in instalments, the total of all outstanding amounts, including the arrears, any interest thereon, any administration fee, costs incurred in taking legal action, and penalty, including payment of a higher deposit, will be immediately due and payable, without further notice or correspondence.

(14) If a consumer fails to comply with an agreement for the payment of arrears in instalments entered into after receipt of a discontinuation notice, access to water services must be discontinued without further notice or correspondence, in addition to any other actions taken against or that may be taken against such a consumer.

(15) A consumer may only enter into a maximum of three debt repayment Agreements, thereafter the full account must be settled before any subsequent arrangements can be entered into again.

(16) The stipulations of these By-Laws can be superseded with the contents of a debt management scheme.

### **Dispute as to amount owing**

21. Should any dispute arise as to the amount owing by a debtor, the debtor must, pending the resolution of that dispute, continue to make regular minimum payments based on the average charges for the preceding three months prior to the arising of the dispute, plus interest, until the resolution of that dispute.

### **POWER TO RESTRICT OR TERMINATE SUPPLY OF MUNICIPAL SERVICES**

22. (1) The Municipality may limit or discontinue the supply of water, and electricity in terms of the prescribed disconnection procedures, or discontinue any other service to any premises, whenever a consumer of any service —

- (a) after the expiry of the period for payment in terms of the final demand notice, fails to make full payment on the due date or fails to make acceptable

arrangements for the repayment of any amount for municipal services, rates or taxes or other amounts due;

- (b) fails to comply with a condition of supply imposed by the ;
- (c) obstructs the efficient supply of electricity, water, gas or any other municipal services to another customer;
- (d) supplies such municipal service to a consumer who is not entitled thereto or permits such service to continue;
- (e) causes a situation, which in the opinion of the is dangerous, or a contravention of relevant legislation;
- (f) in any way bridges the supply or previously disconnected municipal services;
- (g) is placed under provisional sequestration, liquidation or judicial management, or commits an act of insolvency in terms of the Insolvency Act, 1936 (Act 24 of 1936);
- (h) is subject to an administration order granted in terms of section 74 of the Magistrates Court Act, 1944 (Act 32 of 1944) in respect of such user.

(2) The Municipality may hand deliver, or send per mail, to the latest recorded address of the consumer, a discontinuation notice informing such consumer —

- (a) that the provision of the service will be, or has been discontinued on the date stated on the discontinuation notice; and
- (b) of the steps which can be taken to have the service reconnected.

(3) Subject to the provisions of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000), having been observed, save that the Municipality's reasons for its decision to act must be supplied within seven days after a request therefore, the Municipality may discontinue a service to a consumer if —

- (a) full payment was not received within the period stated in the final demand notices referred to in section 14(3);
- (b) no agreement was entered into for the payment of arrears in instalments;
- (c) no proof of registration as an indigent was furnished within the period provided for in the final demand notice contemplated in section 14(3);
- (d) no payment was received in accordance with an agreement for payment of arrears;
- (e) no representations were made within the period provided for in the final demand notice; and

(d) the representations have not been wholly acceded to by the Municipality.

(4) The Municipality must reconnect or restore full levels of supply of any of the restricted or discontinued municipal services only after the full amount outstanding, including the costs of such disconnection and reconnection, if any, have been paid in full, or any other relevant condition or conditions of the Municipality's credit control policy as it may deem fit, have been complied with.

(5) The right of the Municipality or any duly appointed agent to limit or discontinue water to any premises or customer, must be subject to the provisions of sections 3 and 4 of the Water Services Act, 1997 (Act 108 of 1997).

(6) The right of the Municipality to discontinue the provision of electricity to any consumer is subject to the provisions of the Electricity Act, 1987 (Act 41 of 1987).

(7) The right of the Municipality or any duly appointed agent to limit the supply of municipal services to a customer must be subject to the provisions of the Health Act, 1997 (Act 63 of 1997), and the regulations made there under.

#### **RECONNECTION OF MUNICIPAL SERVICES**

23. The authorised officer must authorise the reconnection of services or reinstatement of service delivery after satisfactory payment or a satisfactory arrangement for payment has been made in accordance with this policy.

#### **INTEREST CHARGES**

24. Interest may be levied on all arrears at a rate prescribed by the Municipality from time to time.

#### **COST TO REMIND DEBTORS OF ARREARS**

25. An administrative fee may be levied against the account of a debtor in terms of the tariff provisions of the Municipality in respect of any action taken in demanding payment from the debtor or reminding the debtor by means of telephone, fax, email, letter or otherwise, that payments are in arrear.

#### **COST FOR THE TERMINATION OF MUNICIPAL SERVICES**

26. Where any municipal service is terminated as a result of noncompliance with these By-Laws by the person liable for the payments, the Municipality must be entitled to levy and recover the standard credit control fees determined by the Municipality from time to time.

#### **FULL AND FINAL SETTLEMENT OF A DEBT**

27. (1) The Municipality may appropriate monies received in respect of any municipal debt at its sole discretion.

(2) Where the exact amount due and payable to the Municipality has not been paid in full, any lesser amount tendered to and accepted by any municipal employee, must not be deemed

to be in full and final settlement of such an amount, unless accepted in terms of a power delegated to him or her in writing.

(3) The provisions in subsection (2) must prevail despite the fact that such lesser payment was tendered and accepted in full settlement.

(4) The authorised officer, in accordance with powers delegated to him consent to the acceptance of such a lesser amount in writing.

(5) The Municipality may allocate all monies received to any debt and to any account due of the consumer.

#### **AGENTS, ATTORNEYS AND OTHER COLLECTION AGENTS**

28. (1) The names of all external agents acting on behalf of the Municipality, together with their addressed and contact information must be publicised in a manner that will ensure that it will come to the attention of the customers of the Municipality .

(2) The Municipality's agents must receive clear guidelines and instructions with regard to the exercising of their duties as agents and their conduct towards customers, and under no circumstances may agents negotiate terms, extend payment periods or accept cash on behalf of the Municipality, unless specifically instructed in writing to do so, and such instruction must be produced on request of a debtor.

(3) An agent must record the cost to the Municipality and a debtor for each stage of the credit control measures taken by him or her and for all possible actions which could be necessary in the credit control process.

(4) The cost contemplated in subsection (3), and for any legal action taken by the Municipality's agent must, where appropriate, be for the account of the debtor.

#### **LEGAL FEES**

29. All legal and debt collection costs, including attorney and own client costs incurred by the Municipality in the recovery of arrear amounts, must be levied against the arrears account of the debtor, and be recovered by a duly appointed agent.

#### **FRAUD, THEFT AND OTHER CRIMINAL ACTIVITY**

30. The Municipality may refuse to supply water or electricity to a debtor who is found guilty of fraud, theft or any other criminal offence, or, where it is evident that such criminal offence has occurred, until such time as the total costs, penalties, other fees, tariffs and rates due to the Municipality have been paid in full.

#### **DISHONoured CHEQUES**

32. Where any payment is made to the Municipality by a negotiable instrument, and such negotiable instrument is dishonoured by the bank, the Municipality may levy costs and administration fees against the account of the defaulting debtor at the rate determined by the Municipality from time to time.



**DEBTORS OTHER THAN CONSUMER DEBTORS**

33. Amounts due to the Municipality for any services rendered, other than services rendered to consumer debtors, must be due and payable when the service is rendered, and —

- (a) outstanding amounts must bear interest; and
- (b) all amounts outstanding after 90 days may be handed over for collection.

**WRITING OFF OF BAD DEBTS**

34. Any debt written off must —

- (a) only be written off after all reasonable steps have been taken to recover the debt, in accordance with these By-Laws, and the Municipality has convinced itself that-
  - (i) recovery of the debt would be uneconomical;
  - (ii) recovery would cause undue hardship to the debtor or his or her dependants; and
  - (iii) it would be an advantage to the Municipality to effect a settlement of its claim or to waive the claim.

**Repeal of By-Laws**

35. All previous Council regulations, policies and arrangements dealing with credit control and debt collections that are in conflict with these By-Laws, are repealed.

**Short title and commencement**

36. These By-Laws are called Credit Control and Debt Collection By-Laws, 2012 and will come into operation on the date of publication in the *Provincial Gazette*.

**No. 2**

# **MBHASHE LOCAL MUNICIPALITY**

## **TRAFFIC BY-LAWS**

**MBHASHE LOCAL MUNICIPALITY****NOTICE**

Notice is hereby given in terms of section 13 of the Local Government Municipal Systems Act, 2000(Act 32 of 2000), as amended, read with sections 156 and 162 of the Constitution of the Republic of South Africa, 108 of 1996 as amended, that Mbashe Local Municipality in terms of resolution number 3.2.1 dated 31 October 2012, resolved to adopt the following Traffic By-Laws

**BY-LAWS**

To provide for control of traffic within the municipal area of Mbashe Municipality and to provide for matters incidental thereto.

BE IT ENACTED by the Municipality of the Mbashe Local Municipality, as follows:

**INDEX****CHAPTER 1****Section****1. Definition****CHAPTER II****2. Application of the By-Laws****3. stopping prohibited****4. Parking****5. Special provisions relating to parking.****CHAPTER III****6. Parking meters**

## CHAPTER IV

7. Prohibition of certain actions.
8. Turn with combination vehicles
9. Control of animals in or along a street
10. Animal drawn vehicle
11. Queues.
12. Loads of cycles
13. Public Transportation
14. Allocation and use of parking places for minibus taxis
15. Conveyance of dangerous or offensive articles or dead bodies
16. Disinfections after conveyance of infectious or contagious diseases cases
17. Preventing engagement
18. Unauthorized handing over or abandonment of a taxi
19. Behavior and clothing of driver
20. Property left in a taxi
21. Public bus routes
22. Public bus stands and stopping places
23. Intending passengers to board at approved stands or stopping place only.
24. Public bus to stop on request
25. Public bus not to be left unattended on a stand

## CHAPTER V

26. Penalties
27. Repeal
27. Short title and commencement

## CHAPTER I

### Definitions

1. In these By-Laws, unless the context otherwise indicates:

“bus” means a motor vehicle designed or lawfully adapted by a registered manufacturer in compliance with the Road Traffic Act, 189 (Act No. 29 of 1989)

“Municipality” means —

- (a) Municipal Municipality of Local Mphashe Municipality exercising its legislative and executive authority through the Municipality;
- (b) its successor in title;
- (c) a structure or person exercising a delegated power or carrying out an instruction, where any power in these By-Laws has been delegated or sub delegated or an instruction given, as referred to in section 59 of the Act; or
- (d) a service provider fulfilling a responsibility under these By-Laws;

**“cycle”** means a bicycle or tricycle designed for propulsion solely by means of human power;

**“minibus taxi”** means a motor vehicle, or lawfully adapted by a register manufacturer in compliance with the Road Traffic Act, 1989, (Act No. 29 of 1989), operating an unscheduled public transport service operated on a specific route or routes or where applicable, with a particular area, of the municipality, by means of a motor-car, minibus or minibus;

**“Municipality”** means Mbhashe Local Municipality and its legal successors, and when referred to as-

- (a) a legal entity, means Mbhashe Local Municipality as described in section 2 of the Local Government: Municipal Systems Act, (Act No. 32 of 2000); and
- (b) a geographic area, means the municipal area of the Mbhashe Local Municipality as determined from time to time in terms of the Local Government : Municipal Demarcation Act, 1998 (Act No 27 of 1998);

**“public vehicle”** means a public or tricycle designed for propulsion solely by means of human power;

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

**“street”** means any street, road or through fare indicated on the general map of the Municipality, or to which public has by prescription or in any other way obtained a right of way;

**“toy vehicle”** means a device designed, made or manufactured with the purpose for children to play with or to amuse themselves with, but excludes motorized vehicles designed to convey people, goods or both;

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

**“vehicle”** means a device designed or prepared for the hauling of other vehicles or for the conveyance of passengers, animals or goods or more than one of these groups simultaneously, and moves principally on wheels or crawler tracks, with the exception of:

- (a) a motor cycle to which a side-car is not attached;
- (b) a bicycle;
- (c) a toy vehicle;
- (d) roller skates;
- (e) skate board;

- (f) a device moving exclusively on rails; and

## **CHAPTER II**

### **Application of the By-Laws**

2. (1) These By-Laws apply within the area of jurisdiction of the Mbhashe Municipality from the date of promulgation.

(2) These By-Laws will not apply in the Municipality in so far as they relate to matters with regard to which there are replacing provincial or national legislation in force in the municipality to the extent that such replacing legislation deals with the matters.

### **Stopping Prohibited**

2. No person must stop any vehicle in any street within a distance of 3m from a fuel pump on the Kerbstone, except for the purpose to obtain fuel, oil, water or air, or in compliance with a direction given by an authorized officer.

### **Parking**

- 4. (1) No person must stop, wait or park a vehicle in a street-
  - (a) on approaches to or departures from major intersections and at-grade rail crossings;
  - (b) at or immediately adjacent to pedestrian crossings, fire hydrants, and public transport lanes and stops;
  - (c) in front of driveways or alleyway;
  - (d) where double 'no-overtaking' lines are provided at the center of the carriageway;
  - (e) at locations which might interfere with the movement of emergency vehicles, e.g. at hospitals, ambulance and fire stations;
  - (f) in tunnels, on bridges, or on narrow streets;
  - (g) on or over the verge with perpendicular curbstones;
  - (h) on or over the verge which, for purposes of this or her section also includes the portions commonly known as shoulders, with slanted kerbing or without curbstones except between lines of marks on the surface indicating the required angle for the parking of vehicles, and then only in such a manner that the part of the vehicle nearest to the property boundary line, bordering on the street, where is no paved pedestrian pathway, less than 1m or more than 2m from such property boundary line, bordering on the street;
  - (i) with the front of such vehicle facing the approaching traffic;

- (j) in any other way than parallel with the kerbing or curb of the roadway, but subject to the provisions of paragraph (b), where a sidewall, verge or shoulder is marked, or is broad enough for diagonal parking, while no part of such vehicle protrudes over the roadway which is not marked for such parking, a vehicle may be thus parked;
- (k) for the washing or sale of or repair to such vehicle or for advertisement purposes; or
- (l) next to any vehicle which is already parked parallel to the kerb or kerbing on the roadway in a demarcated parking area.

(2) No person must park a vehicle with a tare of 3 500kg or more for a period exceeding an hour at any time after sunset and before sunrise on the roadway.

### **Special Provisions Relating to Parking**

5. (1) Despite anything to the contrary contained in any law, a Municipality may exempt:

(a) in such circumstance and subject to such conditions as it may deem expedient:

- (i) a medical practitioner; or
- (ii) a registered nurse or midwife ;

(b) in the prescribed circumstances and subject to the prescribed conditions:

- (i) any person who, in the opinion of such Municipality, has a prescribed disability; or
- (ii) any person who is conveying or assisting a person contemplated in subparagraph (i), from the provision of any law relating to the parking of a motor vehicle within its area of jurisdiction.

(2) A Municipality may, and must in the prescribed circumstances, provide special parking places for the exclusive parking of vehicles driven by persons referred to in subsection (1)(b), and such parking places must be identified by a road traffic sign.

(3) A Municipality must control the use of the parking places referred to in subsection (2) in the prescribed manner.

## **CHAPTER 111**

### **Prohibition of Certain Actions**

6. No person must drive or ride on roller skates, skate boards or any other toy vehicle in any street without the written consent of the Municipality on such conditions as may be determined by the Municipality.

### **Turn with Combination Vehicles**

7. No person must turn with any vehicle that draws a semi trailer, trailer or combination of vehicles at any crossing for the purpose of driving in the opposite direction.

### **Control of Animals in or Along a Street**

8. (1) No person must drive or cause any animal to be driven in a street except an animal drawing a carriage or vehicle, but the Municipality may give permission for animals to be driven in certain streets on such conditions as it may deem fit.

(2) No person must in or along any street-

- (a) train or break in an animal;
- (b) allow an animal, which is his or her property or under his or her control, to be let loose or to wander uncontrolled;
- (c) leave an animal which is hurt, weak, sick or dying. Except to obtain assistance to remove such animal; or
- (d) by making noises, gestures, gesticulations or in any other way frighten or irritate an animal.

(3) Subject to the provisions of subsection (4), no person must leave or allow any bovine animal, horse, ass, mule, sheep, goat, pig or ostrich to be on any section of a street where that section is fenced or in any other manner closed along both sides, and no person must leave such animal in a place from where it may stray onto such section of a street.

(4) The provisions of subsection (3) must not apply:

- (a) to any animal which is being ridden or is being used to draw a vehicle along street; or
- (b) to any animal which is being driven from one place to another in a manner as not to constitute a source of danger or injury to any person or vehicle using such road.

(5) In any prosecution for a contravention of subsection (3), it must be presumed, until the contrary is proved that any animal referred to in subsection (3) was left or allowed to be on the section of the street or place concerned by the owner of such animal, and a section of a street must be regarded as fenced or enclosed along both sides even though there is an opening providing access to such street in the fence or other enclosure.

(6) No person must drive any animal referred to in subsection (1):

- (a) along a street during the period from sunset to sunrise, unless a person carrying a red light visible in clear weather for a distance of at least 150 metres tends such an animal or, in the case of a flock or herd of



more than ten animals, a person tending such animals and carrying a light as aforesaid precedes and another such person carrying a light as afore said follows such animals; or

- (b) along a street during any other period, unless a person displaying in a conspicuous manner a red cloth, of not less than 300 millimeters by 300 millimeters, tends such animal or, in the case of a flock or a her or more than 10 animals, a person tending such animals and displaying a cloth as aforesaid follows such animals.

- (7) A person in charge of an animal on a street or danger to other traffic.
- (8) A traffic officer may take charge of any animal referred to in subsection (1) on a public road or take such steps in respect of the animal as may be prescribed.
- (9) For the purpose of this section, the word "animal" does not include a dog or a cat.

#### **Animal-drawn Vehicle**

9. (1) No person must operate an animal-drawn vehicle on a street unless the name and address of the owner thereof is affixed or painted in a conspicuous position on the left side of such vehicle in the letter not less than 25 millimeters high, but nothing herein contained must apply to a vehicle used solely for the conveyance of persons otherwise than for hire or reward.
- (2) No person must operate an animal-drawn vehicle on a street unless the vehicle and the harness and other equipment thereof are in an efficient and safe condition.
- (3) The owner of an animal-drawn vehicle must not cause or permit such vehicle to be used on a street by any person who is not competent whether by any reason of his or her age or otherwise to drive and control such vehicle.
- (4) The driver of an animal-drawn vehicle on a street must at all times give his or her undivided attention to the driving of the vehicle under his or her control, and if the vehicles standing on a street, the driver must not cease or retain control over every animal which is still harnessed to the vehicle, unless such animal, or every such animal is so fastened that it cannot move from the place where it has been left.
- (5) No person must operate on a street a vehicle drawn by a team of animals not controlled by reins, unless there is a person leading the team and exercising control over such team.
- (6) The driver or other person in charge of a vehicle drawn by an animal must not, on a street outside an urban area, permit such vehicle to follow any other vehicle similarly drawn at a distance of less than 150 metres reckoned from the foremost animal of such first-mentioned vehicle, except for the purpose of the foremost

overtaking a vehicle traveling at a slower speed or when a vehicle traveling at a greater speed, having overtaken such vehicle, is drawing away from it.

### **Queues**

10. (1) Persons waiting in a street for the purpose of gaining admittance to any public place must form a queue not more than two persons abreast, or in a manner as required by an authorized officer.
- (2) Persons arriving first must enjoy precedence in a queue.
- (3) An authorized officer may remove from a queue any person if such a person-
- (a) refuses to obey any lawful instruction; or
  - (b) behaves in a disorderly or improper manner.

### **Loads on Cycles**

11. No person must cause or permit to be used-
- (a) any cycle excluding a tricycle, to carry goods exceeding 50kg in mass; or
  - (b) any tricycle to carry goods exceeding 110kg in mass.

### **Public Transportation**

12. (1) (a) No person may operate a road-based public transport service without holding the necessary permit or operating license or, in the case of a special event, a temporary permit issued in terms of section 20 of the Road Transportation Act 1977 (Act No. 74 of 1977) or an authorization obtained or in terms of a replacing provincial law, for such special event;
- (b) Any person who by means of any motor vehicle or other vehicle convey any passengers or goods of both must be presumed to convey such passengers or goods for hire unless the contrary is proved and such motor vehicle or other vehicle must be presumed to be a public vehicle unless the contrary is proved
- (c) If any person has in his or her possession or under his or her control or uses or causes or permits any public vehicle to be used in contravention of the provisions of this section, he or she is guilty of a contravention of these By-Laws.

### **Allocation and Use of Parking Places for Minibus Taxis**

13. (1) Save for any provisions to the contrary in these By-Laws or any other Act, the Municipality may-
- (a) demarcate parking places for minibus taxis and distinguish them by applicable traffic signs; and

- (b) allocate to each taxi association a parking place as contemplated in paragraph (a)
- (2) The Municipality may impose charges for the allocation of parking places in terms of subsection (1).
- (3) The driver of a minibus taxi should intends to park it on parking place allocated for minibus taxis, must park on the parking place immediately behind the other taxis already parked on such parking places.
- (4) A minibus taxi must be parked on a parking place as contemplated in subsection (1), in such a manner that it always occupies parking places from the front end.

### **Conveyance of Dangerous or Offensive Articles or Dead Bodies**

14. No driver of any minibus taxi must knowingly convey any goods or articles or Things of a dangerous or offensive nature, and no driver of such minibus taxi must at any time permit the dead body of any person or the carcass of an animal to be conveyed therein.

### **Disinfections after Conveyance of Infectious or Contagious Diseases Cases**

15. Should any driver unwittingly have conveyed in a minibus taxi any person suffering from any infectious or contagious disease, he or she shall, as soon as it comes to his or her knowledge that he or she has conveyed such a person, immediately disinfect such a minibus taxi to the satisfaction of the medical officer of health.

### **Preventing Engagement**

16. No driver of a minibus taxi or any other person must by using force or threats, or in A clandestine manner o by any other means, prevent or seek to prevent any person from hiring any other taxi of the driver of such other minibus taxi from obtaining or conveying passengers or loads.

### **Unauthorized handing over or Abandonment of a Taxi**

17. No driver of any taxi must abandon a minibus taxi which has been entrusted them, or allow any other person to drive such vehicle without the knowledge or consent of the owner of such minibus taxi.

### **Behaviour and Clothing of Drivers**

18. All drivers of minibus taxis must be dressed cleanly and decently and must conduct themselves in a proper, civil and decorous manner and no driver of any minibus taxi shall, whilst such minibus taxi is under hire, smoke any tobacco or other substance without the 'consent of the hirer or passenger.

### **Property left in Taxi**

19. The driver of any minibus taxi who discovers any property left behind therein, must

within eighteen hours deposit such property in safe custody, at the nearest police station.

### **Public bus routes**

20. (1) No person must drive or cause or allow any public bus to be used for the purpose of conveying passengers, except on a route approved by the Municipality and/or the relevant transport authority.

(2) Notwithstanding anything to the contrary in these By-Laws contained, every public bus operating over a route within the area of the municipality must operate subject to the provisions of section 12 (1)(a).

### **Public Bus Stands and Stopping Places**

21. No person must attempt to ascend or alight from any public bus except at such stands or stopping places as have been approved by the Municipality and no driver of a public bus must allow such bus to stop for the purpose of picking up or allowing any passenger to alight, except at such stands or stopping places as have been approved by the Municipality.

### **Intending passengers to Board at Approved Stands or Stopping Places only**

22. Every driver of a public bus used on any approved route upon being signaled at any approved stand or stopping place by any person wanting to travel on such bus must stop and pick up such person if he is not prohibited by any act from boarding such public bus.

### **Public Bus to Stop on request**

23. Every driver of a public bus having been requested by any passenger to stop his or her bus, must do so at the next approved stopping place to enable such passenger to alight.

### **Public Bus not to be Left Unattended on a Stand**

24. No driver must allow a public bus to remain unattended at any stand or any route.

## **CHAPTER VI**

### **Penalties**

25. Any person contravening or failing to comply with any provision of these By-Laws is guilty of an offence and liable, on conviction, to a fine not exceeding R2000.00 or in default of payment, to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment.

### **Repeal of By-Laws**

26. All previous Municipality regulations, policies and arrangements are dealing with traffic that are in conflict with these By-laws are repealed.

**Short title and commencement**

27. These By-Laws are called Traffic By-Laws, 2012 and will come into operation on the date of publication in the *Provincial Gazette*.

**No. 3**

# **MBHASHE LOCAL MUNICIPALITY**

## **ABBATTOIR BY-LAWS**

**MBHASHE LOCAL MUNICIPALITY****NOTICE**

Notice is hereby given in terms of section 13 of the Local Government Municipal Systems Act, 2000(Act 32 of 2000), as amended, read with sections 156 and 162 of the Constitution of the Republic of South Africa, 108 of 1996 as amended, that Mbashe Local Municipality in terms of resolution number 3.2.1 dated 31 October 2012, resolved to adopt the following Abattoir By-Laws

**BY-LAWS**

To provide for erection of abattoirs within the jurisdiction of the Municipality; for prohibition of slaughter of animals at places other than abattoirs; for appointment of veterinarians and meat inspectors at abattoirs; and to provide for matters incidental thereto.

BE IT ENACTED by the Council of the Mbashe Local Municipality, as follows:

**TABLE OF CONTENTS**

1. Definitions
2. Application
3. Prohibition of slaughter of animals at places other than approved abattoirs
4. Erection of abattoirs
5. Applications for approval of abattoirs
6. Withdrawal and lapse of approval of abattoirs
7. Veterinarians and meat inspectors to be employed at approved abattoirs
8. Prohibition of slaughter of animals at approved abattoirs unless inspected and approved.
9. Prohibitions of removal of animals, slaughtered at approved abattoir unless meat has been inspected and approved.
10. Prohibition of removal of animal products from approved abattoirs
11. Detention or making of or other steps to be taken in respect of certain animals, meat or animal products
12. Permissible methods and procedures for slaughter of animals
13. Restriction of transportation of fresh meat
14. Protective transport to be provided for transport of live stock and carcasses
15. Powers of entry and investigation
16. Seizures
17. Directives
18. Secrecy
19. Offences and penalties
20. Vicarious liability
21. Repeal of By-Laws
22. Short-title and commencement

## Definitions

In these By-Laws, unless the context otherwise indicates-

**"abattoir"** means a place where animals are slaughtered or are intended to be slaughtered, and includes all facilities which normally are attached to such a place, whether or not such facilities are situated at the same place;

**"Act"** means the Abattoir Hygiene Act, 1992 (Act 121 of 1992) and the regulations published hereunder as amended from time to time;

**"animal"** means any animal of a prescribed kind;

**"animal product"** means any portion of an animal excluding the meat thereof, whether or not it is intended to be converted by treatment or processing into articles in daily use;

**"approved abattoir"** means an abattoir in respect of which a certificate of approval has been issued in terms of section 5;

**"Council"** means —

- (a) the Municipal Council of Mbhashe Municipality exercising its legislative and executive authority through the Municipality;
- (b) its successor in title; or
- (c) a structure or person exercising a delegated power or carrying out an instruction, where any power in these By-Laws has been delegated or sub-delegated or an instruction given, as referred to in section 59 of the Act; or
- (d) a service provider fulfilling a responsibility under these By-Laws, assigned to it in terms of section 81(2) of the Act, or any other By-law, as the case may be;

**"meat"** means those portions of any animal which are ordinary intended for Human or animal consumption;

**"meat inspector"** means any person who holds the prescribed qualifications;

**"MEC"** means the Member of the Executive Municipality responsible for Agriculture in the Province;

**"Municipality"** means Mbhashe Local Municipality and its legal successors, and when referred to as-

- (a) a legal entity, means Mbhashe Local Municipality as described in section 2 of the Local Government: Municipal Systems Act, (Act No. 32 of 2000); and



- (b) a geographic area, means the municipal area of the Mphashe Local Municipality as determined from time to time in terms of the Local Government : Municipal Demarcation Act, 1998 (Act No 27 of 1998);

**"officer"** means an officer employed by the Municipality or any person Contracted by the Municipality for purposes of these By-Laws;

**"owner"** in relation to an abattoir, means the person in whom the ownership of abattoir is vested or, in the case of an abattoir in respect of which the right of general control is vested in a person other than the person in whom the ownership is vested, that other person;

**"prescribed"** means prescribed by the Council;

**"slaughter"** in relation to an animal, means kill, skin and perform the usual accompanying acts with the intention of using the meat of the animal for consumption by human being or animals;

**"veterinarian"** means a veterinarian as defined in section 1 of the Veterinary And Para-Veterinary Professions Act, 1982 (Act 19 of 1982).

### **Application**

2. (1) These By-Laws are in accordance with the provisions of the Act and the Regulations and any expression not defined in these By-Laws but defined in the Act or the Regulations must have the meaning assigned to it therein. In the event of any conflict between these By-Laws and the Act or the Regulations the Act will prevail.

(2) If the Municipality does not have the services of a veterinarian at its disposal for any reason, it may use the services of an inspector from another agricultural authority or in private practice to exercise or execute the powers or duties of an inspector referred to in these By-Laws.

### **Prohibition of slaughter of animals at places other than approved abattoirs**

3. (1) No person must:-

- (a) slaughter any animal at any place other than an approved abattoir;
- (b) permit the slaughter of any animal at any place under his control, unless such place is an approved abattoir;

(2) The Municipality may exempt all persons belonging to a particular Category or according to their cultural or religious practices, from the provisions of subsection (1), subject to such conditions as may be prescribed.

**Erection of abattoirs**

4. (1) Any person who wishes:-

- (a) to erect an abattoir;
- (b) to alter the outlay of any place which has before or after the commencement of these By-Laws been designed and erected as an abattoir but in respect of which no approval contemplated in section 5 exists;
- (c) to demolish or substantially alter any building, structure or permanent equipment forming part of a place referred to in paragraph (b) in respect of which no such approval exists;
- (d) to erect any building or structure or install any permanent equipment at any place referred to in paragraph (b) in respect of which no such approval exists; and
- (e) who intends to make application for an approval in terms of section-

must, before commencing with such erection, alteration, demolition or installation, submit to the Municipality for approval design drawings, plans or sketches which have been drawn up in conformity with the prescribed requirements.

(2) The Municipality must not approve any design, drawing, sketch or plan submitted to it in terms of subsection (1) unless it is satisfied that, if the erection, alteration, demolition or installations carried out in accordance with the design drawing, sketch or plan, or in compliance with any condition which the Municipality may deem fit to impose when it considers the application for the approval of the design drawing, sketch or plan, the place in question will be fit to be approved as an abattoir in terms of these By-Laws.

(3) An application for the approval of a design drawing, sketch or plan Referred to in subsection (2) must-

- (a) be made in the prescribed manner;
- (b) be submitted to the Municipality; and
- (c) be accompanied by the prescribed fee.

**Applications for approval of abattoirs**

5. (1) An application for the approval of any place as an abattoir must be submitted to the Municipality in the prescribed manner and must be accompanied by the prescribed fee.

(2) The Municipality must, if it is satisfied that the place to which an application referred to in subsection (1) relates, has been erected or has been altered, or that the demolition, alteration, installation or erection of any building, structure or permanent equipment at such place, has been carried out in accordance with the design, drawing, sketch or plan approved in terms of section 4, approve the abattoir, and must issue a certificate of approval subject to such conditions as may be stated in the certificate.

- (3) The person to whom a certificate referred to in subsection (2) has been issued must comply with such certificate in the prescribed manner.
- (4) A certificate of approval issued in respect of an abattoir under section 4 of the Animal Slaughter, Meat and Animal Products Hygiene Act, 1967 (Act 87 of 1967), and which is in force immediately prior to the commencement of this section, must be deemed to be a certificate of approval issued under subsection (2) in respect of that abattoir.

### **Withdrawal and lapse of approval of abattoir**

6.(1) Subject to subsection 2, the Municipality may withdraw the approval granted under section 5 (2) in respect of any abattoir if it is satisfied that-

- (a) the outlay of an approved abattoir has been altered, or that any building, structure, or fixed equipment erected or installed at such abattoir, has been demolished, removed or substantially altered;
  - (b) the abattoir in question no longer complies with any condition subject to which the approval was granted in terms of section 5 (2); or
  - (c) the abattoir is not operated in the prescribed manner.
- (2) The Municipality must not withdraw the approval of an abattoir unless it has informed the owner of the abattoir of its intention to do so, and of the grounds upon which its intention is based, and unless it has afforded the owner of the abattoir a reasonable opportunity to state its case or to rectify any matter with regard to the abattoir indicated by the Municipality.
- (3) The approval granted in terms of section 5 (2) in respect of an abattoir will lapse-
- (a) when the person to whom the approval was granted ceased to be the owner of the abattoir;
  - (b) if the owner of the abattoir has informed the Municipality of his or her intention to discontinue all activities relating to the slaughter of animals, with effect from the date following the date on which such activities are discontinued.
- (4) If the owner of an approved abattoir disposes of the abattoir, or discontinues all activities with regard to the slaughtering of animals at such abattoir with the intention not to resume such activities, he or she must as soon as possible after such disposal or discontinuance notify the Municipality of that fact and must return the certificate of approval to the Municipality.

### **Veterinarians and meat inspectors to be employed at approved abattoirs**

7. (1) The owner of an approved abattoir must, unless such abattoir is one in respect of which exemption has been granted in terms of subsection (3), employ in respect of that

abattoir a veterinarian who has been designated by the Municipality in respect of that abattoir, as well as a meat inspector who has been so designated.

- (2) The Municipality may at any time, after furnishing reasons, withdraw any such designation under subsection (1).
- (3) (a) The Municipality grant exemption from the provisions of subsection (1), subject to such conditions as it may determine from time to time.  
  
(b) The Municipality may on application in the prescribed manner grant to any Person exemption from the provisions of subsection (1), subject to such conditions as may be set out in the document containing such exemption.
- (4) The veterinarian and meat inspector referred to in subsection (1) must in respect of that abattoir-
  - (a) exercise and carry out the powers and duties of a veterinarian and a meat inspector with regard to the inspection of animals intended to be slaughtered at that abattoir,
  - (b) inspect the meat and animals products derived from animals slaughtered at the abattoir or meat intended for human consumption; and
  - (c) deal with any matter at such abattoir which requires the attention and expertise of a veterinarian or meat inspector.
- (5) The veterinarian appointed and designated in respect of any approved abattoir in terms of subsection (1) may amend or withdraw or substitute his or her own decision for any decision of a meat inspector designated and appointed in terms of that subsection in respect of that abattoir given with regard to-
  - (a) animals intended to be slaughtered at that abattoir;
  - (b) the inspection of the meat and animal products derived from animals slaughtered at the abattoir;
  - (c) the granting or approval for the removal from that abattoir of any meat which is intended for human consumption; or
  - (d) any direction with regard to the manner in which meat has been found to be unfit for human consumption must be dealt with or any other decision which such veterinarian is in terms of these By-Laws authorized to give,

unless the person who is by virtue of such decision obliged or competent to perform any act has commenced with the performance of such act, in which case the decision of the meat inspector may be amended, withdrawn or substituted only with the consent of such person, unless it is withdrawn or substituted only with the consent of such person, or such amendment, withdrawal or substitution is to the benefit of such person.

**Prohibition of slaughter of animals at approved abattoirs unless inspected and approved.**

8. (1) No person must slaughter or permit the slaughter of any animal at an approved abattoir unless the animal has been inspected by a veterinarian or meat inspector and has been passed as fit for slaughter purposes.

(2) The Municipality may on application in the prescribed manner, grant any person exemption from the provisions of subsection (1), subject to written conditions contained in such exemption.

**Prohibition of removal of meat of animals slaughtered at approved abattoir unless meat as been inspected and approved**

9. (1) No person must remove from any approved abattoir any meat of any animal slaughtered at such abattoir unless the meat has been inspected by a veterinarian or meat inspector and has been approved by him or her or her as fit for human consumption and unless it has been marked in the prescribed manner.

(2) The director may on application in the prescribed manner, grant to any person exemption from the provisions of subsection (1), subject to such conditions as may be set out in the writing containing such exemption.

**Prohibition of removal of animal products from approved abattoirs**

10. No person must remove any animal product from any animal slaughtered at an approved abattoir from that abattoir unless such product has been inspected by a veterinarian or meat inspector and it has been found that the animal product is not infected.

**Detention or making of or other steps to be taken in respect of certain animals, meat of animal products**

11. Any animal, meat of animal product which, when inspected in terms of sections 8 and 10 or this section, has been found to be infected, must in the prescribed manner be detained, marked, destroyed or dealt with.

**Permissible methods and procedures for slaughter of animals**

12. (1) (a) No person must slaughter an animal at an approved abattoir otherwise than in a human manner and in accordance with the applicable prescribed methods and procedures.

(b) Despite the provisions of paragraph (a), the Municipality may, on application made in the prescribed manner, grant exemption in writing from the provisions of that paragraph to the extent and subject to such conditions as it may determine and set out in the written exemption concerned.

(2) The owner of an approved abattoir must-

- (a) apply the prescribed hygienic practices when an animals is slaughtered in accordance with the provisions of subsection (1); and
- (b) provide the prescribed means necessary for the application of such practices, and ensure that such means are utilized for that purpose.

#### **Restriction on transportation of fresh meat**

13. (1)(a) No person must transport any fresh meat within the area of the Municipality except on the authority of transport permit issued by the Municipality or any relevant authority.

(b) For the purpose of this section “fresh meat” means meat which has not undergone any processing except dressing, deboning, cooling or freezing;

(c) The provisions of paragraph (1) do not apply to fresh meat transported for a prescribed purpose or if the consignment in question does not exceed the prescribed mass.

(2) An application for a transport permit referred to in subsection (1)(a) must be made in the prescribed manner and must be accompanied by the prescribed fee.

(3) A transport permit referred to in subsection (1)(a) must be issued only in respect of fresh meat derived from animals slaughtered at an abattoir which has for the purposes of the transportation of fresh meat been approved by the Municipality

(4) A transport permit referred to in subsection (1)(a) must be issued subject to such conditions as the Municipality may determine and set out in the certificate concerned.

(5) (a) Fresh meat transported contrary to the provisions of subsection (1) or in conflict with a condition determined under subsection (4) must be forfeited to the Municipality and the Municipality may dispose of it at its discretion.

(6) The Municipality may recover any expenses incurred in connection with the disposal referred to in paragraph (a) from the person concerned.

#### **Protective transport to be provided for transport of live stock and carcasses**

14. (1) No person must transport animals for purposes of slaughter or any other purpose other than in a protected mode of transport an in accordance with the applicable procedures.

(2) A person transporting carcasses to and from an abattoir must do so in a covered transport or any other manner that will not expose such carcasses to the public.

#### **Powers of entry and investigation**

15. (1) (a) Any officer or person acting under a delegation, assignment or direction of the Municipality may, whenever he or she deems it necessary in the exercise of or carrying out by him or her or her of any power or duty conferred or imposed on the Municipality in terms of these By-Laws, enter at any reasonable time and without prior notice in any place, premises or conveyance.

(b) The provisions of paragraph (a) must apply with the necessary changes, to a veterinarian or a meat inspector in so far as they relate to the exercising of a power and the carrying out of a duty at or in connection with the abattoir in respect of which such veterinarian or meat inspector has been appointed and designed in terms of these By-Laws.

(c) Any person who enters any place, premises or conveyance in terms of this subsection must show proof of his or her identity and authority when requested thereto by the person in charge of the place, premises or conveyance concerned.

(2) A person entering upon a place, premises or conveyance in terms of the power conferred under subsection (1) may-

- (a) take with him or her such assistants, appliances, instruments, tools or other things as he or she may deem necessary for the purposes of this subsection;
- (b) demand from the owner or person in charge of the place, premises or conveyance concerned, all reasonable assistance which such person may deem necessary in order to enable him or her to exercise his powers and perform his duties in connection with that place, premises or conveyance;
- (c) examine or cause to be examined any animal, meat, animal product or other article in respect of which these By-Laws apply and that was in fact or is suspected of having been slaughtered, dressed, treated, graded, classified, packed, marked, labeled, kept, removed, transported, exhibited or sold there;
- (d) inspect the operations or processes in connection with any action referred to in paragraph (c), and demand from the owner or custodian of the animal, meat, animal product or other article concerned, or from the person supervising such operations or processes, any information or an explanation regarding the operation, process, animal, meat, animal product or other article concerned, but such information or explanation must only be admissible as evidence in a court of law against such owner, custodian or person on a charge referred to in section 20 (1)(g);
- (e) take such samples of the animal, meat, animal product or other article concerned as he may deem necessary, and for such purpose open any container in which that meat, animal product or other article is contained, and test, examine or analyze such sample or cause it to be tested, examined or analyzed;
- (f) examine and make copies of or take extracts from any book or document in respect of which he or she on reasonable grounds suspects that it relates to such animal, meat, animal product or other article, irrespective of whether or not it is kept on or at the place, premises or conveyance concerned or any other place, and demand from the owner or custodian of that book or document an explanation regarding any record or entry therein, but such explanation is admissible in evidence in a court of law against that owner or person only on a charge referred to in section 20(1)(g).

**Seizures**

16. (1) A person referred to in section 15(1) may at any reasonable time and in any manner, deemed fit by him or her, without prior notice to any person, seize any animal, meat, animal product or other article, or any book or document which-

- (a) is connected or is on reasonable grounds believed by him or her to be connected with the commission or suspected commission of any offence under these By-Laws;
- (b) may afford evidence of the commission or suspected commission of any such offence; or
- (c) is intended or is on reasonable grounds suspected by him or her to be intended to be used in the commission of any such offence.

(2) The person concerned:-

- (a) may remove anything thus seized, from the place, premises or conveyance where he has seized it, or have it thereon and, if he or she deems it necessary, attach any identification mark or seal thereto, or to the container thereof; and
- (b) must notify a police officer as defined in section 1(1) of the Criminal Procedure Act, 1977 (Act 51 of 1977), forthwith, for the purposes of a prosecution under these By-Laws, of such seizure.

(3) Anything thus seized, must be disposed of in accordance with the applicable provisions referred to in Chapter 2 or the Criminal Procedure Act, 1977, but in the case of a meat that is unfit for human consumption, or an animal product that is infected, the Municipality may direct that such meat or animal product be forfeited to the Municipality to be destroyed.

**Directives**

17. (1) If a person referred to in section 15(1) is of the opinion that-

- (a) any approved abattoir or any part thereof or an appliance therein is in a dirty or unhygienic condition, or needs renovation, repair or alteration or does not in all respects comply with any requirement of these By-Laws;
- (b) any water supplied to, used or suspected of being used for the purposes of such abattoir or in connection therewith, is impure, unhygienic or not fit for this purpose;
- (c) a conveyance which is used to convey or remove meat or any animal product from such abattoir is in a dirty or unhygienic condition, or requires renovation, repair or alteration;
- (d) any person at such abattoir is infected with disease or is dirty, or behaves in any manner detrimental to the maintenance of hygiene;
- (e) any person who performs or omits to perform any act at such abattoir which defeat the achievement of the object of these By-Laws, he or she may-



- (i) direct the owner of such abattoir in writing to forthwith clean, disinfect or bring such abattoir, portion thereof or appliance therein into a hygiene condition, or to renovate, repair or alter it or to ensure that it complies in all respects with the requirements of these By-Laws;
- (ii) direct the owner of such abattoir in writing to discontinue the use of such water until it is in all respects fit to be used;
- (iii) direct the owner of such abattoir in writing to clean, disinfect or bring such conveyance into a hygienic condition or to renovate, repair or alter it;
- (iv) direct such person in writing to leave such abattoir at once and remain absent until his or her return thereto is authorized by a person referred to in section 15(1);
- (v) direct such person in writing to cease to perform such action or to perform it.

(2) A copy of each directive referred to in subsection (1) must be filed in the records of the Municipality;

### **Secrecy**

18. No person must disclose any information acquired by him or her or through the exercising of his or her powers or the performing of his or her duties in terms of these By-Laws, except:-

- (a) as far as it is necessary for the proper application of the provisions these By-Laws;
- (b) for the purposes of any legal proceedings under these By-Laws;
- (c) when required to do so by any competent court; or
- (d) if he is authorized thereto by the Municipality.

### **Offences and penalties**

17. (1) Any person who is convicted of an offence under this Act is-

- (a) in the case of a first conviction of an offence, liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding six months or to both that fine and that imprisonment;
- (b) in the case of a second or subsequent conviction of an offence mentioned in paragraph (a), whether it be the same or some other offence mentioned in that paragraph, be liable to a fine not exceeding R16 000 or to imprisonment for a period not exceeding four years or to both that fine and that imprisonment;

(2) Despite anything to the contrary in any other law contained, a magistrate's court must be competent to impose any penalty provided for in these By-Laws.

### **Vicarious liability**

18. (1) When a manager, representative, agent, employee or a member of the family of a person (in this section referred to as the principal) performs or omits to perform any act, and it would be an offence under these By-Laws for the principal to perform or omit to perform such act him or herself, that principal must be deemed him or herself to have performed or omitted to perform the act, unless he or she satisfies the court that-

- (a) he or she neither connived at nor permitted the act or omission by the manager, representative, agent, employee or member concerned;
- (b) he or she took all reasonable steps to prevent the act or omission; and
- (c) an act or omission, whether lawful or unlawful, of the nature charged, on no condition or under no circumstance came within the scope of the authority or employment of the manager, representative, agent, employee or member concerned.

(2) In the application of subsection (1)(b) the fact that such principal issued instruction whereby an act or omission of that nature is prohibited, must not in prevent the act or omission.

(3) When a principal is by virtue of subsection (1) liable for an act or omission by a manager, representative, agent, employee or member of his or her family, that manager, representative, agent, employee or member is liable therefore as if he or she is the principal's concerned.

(4) The principal referred to in subsection (3) must not release a manager, representative, agent, employee or member contemplated in that subsection from any other liability which he or she may have incurred apart from the liability which he or she shares with the principal concerned.

### **Repeal of By-Laws**

19. All previous and Council regulations, policies and arrangements are dealing with abattoirs are repealed.

(2) Repeal is effective from the promulgation of these By-Laws.

### **Short title and commencement**

20. These By-Laws are called Abattoir By-Laws, 2012 and will come into operation on the date of publication in the *Provincial Gazette*.

**No. 4**

## **MBHASHE LOCAL MUNICIPALITY**

### **ADVERTISING SIGNS AND DISFIGUREMENT OF THE FRONTS OR FRONTAGES OF STREETS BY-LAW**

**MBHASHE LOCAL MUNICIPALITY****NOTICE**

Notice is hereby given in terms of section 13 of the Local Government Municipal Systems Act, 2000(Act 32 of 2000), as amended, read with sections 156 and 162 of the Constitution of the Republic of South Africa, 108 of 1996 as amended, that Mbashe Local Municipality in terms of resolution number 3.2.1 dated 31 October 2012 resolved to adopt the following Advertising Signs and Disfigurement of the Fronts or Frontages of Streets By-Laws

**BY-LAW**

To provide for the control of advertising signs and the prohibition of disfigurement of the fronts or frontages of streets in Mbashe Municipality; and for matters connected therewith.

**BE IT ENACTED** by Mbashe Local Municipality, as follows:

**TABLE OF CONTENTS**

1. Definitions
2. Affixing of posters and signs prohibited
3. Submission and approval of application to display signs
4. Existing signs to comply with By – Laws
5. Enforcement
6. Subject matter of signs
7. Signs allowed on buildings
8. Flat signs
9. Projecting signs
10. Sky signs
11. Signs on verandas and balconies
12. Signs over footways forming part of public roads
13. Prohibited signs
14. Signs on walls, fences and hoardings
15. Signs on poles and other structures
16. Signs on vehicles and signs carried through the streets
17. Illuminated signs
18. Structural requirements
19. Use of glass
20. Fire precautions
21. Electrical requirements
22. Exemptions
23. Savings
24. Waiver of provisions
25. Penalty clause
26. Repeal of By-Laws
27. Short title

## Definitions

1. In these By-Laws, unless the context otherwise indicates -

**"aerial sign"** means any sign attached to a lute, balloon, aircraft or any other device whereby it is suspended in the air over any part of the area under the jurisdiction of the Municipality;

**"authorised employee"** means any employee authorised thereto by the Municipality;

**"clear height"** means the vertical distance between the lowest edge of such sign and the level of the ground, footway or roadway immediately below such sign;

**"Council"** means —

- (a) the Municipal Council of Mbhashe Municipality exercising its legislative and executive authority through the Municipality;
- (b) its successor in title; or
- (c) a structure or person exercising a delegated power or carrying out an instruction, where any power in these By-Laws has been delegated or sub delegated or an instruction given, as referred to in section 59 of the Act; or
- (d) a service provider fulfilling a responsibility under these By-Laws, assigned to it in terms of section 81(2) of the Act, or any other By-law, as the case may be;

**"depth"** means the vertical distance between the uppermost and lowest edges of such sign;

**"display of a sign"** includes the erection of any structure if such structure is intended solely or primarily for the support of such sign and the expression **"to display a sign"** shall have a corresponding meaning;

**"flashing sign"** means any illuminated sign, the light emitted from which does not remain constant in all respects;

**"flat sign"** means any sign which is affixed to or painted directly on a main wall and which at no point projects more than 250 mm in front of the surface of such wall, but does not include a poster: Provided however, that a poster affixed to a main wall shall be deemed to be a flat sign if such poster is -

- (a) not less than 0,80 m<sup>2</sup> in area;

**"main wall"** of a building means any external wall of such building, but shall not include a parapet wall, balustrade or railing of a veranda or a balcony;

**"Municipality"** means Mbhashe Local Municipality and its legal successors, and when referred to as-

(a) a legal entity, means Mbhashe Local Municipality as described in section 2 of the Local Government: Municipal Systems Act, (Act No. 32 of 2000); and

(b) a geographic area, means the municipal area of the Mbhashe Local Municipality as determined from time to time in terms of the Local Government : Municipal Demarcation Act, 1998 (Act No 27 of 1998);

**"new sign"** means any sign first displayed after the promulgation of these By-Laws;

**"overall height"** of a sign means the vertical distance between the uppermost edge of such sign and the level of the ground, footway or roadway immediately below such sign;

**"person"** in relation to the display or alteration of or the addition to a sign, or in relation to the intended or attempted display or alteration of, or addition to a sign, includes the person at whose instance such sign is displayed, altered or added to, or at whose instance such sign is intended or attempted to be displayed, altered or added to, as the case may be and the person who or whose goods, products, services, activities, property or premises, is or are referred to in such sign shall be deemed to be such person, unless he or she proves the contrary;

**"poster"** means any placard or similar device attached to some fixed object whereby any advertisement or notice is publicly displayed;

**"projecting sign"** means any sign which is affixed to a main wall and which at some point projects more than 250 mm in front of the surface of such wall;

**"public road"** means any road or thoroughfare or any other place 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 footpath, sidewalk or similar pedestrian portion of a road reserve;
- (c) any bridge, ferry or drift traversed by any such road, street or thoroughfare;
- (d) any other work or object belonging to such road, street or thoroughfare, footpath or sidewalk; and
- (e) any premises with or without structures thereon, used or set aside as a public parking area or public parking place for the parking of motor vehicles whether or not access to such a parking area or place is free of charge;

**"running light"** means a portion of a sign in the form of an illuminated strip, the illumination of which varies periodically in such a way as to convey the impression of a pattern of lights moving steadily along such strip;

**"sign"** means any sign, signboard, screen, private lamp, blind or other device by means whereof any advertisement or notice is publicly displayed;

**"sky sign"** means any sign that is fixed above the roof of a building other than a roof of a veranda or a balcony and shall include any such sign consisting of a single line of free standing, individual, cut-out, silhouette letters, symbols or emblems;

**"thickness"** of a projecting sign means the horizontal dimension of such sign measured parallel to the plane of the main wall to which such sign is affixed.

### **Affixing of posters and signs prohibited**

2. Subject to the provisions of these By-Laws, no person shall affix a poster or any other sign on the front or frontage of any public road, wall, fence, land, rock, tree or other natural feature, or to the front, frontage or roof of any building.

### **Submission and approval of application to display sign**

3. (1) Save as in section 22(2) is provided, every person intending to display a new sign or to alter or to add to an existing sign (hereinafter referred to as the "applicant") must make written application to the Municipality in the form prescribed in the Schedule to these By-Laws, submitting therewith plans drawn in accordance with the following requirements:

- (a) The plans must be drawn in black ink on tracing linen or stout durable drawing paper or shall be linen prints with black lines on a white background.
- (b) Such form and plans shall be in duplicate (one set of which must become the property of the Municipality) and must be dated and signed in ink by the applicant or by a person authorised by such a person in writing to sign on his or her behalf, and all alterations and corrections to such form and plans shall be similarly dated and signed.
- (c) Where the sign is to be affixed to a building, the plans must include an elevation and a section of the facade and, where necessary, of the roof of the building, drawn to a scale of 1:100 upon which must be depicted the sign, any other signs affixed to such roof and enough of the main architectural features of such facade or roof to show the position of the sign in relation to such other signs and features.
- (d) The location of the sign relative to the ground level and, where necessary, the kerb line must also be shown on such elevation and section.
- (e) Where the sign is not to be affixed to a building, the location of the sign relative to the ground level and, where necessary, the

kerb line must be shown on an elevation, plan and section drawn to a scale of 1:100.

- (f) Elevations, including full particulars of the subject matter as defined in section 6, plans and sections of the sign itself as may be necessary to show whether it complies with these By-laws, accurately drawn to a large enough scale (but in no event less than 1 :50) must also be included.
- (g) The plans must depict full details of the structural supports of the sign, drawn to a scale of 1:20.
- (h) The plans must also include a site plan, drawn to a scale of 1:200, showing clearly and accurately the position of the sign and the building, if any, to which it is to be attached, in relation to such the boundaries of the erf as may be affected by such position, and giving the name of the abutting street and the distance to and the name of the nearest named cross-street, and showing the direction of true north.
- (i) The plans shall indicate the materials of which the sign is to be constructed, the manner in which the lettering thereon is to be executed, the colours to be used, and whether or not the sign is to be illuminated, and in the latter event the plans shall indicate whether or not the sign is a flashing sign, and if the sign is a flashing sign, full details of its periodicity and variations or changes in appearance shall be furnished.

(2)(a) Despite the provisions of subsection (1), and subject to the provisions of section 6(1), it is lawful to display any poster and to replace any poster by another poster of the same size without the consent of the Municipality, if any such poster as aforesaid is-

- (a) displayed at a cinema or theatre, or other place of public amusement; or
- (b) on a hoarding, the erection and use of which for this purpose have been authorised by the Municipality;
- (c) or is a poster which in terms of section 1 is deemed to be a flat sign.

(3) The Municipality may, subject to such conditions as it may deem fit, grant permission for the display of posters on special occasions such as elections, festivities, university rag processions, etc.

(3) The Municipality must, within 14 days after receiving the form and plans referred to in subsection (1), specify to the applicant the provisions, if any, of these By-Laws, or of any other law that the Municipality is required or empowered to administer, with which such form or plans do not comply and the Municipality may, if it deems it necessary, return the form



and plans to the applicant.

(4) Where the form and plans comply with these By-Laws and any other law as aforesaid, the Municipality must approve them and must forward one set thereof to the applicant.

(5) Approval granted in terms of subsection (4) must be null and void if the sign has not been completed in accordance with the approved form and plans within 12 months of the date of such approval.

#### **Existing signs to comply with By-Laws**

4. (1) (a) Every sign existing at the date of the promulgation of these By-Laws must be made to comply in all respects with all the requirements of these By-Laws within a period of 1 year from the date of such promulgation.

(b) Where any sign does not so comply after the said period of 1 year, it must forthwith be removed.

(2) Where any sign not complying with the provisions of these By-Laws has not been made to comply therewith within the aforementioned period of 1 year, or where any sign has been erected which is not in conformity therewith, the Municipality may order the owner thereof to remove such sign.

(3) Whenever, through change of ownership or occupancy or change in the nature of the business, industry, trade or profession conducted on any premises or through the erection of new traffic signal lights or through an alteration in the level or position of any street, footway or kerb, or through any other cause whatsoever, a new sign ceases to comply with these By-laws, such sign must be forthwith removed, obliterated or altered by the person displaying such sign so as to comply with these By-Laws.

#### **Enforcement**

5. (1) Any person who displays or attempts to display a new sign or who alters or adds to, or attempts to alter or add to, an existing sign without the prior approval of the Municipality given in terms of section 3, where such approval is required by the said section 3, is guilty of an offence.

(2) Any such person must forthwith, after serving on him or her of an order in writing to that effect under the hand of an authorised employee of the Municipality, cease or cause to cease all work on the display of such new sign, or must cease or cause to cease any alteration or addition to such existing sign, as the case may be, and any such person who fails to comply with such order is guilty of an offence.

(3) Any person who, having obtained such approval, does anything in relation to any sign which is a departure from any form or plan approved by the Municipality is guilty of an offence.

(4) Any such person must forthwith, after the service upon such a person, of

an order in writing to that effect under the hand of the authorised employee of the Municipality, discontinue or cause to be discontinued such departure, and any person who fails to comply with such order is guilty of an offence.

(5) Whether or not any such order as is referred to in subsections (2) and (4) has been served on any such person, the Municipality may serve upon such person an order in writing requiring such person forthwith to begin to remove or obliterate such sign or anything referred to in subsection (3) and to complete such removal or obliteration by a date to be specified in such order, which date may be extended by the Municipality as it may deem fit.

(6) If before the date for completion of the removal or obliteration required by such order such person satisfies the Municipality that such a person has complied with these By-laws, the Municipality may withdraw such order.

(7) Where any person displaying a sign contravenes any of the provisions of these By-Laws other than those relating to the matters referred to in subsections (1) and (3), the authorised employee of the Municipality may serve a notice in writing under his or her hand upon such person, and in such notice must cite the provisions contravened and must specify the guidelines to be followed in order that such provisions may be complied with.

(8) Any person who fails to comply with any order referred to in subsection (5) or with the terms of any notice referred to in subsection (7) is guilty of an offence, and in addition the Municipality itself may give effect to such order or notice at the expense of such person.

### **Subject matter of signs**

**6. (1)** No sign on any premises must contain any words, letters, figures, symbols, pictures or devices (hereinafter called "subject matters") unless every part of such subject matter falls into one or more of the following categories:

- (a) the name, address and telephone number of such premises or part thereof;
- (b) the name of the occupier of such premises or part thereof;
- (c) A general description of the type of trade, industry, business or profession lawfully conducted on such premises or part thereof by the occupier thereof;
- (d) Any information, recommendation or exhortation concerning, or any name, description, particulars or other indication of -
  - (i) any goods, not being samples, regularly and lawfully manufactured, kept and sold or kept and offered for sale on such premises; or
  - (ii) any services regularly and lawfully rendered or offered on such premises; or

- (iii) any catering or any entertainment or amusement or any cultural, educational, recreational, social or similar facilities lawfully provided or made available on such premises, or any meeting, gathering or function lawfully held on such premises: but this paragraph must not be construed as permitting any subject matter, which, in the opinion of the Municipality, is an evasion of or not in accordance with the intent of this paragraph.

(2) Despite the provisions of subsection (1), in the case of any premises partly or wholly used for residential purposes, no sign other than the name of such premises shall be displayed on the part of such premises used for residential purposes.

(3) Where a sign is displayed by means of a device whereby a series of consecutive signs is displayed at one place, the provisions of subsection (1) must, subject to the following conditions, not apply to any such sign so displayed:

(4) No sign in such series, other than a sign permitted in terms of subsection (1), must be displayed on any one occasion for a longer period than 20 seconds.

(5) The individual signs consecutively displayed within any particular 10-minute period must all be completely different from one another in so far as their subject matter is concerned, but that this paragraph does not apply to any sign permitted in terms of subsection (1).

(6) Where such device is capable of displaying news or of providing entertainment, it must not be operated in any position or place where in the opinion of the Municipality such operation may bring about or aggravate congestion of vehicular or pedestrian traffic.

(7) Such device whether or not it is capable of displaying news or of providing entertainment must not be operated in any position or place where in the opinion of the Municipality such operation or any gathering of persons brought attracted by it, may detract from the amenities of the neighbourhood or to depreciate property or to cause a public nuisance.

(8) A sign must have a clear height of not less than 9 m.

(9) Despite the granting of approval by the Municipality for the display of signs referred to in this subsection, the Municipality is entitled at any time thereafter to revoke such approval if it is satisfied that the display of such signs is in contravention of paragraph (a), (b) or (e) or is bringing or has brought into existence the conditions referred to in paragraph (c) or (d).

(10) (a) Where the Municipality, by notice in writing informs any person displaying signs of the revocation of its approval for such display, such person must forthwith cease to display such signs and shall remove the device by means whereof such signs are displayed by a date to be specified in such notice, which date may be extended by the Municipality as it may deem fit.

(b) Any person who fails to comply with any notice referred to in paragraph (a) is guilty of an offence, and in addition the Municipality itself may give effect to such notice at the expense of such person.

### **Signs allowed on buildings**

7. (1) The following signs and no others may be affixed to or painted on buildings, but the Municipality may prohibit the erection of certain or all of the under mentioned signs or the use of certain colours therein-

- (a) flat signs;
- (b) projecting sign;
- (c) sky signs;
- (d) signs affixed to or painted on verandas or balconies;
- (e) signs painted on sunblind affixed to buildings; and
- (f) any sign referred to in paragraphs (a), (b), (c), (d), (g), (h), (i), (j), (k), (m), (o), (p), (q) and (r) of section 22(2), if all the conditions applicable to such sign are complied with.

### **Flat signs**

8. (1) Flat signs must not exceed, in aggregate area, 40 m' or one-quarter of the overall area of the main wall to which they are affixed or on which they are painted, whichever of these figures is the lesser, but the Municipality may fix a lesser aggregate area for any flat sign .

(2) No flat sign must extend above the top of such main wall or beyond either end of such main wall-

- (a) where a building which is adjacent to another building, and which extends over the boundary line of the prospective width of a proclaimed road or public street, is demolished either wholly or partially and is reconstructed in such a manner that it no longer extends over the aforementioned boundary line, no flat sign must be permitted on the sidewall of such other building facing the building so reconstructed, in so far as the said sidewall extends over the aforementioned boundary line.
- (b) For the purpose of this section -
  - (i) "prospective width" in relation to a proclaimed road means the statutory width as contemplated by any enactment promulgated by any legislative body which has legal competency to pass legislation on such a matter and

in relation to a public road shall mean the width whereto it is to be widened in accordance with a town planning scheme whether in the course of preparation, awaiting approval or in operation;

- (ii) "adjacent" means a distance of 6 m or less.

### **Projecting signs**

9. (1) No part of any projecting sign must project in front of the main wall to which such sign is affixed to a greater extent than -

- (a) 1, 5 m in the case of a sign which has a clear height of not less than 7,5 m; or
- (b) 1 m in the case of any other sign, but where such a sign has a clear height of less than 7, 5 m -
  - (i) any portion of such sign which is not more than 600 mm in depth may project as aforesaid to an extent of more than 1 m, but not more than 1,5 m and there must be a clear vertical distance of not less than 3,6 m between any two successive portions, if any, so projecting; and
  - (ii) any such sign which is not more than 600 mm in depth may project as aforesaid to an extent of more than 1 m, but not more than 1,5 m and there must be a clear vertical distance of not less than 3.6 m between any two such signs, if any, which are in the same vertical plane.

(2) No projecting sign must extend above the top of the main wall to which it is affixed.

(3) The depth of a projecting sign must not exceed one-and-a-quarter times the clear height of such sign.

### **Sky Signs**

10. (1) The depth of a sky-sign must not exceed one-sixth of the clear height of such sky-sign.

(2) A sky-sign must not project in front of a main wall of a building so as to extend, in plan, beyond the roof of such building in any direction.

(3) The length of a sky-sign must not exceed –

- (a) 14 m, if the depth of such sky-sign does not exceed 4,5 m; or
- (b) 18 m, if the depth of such sky-sign exceeds 4,5 m.

(4) Subject to the preceding provisions of this section the Municipality may allow a sky-sign in excess of 18 m in length whenever the street frontage of a site exceeds 55 m: but –

- (a) such sky-sign must consist of a single line of free standing, individual, cut-out, silhouette letters, symbols or emblems;
- (b) the length of such sky-sign must not exceed one-third of the length of the road frontage of such site;
- (c) such sky-sign must be erected parallel to the road frontage of such site; and
- (d) if as a result of the road frontage of such site being reduced, such sky-sign ceases to comply with the preceding provisions of this section, the owner of such site shall forthwith remove such sky sign or alter it so as to comply with such provisions.

### **Signs on verandas and balconies**

**11.** (1) The following signs and no others may be affixed to or painted on verandas and balconies:

- (a) Signs affixed flat on to or painted on a parapet wall, balustrade or railing of a veranda or a balcony.
- (b) Signs affirmed flat on to or painted on a beam or fascia of a veranda or a balcony.
- (c) Signs suspended below the roof of a veranda or the floor of a balcony.

(2) A sign affixed to a parapet wall, balustrade or railing of a veranda or a balcony must not exceed 1 m in depth, or project above or below or beyond either end of such parapet wall, balustrade or railing, or project more than 250 mm in front of such parapet wall, balustrade or railing.

(3) (a) A sign affixed to a beam or fascia of a veranda or balcony must not exceed 600 mm in depth, or project above or below or beyond either end of such beam or fascia, or project more than 250 mm in front of such beam or fascia.

(b) Where any such sign is affixed to a beam which is at right angles to the building line and which is below the roof of a veranda or the floor of a balcony, such sign must not exceed 1,8 m in length.

(4) A sign suspended below the roof of a veranda or the floor of a balcony must exceed 1,8 m in length or 600 mm in depth and every such sign must not be at right angles to the building line.

(5) Despite the foregoing, it must be permissible to erect a sign on the roof of a veranda or balcony, if –

- (a) such sign is composed of a single line of free-standing, individual, cut-out silhouette letters;

- (b) such sign lies in the vertical plane passing through the foremost edge of such roof, being an edge parallel to the kerb line;
- (c) the subject matter of such sign is limited to that referred to in paragraphs (a), (b) and (c) of section 6(1); and
- (d) the depth of such sign does not exceed 600 mm.

(6) Despite the provisions of section 17(1), it is permissible for a sign suspended below the roof of a veranda or the floor of a balcony to be bordered by a running light but such running light border must not be more than 75 mm in width.

### **Signs over footways forming part of public roads and public roads**

12. (1) Any sign projecting over a footway forming part of a public road must not be less than 2,4 m in clear height, but a flat sign in the form of a showcase for the display of goods may project not more than 50mm over such footway if such footway is not less than 1,5 m wide, irrespective of the clear height of such showcase.

(2) Any sign projecting more than 150 mm over any place where persons may walk, if such place is not a footway forming part of a public road, must not be less than 2,1 m in clear height.

(3) No part of a sign projecting over a footway forming part of a public road must be nearer than 300mm to a vertical plane through the kerb line of such footway.

4) Where a public road has no footway, signs may project over the carriageway of such public road if such signs are not less than 6 m in clear height.

### **Prohibited signs**

13. (1) Despite anything in these By-Laws contained, the following types of signs are prohibited:

- (a) Swinging signs, loose portable signs (other than signs designed for the purpose of being carried through the streets and signs on portable racks or other articles for containing and displaying goods), aerial signs and other signs not rigidly fixed.
- (b) Posters, except -
  - (i) any poster referred to in section 3(2) of these By-laws;
  - (ii) any poster comprising any such sign as is referred to in paragraph (a), (b), (i), (iv), (v), (vi), (vii), (x), (xv) or (xvi) of section 22(2).
- (c) Any sign which is so placed as to obstruct, obscure, and interfere with, or otherwise be likely to introduce confusion into the

effective working of any traffic sign.

(2) A person must not exhibit in any place to which the public has access or must expose to public view, any advertisement, placard, poster, engraving, picture, drawing, print or photograph of an indecent, obscene, repulsive, revolting or objectionable character, or of a nature calculated to produce a pernicious or injurious effect on the public or any particular class of persons.

(3) Any person contravening the provisions of subsection (2) is guilty of an offence.

### **Signs on walls, fences and hoarding**

14. (1) Except as in section 22 provided, a sign must not be affixed to or painted on a wall, a fence or a hoarding, unless

- (a) in the opinion of the Municipality such wall, fence or hoarding serves primarily either to conceal a condition or attribute of the property on which such wall, fence or hoarding is erected, which condition or attribute is unsightly by reason of the use to which such property is lawfully being put;
- (b) or unless such wall, fence or hoarding is a temporary measure to protect the public in the neighbourhood of building, demolition or similar operations.

(2) In granting its approval in terms of section 3 for the affixing or painting of any such sign, the Municipality may grant such approval for a limited period only, and the provisions of section 6 do not apply to such sign.

(3) Every such sign affixed or painted in terms of this section must comply with the following requirements:

- (a) No such sign must exceed 3 m in depth or 4,2 m in overall height.
- (b) Poster signs must be enclosed with definite panels, which must be uniform in size and level.

### **Signs on poles and other structures**

15. (1) Except as in section 22 provided, a sign must not be affixed to or painted on a pole or any other structure which is not a building, wall, fence or hoarding unless -

- (a) such sign is indispensable for the effectual conduct of the activity in connection with which it is displayed; and
- (b) either -



- (i) it is impracticable to display a sign effectually at the premises concerned except by affixing a sign to or painting a sign on a pole or other structure as aforesaid; or
- (ii) in the opinion of the Municipality a particular sign intended to be affixed to or painted on a pole or other structure as aforesaid would not detract from the amenities of the neighbourhood or depreciate neighbouring property to a greater extent than a sign capable of being displayed at the premises in conformity with any other section of these By-laws would do.

(2) Where in the opinion of the Municipality serious difficulty is experienced by the public in finding the way to a factory in an industrial zone the Municipality may permit the erection of a signboard on a pole on a vacant erf in such zone for purposes of indicating the direction to such factory, subject to the following conditions:

- (a) Not more than one such signboard must be erected on any one erf, but it is permissible to indicate more than one factory on the erected signboard.
- (b) The subject matter of the signs on such signboard must be limited to the names of the factories concerned, the names of their occupiers, and essential directional information and the lettering used must not exceed 100 mm in height.

(3) The Municipality may permit-

- (a) the erection of a signboard on a pole on a vacant erf in a township for the purposes of displaying thereon a map showing the street names and erf numbers of such township, together with the name and address of the owner of or agent for such township and the name of the township;
- (b) and such signboard must not exceed 3.6 msquared, in area, and the lettering employed thereon must not exceed 100 mm in height.

(4) In granting its approval in terms of section 3 for the display of any sign referred to in subsection (1), (2) or (3) of this section the Municipality may grant such approval for a limited period only and on the expiry of such period the person displaying such sign must forthwith remove it.

### **Signs on vehicles and signs carried through the street**

16. (1) A person must not carry or cause to be carried in any public road any sandwich board, lantern, flag, banner, screen or other movable advertising device if such board, lantern, flag, banner, screen or other device hinders or obstructs traffic in such road, or is likely to do so.

(2) A person must not drive or propel or cause to be driven or propelled in any public road any advertising van or other movable advertising device if

such van or device hinders or obstructs traffic in such road, or is likely to do so.

(3) Any person who contravenes the provisions of subsections (1) or (2) is guilty of an offence.

### **Illuminated signs**

17. (1) A flashing sign must not be less than 9 m in clear height, and an illuminated sign must not be displayed in such a position that it is or is likely to be a danger to traffic or to cause confusion with traffic signals.

(2) A sign that is so intensely illuminated as to create a nuisance must not be displayed.

### **Structural requirements**

18. (1) (a) Every sign affixed to a building or structure must be rigidly attached thereto.

(b) Every sign which is affixed to the ground and every structure supporting a sign, which structure is affixed to the ground, must be rigidly anchored to the ground.

(c) Every sign and its supports and anchorages, and the building or structure, if any, to which it is affixed, must be of adequate strength to resist, with a safety factor of 4, the dead load of the sign and a superimposed horizontal wind pressure of 1,5 kPa.

(2) All signs and supports thereof which are attached to brickwork or masonry must be attached thereto by means of expansion bolts or by means of bolts passing through such brickwork or masonry and secured on the opposite side thereof and such bolts must not be less than 12 mm in diameter.

(3) Every sign affixed to a building or a wall must be supported by at least 4 independent supports so designed and disposed that any 2 of such supports will safely support the sign with a safety factor of 2.

(4) All exposed metalwork in a sign or its supports must be painted or otherwise treated to prevent corrosion and all timber in a sign or its supports shall be treated with creosote or other preservative to prevent decay.

(5) Every person displaying a sign must cause such sign and its supports to be maintained in a safe condition at all times and any person who contravenes the provisions of this subsection is guilty of an offence.

### **Use of glass**

19. All glass used in signs (other than glass tubing used in neon and similar signs) must be plate glass at least 5mm thick.

**Fire precautions**

**20.** (1) Except as in section 22 provided, all illuminated signs and supports thereof must be of incombustible material, but the Municipality may allow any sign approved in terms of sections 14 and 15 and any support for any such sign to be of combustible material.

(2) No person must display a sign in such a way or in such a position that it may, partly or completely, obscure a sign displayed by the Municipality to indicate the location of emergency equipment or a fire hydrant terminal.

**Electrical requirements**

**21.** (1) A sign must not be illuminated except by electricity from the Municipality's mains where such supply is available.

(2) Every sign in connection with which electric current is used must be provided with an external switch in a position to be determined by the Municipality whereby the electricity supply to such sign may be switched off.

**Exemptions**

**22.** (1) The provisions of these By-laws do not apply to any sign inside a building, except illuminated signs on shop windows.

(2) Any-

- (a) sign displayed by the Municipality or by any omnibus or tramway company lawfully authorised to conduct a system of transport for use by the public, and any sign affixed to a street pole with the written permission of the Municipality;
- (b) sign inside a shop window;
- (c) advertisement appearing in a newspaper or periodical sold on the streets, and any poster in connection therewith;
- (d) sign temporarily displayed on the occasion of -
  - (i) any public thanksgiving, rejoicing or mourning; or
  - (ii) any other public function or occasion to which the Municipality may apply the provisions of this paragraph;
- (e) sign displayed on any vehicle ordinarily in motion upon public roads, and any sign carried by such vehicle.
- (f) unilluminated sign not projecting over a public road and not exceeding 0,60 m squared, in area, notifying only that-

- (i) the premises to which it is attached are to be sold on a date specified in such sign, or
- (ii) a sale of furniture or household goods is to take place therein,

on a date specified in such sign (neither of which dates must be more than 1 month after the date when the sign is first displayed, but only 1 such sign is displayed on any public road frontage of such premises and that it is removed within 7 days after the said specified date;

- (g) unilluminated sign not projecting over a public road and not exceeding 0,20 m squared in area, notifying only that the premises to which it is attached are for sale or to let or that lodgers and boarders may be received therein: Provided that only 1 such sign is displayed on any public road frontage of such premises;
- (h) illuminated sign not projecting over a public road and not exceeding 1,2 m squared in area, comprising only the name, address and telephone number of any building or premises not used for purposes of industry or trade, and attached to such premises, but that only 1 such sign is displayed on any public road frontage of such premises;
- (i) unilluminated sign not projecting over a public road and not exceeding 0,20 m squared in area, notifying only the types of trade, business, industry or profession lawfully conducted by any occupant of the premises to which it is attached, the name of such occupant, the address and telephone number of such premises and the hours of attendance (if any), but only 1 such sign is displayed by any occupant on any public road frontage of such premises
- (j) unilluminated sign not projecting over a public road and not exceeding 0,60 m squared in area, advertising a function to be conducted on a date specified in such sign on the premises to which it is attached, but such function is not conducted for the private gain of any individual and such date is not more than 1 month after the date when such sign is first displayed and unless only 1 such sign is displayed on any public road frontage of such premises and that it is removed within 7 days after the said specified date;
- (k) unilluminated sign not projecting over a public road, which serves only for purposes of warning or indication of direction in relation to the premises to which such sign is attached, and which is no bigger or higher than is reasonably necessary for the effectual performance of its functions;
- (l) sign painted directly on, or forming part of the permanent fabric of, a wall of a building;
- (m) sign painted or otherwise executed on the glass of any Window;

- (n) sign painted directly on a veranda or balcony if it complies with section 11;
  - (o) sign required to be displayed by law; or
  - (p) sign displayed at premises upon which budding operations are taking place relating to any services being provided, or any work being done, or any goods being supplied in connection with such operations, but any such sign must be forthwith removed when the provision of such services or the doing of such work or the supply of such goods, as the case may be, has ceased,
- is exempted from the provisions of sections 3, 14, 15 and 20

### **Savings**

**23.** Nothing in these By-Laws contained must be construed as affecting in any way rights belonging to, or duties imposed upon, the Municipality as the organisation in which it is lawfully vested the ownership of, or the control over, any public road or other place or thing whatsoever within its area of jurisdiction.

### **Waiver of provisions**

**24. (1)** The Municipality may, if it deems it desirable to do so in the public interest, waive compliance with or relax the provisions of these By-laws, but any person whose rights are adversely affected by such waiver or relaxation will be exempted from such waiver.

**(2)** In each case in which such waiver or relaxation has been granted to any person, the Municipality must serve a written notice on such person citing the relevant provision waived or relaxed and the extent to which such provision has been waived and in addition, the Municipality must keep a record containing a copy of each such notice, which record must be available for inspection by members of the public at the offices of the Municipality.

### **Penalty clause**

**25.** In addition to any offence created by a specific provision of these By-laws, any person who contravenes or fails to comply with any provision of these By-laws is guilty of an offence and on conviction is liable to a penalty not exceeding -

- (a) a fine or imprisonment for a period of 1 year or both;
- (b) in the case of a continuing offence, an additional fine or an additional period of imprisonment of 10 days or either such additional both for each day on which such offence is continued; and
- (c) a further amount equal to any costs and expenses found by the court to have been incurred by the Municipality as a result of such contravention or failure.

**Repeal of By-Laws**

38. All previous Council regulations, policies and arrangements dealing with advertising signs and disfigurements of fronts and frontages are repealed.

**Short title and commencement**

39. These By-Laws are called Advertising Signs and Disfigurement of the Fronts or Frontages of Streets By-laws, 2012 and will come into operation on the date of publication in the *Provincial Gazette*.

**No. 5**

# **MBHASHE MUNICIPALITY**

## **AERIAL SYSTEMS BY-LAWS**

**MBHASHE LOCAL MUNICIPALITY****NOTICE**

Notice is hereby given in terms of section 13 of the Local Government Municipal Systems Act, 2000(Act 32 of 2000), as amended, read with sections 156 and 162 of the Constitution of the Republic of South Africa, 108 of 1996 as amended, that Mbashe Local Municipality in terms of resolution number 3.2.1 dated 31 October 2012, resolved to adopt the following Aerial Systems By-Laws

**BY-LAWS**

**To provide for the regulation of the erection of aerial systems in Mbashe Municipality; and for matters connected therewith.**

**BE IT ENACTED** by Mbashe Municipality, as follows:

**Definitions**

**1.** In these By-Laws, unless the context otherwise indicates -

**"aerial system"** means any device used or designed to assist radio or television broadcast or reception and shall include a dish aerial system;

**"building"** includes -

- (a) any other structure, whether of a temporary or permanent nature and irrespective of the materials used in the erection thereof, erected or used for or in connection with -
  - (i) the accommodation or convenience of human beings or animals;
  - (ii) the manufacture, processing, storage, display or sale of any goods;
  - (iii) the rendering of any service;
  - (iv) the destruction or treatment of refuse or other waste materials;
  - (v) the cultivation or growing of any plant or crop;



- (b) any wall, swimming bath, swimming pool, reservoir or bridge or any other structure connected therewith;
- (c) any fuel pump or any tank used in connection therewith;
- (d) any part of a building, including a building as defined in paragraph (a), (b) or (c);
- (e) any facilities or system, or part or portion thereof, within or outside but incidental to a building, for the provision of a water supply, drainage, sewerage, storm water disposal, electricity supply or other similar service in respect of the building;

**"dish aerial system"** means any concave device used or designed to receive satellite broadcasts; and

**"Council"** means —

- (a) the Municipal Council of Mbhashe Municipality exercising its legislative and executive authority through the Municipality;
- (b) its successor in title; or
- (c) a structure or person exercising a delegated power or carrying out an instruction, where any power in these By-Laws has been delegated or sub delegated or an instruction given, as referred to in section 59 of the Act; or
- (d) a service provider fulfilling a responsibility under these By-Laws, assigned to it in terms of section 81(2) of the Act, or any other By-law, as the case may be;

**"Municipality"** means Mbhashe Local Municipality and its legal successors, and when referred to as-

- (a) a legal entity, means Mbhashe Local Municipality as described in section 2 of the Local Government: Municipal Systems Act, (Act No. 32 of 2000); and
- (b) a geographic area, means the municipal area of the Mbhashe Local Municipality as determined from time to time in terms of the Local

Government : Municipal Demarcation Act, 1998 (Act No 27 of 1998);

### **Permission for certain antennae systems**

2. (1) No person may, without the prior written permission of the Municipality, and subject to the conditions determined in such permission, erect, cause or allow to be erected, an aerial system on any premises -

(a) that stands higher than three metres from the ground, if not mounted on a building;

(b) that, if mounted on a building, projects more than three metres above the highest point of that building;

(c) that is a dish aerial system with a diameter of more than one metre.

(2) Application for permission must be made to the Municipality on the form provided by the Municipality for that purpose and must be accompanied by the fees determined by the Municipality.

(3) Any person who does not comply with the provisions of subsection (1) must, within 12 months after these By-Laws have come into operation, comply with the said provisions.

### **Penalty clause**

3. (1) Any person who contravenes or fails to comply with any provision of section 2(1) or any requirement or condition there under, is guilty of an offence.

(2) Any person convicted of an offence in terms of subsection (1) is liable to a fine or to imprisonment for a period not exceeding one year, or to both such fine and such imprisonment.

### **Repeal of By-Laws**

4. All previous Council regulations, policies and arrangements dealing with Aerial Systems are repealed.

**Short title and commencement**

5. These By-Laws are called Aerial Systems By-laws, 2012 and will come into operation on the date of publication in the *Provincial Gazette*.

**No. 6**

# **MBHASHE LOCAL MUNICIPALITY**

## **BY-LAWS FOR THE CONTROL OF DISPOSAL SITES**

## MBHASHE LOCAL MUNICIPALITY

## NOTICE

Notice is hereby given in terms of section 13 of the Local Government Municipal Systems Act, 2000(Act 32 of 2000), as amended, read with sections 156 and 162 of the Constitution of the Republic of South Africa, 108 of 1996 as amended, that Mbashe Local Municipality in terms of resolution number ..... dated....., resolved to adopt the following By-Laws for the control of Disposal Sites

**By-Laws**

The purposes of These By-laws are to promote safe and healthy environment within the area of jurisdiction of the Municipality; to provide for procedures, methods and practices to regulate the dumping of refuse and the management of disposal sites and to provide for matters connected thereto.

**Definitions**

1. In these By-Laws, unless the context otherwise indicates:

**“attendant”** means an employee of the Municipality or agent of the Municipality duly authorised to be in charge of the disposal site;

**“Council”** means —

- (a) the Municipal Council of Mbashe Local Municipality exercising its legislative and executive authority through the Municipality;
- (b) its successor in title; or
- (c) a structure or person exercising a delegated power or carrying out an instruction, where any power in these By-Laws has been delegated or sub delegated or an instruction given, as referred to in section 59 of the Act; or
- (d) a service provider fulfilling a responsibility under these By-Laws, assigned to it in terms of section 81(2) of the Act, or any other By-law, as the case may be;

**“Municipality”** means Mbashe Local Municipality and its legal successors, and when referred to as-

(a) a legal entity, means Mbhashe Local Municipality as described in section 2 of the Local Government: Municipal Systems Act, (Act No. 32 of 2000); and

(b) a geographic area, means the municipal area of the Mbhashe Local Municipality as determined from time to time in terms of the Local Government : Municipal Demarcation Act,1998 (Act No 27 of 1998);

**“disposal site”** means any site set aside by the Municipality for this purpose and which can be identified as such by means of a notice to this effect at or near to the entrance of the site; and

**“offensive matter”** means such matter, including fluids, that may be classified as such by the Municipality from time to time.

### **Control of disposal site**

2. The Municipality may control a disposal site, or may appoint agents or may contract some other person or body to control, manage and operate a disposal site on behalf of the Municipality in accordance with the provisions of these By-Laws and the provisions of any other legislation that may be applicable.

### **Access to disposal site**

3. (1) No person shall enter the disposal site or must be on such a site except on such days and at such times as must be fixed by the Municipality from time to time.

(2) A notice setting forth the days and hours during which a disposal site will normally be open for the dumping of refuse, must be displayed by the Municipality in a clearly visible place at or near the entrance to the disposal site.

(3) Only persons wishing to dump refuse who have-

(a) paid the prescribed fees or who are in possession of a written permission issued by the Municipality which permits them to dump such refuse at a disposal site; and

- (b) obtained a written consent from the Municipality to recycle any materials or objects on such a site, is entitled to enter the disposal site or to be on the site.

(2) Despite anything to the contrary contained in these By-Laws, any employee of the Municipality or anybody acting on behalf of the Municipality and duly authorised thereto, may enter a disposal site at any time in exercising his or her duties.

(3) Any person making use of the disposal site or entering the disposal site, do so at his or her own risk and the Municipality accepts no responsibility for the safety of such person or any damages or losses sustained by such person in contravention of the provisions of this section is guilty of an offence.

#### **Off-loading of refuse and rubbish etc.**

4. (1) Any person who wishes to dump refuse or rubbish or any other obsolete object or thing of whatsoever nature, at a disposal site, must off-load such refuse or rubbish or obsolete object or thing at such a place within the borders of the disposal site as the attendant may direct.

(2) Any person who disregards the reasonable instructions of the attendant is guilty of an offence.

#### **Prohibition on dumping of offensive matter**

5. The Municipality reserves the right to prohibit the dumping of any offensive or toxic matter at a disposal site.

#### **Ownership of refuse**

6. Refuse, rubbish, obsolete objects or any other material or waste of whatsoever nature, dumped at a disposal site, becomes the property of the Municipality and no person who is not duly authorised by the Municipality to do so

must remove or interfere with such refuse, rubbish, objects or any other material or waste.

### **Charges**

7. The Municipality may from time to time fix the charges payable to the Municipality for the dumping of any refuse, rubbish, obsolete objects or any other material or waste at any disposal site under the control of the Municipality.

### **Penalties**

8. Any person who contravenes or fails to comply with any provision of these By-laws is guilty of an offence and liable on conviction to –

- (a) fine or imprisonment for a period not exceeding six months or either such fine or such imprisonment or both such fine and such imprisonment;
- (b) in the case of a continuing offence, an additional fine or an additional period of imprisonment of 10 days or either such additional fine or such additional imprisonment or both such additional fine and imprisonment for each day on which such offence is continued, and
- (c) a further amount equal to any costs and expenses found by the court to have been incurred by the Municipality as a result of such contravention or failure.

### **Repeal of By-Laws**

9. All previous and erstwhile Council regulations, policies and arrangements are dealing with control of disposal sites are repealed.

### **Short title and commencement**

10. These By-Laws are called Control of Disposal Sites By-Laws, 2012 and will come into operation on the date of publication in the *Provincial Gazette*.



**No. 7**

# **MBHASHE LOCAL MUNICIPALITY**

## **BY-LAWS RELATING TO HAIRDRESSERS AND BEAUTICIANS**

**MBHASHE LOCAL MUNICIPALITY****NOTICE**

Notice is hereby given in terms of section 13 of the Local Government Municipal Systems Act, 2000(Act 32 of 2000), as amended, read with sections 156 and 162 of the Constitution of the Republic of South Africa, 108 of 1996 as amended, that Mbashe Local Municipality in terms of resolution number 3.2.1 dated 31 October 2012, resolved to adopt the following By-Laws Relating to Hairdressers and Beauticians:

**By-Laws**

To promote the achievement of a safe and clean environment for the benefit of all residents within the area of jurisdiction of the Municipality; To provide for procedures, methods and practices for the regulation of the business of barbers, hairdressers and beauticians and to provide for matters incidental thereto.

BE IT ENACTED BY the Council of Mbashe Local Municipality, as follows;

**TABLE OF CONTENTS**

1. Definitions
2. Hygiene on premises
3. General hygiene
4. Removal of refuse
5. Penalty clause
6. Repeal of By-Laws
7. Short title

**1. Definitions**

In these By-Laws, texts and unless the context otherwise indicates -

**“barber”** or “hairdresser” means a person who carries on or assists in carrying on the business of cutting, shaving or dressing the hair and beard of human beings;

**“beautician”** means a person who carries on or assists in carrying on the business of manicure, pedicure, massage and beauty treatment;

**“Council”** means —

- (a) the Municipal Council of Mbashe Municipality exercising its legislative and executive authority through the Municipality;
- (b) its successor in title; or
- (c) a structure or person exercising a delegated power or carrying out an instruction, where any power in these By-Laws has been delegated or sub delegated or an instruction given, as referred to in section 59 of the Act; or

- (d) a service provider fulfilling a responsibility under these By-Laws, assigned to it in terms of section 81(2) of the Act, or any other By-law, as the case may be;

**“dwelling”** means any place the whole or part of which is used as a sleeping place or is habitually occupied by any person;

**“Municipality”** means Mbhashe Local Municipality and its legal successors, and when referred to as-

- (a) a legal entity, means Mbhashe Local Municipality as described in section 2 of the Local Government: Municipal Systems Act, (Act No. 32 of 2000); and
- (b) a geographic area, means the municipal area of the Mbhashe Local Municipality as determined from time to time in terms of the Local Government : Municipal Demarcation Act, 1998 (Act No 27 of 1998);

**“Municipal Manager”** means the person appointed by the Council as the Municipal Manager of Mbhashe Local Municipality appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), and includes any person-

- (a) acting in such position; and
- (b) to whom the Municipal Manager has delegated a power, function or duty.

### **Hygiene on premises**

2. No person must carry on the business of a barber, hairdresser or beautician unless-

- (a) all parts of such premises are effectively illuminated and ventilated;
- (b) there is provided on such premises for employees of each sex separately at least one closet for every twenty or part of twenty employees of that sex; provided that where the majority of employees is of one sex and not more than two are of the other sex, separate closet accommodation need not be provided for the latter.
- (c) there is fixed on the premises at least one wash-basin with running hot and cold water laid on and fitted with a trap waste pipe, for every two or part of two persons engaged at the same time on the premises in any operation in connection with the business of a barber, hairdresser or beautician;
- (d) the wall at the rear of each such wash-basin or sink on the premises is lined to a height of not less than 450mm above the tap and for the full width of such wash-basin or sink with glass, marble, glazed tiles or other similar glazed, durable or non-corroding material approved by the council;

- (e) all tables and shelves on such premises on which instruments are usually laid, are constructed of or covered with glass, marble, glazed tiles or other similar glazed, durable or non-corroding material approved by the council;
- (f) such premises have an even floor suitably covered with linoleum or impervious material, or constructed with a smooth impervious surface and maintained so that it may be easily swept and thoroughly cleaned;
- (g) there is on such premises a sufficient number of readily portable refuse receptacles constructed of impervious material in such manner that they can be readily washed and cleaned and covered with close-fitting lids;
- (h) a minimum of 14 square metres of air space per chair is provided;
- (i) the premises on which such business is carried on and all instruments and other articles thereon which are used or intended to be used in connection with such business are at all times kept clean and in good repair;
- (j) there is on such premises a sufficient number of brushes, combs, razors, scissors, clippers or other instruments for the purpose of carrying on such business;

### **General hygiene**

3. No person carrying on the business of a barber, hairdresser or beautician, or assisting in any such business-

- (a) must use or keep a hairbrush or equipment, instruments and articles for use in such business unless it is thoroughly clean and sterilised before use. Where articles or instruments are destined for non-recurrent use it must not be used repeatedly;
- (b) must, in such business, use or allow the use of any towel upon a person unless it has been thoroughly washed and sterilised since having been used on any other person; or
- (c) must, in such business, use or allow the use of a covering or garment upon any person so as to come into contact with the head, face or neck of such person unless it has been thoroughly washed and sterilised since having been used on any other person; or
- (d) must attend to or allow any person to be attended to unless an un-used piece of clean paper, or linen which has been washed and sterilised since previous use, has been applied to such person so as effectively to prevent direct contact of the head or neck of such person with the chair occupied by him; or
- (e) must use or allow the use of any brush, comb, razor, scissor, clipper or other instrument which has been in contact with the exposed portion of a person's body upon any other person, unless -

- (i) it has been immersed in boiling water; or
  - (ii) it has been immersed for at least ten minutes in a disinfectant solution of a germicidal strength not less than that of a five percent solution of carbolic acid and has thereafter, before use, been thoroughly rinsed in clean water; or
  - (iii) it has been treated in a special disinfecting apparatus and in a manner approved by the council; or
- (f) must, on that part of the premises where such business is ordinarily carried on, subject or allow any person who appears to be suffering from any hair or skin disease to be subjected to shaving, haircutting or any other operation connected with such business; or
- (g) must use or allow the use of any towel, instrument or other article which has been used on a person referred to in paragraph (f) unless it has been sterilized; or,
- (h) must, in such business, use or allow the use -
- (i) of soap, shaving cream, wax or similar substance in any other than its liquid, powder or tube form;
  - (ii) of soap in cake or tablet form;
  - (iii) on any person of any styptic other than liquid or powder applied as a spray or by means of a clean and un-used piece of cotton wool; or
  - (iv) on any person of any sponge, powder-puff or alum or other styptic in stick or block form; or
- (i) must apply or allow any operation pertaining to the business of a barber, hairdresser or beautician to be applied to any person, unless the person so applying:
- (i) wears clean clothes;
  - (ii) has immediately before commencing such operation washed his hands; and
  - (iii) if free from any infectious or contagious disease, any disruptive disorder or any discharging ulcer or sore, or, if he has attended to or been in contact with a person thus afflicted, has thoroughly disinfected himself before commencing such operation; or
- (j) must, when engaged in any operation in such business -
- (i) blow away with his own breath any hair or other matter which may have fallen upon a person in the course of such operation;

- (ii) remove such hair or matter otherwise than by means of a soft brush or a compressed air blower.

#### **Removal of refuse**

4. Every person carrying on the business of a barber, hairdresser or beautician must ensure that all hair, immediately after being cut, be swept up and placed in covered refuse receptacles provided for the purpose.

#### **Penalty clause**

5. Any person who contravenes or fails to comply with any provision of these By-Laws is guilty of an offence and liable upon conviction to -

- (a) a fine or imprisonment for a period not exceeding six months, or to both a fine and such imprisonment;
- (b) in the case of a continuing offence, an additional fine or an additional period of imprisonment or 10 days or either such additional fine or such additional imprisonment or both such additional fine and imprisonment for each day on which such offence is continued; and
- (c) a further amount equal to any costs and expenses found by the court to have been incurred by the municipality as a result of such contravention of failure.

#### **Repeal of By-Laws**

6. All previous Council regulations, policies and arrangements dealing with hair dressers and beauticians are repealed.

#### **Short title and commencement**

7. These By-Laws are called By-Laws Relating to Hairdressers and Beauticians, 2012 and will come into operation on the date of publication in the *Provincial Gazette*.

**No. 8**

# **MBHASHE MUNICIPALITY**

## **FIREWORKS BY-LAWS**

**MBHASHE LOCAL MUNICIPALITY****NOTICE**

Notice is hereby given in terms of section 13 of the Local Government Municipal Systems Act, 2000(Act 32 of 2000), as amended, read with sections 156 and 162 of the Constitution of the Republic of South Africa, 108 of 1996 as amended, that Mbashe Local Municipality in terms of resolution number 3.2.1 dated 31 September 2012, resolved to adopt the following Fireworks By-Laws:

**BY-LAWS**

**To provide for the regulation of the discharge of fireworks within the area of jurisdiction of the Mbashe Municipality; and for matters connected therewith.**

**BE IT ENACTED** by Mbashe Municipality, as follows:

**TABLE OF CONTENTS**

1. Definitions
2. Discharge of fireworks inside or near developed areas regulated
3. Permission to hold fireworks display
4. Penalty clause
5. Repeal
6. Short title

**Definitions**

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

**“Council”** means —

- (a) the Council of Mbashe Municipality exercising its legislative and executive authority through the Municipality;
- (b) its successor in title; or
- (c) a structure or person exercising a delegated power or carrying out an instruction, where any power in these By-Laws has been delegated or sub delegated or an instruction given, as referred to in section 59 of the Act; or
- (d) a service provider fulfilling a responsibility under these By-Laws, assigned to it in terms of section 81(2) of the Act, or any other By-law, as the case may be;

**"developed area"** means that portion of the area of jurisdiction of the Municipality which –

- (a) has, by actual survey been subdivided into erven;



(b) is surrounded by surveyed erven; or

(c) is an informal settlement;

**"firework"** means a firework composition or a manufactured firework referred to in Division 1 or 2 of regulation 1.10 of the regulations issued in terms of then Explosives Act, 1956 (Act No. 26 of 1956);

**"fireworks display"** means the discharge of a number of fireworks for religious, public or private purposes;

**"Municipality"** means Mbhashe Local Municipality and its legal successors, and when referred to as-

(a) a legal entity, means Mbhashe Local Municipality as described in section 2 of the Local Government: Municipal Systems Act, (Act No. 32 of 2000); and

(b) a geographic area, means the municipal area of the Mbhashe Local Municipality as determined from time to time in terms of the Local Government : Municipal Demarcation Act, 1998 (Act No 27 of 1998);

**"Municipal Manager"** means the person appointed by the Council as the Municipal Manager of Mbhashe Local Municipality in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), and includes any person:

(a) acting in such position; and

(b) to whom the Municipal Manager has delegated a power, function or duty;

### **Discharge of fireworks inside or near developed areas regulated**

2. Except as part of fireworks display and subject to these By-laws, no person may, inside a developed area or within 500 metres of such area, discharge a firework.

### **Permission to hold fireworks display**

3. (1) No person may, without the prior written permission of the Municipality, hold a fireworks display.

(2) Any person or group of persons, who wants to hold a fireworks display, must apply for permission in writing, on the form provided by the Municipality, at least 30 days before such display is to be held.

(3) An application referred to in subsection (2) must -

(a) be directed to the Municipal Manager; and

(b) be accompanied by the fees determined by the Municipality.

(4) After receipt of the application, the Municipal Manager may -

- (a) inspect, or cause to be inspected -
  - (i) the premises on which the fireworks display is to be held; and
  - (ii) the facilities and equipment to be used during the fireworks display; and
- (b) grant the permission in writing, subject to such conditions as he or she may deem necessary in the interest of the safety and well-being of the community; or
- (c) in writing, refuse to grant permission and state his or her reasons for such refusal.

(5) The Municipal Manager must -

- (a) when considering the application, amongst other matters, take into account what negative effects the proposed fireworks display might have on -
  - (i) the safety of the inhabitants of the neighbourhood and their property;
  - (ii) animals in the vicinity;
  - (iii) the serenity of the neighbourhood; and
- (b) if the permission is granted, lay down conditions to prevent or remedy such possible negative effects.

#### **Penalty clause**

4. (1) Any person who contravenes or fails to comply with any provision of this By-Law or any requirement or condition there under, shall be guilty of an offence.

(2) Any person convicted of an offence in terms of subsection (1), shall be liable to a fine or to imprisonment for a period not exceeding one year, or to both a fine and such imprisonment.

#### **Repeal of By-Laws**

5. All previous Council regulations, policies and arrangements dealing with fireworks are repealed.

#### **Short title and commencement**

6. These By-Laws are called Fireworks By-laws, 2012 and will come into operation on the date of publication in the *Provincial Gazette*.

**No. 9**

# **MBHASHE LOCAL MUNICIPALITY**

## **FRESH PRODUCE MARKET BY-LAWS**

**MBHASHE LOCAL MUNICIPALITY****NOTICE**

Notice is hereby given in terms of section 13 of the Local Government Municipal Systems Act, 2000(Act 32 of 2000), as amended, read with sections 156 and 162 of the Constitution of the Republic of South Africa, 108 of 1996 as amended, that Mbashe Local Municipality in terms of resolution number 3.2.1 dated 31 October 2012, resolved to adopt the following Fresh Produce Market By-Laws

**By-Laws**

To provide for the operation of the Mbashe Fresh Produce Market and to provide for matters incidental thereto.

BE IT ENACTED by the Council of the Mbashe Local Municipality, as follows:

**CONTENTS**

1. Definitions
2. Market days and hours
3. Risk of profit and loss
4. Control and risk of produce
5. Packing, stacking and display of produce
6. Cold storage and ripening
7. Storage
8. Abandoned produce
9. Produce unfit for human consumption
10. Market agents and their employees
11. Automatic lapse of a market agent's licence
12. Salespersons
13. Withdrawal of a sales permit
14. Market agents and floor sales
15. Protective and corporate clothing
16. Market agents' signage
17. Floor sales
18. Payment
19. Commission on sales
20. Collection and removal of produce
21. Default of buyer
22. Dispute between buyer and market agent
23. Obligations of a market agent
24. Carriers
25. Barrows
26. Withdrawal of a carrier's permit
27. Liability of carriers
28. Private barrows and trolleys
29. Vehicles, motorcycles and pedal cycles
30. Market rules and regulations

31. Retailers and wholesalers
32. Powers of the Municipal Manager
33. Sales to employees of the Municipality
34. Fees
35. Appeals
36. Indemnification from liability
37. Offences and penalties
38. Repeal of By-Laws
- 39 Short title and commencement

## Definitions

1. In these By-Laws, unless the context otherwise indicates —

**“agricultural product”** means an article specified in Part A of Schedule 1 of to the Act;

**“appeal”** means an appeal in terms of section 62 of the Municipal Systems Act;

**“bank”** means a public company registered as a bank in terms of the Banks Act, 1990 (Act 94 of 1990);

**“buyer”** means any person who is the holder of a buyer’s card issued by market administration and who purchases produce at the market;

**“carrier”** means a self employed person who is hired to convey produce at the market;

**“carrier’s permit”** means a permit issued by the Municipal Manager in terms of section 25(2);

**“consigner”** means a producer or his representative and, for the purposes of these By-Laws, the driver of a vehicle delivering produce on behalf of a producer is deemed to be a representative of the producer;

**“Council”** means —

- (a) Municipal Council of Mbhashe Local Municipality exercising its legislative and executive authority through the Municipality;
- (b) its successor in title;
- (c) a structure or person exercising a delegated power or carrying out an instruction, where any power in these By-Laws has been delegated or sub delegated or an instruction given, as referred to in section 59 of the Act; or
- (d) a service provider fulfilling a responsibility under these By-Laws;

**“credit facility”** means a preapproved account enabling the holder of the account to purchase produce on credit at the market;

**“direct sale”** means a sale of produce concluded direct between the owner of the produce and a wholesaler or retailer, which produce is brought onto the market premises;

**“fee”** means a fee, charge or tariff levied by the Municipality in terms of the Municipal Systems Act in respect of a municipal function or service;

**“fidelity fund certificate”** means a fidelity fund certificate issued in terms of section 16 of the Act;

**“floor sale”** means a sale concluded on the market floor;

**“market”** means the Dutywa Market;

**“market administration”** means the duly appointed management team responsible for the management of the market on behalf of the Municipal Manager;

**“market agent”** means a fresh produce agent as defined in section 1 of the Act and allowed by Council to operate at the Dutywa Market;

**“market agent’s licence”** means a market agent’s licence issued in terms of section 10(3);

**“market floor”** means the floor area of a market hall situated on the market premises;

**“market hall”** means an area on the market premises allocated for the purpose of displaying and selling produce;

**“market premises”** means property on which the Municipality conducts the business of a fresh produce market;

**“market product”** means any article or product approved by the Municipal Manager to be offered for sale on the market premises, and includes any agricultural product;

**“Municipality”** means the Mbhashe Local Municipality and its legal successors, and when referred to as-

- (a) a legal entity, means Mbhashe Local Municipality as described in section 2 of the Local Government: Municipal Systems Act, (Act No. 32 of 2000); and
- (b) a geographic area, means the municipal area of the Mbhashe Local Municipality as determined from time to time in terms of the Local Government : Municipal Demarcation Act, 1998 (Act No 27 of 1998);

**“Municipal Manager”** means the person appointed in terms of section 82 of the Municipal Structures Act as Municipal Manager of the Municipality or his duly authorised nominee;

**“Municipal Structures Act”** means the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

**“Municipal Systems Act”** means the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);

**“operational unit”** means a mechanical vehicle powered by battery, gas or fuel, and includes —

- (a) a forklift;
- (b) a cleaning and washer unit;
- (c) a maintenance unit; and
- (d) any other unit in use for operational purposes at the market;

**“person”** means a natural person and includes any legal entity recognised by law;

**“produce”** means agricultural products and any other related products;

**“retailer”** means a person in respect of whom a service level agreement or any other agreement exists with the Municipality for such person to operate as a business on the market premises;

**“sales docket”** means a docket issued in terms of section 18(4);

**“sales permit”** means a permit issued in terms of section 12(3);

**“salesperson”** means a person who is the holder of a sales permit issued by the Municipal Manager and who is employed by a market agent;

**“the Act”** means the Agricultural Produce Agents Act, 1992 (Act 12 of 1992);

**“vehicle”** means any mechanical drivable unit developed for the transportation of people and/or goods; and

**“wholesaler”** means a person in respect of whom a service level agreement or any other agreement exists with the Municipality for such person to operate as a wholesale business on the market premises, provided that sales of the wholesaler do not include over the counter sales to the general public.

### **Market days and hours**

2. (1) The market must be open on such days and during such hours as the Municipal Manager may from time to time determine.

(2) Subject to subsection (3), trading on the market floor may take place only during the hours determined by the Municipal Manager.

(3) With the prior approval of the Municipal Manager, a floor sale may be concluded after the trading hours referred to in subsection (2).

**Risk of profit and loss**

3. (1) The risk of profit and loss in respect of produce brought onto the market premises must at all times be solely that of the consigner of the produce.

(2) Nothing in this section contained may be so interpreted as to absolve a market agent from fulfilling his or her obligations under these By-Laws, but the Municipal Manager is authorised to acknowledge at his or her own discretion any claim not exceeding an amount of R20 000- 00 and to make payment in respect of the claim, and any claim in excess of such amount is referred to the Council for consideration with an appropriate recommendation for the Municipal Manager.

**Control and risk of produce**

4. (1) Before any produce that is to be sold is brought onto the market premises, the produce must be registered with —

- (a) the Municipality in the manner prescribed by the Municipal Manager; and
- (b) the market agent or the wholesaler to whom the produce is consigned.

(2) Produce that is brought onto the market premises and that is not for sale must be declared and registered in accordance with subsection (1), failing which the market administration may refuse such produce and prohibit it from being brought onto the market premises.

(3) Simultaneously with the registration referred to in subsection (1), further particulars required in respect of produce delivered by a consigner must be provided at the designated points as required from time to time by the market administration.

(4) When produce is consigned to a market agent, the market agent must —

- (a) on delivery of the produce to him or her, sign to acknowledge receipt of the produce and specify the time of such delivery;
- (b) allocate a consignment number, prepared in accordance with the information required in subsection (3), and hand proof of such a receipt to the market administration;
- (c) immediately make all the necessary arrangements to offload and place the produce in the space or enclosure provided for the produce; and
- (d) be accountable to the consigner for the quantity of produce specified in the necessary documentation.

(5) If any person fails or refuses to comply with the provisions of subsection (1) or subsection (3), the market administration may refuse the produce and prohibit it from being brought onto the market premises.

(6) The provisions of subsections (3) and (4) do not apply in respect of produce



referred to in subsection (2).

### **Packing, stacking and display of produce**

5. A market agent must —

- (a) conspicuously display, place and stack all produce received by him or her in such a manner that an orderly appearance is created; and
- (b) at the daily closing of sales, display and restack all unsold produce in the manner referred to in paragraph (a).

### **Cold storage and ripening**

6. (1) The Municipality is entitled to —

- (a) establish, equip and carry on cold storage facilities and ripening chambers on the market premises; and
- (b) levy fees, as determined by the Council from time to time, for the use of the cold storage facilities and ripening chambers.

(2) Any person who makes use of any cold storage facilities or ripening chamber referred to in subsection (1) must do so at his or her own risk, and the Municipality is not liable for any loss or damage, whether direct or indirect, suffered by such a person, provided that the Municipal Manager is authorised to acknowledge at his or her own discretion any claim in terms of section 4 in respect of such loss or damage if—

- (a) such loss or damage is caused by any interruption or failure of the supply of electricity; or
- (b) such loss or damage is caused by any interruption or failure of machinery or equipment; or
- (c) any act or omission is done by an employee of the Municipality in the execution of his or her duties and in good faith.

### **Storage**

7. (1) No person may without the prior written approval of the Municipal Manager store or leave any produce, article, item or thing of whatever nature on the market premises.

(2) No person may without the prior written approval of the Municipal Manager store any produce, article, item or thing in the storage facilities provided by the Municipality, on the market premises.

(3) Any person who fails to comply with the provisions of subsection (1) and (2) is liable to the Municipality for payment of the storage fees determined by the Council from time to time.

**Abandoned produce**

8. (1) If the Municipal Manager on reasonable grounds suspects that any produce left on the market premises has been abandoned, he may direct that such produce be —

- (a) sold if it is sound and fit for human consumption or use; or
- (b) removed and destroyed if it is unsound and unfit for human consumption or use.

(2) If abandoned produce —

- (a) is sold, the Municipality must pay the proceeds of the sale, less the fee the Council from time to time, to the person who is entitled to such proceeds, if his or her identity is known; or
- (b) is removed and destroyed, the Municipality must recover the fee, determined by the Council from time to time, from the person who abandoned the produce, if his or her identity is known.

**Produce unfit for consumption**

9. (1) If the Municipal Manager on reasonable grounds believes that —

- (a) any produce offered for sale on the market floor is diseased or unsound or unfit for human consumption, he or she must immediately —
  - (i) withdraw the produce from the market floor;
  - (ii) take possession of the produce; and
- (b) a container is likely to contaminate the produce contained in it, if any, or other produce, he or she must immediately —
  - (i) withdraw the produce, if any, and the container from the market floor; and
  - (ii) take possession of the produce, if any, and the container.

(2) If the owner of produce or a container referred to in subsection (1), or in his or her absence, the market agent to whom the produce has been consigned shares the same belief as the Municipal Manager, the produce and the container, if applicable, must be destroyed immediately.

(3) If a dispute in respect of the condition of produce or a container referred to in subsection (1) arises between the Municipal Manager and the owner or market agent referred to in subsection (2) —

- (a) the produce or the container, if applicable, may not be destroyed; and

- (b) the dispute must be dealt with in accordance with the provisions of these By-Laws.

### **Market agents and their employees**

10. (1) No person may operate as a market agent at the market unless he or she is the holder of —

- (a) a fidelity fund certificate; and
- (b) a market agent's licence.

(2) An application for a market agent's licence must be made on the prescribed form available at the market's administration offices situated on the market premises, which form must —

- (a) be accompanied by the application fee determined by the Council from time to time and the other applicable particulars and documents requested on the form; and
- (b) be sent by post or be delivered to the market administration at the address indicated on the form;

(3) A market agent's licence may be issued to an applicant if —

- (a) there is in the opinion of the Municipal Manager sufficient space available on the market floor to accommodate the applicant's business;
- (b) the applicant has satisfied the Municipal Manager that —
  - (i) he or she is a fit, competent and proper person to conduct the business of a market agent and has complied with the provisions of the Act and all other legislation pertaining to market agents; and
  - (ii) in the case of the applicant's being a natural person, a company, a close corporation or a partnership, neither the applicant nor one of the directors, members or partners, as the case may be, has any direct or indirect interest in any other company, close corporation or partnership to which a market agent's licence at the Market has been issued; and
- (c) the applicant has furnished the Municipality, within the period determined by the Municipal Manager, with security in the form of cash or a bank guarantee or a combination of cash and a bank guarantee to the satisfaction of the Municipal Manager for an amount determined by the Municipal Manager in order to make provision for payment by the applicant of any costs, fees or deposits of whatever nature that may become payable to the Municipality, but —

- (i) the Council may from time to time determine that the amount for which a market agent gave security should be increased, in which case the Municipality must notify the market agent in writing of the increased amount; and
- (ii) the market agent furnishes the additional security to the Municipality within 30 days from the date of the notice referred to in subparagraph (i), which additional security must be for the difference between the increased amount and the amount for which security had previously been furnished and must be in the form of cash or a bank guarantee or a combination of cash and a bank guarantee.

(4) If the Municipal Manager is of the opinion that an applicant does not comply with any one or more of the provisions of subsection (3), he or she must refuse to issue a market agent's licence to the applicant and must notify the applicant in writing of the refusal. Should the applicant in writing request the reasons for the refusal, the Municipal Manager must furnish them.

(5)(a) The Municipal Manager can withdraw the market agent's licence of a market agent if

- (i) the fidelity fund certificate of the market agent has lapsed or has been withdrawn in terms of section 16 of the Act;
- (ii) in the case of the market agent's being a company, close corporation or partnership, a change in the shareholding of the company or the membership of the close corporation or the partners of the partnership has occurred without the market agent's having obtained the Municipal Manager's prior written approval for such change;
- (iii) any one or more of the provisions of subsection (3)(b)(ii) are not complied with;
- (iv) the market agent enters into a business relationship or obtains a business interest that, either directly or indirectly, could harm, prejudice or impair the interests of the market; or
- (v) the market agent contravenes any provision of section 14(2), section 23(a) to (d) or section 23(g) and h).

(b) If the Municipal Manager decides to withdraw the market agent's licence of a market agent, he or she must notify the market agent in writing of his or her decision.

(c) A market agent whose market agent's licence has been withdrawn must, subject to the provisions of section 35, immediately cease to operate as a market agent.

**Automatic lapse of a market agent's licence**

11. A market agent's licence is neither negotiable nor transferable and lapses automatically and is of no force and effect if —

- (a) the market agent is a natural person who has died or whose estate is sequestrated;
- (b) the market agent commits an act of insolvency as referred to in the Insolvency Act, 1936 (Act 24 of 1936);
- (c) the market agent is a partnership that is dissolved for any reason whatsoever;
- (d) the market agent is a company that is placed under provisional liquidation or judicial management; or
- (e) the market agent is a close corporation that is placed under provisional liquidation.

**Salespersons**

12. (1) No person may operate as a salesperson on the market floor unless he or she is the holder of a sales permit issued by the Municipal Manager.

(2) An application for a sales permit must be made by the market agent on behalf of the salesperson on the prescribed form available at the market's administration offices situated on the market premises, which form must

- (a) be accompanied by the application fee determined by the Council from time to time and the other applicable particulars and documents indicated on the form; and
- (b) be sent by post or be delivered to the Municipal Manager at the address indicated on the form.

(3) A sales permit may only be issued to an applicant if he or she has satisfied the Municipal Manager that he or she —

- (a) is in the employ of a licensed market agent; and
- (b) is a fit, competent, proper and suitably qualified person to operate as a salesperson on the market floor.

(4) If the Municipal Manager is of the opinion that an applicant does not comply with any one or more of the provisions of subsection (3), he or she must refuse to issue a sales permit to the applicant and must notify the applicant in writing of his or her refusal.

**Withdrawal of sales permit**

13. (1) A sales permit is neither negotiable nor transferable.

(2) The Municipal Manager can withdraw the sales permit of a salesperson if —

- (a) the salesperson is no longer in the employ of the market agent referred to in section 12(3)(a);
- (b) the estate of the salesperson is sequestrated;
- (c) any one or more of the provisions of section 12(3)(b) are not with; or
- (d) the salesperson contravenes any provision of section 14(2), section 23(a) to (d) or section 23(g) and (h).

(3) If the Municipal Manager decides to withdraw the sales permit of a salesperson, he or she must notify the market agent in writing of his or her decision. A salesperson whose sales permit has been withdrawn must, subject to the provisions of section 35, immediately cease to operate as a salesperson.

**Market agents and floor sales**

14. (1) A market agent must conduct his business in accordance with the provisions and principles of the Act, the rules made under the Act and the provisions of these By-Laws.

(2) A market agent may conduct his or her business —

- (a) on the market floor only, which business must be reflected in the official system of the market administration; and
- (b) on a commission basis only and may not be involved in any direct sale.

(3) In conducting his or her business, a market agent may allow only salespersons to sell on the market floor.

**Protective and corporate clothing**

15. (1) A market agent must —

- (a) subject to the provisions of the Occupational Health and Safety Act, 1993 (Act 85 of 1993), supply his or her employees with protective and corporate clothing; and
- (b) ensure that the protective and corporate clothing complies with the relevant policy of the Municipality.

(2) A market agent may not allow any employee of his or her to work at the market unless the employee is wearing the protective or corporate clothing referred to in subsection (1).

### **17. Market agents' signage**

A market agent must —

- (a) at his or her own expense, affix a signboard on the door of the offices occupied by him or her, which signboard must be approved by the Municipal Manager and must bear the name of the market agent's business;
- (b) at his or her own expense, maintain the signboard in good repair; and
- (c) at his or her own expense, display in the market hall the name of his or her business in such a manner as may be determined by the Municipal Manager.

### **Floor sales**

17. (1) The parties to a floor sale must be the buyer and the principal of the market agent concerned, and the Municipality may not be a party to a floor sale or in any manner be held liable for the due fulfilment of the terms of the floor sale.

(2) If produce on the market floor is sold by —

- (a) weight, it must be the net weight of the produce, and it is the responsibility of the market agent concerned to ensure that, before the produce is offered for sale —
  - (i) the correct net weight of the produce is displayed on the produce; and
  - (ii) the correct net weight of the produce is displayed on the container if the produce is contained in a container; and
- (b) sample, the bulk of the produce must correspond in quality to the sample of produce exhibited, and the market agent concerned is responsible for ensuring that any sample of produce exhibited corresponds in quality to that of the bulk of the produce.

(3) The Municipal Manager is entitled-

- (a) to take such measures as he may deem necessary to ensure that the provisions of this section are complied with; and
- (b) to prohibit produce from being offered for sale if any of the provisions of this section are not complied with.

(4) Produce on the market floor may only be sold to a buyer who holds a valid buyer's card issued by the market administration.

(5) When conducting a floor sale the buyer must immediately present his or her buyer's card to the market agent concerned, who must record the details of the sale in the manner prescribed by the Municipal Manager from time to time.

### **Payment**

18. (1) The buyer of any produce must, immediately after the sale pay the purchase price in cash to the Municipality in the manner required by the market administration.

(2) If the buyer of produce is the holder of a credit facility in accordance with the financial regulations of the Municipality, payment of the purchase price to the Municipality may be effected by means of and on submission of such card.

(3) (a) The Municipal Manager may grant a credit facility to a buyer on condition that the buyer furnishes, at the buyer's cost, a bank or cash guarantee for such amount as the Municipal Manager may decide and pays the purchase price —

- (i) before 11:45 on the day following the date of purchase;
- (ii) if the purchase was made on a Saturday, before 11:45 on the following Tuesday; or
- (iii) if the purchase was made on a day preceding a public holiday, before 11:45 on the next business day.

(b) Despite the provisions of subsection (3) (a), the Municipal Manager may, on each written application of a buyer, grant the buyer an extension of time to pay the purchase price, provided that the extension is subject to the terms and conditions contained in the credit control policy of the Municipality.

(4) After payment of the purchase price of produce has been effected or credit for the payment of the purchase price has been granted, the Municipality must issue a sales docket to the buyer, which sales docket must contain the details and information prescribed by the Municipal Manager from time to time.

### **Commission on sales**

19. (1) The consigner is liable for payment to the Municipality of the fee determined by the Council from 'time to time in respect of every floor sale concluded by him or her.

(2) The Municipality must deduct the fee referred to in subsection (1) from the purchase price in respect of every floor sale and must pay the balance of the purchase price to the market agent concerned, which market agent is liable to account to his or her principal.

### **Collection and removal of produce**

20. (1) Subject to the provisions of subsection (2), a buyer must, within a period of four hours from the time of the conclusion of the sale of produce, collect and remove or cause to be collected and removed all the produce purchased by him or her, provided that the Municipal



Manager may in his or her sole discretion grant the buyer an extension of time for the collection and removal of the produce.

(2) No buyer or his representative may remove any produce from the market floor unless —

- (a) he or she is in possession of a valid sales docket referred to in section 18(4) in respect of the produce; or
- (b) permission has been granted by the Municipal Manager for the removal, of the produce.

### **Default of buyer**

21. (1) If a buyer fails to present a buyer's card or to effect payment of the purchase price for produce purchased, the Municipal Manager may direct that the produce be resold in such manner as he may deem fit and expedient.

(2) A buyer referred to in subsection (1) is liable to the Municipality for payment for any loss in respect of fees suffered by the Municipality as a result of the resale of the produce, and the Municipal Manager is entitled to suspend the buyer's card of the buyer until the payment has been recovered from the buyer.

### **Dispute between buyer and market agent**

22. (1) If there is a dispute between a buyer and a market agent in respect of the weight, quantity, quality, grade or variety of produce purchased, the buyer and the market agent, as the parties to the dispute, must refer the dispute to the Municipal Manager, who must endeavour to resolve it.

(2) If any one of the parties is not satisfied with the recommendation of the Municipal Manager, that party may enforce his rights against the other party in a court of law.

### **Obligations of a market agent**

23. A market agent must fulfil the following obligations:

- (a) The market agent may only sell produce and such other market products as the Municipal Manager in his or her sole discretion may allow market agents to sell.
- (b) The market agent may not receive any cash or other form of payment from a buyer.
- (c) The market agent may not allow a buyer to remove any produce purchased on the market floor unless the buyer is in possession of a sales docket for the produce in accordance with section 19(4).
- (d) The market agent may not sell any produce in a container that does not comply with the specifications stipulated by the Municipal Manager.

- (e) The market agent must provide for a buyer produce consistent with that purchased by the buyer in so far as the quantity, weight, quality, grade, variety and container of the produce are concerned.
- (f) The market agent is liable towards a buyer if-
  - (i) the produce provided by the market agent differs from that purchased by the buyer in so far as the quantity, weight, quality, grade, variety and container of the produce are concerned; or
  - (ii) in respect of produce bought by sample, the produce provided by the market agent differs materially from the sample.
- (g) The market agent may not purchase, or allow his or her employees to purchase, any produce on the market floor for the purpose of reselling or trading in that produce.
- (h) The market agent or any of his or her employees is allowed, for purposes of personal use or consumption, to purchase any produce on the market floor at a price not lower than the price at which the produce was sold on the market floor on the same day.
- (i) The market agent must ensure that his or her salespersons comply with the provisions of this section and those of section 14(2).

### **Carriers**

24. (1) No person may operate as a carrier on the market premises unless he or she is registered with the Municipal Manager as a carrier and holds a carrier's permit.

(2) A carrier's permit may only be issued to a person on submission of proof of identification and on payment to the Municipal Manager of a refundable deposit determined from time to time by the Council.

(3) A carrier must at all times wear the proper identification and clothing supplied by the Municipal Manager to registered carriers and must keep his or her person and the clothing clean and tidy.

(4) A carrier may not-

- (a) while he or she is not engaged in providing carrier services, enter any part of the market premises other than an enclosure or other area set aside by the Municipal Manager for carriers; and
- (b) tout for customers by shouting or persistently following a buyer or prospective buyer.

**Barrows**

25. (1) The Municipality may issue a barrow to a carrier only if him or her—

- (a) wears the clothing referred to in section 24(3);
- (b) holds a valid carrier's permit; and
- (c) has paid a refundable deposit of which a fee for usage will be deducted, to the market administration determined by the Council for the acquisition of the barrow.

(2) A carrier –

- (a) must at all times be in possession of his or her receipt for the deposit referred to in subsection (1)(c) and must produce the receipt at the request of the Municipal Manager;
- (b) may not pull more than two barrows at any given time;
- (c) may only use a barrow issued by the Municipality;
- (d) is liable for the safe use of a barrow issued to him or her.
- (e) must ensure that the barrow issued to him or her is utilised in such a manner as to avoid any wilful or negligent damage.
- (f) may not sublet a barrow to a third party.

**Withdrawal of a carrier's permit**

26. (1) A carrier's permit is neither negotiable nor transferable.

(2) The Municipal Manager may withdraw a carrier's permit if the carrier —

- (a) does not comply with any one or more of the provisions of section 25(1)(a) and (b) or section 25(2);
- (b) fails to pay the deposit referred to in section 25(1)(c); or
- (c) uses a barrow in an improper and dangerous manner that can cause injury to a person or damage to property.

(3) If the Municipal Manager decides to withdraw the carrier's permit, he or she must notify the carrier in writing of his or her decision.

(4) A carrier whose carrier's permit has been withdrawn forfeits the refundable deposits referred to in sections 24(2) and 26(1)(c) and must, subject to the provisions of section 35, immediately cease to operate as a carrier.

**Liability of carriers**

27. (1) A carrier must render his or her carrier services at his or her own risk, and the Municipality is not liable to the carrier in respect of any loss or damage, whether to person or property, resulting from the carrier's services.

(2) The Municipality is not liable to any person in respect of any loss or damage, whether to person or property, caused by a carrier in the carrier's execution of his or her carrier services.

**Private barrows and trolleys**

28. (1) Any person may apply in writing to the Municipal Manager for approval to use a privately owned barrow on the market premises, which approval may, in the sole discretion of the Municipal Manager, be granted or refused.

(2) The Municipal Manager must notify such person in writing of his or her decision, and if approval is granted, the written or approval must at all times be in possession of the person whilst he or she is on the market premises.

**Vehicles, motorcycles and pedal cycles**

29. (1) Except for operational units, no person may operate a motor vehicle on the market floor.

(2) Without the prior written approval of the Municipal Manager, no person may operate a motorcycle or ride a pedal cycle on the market floor.

(3) Any person who wants to operate a motorcycle or ride a pedal cycle on the market floor must apply in writing to the Municipal Manager for his or her approval.

(4) If the Municipal Manager approves an application, he or she may impose the conditions on which the motorcycle or pedal cycle is to be used and must advise the applicant in writing of the conditions.

(5) A person to whom an approval referred to in subsection (3) has been granted must comply strictly with the conditions, if any, failing which the Municipal Manager is entitled to withdraw the approval.

**Market rules and regulations**

No person may —

- (a) occupy or trade from any office, area, stand or other place on the market premises unless he or she has —
  - (i) obtained the prior written permission of the Municipal Manager in terms of the approved policy of the Municipality; and

- (ii) paid in advance any rent or fee lawfully due in respect of the office, area, stand or other place on the market premises;
- (b) save as provided for in these By-Laws, purchase or sell any produce on the market premises;
  - (c) without the approval of the Municipal Manager, light a fire on the market premises;
  - (d) stand or sit on or lean against any produce on the market premises;
  - (e) touch or taste any produce on the market premises;
  - (f) throw an object at any person or property on the market premises;
  - (g) tamper with any produce or container or tamper with or remove any label on such produce or container;
  - (h) cause a blockage in or damage to the sewerage or storm water drainage system of the market premises;
  - (i) without the prior written approval of the Municipal Manager, wash, peel, pack, sort, grade or clean produce other than in the designated area of the market premises;
  - (j) interfere with or molest any other person on the market premises;
  - (k) interfere with the activities or business of or be a nuisance to any other person on the market premises;
  - (l) enter or remain on the market premises after hours without the written approval of the Municipal Manager;
  - (m) fail or refuse to comply with an instruction by the Municipal Manager to remove an article from the market premises or relocate article to another area on the market premises;
  - (n) spit, loiter or use any threatening, obscene, abusive or offensive language or cause a disturbance on the market premises;
  - (o) on the market premises, consume or be under the influence of intoxicating liquor or a drug having a narcotic effect;
  - (p) damage or deface any property or building on the market premises;
  - (q) on the market premises, dispose of any peels, vegetable leaves, garbage or other refuse other than in the appropriate bins provided;

- (r) interfere with or obstruct any employee of the Municipality in the execution of his or her duties;
- (s) hawk, peddle or beg on the market premises;
- (t) without the prior written approval of the Municipal Manager, remove any refuse, waste or condemned produce from the market premises;
- (u) cook food or make any beverage other than in the designated areas of the market premises; and
- (v) without the prior written approval of the Municipal Manager, bring any animal onto the market premises.

### **Retailers and wholesalers**

31. The Municipality is entitled to reserve any part of the market premises for the purpose of retail and wholesale business in market products and may, for that purpose, enter into agreements with a retailer or wholesaler in terms of which a table, stall or other area is leased to the retailer or wholesaler, as the case may be, if the retailer or wholesaler and the employees of the retailer or wholesaler, as the case may be —

- (a) conducts his or her business only in the part of the market premises allocated to him or her in terms of the lease;
- (b) deals only in the market products specified in the lease; and
- (c) is not entitled to trade on the market floor unless specific approval is granted by the Municipal Manager at his or her sole discretion.

### **Powers of the Municipal Manager**

31. The Municipal Manager is entitled to —

- (a) inspect any produce, article, item, object or thing of whatever nature on the market premises;
- (b) prohibit any produce from leaving the market premises if he or she reasonably believes that any person has failed to comply with the provisions of section 18(4) or (5) or section 19;
- (c) if he or she reasonably suspects that any produce offered for sale is stolen, prohibit the produce from being sold until he or she is satisfied of the ownership of the produce;
- (d) for statistical or other lawful purposes, request any documentation or information relating to any aspect whatsoever of the sale of produce on the market premises, and the person to whom the request was made must furnish him or her with documentation or information immediately;

- (e) instruct any person who has placed any produce, article, item, object or thing on the market premises that causes an inconvenience or obstruction to remove the produce, article, item, object or thing;
- (f) prohibit the cleaning, stripping or peeling of produce on the market premises or in any part of the market premises; and
- (g) for the purpose of ensuring the effective, efficient and proper functioning of the market and the safety and wellbeing of all people on the market premises, issue such instructions as he may deem necessary, which instructions may be contained in a notice or notices affixed to a notice board or notice boards situated in a prominent place on the market premises, and every person entering the market premises must obey and comply with the instructions.

### **Sales to employees of the Municipality**

33. No employee of the Municipality who is stationed at the market or is in some way involved in the market, is entitled to purchase any produce, except for purposes of personal use or consumption, provided that the purchase price of produce purchased for personal use or consumption is not lower than the price at which the produce was sold on the market floor on the same day.

### **Fees**

34. The fees payable to the Municipality in terms of these By-Laws are specified in the Schedule to these By-Laws.

### **Appeals**

35. (1) Any person aggrieved by a decision of the Municipal Manager made in terms of these By-Laws, may appeal against that decision in accordance with the provisions of section 62 of the Municipal Systems Act, which provisions apply with the necessary changes, in respect of the appeal.

(2) Pending the outcome of an appeal referred to in subsection (1) —

- (a) a market agent referred to in section 11 (5)(b) is entitled to continue to operate as a market agent;
- (b) a salesperson referred to in section 14(2) is entitled to continue to operate as a salesperson; and
- (c) a carrier referred to in section 27(2) is entitled to continue to operate as a carrier.

**Indemnification from liability**

36. Any person who enters the market premises must do so at his or her own risk, and neither the Municipality nor any of its employees is liable for any loss or damage, whether to person or property, suffered by such person arising from any act or omission done by such an employee in the execution of his or her duties and in good faith.

**Offences and penalties**

37. (1) Any person who—

- (a) fails to comply with or performs any act contrary to the terms, conditions, restrictions or directions subject to which a licence, permit, approval, consent or authority has been issued or granted to him or her under these By-Laws;
- (b) contravenes or fails to comply with any provision of or direction issued or requirement imposed under these By-Laws; or
- (c) contravenes or fails to comply with any provision of these By- Laws;

is guilty of an offence.

(2) Any person convicted of an offence under these By-Laws is liable to imprisonment as determined by a court of law or to a fine calculated in terms of the Adjustment of Fines Act, 1991 (Act 101 of 1991), or to both such imprisonment and such fine.

**Repeal of By-Laws**

38. All previous Council regulations, policies and arrangements are dealing with fresh produce market are repealed.

**Short title and commencement**

39. These By-Laws are called Fresh Produce Market By-Laws, 2012 and will come into operation on the date of publication in the *Provincial Gazette*.



**No. 10**

## **MBHASHE LOCAL MUNICIPALITY**

### **PARKING GROUNDS, PARKING ATTENDANTS AND CAR WATCHERS BY-LAWS**

**MBHASHE LOCAL MUNICIPALITY****NOTICE**

Notice is hereby given in terms of section 13 of the Local Government Municipal Systems Act, 2000(Act 32 of 2000), as amended, read with sections 156 and 162 of the Constitution of the Republic of South Africa, 108 of 1996 as amended, that Mbashe Local Municipality in terms of resolution number 3.2.1 dated 31 October 2012, resolved to adopt the following Parking Grounds, and Car Watchers By-Laws

**BY-LAWS**

To provide for the regulation of Parking grounds, Parking Attendants and Car Watchers within the municipal area of the Municipality and to provide for matters incidental thereto.

BE IT ENACTED by the Council of Mbashe Local Municipality, as follows:

**TABLE OF CONTENTS**

1. Definitions
2. Ticket controlled parking grounds.
3. Parking after end of period.
4. Free parking.
5. Vehicles of excessive size.
6. Proof of time.
7. Miscellaneous.
8. Prohibition.
9. Consent of the Council.
10. Conditions for consent.
11. Registration fee payable.
12. Garments and identification of parking attendants.
13. Conduct of organisations.
14. Requirements for conduct of parking attendants.
15. Cancellation or suspension of permits.
16. Offences.
17. Vicarious responsibility and liability of organisation.

**Definitions**

1. In these By-Laws, unless the context otherwise indicates -

**“demarcated space”** means a space within which a vehicle is to be parked in terms of these By-Laws, demarcated by means of one or more white lines upon the surface of a parking ground or a floor thereof;

**“driver”** shall have the meaning assigned to it by the National Road Traffic Act, Act 93 of 1996, as amended;

**“motor vehicle”** means a motor vehicle as defined in Section 1 of the National Road Traffic Act, Act 93 of 1996, as amended;

**“NRTA”** means the National Road Traffic Act, Act 93 of 1996 as amended;

**“organisation”** means a group of people, company, association or body representing parking attendants that operates a parking attendant service in certain geographical areas approved by the Council;

**“park”** means to keep a vehicle, whether occupied or not, stationary for a period of time longer than is reasonably necessary for the actual loading or unloading of persons or goods, but does not include any such keeping of a vehicle by reason of a cause beyond the control of the person in charge of such vehicle;

**“parking attendant”** means a person in the employ of an organisation to render a parking attendant service to drivers in a public place or on a public road, and includes a car watcher;

**“parking ground”** means any area of land or any building set aside by the Council as a parking ground or garage for the parking of vehicles therein by members of the public, whether or not charges are prescribed by these By-Laws for the use thereof;

**“parking period”** means the period of time measured in hours or part thereof on any one day during which vehicles are permitted to park in a parking ground as prescribed by Council;

**“particulars”** means any form of information of any party and shall include the name, surname, company name, residential, business or email address, telephone, cellular or fax number or any other such information;

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

**“Passenger Transport Working Group”** means the Passenger Transport Working Group contemplated in Chapter III of these By-Laws;

**“passenger”** means any person in or on a vehicle but shall not include the “driver” or the “conductor”;

**“pavement”** means a sidewalk as defined in Section 1 of the NRTA (*see infra*);

**“pedestrian”** shall mean any person afoot;

**“permit”** in relation to these By-laws means a document in which the Council authorises the holder to operate as a parking attendant in terms of these By-Laws;

**“pound”** means any area or place set aside by the Council for the custody of vehicles;

**“street”** means any street, road or thoroughfare shown on the general plan of a township, agricultural holding or any other division of land or in respect of which the public have acquired a prescriptive or other right of way and which vests in the Council;

**“verge”** means a verge as defined in Section 1 of the NRTA (*see infra*);

**“voucher”** means a document, approved by the Council containing the information reflected in the document, which is handed by a parking attendant to a driver informing the driver of the particulars of the attendant’s organisation and emergency telephone numbers and requesting a donation regarding the service;

**“ward”** means a portion of a public place or public road of the Council that has been demarcated by the Council to be allocated to an approved organisation for the purpose of providing a parking attendant service and **“zone”** shall have a corresponding meaning;

**“waiting area”** shall mean a place where vehicles, or vehicles of a particular class or description, for public transport may wait or stand;

### **Ticket controlled parking grounds**

2. (1) Subject to the provisions of these By-Laws no person must park a vehicle or cause or permit it to be parked or allow it to be or remain in a parking ground wherein parking is controlled by the issue of tickets-

- (a) unless he or she has paid to an authorized official the charge for a parking period or sub period prescribed for such parking ground in these By-Laws;
- (b) otherwise than within a demarcated space and in compliance with such directions as may be given by an authorized official or, where no such spaces have been marked, otherwise than in such a place as an authorized official may indicate;
- (c) after expiry of the sub period for which payment has been made in terms of subsection (1)(a) without paying a further charge;
- (d) after an authorized official has indicated to him or her that the parking ground is full;

(2) Subject to the provisions of subsection (1)(a) and subsection (4), after having previously removed the vehicle from the parking ground on the same day without paying to an authorized official a further additional tariff as determined by Municipality.

(3) Upon payment of any charge referred to in subsection (1)(a), the authorized official must issue to the person paying the charge a ticket bearing a distinctive number, the date of issue, the charge made and the Municipality's name which entitles him or her to park his or her vehicle in the parking ground concerned during the parking period or sub period, as the case may be, for which the charge has been paid.

(4) A person who has parked or caused or permitted to be parked a vehicle in a parking ground referred to in subsection (1)(a), must produce for inspection the ticket issued to him in terms of subsection (1)(a) when required to do so by an authorized official.

(5) It must be presumed, until the contrary is proved, that a person referred to in subsection (3) that fails to

produce his ticket when required to do so in terms of that subsection has not paid the charge for which he is liable in terms of these By-Laws.

### **Parking after end of period**

3. (1) When a vehicle is left in a parking ground other than a parking ground as referred to in section 7 during the intervening period between one parking period and the next, a sum equal to twice the minimum tariff payable for a whole parking period in that ground must be paid in respect of each such intervening period and, in addition, the prescribed tariffs in respect of the second and any subsequent parking period during any part of which the vehicle remains in the parking ground must be paid.

(2) No person must remove a vehicle from a parking ground without first having paid all tariffs that have accrued in terms of subsection (1).

### **Free parking**

4. (1) The Municipality may issue to any of its authorised officials a decal entitling the holder, when using a vehicle on the business of the Municipality, to park it free of charge in such parking ground as the decal may specify, if space therein is available.

(2) A decal issued in terms of subsection (1) must be affixed by the holder thereof to the vehicle in respect of which it is issued in such manner and place that its written or printed context is readily legible from the outside of such vehicle.

### **Vehicles of excessive size**

5. (1) No vehicle with a gross vehicle mass exceeding 3 500 kg or a vehicle with a load exceeding 6m in length must be parked in or on a parking ground.

(2) Where the parking of a vehicle which with a load thereon exceeds 6m in length, is by notice permitted, the charge payable for parking must be twice the charge prescribed for an ordinary vehicle and where the total length exceeds 7m, three times such charge.

### **Miscellaneous**

#### **Closure of Parking Ground**

6. (1) Despite anything to the contrary in these By-Laws contained, the Municipality may at any time close any parking ground or portion thereof temporarily or permanently and must indicate the fact and the period of such closure by notice displayed at the entrances to the ground closed or at the portion closed, as the case may be.

(2) No person must introduce a vehicle into or park or cause or permit a vehicle to be parked or to remain in any parking ground or portion of a parking ground while it is closed in terms of subsection (1)(a).

### Responsibility for Offence

7. Whenever a vehicle is parked in contravention of any provision of these By-Laws it must be presumed, until the contrary be proved, that it was so parked by the person registered as its owner in the records of the appropriate registering authority in terms of the NRTA.

### Defective Vehicles

8. No person must park or cause or permit any vehicle to be parked or to be or remain on any parking ground for the use of which no tariff is determined by Municipality which is out of order or for any reason incapable of movement, but no offence against these By-Laws must be deemed to have been committed in respect of any vehicle which, after having been parked in a parking ground, develops a mechanical defect which immobilizes it if the person in control of it proves that he took reasonable steps to have the vehicle repaired or removed as soon as possible.

### Behaviour in Parking Ground

9. (1) No person must in any parking ground-

- (a) park or cause or permit to be parked or cause to be or remain, any vehicle other than a vehicle as defined in Section 2;
- (b) when called upon by an authorized official to do so, fail or refuse to furnish him or her with his full and correct name and address;
- (c) use or cause or allow any vehicle to be used for plying for hire for the conveyance of passengers or goods or both;
- (d) clean, wash or, save in an emergency, work on or effect repairs to any vehicle or any part thereof;
- (e) drive any vehicle recklessly or negligently or without reasonable consideration for the safety or convenience of other persons;
- (f) drive any vehicle at more than 15 km/h;
- (g) park a vehicle otherwise than in compliance with any notice or sign displayed therein or with an instruction or direction given him by an authorized official or introduce or remove a vehicle otherwise than through an entrance thereto or exit there from appointed for that purpose;
- (h) so park or load a vehicle or allow anything to be on it that it obstructs other vehicles or persons or impedes their movement or is likely to do so;
- (i) without reasonable cause or without the knowledge and consent of the owner or person in lawful control of a vehicle, enter or climb upon such vehicle or set the machinery thereof in motion or in any way tamper or interfere with its machinery or any other part of it with its fittings, accessories or contents;

- (j) so park any vehicle that any part of it lies across any white line forming a boundary of a demarcated space or that it is not entirely within the confines of such a space;
- (k) remove, obscure, deface, damage or interfere with any notice, sign or marking erected or made by the Municipality or with any other property belonging to it;
- (l) do any act or introduce anything which obstructs or is likely to obstruct the movement of persons and vehicles;
- (m) with intent to defraud the Municipality forge, imitate, deface, mutilate, alter or make any mark upon a ticket issued in terms of these By-Laws;
- (n) without first having obtained the Municipality's permission thereto, fill any vehicle with or drain fuel from such vehicle;

(2) A sign which the Municipality displays in a parking ground and which conforms to a road traffic sign prescribed in terms of the NRTA as amended, must for the purpose of these By-Laws bear the same significance as is given to that sign by those regulations.

(3) Unless he or she is the holder of a decal issued in terms of Section 19(10), entitling him or her to do so, no person must park a vehicle or cause or permit it to be parked in any parking ground before the beginning or after the expiry of the parking period prescribed for the parking ground in terms of these By-Laws hereto.

### **Damage to Vehicles**

10. The Municipality must not be liable for the loss of any vehicle or for its unlawful removal from the ground, or for damage to any vehicle or its fittings, accessories or contents while in a parking ground, or for such damage if it is the consequence of its being moved due to a non compliance with any stipulation contained in these By-Laws.

### **Authorized Persons**

11. No person must, unless authorized thereto by the Municipality, enter or be in a parking ground otherwise than for the purpose of parking a vehicle therein or lawfully removing it there from, but this section does not apply to a person whom the person in charge of a vehicle has permitted to be a passenger therein.

### **Obstruction**

12. If a vehicle has been parked in such a position that in the opinion of an authorized official it is likely to obstruct or impede the movement of other vehicles or persons in the parking ground, he may move it or cause it to be moved to another part of the ground.

### **Abandoned Vehicles**

13. (1) Any vehicle that has been left in the same place in a parking ground for a continuous period of more than seven days may be removed by or at the instance of an authorized official to the Municipality's pound.

(2) The Municipality must take all reasonable steps to trace the owner of a vehicle removed in terms of subsection (8)(a) and if, after the lapse of 90 days from the date of its removal the owner or other person entitled to its possession cannot be found, the vehicle may, subject to the provisions of subsection (8)(c), be sold by public auction.

(3) 30 days notice of an auction sale to be held in terms of subsection (8)(b) must be published in at least four newspapers circulating in the Municipal area, but the sale must not be proceeded with if at any time before purchase of the vehicle it is claimed by the owner or any person authorized by him or her or otherwise lawfully entitled to claim it and all charges payable in respect thereof in terms of these By-Laws and all costs incurred in terms of subsection (8)(d) have been paid to the Municipality.

(4) The proceeds of a sale concluded in terms of this section must be applied first in payment of the charges incurred in terms of subsection (8)(c) and in satisfaction of the following costs-

(a) the costs incurred in endeavouring to trace the owner in terms of subsection (8)(b).

(b) the costs of removing the vehicle and advertising and affecting its sale.

(c) the costs of keeping the vehicle in the pound, which must be determined by Municipality from time to time, up to a maximum of

120

days.

(5) Any balance of the proceeds must be paid to the owner of the vehicle or any person lawfully entitled to receive it on his behalf upon his or her establishing his or her right thereto to the satisfaction of the Municipality, but if no claim be so established within one year of the date of the sale, such balance must be forfeited to the Municipality.

(6) The exercise by the Municipality, or any person acting on its behalf, of the powers conferred by this section must not subject it or him or her to any liability in respect of the loss or theft of or damage to the vehicle or any part thereof or anything therein or relieve any person of the consequences of his or her contravention of any provision of these By-Laws.

### **Refusal of Admission**

14. (1) It must be in the discretion of a duly authorized official to refuse to admit to a parking ground a vehicle which with or without any load is by reason of its length, width or height likely to cause damage to persons or property or to cause an obstruction or undue inconvenience.

(2) A person in control of a vehicle who, having been refused admission in terms of subsection (9)(a), proceeds to drive it into a parking ground must be guilty of an offence.



### **Monthly Tickets**

15. (1) Despite anything to the contrary in these By-Laws contained, the Municipality may in respect of any parking ground issue a ticket at the tariff as determined by the Municipality, entitling the holder to park a specified vehicle in that area for a continuous period of one calendar month or any lesser period states therein, at the times stated on the ticket, if space is available, and such ticket must not be transferred to any other person.

(2) A ticket issued in terms of subsection a must be affixed to the vehicle in respect of which it is issued, in such manner and place that the written or printed context thereof is readily legible from the outside of such vehicle.

(3) The tariffs payable for the use of parking grounds must be as determined by Municipality.

## **Chapter VII**

### **Parking Attendants & Car watchers**

#### **Prohibition**

16. (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 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 and approved by the Municipality as a parking attendant organisation.

(3) No person may act as a parking attendant unless he or she is registered as a member of an organisation.

#### **Consent of the Municipality**

17. (1) Only organisations that are registered with the Municipality as parking attendant organisations may provide a parking attendant service in public places or on public roads of the Municipality.

(2) Before any organisation can be registered with the Municipality, the organisation must submit, together with its application form for registration proof of indemnity or of public liability insurance regarding the actions of its parking attendants, to the satisfaction of the Municipality.

(3) The Municipality may consider any application and may grant, partially grant or refuse an application and must furnish the reasons for the decision at the request of the applicant.

(4) The decision of the Municipality is final.

(5) The Municipality, on receipt of an application for registration, call for documentary or other proof of the capacity of the organisation to provide parking attendants, including information regarding the finances of the organisation.

(6) When approving an organisation's application for registration regarding a specified geographic area, the Municipality must issue a permit (see annexure 12) prescribing the geographic areas within which the organisation may operate and the period of time for which it is granted.

(7) The permit issued is not valid for a period exceeding 12 months from the date of issue.

### **Conditions for consent**

#### **Organisations**

18. (1) Subject to the provisions of section 19, consent is granted to an organisation to place parking attendants, provided that the organisation adopts and signs the Code of Conduct for Organisations.

(2) Organisations must keep detailed attendance and duty records reflecting the following in respect of their parking attendants:

- (a) Name of the 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.

#### **Parking attendants**

19. Each parking attendant in the employ of an organisation must sign the Code of Conduct for Parking Attendants.

#### **Registration fee payable**

20. (1) After the Municipality has granted approval: to an organisation to operate a parking attendant service within the Metropolitan area, the organisation must pay to the Municipality a registration tariff.

(2) The monetary amount of the registration tariff is determined by Municipality and fixed in the contract.

#### **Garments and identification of parking attendants**

21. (1) An organisation is responsible for issuing the following to its parking attendants free of charge or at the parking attendant's own cost:

- (a) A bib or jacket and equipment;
- (b) A supply of vouchers (see annexure 3); and
- (c) An identification card (see annexure 1).

(2) A parking attendant must, before undertaking any duties, equip himself or herself with the following, at his or her own cost or obtain the following free of charge from the organisation:

- (a) A bib or jacket and equipment;
- (b) A supply of vouchers ; and
- (c) An identification card .

(3) 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 that the identification card is displayed in a visible position.

(4) A parking attendant must, whenever he or she undertakes to guard a vehicle, hand the driver a voucher.

### **Conduct of organisations**

22. Any Organisation must undertake to do the following:

- (a) Register with the Municipal Police Services.
- (b) Train parking attendants, and incorporate all unauthorized parking attendants who adhere to the requirements of conduct for organisations and for parking attendants.
- (c) Provide its parking attendants with supervision, preferably by means of direct radio contact with the organisation's control office.
- (d) Supply uniforms (bibs or jackets), identification cards and the other relevant equipment to the parking attendants.
- (e) Resolve all parking disputes or differences that may arise in the assigned areas of the parking attendants.
- (6) Instruct all parking attendants under contract to comply with the laws. By-
- (7) Ensure that the organisation's officials make themselves available to attend meetings as and when requested to do so with their clients.
- (8) Establish communication with the SAPS and the Municipal Police Services.
- (9) Make sure that all of its parking attendants have been screened and have undergone security clearance as prescribed by the Security Officers Act, Act 53 of 1985.
- (10) Keep detailed attendance and duty records of the daily activities of its parking attendants.

**Requirements for conduct of parking attendants**

23. (1) No parking attendant may, when on duty-

- (a) wash a car on a public road or in a public place and interfere with the movement of traffic or pedestrians;
- (b) demand a donation or fee for guarding a driver's vehicle;
- (c) fail to obey a lawful order from an authorised officer or an authorised official;
- (d) harass or threaten a driver, or damage a vehicle in any way;
- (e) involve himself or herself in any form of criminal activity;
- (f) be under the influence of alcohol or any narcotic substance or consume or use any alcohol or narcotic substance;
- (g) be untidily dressed;
- (h) refuse to produce proof of his or her identity when requested to do so by an authorised officer or authorised official of a person who requires it for his or her information relating to the service rendered;
- (i) ignore any By-Laws of the Municipality or contravene or fail to comply with any other law.

(2) No parking attendant may refuse to subject him or herself to a security check as prescribed by the Security Officers Act, 1985 ( Act 53 of 1985).

**Cancellation or suspension of permits**

24. (1) The Municipality may suspend a permit on the grounds that the holder of the permit or the organisation to which the holder belongs has allegedly committed an offence in terms of these By-Laws.

(2) A permit granted in terms of the By-Laws may be immediately suspended or cancelled by the Municipality if the permit holder-

- (a) tampers with or activates or operates a parking meter;
- (b) fails to observe or carry out the lawful instructions of an authorised person or an authorised officer;

- (c) is intoxicated while performing his or her duties as a 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;
- (j) 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.

### **Offences**

#### **25. No parking attendant may-**

- (a) refuse to observe or carry out the lawful instruction of an authorised person or an authorised officer;
- (b) be intoxicated while performing his or her duties as a parking attendant;
- (c) clean or wash any motor vehicle in a public place or on a public road;
- (d) interfere with the movement of vehicular traffic or the parking vehicles;
- (e) interfere with the movement of pedestrians;
- (f) through intimidation, demand a donation or fee for guarding a vehicle;
- (g) damage or threaten to damage a vehicle in any way for not receiving a donation or fee;
- (h) refuse to produce a permit on request;

- (i) operate as a parking attendant in a public place or on a public road without a permit issued by the Municipality;
- (j) use a false permit to operate as a parking attendant in a public place or on a public road;
- (k) 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 organisation and in accordance with the provision of these By-Laws; or
- (l) allow any organisation to permit a person who has his or her permit cancelled or suspended to act as a parking attendant.

### **Vicarious responsibility and liability of organisation**

26. When a person who is a member of an organisation acts illegally as a parking attendant or commits any other offence in terms of these By-Laws, the directors of that organisation are equally responsible and liable for the offence.

## **Chapter VIII**

### **Penalties**

27. Any person contravening any of the foregoing By-Laws is guilty of an offence and liable on conviction, except where otherwise expressly stated, to-

- (a) a fine not exceeding R2 000.00 or in default of payment, to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment;
- (b) in case of successive or continuous breaches of any By-Law it is provided that any expense incurred by the Municipality in consequence of a breach of any By-Law or in the execution of any work directed by any By-Law to be executed by any person and not executed by him or her, must be paid by the person committing such breach or failing to execute such work.

### **Short Title and commencement**

28. (1) These By-Laws are called Parking Grounds Car Watchers and Parking Attendants By-Laws, 2012 and will come into operation on a date of publication in a *Government Gazette*.

(2) Different dates may be so fixed in respect of different provisions of these By-Laws.

**Annexure 1****Parking grounds****Indemnity Form**

I, the undersigned,.....

(Full names)

residing at .....

and employed/carrying on business at .....

..... being the owner/person legally entitled to possession of the motor vehicle

described hereunder and parked at the ..... by

.....

on..... (date) in the custody of the Municipality and being unable to produce the ticket in terms of the provisions of the Municipality's Parking Grounds By-Laws in respect thereof, do hereby indemnify and hold harmless the Municipality against any claim for damages and any other action or proceedings at law directly or indirectly connected with or arising out of the delivery to me by the said Municipality of the said motor vehicle that may be brought by any person against the said Municipality and against all costs incurred by it in opposing, defending or settling any such claim, action or proceeding in its sole discretion inclusive of attorney and client costs.

**DESCRIPTION**

Motor Vehicle:

Type of Vehicle: ..... Make: .....

Model: ..... Reg. No. ....

Dated at Mbhashe Local Municipality this ..... day of ..... 200 , in the presence of the

undersigned witnesses:

AS WITNESSES:

1. .... 2. ....

**Annexure 2****Parking Grounds**

Undertaking

I, the undersigned .....

(Full names)

residing at .....

and employed.....

Being the holder of a token no. .... entitling me to park the motor vehicle in my possession at the

..... parking ground during the period of validity of the aforesaid token, do hereby undertake that should I lose, misplace or for any other reason be unable to return it to the Municipality at the expiry of the validity period thereof, or as result of such loss, misplacement or such other reason apply for a replacement of such token, I shall pay to the Municipality, the sum of R50 in respect of such lost, misplaced or replaced token.

.....

Signature of Holder



**Annexure 3****PARKING ATTENDANT/CAR WATCHER IDENTIFICATION****PHOTO**

NAME :.....

ID NO :.....

ORGANISATION :.....

TELEPHONE NO :.....

ZONE/WARD ALLOCATION: .....

**EMERGENCY TELEPHONE NUMBERS**

MUNICIPAL POLICE SERVICES:.....

SAPS :.....

**NB: The dimensions of the identification card must be 125mm x 85mm**

**Annexure 4****PERMIT TO OPERATE AS A PARKING ATTENDANT/CAR WATCHER****PERMIT NO:** .....

NAME : .....

ID NO : .....

ORGANISATION : .....

GEOGRAPHICAL AREA OF OPERATION : yyyyyyyyyyyyyyy.

**THE BEARER IS HEREBY AUTHORISED TO OPERATE AS A PARKING  
ATTENDANT/CAR WATCHER ON A PUBLIC  
ROAD AND IN A PUBLIC PLACE AS SPECIFIED IN THE GEOGRAPHICAL  
AREA OF OPERATION.**

EXPIRY DATE: .....

AUTHORISED BY THE CHIEF: METROPOLITAN POLICE SERVICES

SIGNATURE : .....

DATE : .....

ISSUED BY : .....

**Annexure 5****PARKING ATTENDANT/CAR WATCHER VOUCHER FOR A CAR PROTECTION SERVICES**

PARKING ATTENDANT / CAR WATCHER: .....

PERMIT NO : .....

ORGANISATION : .....

TELEPHONE NO : .....

**EMERGENCY TELEPHONE NUMBERS**

METROPOLITAN POLICE SERVICES DIVISION : .....

SAPS : .....

**A donation would be highly appreciated.****Thank you for your support****NB: The dimensions of the voucher must be 55mm x 90mm**

**Annexure 6****CODE OF CONDUCT FOR PARKING ATTENDANTS AND CAR WATCHERS**

1. No parking attendant or car watcher may, when on duty 2, Tamper with; activate or operate a parking meter.
3. Wash a car on a public road or in a public place and interfere with the movement of traffic or pedestrians.
4. Demand a donation or fee for guarding a driver's vehicle.
5. Refuse to obey a lawful order from an authorised person or an authorised officer.
6. Harass or threaten motorists, damage or threaten motorists by any other means.
7. Involve him or her in any form of criminal activity.
8. Be under the influence of alcohol or any narcotic substance or consume or use any alcohol or narcotic substance.
9. Be untidily dressed.
10. Refuse to produce proof of his or her identity when requested to do so by an authorised officer of a person who requires it for his or her information relating to the service rendered.
11. Refuse to subject himself or herself to an alcohol and drug test when called upon to do so; and
12. Ignore any By-laws of the Municipality, contravene or fail to comply with any other law.
13. No parking attendant or car watcher may refuse to subject him or herself to a security scan.

**No. 11**

# **MBHASHE LOCAL MUNICIPALITY**

## **PUBLIC AMENITIES BY-LAWS**

**MBHASHE LOCAL MUNICIPALITY****NOTICE**

Notice is hereby given in terms of section 13 of the Local Government Municipal Systems Act, 2000(Act 32 of 2000), as amended, read with sections 156 and 162 of the Constitution of the Republic of South Africa, 108 of 1996 as amended, that Mbashe Local Municipality in terms of resolution number 3.2.1 dated 31 October 2012, resolved to adopt the following Public Amenities By-Laws

**BY-LAWS****Purpose of By-Laws**

- To promote the achievement of a safe and peaceful environment;
- To provide for procedures, methods and practices to regulate the use and management of public amenities.

BE IT ENACTED by the Council of the Mbashe Local Municipality, as follows:

**TABLE OF CONTENTS**

1. Definitions
2. Maximum number of visitors
3. Admission to and sojourn in a public amenity
4. Entrance fees
5. Nuisances
6. Health matters
7. Structures
8. Liquor and food
9. Animals
10. Use of public amenities
11. Safety and order
12. Water
13. Laundry and crockery
14. Vehicles
15. Games
16. Penalties
17. Repeal of By-Laws
18. Short title

**Definitions**

1. In these By-Laws, unless the context otherwise indicates: -

“Council” means —

- (a) Municipal Council of Mbashe Municipality exercising its legislative and executive authority through the Municipality;

- (b) its successor in title; or
- (c) a structure or person exercising a delegated power or carrying out an instruction, where any power in these By-Laws has been delegated or sub delegated or an instruction given, as referred to in section 59 of the Act; or
- (d) a service provider fulfilling a responsibility under these By- Laws,

**“Municipality”** means Mbhashe Local Municipality and its legal successors, and when referred to as-

- (a) a legal entity, means Mbhashe Local Municipality as described in Section 2 of the Local Government: Municipal Systems Act, (Act No. 32 of 2000); and
- (b) a geographic area, means the municipal area of the Mbhashe Local Municipality as determined from time to time in terms of the Local Government : Municipal Demarcation Act, 1998 (Act No 27 of 1998);

**“notice”** means official notice displayed at every entrance to or at a conspicuous place at or on a public amenity and in which the Municipality must make known provisions and directions adopted by it in terms of this By-Laws;

**“public amenity”** means –

- (a) any land, square, camping site, swimming bath, river, public resort, recreation site, nature reserve, zoo-logical, botanical or other garden, park or hiking trail which is the property of the municipality, including any portion thereof and any facility or apparatus therein or thereon;
- (b) any building, structure, hall, room, or office including any part thereof and any facility or apparatus therein, which is the property of, or is possessed, controlled or leased by the Municipality and to which the general public has access, whether on payment of admission fees or not but excluding-
  - (i) any public road or street;
  - (ii) any public amenity contemplated in paragraphs (a) and (b), if is lawfully controlled and managed in terms of an agreement by a person other than the Municipality; and
  - (iii) any public amenity hired from the Municipality;

### **Maximum number of visitors**

2. (1) The Municipality may determine the maximum number of visitors who may be present at a specific time in or at a public amenity;

(2) The number referred to in subsection (1) is made known by the Municipality by means of a notice.

### **Admission to and sojourn in a public amenity**

3. (1) A public amenity is, subject to the provisions of this By-Laws, open to the public on the times determined by the Municipality;

(2) No visitor must enter or leave a public amenity at a place other than that indicated for that purpose.

(3) The times and places referred in subsections (1) and (2), must be made known by the Municipality by means of a notice.

### **Entrance fees**

4. (1) A visitor to a public amenity must pay entrance fees determined from time to time by the Municipality and such entrance fees must be made known by means of a notice.

(2) Different entrance fees may be determined in respect of visitors of different ages and the Municipality may exempt certain groups of persons from the payment of an entrance fee.

### **Nuisances**

5. (a) No person must perform or permit any of the following acts in or at a public amenity –

- (b) the use of language or the performance of any other act which disturbs the good order;
- (c) the firing of firearms, airguns, air pistols, fireworks or the use of sling-shots or catapults without the Municipality's written consent;
- (d) the burning of rubble or refuse;
- (e) the causing of unpleasant or offensive smells;
- (f) the production of smoke nuisances;
- (g) the causing of disturbances by fighting, shouting, arguing, singing or the playing of musical instruments; or by the use of loudspeakers, radio reception devices, television sets, or similar equipment;
- (h) the begging for money, food, work or the offering of services; or in any other manner cause a nuisance, obstruction, disturbance or annoyance to the public.



**Health matters**

6. No person must in or at a public amenity-

- (a) dump, drop or place any refuse, rubble, material or any object or thing or permit it to be done, except in a container provided for that purpose in or at the amenity;
- (b) pollute or contaminate in any way the water in any bath, swimming-bath, dam, river or water-course;
- (c) enter any bath or swimming bath while suffering from an infectious or contagious disease or having an open wound on his body;
- (d) perform any act that may detrimentally affect the health of any visitor to a public amenity.

**Structures**

7. No person must without the written consent of the Municipality having first been obtained, erect or establish in or on a public amenity any structure, shelter or anything similar, except the parking of a caravan or tent erected for camping purposes on a site specifically set aside therefor by notice;

**Liquor and food**

8. (1) No person must, contrary to a provision of a notice, bring into a public amenity any alcoholic or any other liquor or any food of whatever nature.

(2) No person must, on, in or at a public amenity, contrary to a provision of a notice, cook or prepare food of any kind whatsoever, except at places set aside for such purposes by notice, but the preparation and cooking of food in or at a public amenity must be done in a clean and hygienic manner so as not to give rise to excessive smoke or other nuisances or entail any danger to health; provided further that no live animals, poultry or fish may be killed or skinned on, in or at a public amenity.

**Animals**

9. (1) No person must bring any live animal, bird, fish or poultry into a public amenity except in accordance with the directions of the Municipality

(2) The directions referred to in subsection (1) must be made known by means of a notice.

**Use of public amenities**

10. (1) No person must without the consent of the council or contrary to any condition which the Municipality may impose when granting such consent –

- (a) arrange or present any public entertainment;

- (b) collect money or any other goods for charity or any other purpose from the general public;
- (c) display or distribute any pamphlet, placard, painting, book, handbill or any other printed, written or painted work;
- (d) arrange, hold or address any meeting;
- (e) arrange or hold a public gathering or procession, exhibition or performance;
- (f) conduct any trade, occupation or business;
- (g) display, sell or rent out or present for sale or rent any wares or articles;
- (h) hold an auction;
- (i) tell fortunes for compensation;

(2) For the purposes of these By-Laws “public gathering or procession” means a procession or gathering of 15 or more persons and which is not regulated by national or provincial legislation.

### **Safety and order**

11. (1) No person must, subject to subsection (2), in or at a public amenity-

- (a) damage or disfigure anything within such amenity;
- (b) use or try to use anything within such amenity for any
- (c) purpose other than that for which it is designated or determined by notice;
- (d) light a fire or prepare food, except at a place indicated for that purpose by notice;
- (e) throw away any burning or smouldering object;
- (f) throw or roll down any rock, stone or object from any mountain, slope or cliff;
- (g) pull out, pick or damage any tree, plant, shrub, vegetation or flower;
- (h) behave himself or herself in an improper, indecent, unruly, violent or unbecoming manner;

- (i) cause a disturbance;
- (j) wash, polish or repair a vehicle;
- (k) walk, stand, sit or lie in a flower bed;
- (l) kill, hurt, follow, disturb, ill-treat or catch any animal, bird or fish or displace, disturb, destroy or remove any bird nests or eggs;
- (m) walk, stand sit or lie on grass contrary to the provisions of a notice;
- (n) lie on a bench or seating-place or use it in such a manner that other users or potential users find it impossible to make use thereof;
- (o) play or sit on play park equipment, except if the person concerned is a child under the age of 13 years; or
- (p) swim, walk or play, contrary to the provisions of a notice, in a fish-pond, fountain, stream or pond.

(2) The Municipality may, by way of notice and subject to such conditions as the Municipality deems necessary authorise any of the actions referred to in subsection (1).

### **Water**

12. No person may misuse, pollute or contaminate any water source or water supply or waste water in or at any public amenity.

### **Laundry and crockery**

13. No person may, in or at a public amenity wash any crockery or laundry or hang out clothes except at places indicated by notice for that purpose.

### **Vehicles**

14. (1) No person may bring into a public amenity any truck, bus, motorcar, motor cycle, motor tricycle, bicycle or any other vehicle, craft or aeroplane, whether driven by mechanical, animal, natural or human power, except in accordance with the directions of the council.

(2) The Municipality determines the speed limit applicable in a Public amenity;

(3) The directions contemplated in subsection (1) and the speed limit contemplated in subsection (2) must be made known by the council by way of notice.

**Games**

15.No game of any nature whatsoever must be played or conducted in or on a public amenity by any person or persons except at places set aside for that purpose by notice and in accordance with the directions of the Municipality and which is made known by way of notice.

**Penalties**

16. Any person who contravenes or fails to comply with a provision of these By-Laws, a notice issued in terms of these By-Laws or a condition imposed under this By-Laws, irrespective of whether such contravention or failure has been declared as an offence elsewhere in this By-Laws, is guilty of an offence and liable upon conviction to:

- (1) a fine or imprisonment for a period not exceeding six months or either such fine or such imprisonment or both such fine and such imprisonment
- (2) in the case of a continuing offence, an additional fine or an additional period of imprisonment of 10 days or either such additional fine or such additional imprisonment or both such additional fine and imprisonment for each day on which such offence is continued, and
- (3) a further amount equal to any costs and expenses found by the court to have been incurred by the Municipality as a result of such contravention or failure.

**Repeal of By-Laws**

17. All previous Council regulations, policies and arrangements are dealing with public amenities are repealed.

**Short title and commencement**

18. These By-Laws are called Public Amenities By-Laws, 2012 and will come into operation on the date of publication in the *Provincial Gazette*.

**No. 12**

# **MBHASHE LOCAL MUNICIPALITY**

## **REGULATION OF PARKS AND OPEN SPACES BY-LAWS**

**MBHASHE LOCAL MUNICIPALITY****NOTICE**

Notice is hereby given in terms of section 13 of the Local Government Municipal Systems Act, 2000(Act 32 of 2000), as amended, read with sections 156 and 162 of the Constitution of the Republic of South Africa, 108 of 1996 as amended, that Mbashe Local Municipality in terms of resolution number 3.2.1 dated 31 October 2012, resolved to adopt the following Regulation of Parks and Open Spaces By-Laws

**By-Laws**

To provide for the regulation of parks and open spaces within the municipal area of the municipality and to provide for matters incidental thereto.

BE IT ENACTED by the Council of the Mbashe Local Municipality, as follows:

**DEFINITIONS**

1. In these By-Laws, unless the context otherwise indicates:

**“authorised Official”** means an Official of the Municipality who is authorised to do, or to cause to be done any act or function in terms of these By-Laws, and includes a member Of the Municipal Police force;

**“lake/dam”** means body of water impounded on a stream or river;

**“Council”** means —

- (a) the Municipal Council of Mbashe Local Municipality exercising its legislative and executive authority through the Municipality;
- (b) its successor in title;
- (c) a structure or person exercising a delegated power or carrying out an instruction, where any power in these By-Laws has been delegated or

sub delegated or an instruction given, as referred to in section 59 of the Act; or

- (d) a service provider fulfilling a responsibility under these By-Laws, assigned to it in terms of section 81(2) of the Act, or any other By-Law, as the case may be;

**“minibus”** means a motor vehicle designed or adapted, solely or principally, for the conveyance of more than nine (9) persons, but not more than sixteen (16)(including the driver);

**“Municipal Manager”** means the official appointed by the Municipality in terms of the Municipal Systems Act, 2000 (Act No. 32 of 2000) as amended;

**“Municipality”** means Mphashe Local Municipality and its legal successors, and when referred to as-

- (a) a legal entity, means Mphashe Local Municipality as described in section 2 of the Local Government: Municipal Systems Act, (Act No. 32 of 2000); and
- (b) a geographic area, means the municipal area of the Mphashe Local Municipality as determined from time to time in terms of the Local Government : Municipal Demarcation Act,1998 (Act No 27 of 1998).

**“notice”** means an official notice drawn up by the Municipality and displayed by order of the Municipality at entrances to or at conspicuous places in or on a park and to which the Municipality shall make known provisions and directives adopted by it in terms of a By-Law;

**“park”** means parks, open spaces, pleasure resorts, recreation areas, gardens, squares, reserves and bird sanctuaries within the Municipality and being held by the Council, and includes all buildings, grounds and spaces situated in such areas;

**“passenger bus”** means a motor vehicle designed or adapted for the conveyance of more than sixteen (16) persons (including the driver);

**“public holidays”** means all holidays, declared as public holidays in terms of the Public Holidays Act, 1994 (Act 36 of 1994), as amended, or declared by the State President to be a public holiday by virtue of the powers conferred upon him in terms of the said Act;

**“refundable deposit”** means the deposit mentioned in the tariff, determined by the Municipality from time to time and which shall be refunded, on demand, provided, that no damage has been caused to any facility of the Municipality, its environment or the recreation grounds during the period within which the facilities, environment, or recreation grounds are used;

**“swim”** means the entering into the water for the purpose of swimming, or to windsurf or participate in other similar water activity or the accidental contact with the water while participating in such water sport;

**“motor cycle”** means a motor vehicle which has two wheels and includes any such vehicle having a sidecar attached;

**“motor quadracycle”** means a motor vehicle other than a tractor, which has four wheels and which is designed to be driven by the type of controls usually fitted to a motor cycle;

**“motor tricycle”** means a motor vehicle, other than a motor cycle or tractor which has three wheels and which is designed to be driven by the type of controls usually fitted to a motor cycle;

**“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 and an internal 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) any vehicle propelled by electrical power derived from storage batteries and which is controlled by a pedestrian; or
- (ii) any vehicle with a 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.

## **CONTROL OF PARKS**

2. All land laid out or which may hereafter be laid out or proclaimed as public parks, within the Municipality shall be maintained and used solely for the purpose for which it was laid out or otherwise reserved.

## **ENTRANCE TO A PARK**

3. (1) No person shall be present in a park outside the hours indicated on a notice at or within the vicinity of the park;

(2) No person shall enter or leave a park except through the gates provided for that purpose;

(3) No person shall on any day on which an entrance fee is charged enter the park unless he or she has paid the entrance fees determined by the Municipality.

(4) Any person being present in the park shall on request of an authorised official produce proof of payment of the entrance fee if such entrance fee applies.

(5) The Municipality may suspend the payment of entrance fees on any specific day whereon a public function is being held,

(6) The Municipality may suspend the payment of an entrance fee on any specific day or days as it may deem fit.

## **PERSONAL BEHAVIOUR**

4. In keeping with Chapter 2 of the Bill of Rights of the Constitution of the Republic of South Africa, 1996, no person shall:

- (1) fire any firearm or pellet gun, discharge any firework, catapult or sling, throw any stone, stick or other missile, use any squirt, syringe or other instrument, or do anything which may endanger or be deemed a nuisance, objectionable or an annoyance to the public;
- (2) brawl, fight, use profane, indecent or improper language, be intoxicated, bet, gamble, beg, lie on any seat or behave in an indecent or offensive manner, or commit any nuisance or stay in a park overnight;
- (3) use, intrude upon or attempt to intrude upon any water closet, urinal or other place of convenience provided for the opposite sex;
- (4) deliver, utter or read aloud any public speech, prayer, book or address of any kind, or sing any song or hold or take part in any public meeting or assemblage, except with the prior written consent of the Municipality ;
- (5) contrary to a propitiatory notice, prohibiting smoking exhibited on a conspicuous place at or near the entrance of any place or building on a square or other open space, park or other enclosed space, smoke in such place or building;
- (6) obstruct, disturb, interrupt or annoy any person in the proper use of any park;
- (7) refuse to leave any park or any other enclosed space at, or after the time of closing the gates, when requested to do so by any authorized officer of the Municipality, or unlawfully remain therein after the gates or fences or railings have been closed, or enter or leave other than through one of the authorized means of ingress or egress;
- (8) refuse to give his or her name and address when asked to do so by a duly authorized officer of the Municipality during his or her presence in a park;
- (9) make a nuisance of themselves by the consumption of alcohol or other intoxicating substance, to any other users of a park.
- (10) consume or sell any alcohol or prohibited drugs in any park without the applicable authorization approved by the Municipality;
- (11) conduct any sexual activities of whatever nature in any public park or open space Soliciting will not be permitted;

## DAMAGE

### 5. No person shall:

- (1) remove, mark, damage any fountain, statue, monument, bust, post, chain, railing, fence, seat barrier, gate lamp post, notice board or plate, watch box, house, building, shed, urinal, water closet, flag or other matter or thing, or deface or disfigure the same by pasting or affixing in any way any bills, placard or notice, or by cutting, writing, stamping, printing, drawing, or marking thereon;
- (2) cut, remove, dig up, fell, burn, pluck, break, climb up or upon or cause damage to timber or to any tree, shrub, brushwood, fencing post, pole, fern, turf, grass, fruit, flower or plant;
- (3) take, dig, cut, break, damage or remove any gravel, sand, sod, clay, mould, soil, water or other substance;
- (4) light any fire, except at braai facilities, or burn or do any act, which might cause any timber, brushwood, plant, paper, rubbish or other substance to burn;
- (5) go into, or attempt to go into any enclosed place, plantation or garden or any temporary enclosure, or walk on any flowerbed or any grass plots, on which walking may be prohibited;
- (6) commit any encroachment or make or attempt to make any enclosure;
- (7) erect or place any post, railing, fence, pole, peg, spike, tent, booth, screen, stand, swing or other building, erection or obstruction of any kind whatsoever without the consent of the Municipality in writing;
- (8) deposit or leave any refuse, rubbish, paper, dead or other matter or thing in the park, other than in the place provided for such matter;
- (9) wash clothes or other things in any pond, fountain or ornamental water feature, stream, river or otherwise pollute any water therein;
- (10) bathe in any pond, fountain, lake, stream, river or ornamental water feature.

## ENTERTAINMENT

6. No person shall:

(1) sell or offer or expose for sale or hire any commodity or article or distribute any pamphlet, book, handbill, or other printed or written matter without prior written consent of the Council;

(2) play or make preparation to play cricket, football, or any other game, except on the allocated places and at the times set apart for such games by the Council;

(3) use the entertainment apparatus such as swings, roundabouts, seesaws, slides or any other apparatus in a park, which has been supplied for the entertainment of children if he or she is over the age of 16 years;

(4) play or make sounds on any musical instrument, except with the prior written consent of the Municipality.

## ANIMALS

7. (1) No person shall:

- (a) take any dog into or have any dog or other animal in any park or other enclosed public place in contravention of a notice exhibited in such park, or other enclosed public place;
- (b) bathe or wash any dog or other animal, or allow any dog or other animal to be in any pond, fountain, stream or river or ornamental water feature;
- (c) catch or snare birds or lay or place any net, snare or trap for the catching of birds without a permit from the Eastern Cape Provincial Government, Department of Environmental Affairs and Tourism the written consent of the Municipality.
- (d) take birds' eggs or nests, or shoot or chase or attempt to shoot any bird or animal, or throw any stone or stick or other missile, with intent to injure or catch any bird or animal, or in any way interfere with any fish, waterfowl or other animal;

- (e) bring into a park or ride in a park on a horse, mule, donkey or any other farm animal except with prior written permission of the Municipality which written permission shall be produced on request by any authorised official.

(2) In any park where dogs are allowed, such dogs should be kept on leashes. Any person in charge of a dog in a park, shall remove any faeces left by such dog.

(3) Except in the event of a blind person being lead by a guide dog, in which instance the faeces will be removed by the maintenance team of the department.

(4) The owner of a dog or other animal or the person who has a dog or other animal in his or her custody or under his supervision shall take care that such a dog or other animal does not attack or terrify any person, animal or bird in a park without reasonable cause.

(5) The Municipality may impound any dog or other animal found wandering at large and uncontrolled in a park.

## VEHICLES

8. (1) No person shall:

- (a) drive, draw or propel any cycle, or vehicle other than a wheeled chair, or a perambulator drawn or propelled by hand and used solely for the conveyance of a child or children or invalid, in any park, except in the places and at the times which shall be defined by the Council's By-Laws or by notices affixed or set up at or near the entrance to any such park;
- (b) drive any motor cycle, motor quadracycle, motor tricycle or motor vehicle, that may be set aside by notice at a specified rate;
- (c) draw, propel, stand or place any wheeled motor vehicle, motor cycle or cycle or any machine whatsoever upon or over any part of a flowerbed or lawn;

- (d) use any part of any park for the cleaning of any motor cycle, motor quadracycle, motor tricycle or motor vehicle, clothes or other articles;
- (e) carry out repairs or maintenance to any motor vehicle in a park or other area;
- (f) park a motor vehicle or motor cycle, motor quadracycle or motor tricycle in a park at any other place than at the parking areas specially set aside for motor vehicles;
- (g) drive any motor cycle, motor quadracycle, motor tricycle or motor vehicle, in a park while he or she is under the influence of alcohol or any other drug.

(2) The Municipality reserves the right to permanently or temporarily close any road or walkway in a park,

## **TRADING**

9. (1) No refreshment or drinks shall be hawked or offered for sale in a park except in the rooms, buildings and places assigned by the Municipality and by persons or bodies properly authorised thereto by the Municipality.

(2) No peddler or street vendor shall be allowed to trade in a park without prior permission from the Municipality.

(3) No person shall beg in a park.

(4) No person shall gamble, participate or present gambling or games of chance in a park.

## **MEETINGS AND ORCHESTRAL PERFORMANCES**

10. No person shall:

(1) present or participate in an orchestral performance in a park without written permission of the Municipality and on such conditions as it may determine;

(2) present or participate in a sermon, lecture, public discussion or a meeting without the written permission of the Municipality.

## **CAMPING**

11. No person shall erect any structure in a park without the permission of the Municipality in terms of its tariffs. No camping overnight is permitted in a park.

## **LAKE AND DAM WATERS**

12. (1) No person shall

- (a) swim in a lake, dam, stream or river except with the permission of the Municipality on special occasions, nor shall he or she wash himself or herself, his or her clothes or any other item in a lake, dam, stream or river.
- (b) launch a boat, canoe, raft or any other floating object, irrespective of its propulsion mechanism, onto a lake or dam except from those sections of a lake shore specifically apart by the Municipality for that purpose in consultation with existing aquatic clubs.

(2) The use of a lake or dam surface shall be subject to such conditions as the Municipality or its agents to whom the Municipality relinquished the control determines.

## **ANGLING**

13. (1) No person shall:

- (a) angle without a permit to angle issued by the Eastern Cape Provincial Government, Department of Environmental Affairs and Tourism;
- (b) angle in a lake or dam except from such portions of the lake shore that the Municipality from time to time specially sets aside for that purpose;
- (c) angle in a lake or dam before or after times specified by the Municipality ;

(2) The Municipality reserves the right to temporarily close the angling areas or any part thereof at its own discretion;

(3) The Municipality reserves the right to delegate the control of angling to a third party at its discretion.

## **CLOSING OF PARKS TO THE PUBLIC**

14. (1) Subject to the provisions of the Local Government Ordinance 17 of 1939, the Municipality reserves the right to close a park or part thereof or to limit the use thereof to a particular group or organization temporarily or permanently.

(2) The Municipality shall, by notices posted at or near the entrance gates, indicate the hours during which any park or enclosed space is closed to the public and may, for any special purpose close any park or closed space, or any part thereof, or any building therein, to the public for such time as it may from time to time consider necessary or expedient.

(3) Applications to permanently close or sell any park within Mbhashe shall be presented to the Environmental Development Portfolio Committee for approval, after consultation with the relevant Ward Councillor.

(4) The Municipality shall be entitled to limit the number of visitors to a park or any portion thereof.

(5) That applications for the use of a park by individuals or organisations for any purpose that may in any way restrict the use of the park by the general public be submitted in writing to the Executive Director: Environmental Development at least one month prior to the event for approval, such applications also to be forwarded to the relevant Ward Councillor for information.

## **PENALTIES**

15. (1) A person contravening a provision of these By-Laws shall be guilty of an offence and be punishable on conviction by imprisonment for a period not exceeding 6 months, or to a fine not exceeding R 2000, 00 or to both such fine and



imprisonment, and in the case of continuing offences, be liable to such fine or imprisonment for each such offence, or to both such fine and imprisonment.

(2) In addition to the fines mentioned in subsection (1), a person convicted of a contravention of these By-Laws must compensate the Municipality for any loss or damage it may have incurred as a result of the contravention. The Municipality may institute a claim in the appropriate court for the amount of such loss or damage.

(3) The Municipality may refuse entrance to a park to a person who repeatedly contravened these By-Laws in which case the authorized official may forthwith remove such a person found in a park from the park notwithstanding the provisions of subsection 15(2).

### **REPEAL OF MUNICIPALITY BY-LAWS**

16. The provisions of any By-Law relating to regulation of parks and open spaces by the Municipality are repealed insofar as they relate to matters provided for in these By-laws but such provisions are not deemed to be repealed in respect of any By-law which has not been repealed and which is not contrary to these By-Laws.

### **SHORT TITLE AND COMMENCEMENT**

17 . These By-Laws are called Regulation of Parks and Open Spaces By-Laws and, 2012 and will come into operation on the date of publication in the *Provincial Gazette*

**No. 13**

# **MBHASHE LOCAL MUNICIPALITY**

## **CHILD-CARE FACILITIES BY-LAWS**

**MBHASHE LOCAL MUNICIPALITY  
NOTICE**

Notice is hereby given in terms of section 13 of the Local Government Municipal Systems Act, 2000(Act 32 of 2000), as amended, read with sections 156 and 162 of the Constitution of the Republic of South Africa, 108 of 1996 as amended, that Mbashe Local Municipality in terms of resolution number 3.2.1 dated 31 October 2012, resolved to adopt the following Child Care Facilities By-Laws

**By-Laws**

To provide for the control of child care services in Mbashe Municipality and for matters connected therewith.

**BE IT ENACTED** by Mbashe Local Municipality, as follows:

**APPLICATION OF BY-LAWS**

1. These By-Laws apply to all child-care services or institutions.

**HEALTH CARE CERTIFICATE**

2. (1) subject to the provision of sub regulation (2) no person must conduct a child-care service or be permitted to care for children:
  - (a) on a premises in respect of which a valid health certificate has not been issued or is not in force:
  - (b) in contravention of any restriction or condition or stipulation contained in such health certificate.
- (2) The provision of sub regulation (1) will come into effect in the case of a child-care institution or service existing at the time of publication of these By-Laws on the first day following a period of six months after the date of promulgation of these By-Laws.
- (3) The person in charge of any child-care service wishing to obtain a health certificate in respect of such premises must apply in writing to the Municipality in whose area of jurisdiction the premises are situated on a form containing at least the particulars that are substantially the same as those contained in the prescribed form.
- (4) An Environmental Health Officer may, in considering such application, request further information as he or she may deem necessary or expedient from the applicant or from any other person.
- (5) If the person in charge of a child-care facility or service is replaced by another person, such person must inform the Municipality in writing of such replacement within 30 days

of the date thereof, subject to the provisions of By-Laws 4(2), the Municipality must then issue a new health certificate in the name of the new person in charge

(6) A health certificate:-

- (a) must not be transferable from one person to another person and from one premises to another premises;
  - (b) must be valid only in respect of child-care set out in the application for a health certificate;
  - (c) must state the number and both minimum and maximum ages of the children permitted to be cared for on such premises and the hours during which such child-care service may operate;
  - (d) may at any time be endorsed by the Environmental Health Officer by:
    - (i) the addition of any further restriction that may be necessary to prevent a health hazard or danger to a child; and
    - (ii) the removal of any restriction.
  - (e) must expire temporarily for the period during which a prohibition under regulation (4) 2 is in effect;
  - (f) must expire permanently if a prohibition referred to in regulation 4(2) is not removed within a stipulated period which must not exceed two months from the date on which a notice was issued in terms of By-Laws 4(2)
  - (g) must expire permanently if the provisions of regulation 3 (5) are not complied with;
- (7) no person must make any unauthorised changes or additions to or forge a health certificate.

### **PROHIBITION ON CHILD-CARE**

3. (1) No person must care for children in a manner contrary to the provisions of these By-Laws;

(2) if an Environmental Health Officer following an inspection of a child-care service or facility is of the opinion:-

- (a) that such child-care service or facility:-
  - (i) are or is in such condition or used in such a manner; or

- (ii) do or does not comply with these By-Laws to the extent; or
  - (b) that a particular activity with regard to the care of children takes place in such a manner, or
  - (c) that such circumstance exists with regard to the child-care facility or service or any other activity, that they constitute a health hazard or a hazard to the safety of the children and that continued use of the child-care service or facility or the activity should be prohibited, the Environmental Health Officer must summarily prohibit the use of the child-care service or facility or any of the activities that relate to the care for children by serving a notice in terms of sub-section 7(1) on the person in charge or if he or she is not available, his or her representative informing such person of the prohibition.
- (3) A notice referred to in sub regulation (2) must contain at least the following particulars:-
- (a) the reason(s) for the prohibition;
  - (b) a statement that the prohibition will in writing be removed by an Environmental Health Officer as soon as the reason(s) for the prohibition has (have) been removed and provided the Environmental Health Officer is satisfied that the reason(s) for the prohibition is (are) not likely to recur.
- (4) a prohibition will come into operation from the time at and the date on which a notice service under sub regulation (2).
- (5) No person must perform any act that is contrary to such prohibition.
- (6) An Environmental Health Officer must, with 72 hours of receiving a request for the removal of a prohibition, carry out an investigation of the child-care facility or service, activity or circumstance which gave rise to the prohibition and the Environmental Health Officer must upon completion of such investigation in writing inform the person on whom the prohibition notice was served or if he or she is not available, any other person representing such person, that the prohibition has been removed or remains, as the case may be.
- (7) The Municipality may levy an inspection fee on the person in charge for each investigation carried out by an Environmental Health Officer in terms of sub regulation (5).
- (8)(a) Whenever any notice, order or other document is under these By-Laws required to be served-
- (i) on any person, it must be deemed to be duly and sufficiently served if it is sent by registered post to that person at his or her

last known address, or if it is left there at with him personally or with some adult inmate thereof.

- (ii) on an owner or occupier of any premises and the address of such owner or occupier is unknown, it must be deemed to be duly and sufficiently served if it is posted up in some conspicuous place on such land or premises.

(b) it is not be necessary in any notice, order or other documentation given under these By-Laws to an owner or occupier of land or premises to name him or her, if the notice, order or document describes him or her as the owner or occupier of the land or premises in question.

### **REQUIREMENTS FOR PREMISES**

4. (1) no person must care for children elsewhere than on or in premises that meets the requirement of this regulation.

(2) Child-care facility or service must be of such location, design, construction and finish and must be so equipped, in such condition and so appointed that it can be used at all times for the purpose of which it was designed, equipped and appointed-

(a) without creating a health hazard; and

(b) in such manner that children-

- (i) can be cared for hygienically thereon, and
- (ii) can be effectively protected by the best practical methods against all elements, heat, vapours, odours, smoke, dust, moisture, cold, insect or any other physical, chemical, biological dangers or pollutions, any substance or thing that is dangerous to the child, or any other agent or substance whatsoever, to the best interest of the child.

(3) in respect of child-care for children under compulsory school-going age, the following accommodation and facilities must be provided for the purposes of subsection (2).

### **INDOOR PLAY AREA:**

5. (1) All building or structure(s) used as an indoor play area of a child-care service or facility must be constructed of approved material(s) in an approved manner taking into consideration construction and erection, cross ventilation and lighting, thermal protection, health and safety of the child and best practical method.

(2) The floor must have smooth surface which is easily washable and which prevent the permeation of dampness.

(3) an indoor play area of at least 1.5m<sup>2</sup> free unobstructed floor space per child must be provided.

(4) Separate indoor play areas must be provided for the following different age groups:

- (a) 0-2 years;
- (b) 2-4 years;
- (c) 4 years up to compulsory school-going age;
- (d) after-school children (school going children)

(5) the children in the different age groups must be cared for separately at all times.

(6) Divisions or removable partitions may be used.

### **OUTDOOR PLAY AREA**

6. (1) an outdoor play area, which is free of any excavations, steps, projections, levels or any surface which is dangerous or may constitute a safety hazard must be provided.

(2) A minimum outdoor play area of 2m<sup>2</sup> per child must be provided.

(3) If no outdoor area is available an approved additional indoor area of 1.5 m<sup>2</sup> per child must be provided.

(4) Divisions or removable partitions may be used.

(5) an outdoor play area, which is free of any excavations, steps, projections, level of any surface which is dangerous or may constitute a safety hazard must be provided.

(6) A minimum outdoor play area of 2m<sup>2</sup> per child must be provided.

(7) If no outdoor area is available an approved additional indoor area of 1.5m<sup>2</sup> per child must be provided.

(8) The should have an approved means of enclosure and lockable gates to prevent a child leaving the premises on his own and to prevent the entrance of animals or unauthorised persons.

(9) Separate outdoor play area must be provided for the following different age groups:

- (a) 0-2 years;
- (b) 2-4 years;
- (c) 4 up to compulsory school going age;

(d) after-school children (school-going children).

(10) Approved toilet and wash facilities must be provided for children from 2 years of age up to school going age.

(11) One water closet or chemical toilet must be provided for every 15 children or part thereof.

(13) One hand wash facility must be provided for every 20 children or part thereof.

(14) Preferably running water must be available at the wash and basins, if no running water is available, minimum of 25 litres of potable water must be available at all times at the premises, and stored in a hygienically clean container and must be suitably protected.

(a) Toilet and wash facilities for children under the age of 2 years:

- (i) an approved separate napkin changing unit must be provided for changing of napkins of children under the age of 2 years;
- (ii) an approved method in accordance with the best practical method must be used to clean the children wearing napkins;
- (iii) approved containers for the storage of clean and soiled napkins must be provided;
- (iv) approved hand wash facilities must be provided in the napkin changing area.

(b) Toilet and hand wash facilities for children from 2 years of age up to school going age:

- (i) approved toilet and wash facilities must be provided for children from 2 years of age up to school going age;
- (ii) one water closet or chemical toilet must be provided for every 20 children or part thereof;
- (iii) preferably running water must be available at the wash hand basins, if no running water is available, a minimum of 25 litres of potable water must be available at all times at the premises, and stored in a hygienically clean container and must be suitably protected

(c) toilet and hand wash facilities for staff members must be provided in the preferably separate from the facilities used by children.

(d) no children must have, at any time access to living quarters of staff and measures must be taken to keep such living quarters separately.



(15) An adequate in size for the treatment and care of any child who falls ill or who is injured during day care must be provided.

(16) An approved method for hand washing must be provided in the sick bay area.

(17) An approved lockable and adequately equipped first aid unit must be provided in the sick bay area.

(18) An area adequate in size where food is to be handled, prepared, stored or provided to children or any other purpose.

(19) A separate and an approved storage area must be provided for the storage of indoor and outdoor play materials and equipment and for stretchers, sleeping mats, bedding and linen.

(20) A separate and approved designated storage facility for the storage of the personal belongings of each child and staff member must be provided.

### **RESTING AND PLAY EQUIPMENT**

7. (1) Suitable child sized seating accommodation and tables must be provided for each child.

(2) Adequate and an approved individual resting or sleeping equipment must be provided for the separate use of each child.

(3) An approved blanket for the individual use of each child must be provided.

(4) Adequate, approved and safe indoor and outdoor play equipment must be provided for the children's use.

### **AFTER SCHOOL FACILITIES**

8.(1) In respect of child-care for children of school going age the following accommodation must be provided for the purposes of section 5(2):

- (a) where an after-school care is provided on the same premises as for the care of children under school going age, such facilities must be kept totally separate, except for the kitchen and office area;
- (b) an indoor care area of at least-
  - (i) 1.5m free floor space for each child must be provided;
  - (ii) one toilet and one hand wash facility must be provided for every 20 children or part thereof, such facilities must be separately designated for the use of each sex; and

- (iii) approved and adequate seating equipment and tables must be provided for each child.

### **MEDICAL CARE FOR CHILDREN**

9. (1) The parent or guardian of the child who becomes ill or has suffered an injury requiring medical attention must be notified as soon as possible.
- (2) Whenever a child becomes ill or has suffered an injury requiring medical attention, medical assistance must be summoned for which purpose a telephone must be easily available.
- (3) Any child who falls ill or has suffered an injury must receive the necessary care and treatment in the sick bay area, so designated.
- (4) In the event of a communicable disease, the Municipality must be notified immediately.
- (5) The child-care provider must ensure that all children have completed basic immunisation schedules as deemed necessary.
- (6) The provisions of these By-Laws regarding the exclusion of children from day-care services on account of infectious diseases made in terms of the Health Act and amended must apply to all child-care services.

### **SAFETY MEASURES**

10. The following measures must be taken on premises on which child-care services are conducted:

(11) Children must be adequately protected against fires, hot water installations, electrical fittings and appliances, heating appliances and any other article or thing or substance which may be dangerous or cause injury to any child.

- (a) any slats or rails forming part of an enclosure, security gate, play pen, bed, cot or any other object or structure whatsoever, must not be more than 75mm and be maintained in a good state of repair and if painted only non-toxic paint must be used;
- (b) all medicines, pesticides, detergents and other harmful substances must be stored so as not to be accessible to any child and be under lock and key at all times;
- (c) No noxious or poisonous or dangerous plant or shrub must be permitted on the premises and no animal or birds be kept on the premises without the approval of the Environmental Health Officer;
- (d) no person known or suspected to be suffering from an infectious or contagious disease and no person so suffering, must be allowed on the premises while in the

opinion of the Environmental Health Officer or medical trained person, such person is capable of communicating such infectious or contagious disease;

- (e) no paddling pool, swimming pool or other structure must be permitted in any child-care service without an approved fencing and safety net;
- (f) the sandpit must be covered with an approved covering material when not in use and must be treated with a treatment agent on a regular basis;
- (g) the provision of the By-Laws regarding the exclusion of children from day-care services on account of infectious disease made in terms of the Health Act as amended must apply to all child-care services; and
- (h) any other reasonable measures that may in the opinion of the Environmental Health Officer be necessary to protect the children from any physical danger must be taken by the child-care service on instruction of the Environmental Health Officer.

#### **GENERAL DUTIES AND LIABILITIES FOR COMPLIANCE WITH THE BY-LAWS**

11. The health certificate holder must ensure that the children are at all times properly cared for and supervised and must-

- (a) maintain every part of the child care service, including any outdoor area and all structure and equipment in good repair and in a clean and hygienic condition at all times;
- (b) ensure that all persons on or in the premises are clean in person and clothing and are in good state of health;
- (c) ensure that no person must smoke or use any tobacco product in the presence of children;
- (d) ensure the toys, books and other indoor play material intended for day-to-day use are available in the indoor play areas and suitably store so as to be within easy reach of the children.
- (e) ensure that the children are at all times under the direct supervision of the specified number of adults in the following ratio:
  - (i) one adult supervisor for every 6 babies between 0-18 months;
  - (ii) one adult supervisor for every 12 children between 18 months and 3 years;
  - (iii) one adult supervisor for every 20 children between 3 and 5 years;
  - (iv) one adult supervisor for every 30 children between 5 and 6 years;

- (v) one adult supervisor for every 35 children of school going age;
- (f) if transport to or from a child care service is provided such a service, must ensure that:
  - (i) the children are supervised by at least one adult apart from the driver during transport;
  - (ii) the doors of the vehicle are lockable so that they cannot be opened from the inside by the children;
  - (iii) no children are transported in the front seat of the vehicle;
  - (iv) no babies must be placed under the seat of a vehicle;
  - (v) the vehicle is not overloaded in terms of any applicable law;
  - (vi) the transport of children are not allowed in the boot of any vehicle;
  - (vii) the driver of the is licensed to transport passengers as stipulated in the Road Traffic Ordinance;
  - (viii) the vehicle is licensed and is in a road worthy condition;
  - (ix) that when children are transported in the back of an enclosed light commercial vehicle, care must be taken to ensure that no exhaust fumes enter the enclosed area, and that the said enclosed is sufficiently ventilated.
- (g) if meals are provided an approved two weekly menu must be displayed as to be visible to the parents;
- (h) meals provided must be nutritionally balanced and of adequate volume to satisfy the energy of the children in each age group;
- (i) whenever laundry is done on the premises such laundry must be done in an approved area away from any area used to cater for children and no laundry must be done in the kitchen or kitchen area;
- (j) an approved and adequate number of bins with self-closing lids for the disposal of paper, paper towels, tissues and other waste material must be provided inside the premise;
- (k) an approved refuse area, with adequate and approved refuse bins must be provided for the storage of refuse pending removal;

- (l) approved towels preferably disposable towels for the individual use of children must be provided;
- (m) suitable pegs or hooks for the individual hanging of the children's towels which must be individually marked with the child's name or symbol must be provided.

### **APPLICATION FOR ADMISSION**

11.(1) the health certificate holder must ensure that an application form containing the following information is completed by the parent or guardians of a child on admission to child care service:

- (a) the child's name and date of birth;
- (b) name, address and telephone number the parent or guardian;
- (c) place of employment and telephone numbers of the parent or guardian;
- (d) name, address and telephone number of a responsible person other than the parent or guardian who may be consulted in emergencies;
- (e) name, address and telephone number of the child's doctor and permission to consult him or her.

(2) all application forms must be retained for minimum of 3 years and the relevant date admission discharge of the child referred to, in such form, must be entire thereon.

### **REGISTERS**

12. (1) An admission and discharge register of all children admitted to and discharged from the child care service must be kept.

(2) a register of attendance must be kept in which the presence or absence of children must be noted daily

(3) such attendance register must include the children's respective dates of birth.

### **MEDICAL REPORT**

13. A report containing the following health data must be obtained from the parent or guardian in respect of each child admitted and care for

- (a) information concerning the child's general state of health and physical condition;
- (b) operations, illnesses and any communicable diseases which the child has suffered and the relevant dates;

- (c) details of required immunisations;
- (d) details of allergies and any medical treatment such child may be undergoing

## **JOURNAL**

14.(1) a journal, diary, log book or book of similar nature must be kept in which important or outstanding events, including accidents and explanations are recorded.

A medicine journal must be kept in which the medicine and quantity that are given to a child are recorded and must be signed daily by the parent or guardian.

## **RIGHT OF ENTRY AND INSPECTION OF PREMISES AND RECORDS**

15. (1) A duly authorised Environmental Health Officer may for any purpose connected with the carrying out of these By-Laws, at all reasonable times and without previous notice, enter any premises upon which a child care service is conducted, or upon which such officer has reasonable ground for suspecting the existence of child care service and make such examination, enquiry and inspection thereon as the officer may deem necessary.

## **PENALTY CLAUSE**

16. (1) any person who fails to give or refuses access to any Environmental Health Officer duly authorised by these By-Laws or by the Municipality to enter upon and inspect any premises, or obstructs or hinder such official in the execution of his/her duties in terms of these By-Laws, or who fails or refuses to give information that the officer may lawfully require, or who give to such official false or misleading information, or who unlawfully prevent any other person from entering upon such premises, must be guilty of an offence.

(2) Any person who-

- (a) fails or refuses to comply with any provision of these By-Laws or any requirements imposed by the Environmental Health Officer in terms of these By-Laws;
- (b) being a health certificate holder allows:
  - (i) a greater number of children than the number stated on the health certificate to be enrolled at or to be present in a child care service to which the health certificate relates;
  - (ii) any child who is care for in contravention of section 5(3)(a) and (b) of these By-Laws.
  - (iii) allow such child care service to be operated,

is guilty of an offence.

#### **REPEAL OF BY-LAWS**

17. All previous Council regulations, policies and arrangements dealing with child care facilities are repealed.

#### **SHORT TITLE AND COMMENCEMENT**

17. These By-Laws are called Child Care Facilities By-laws, 2012 and will come into operation on the date of publication in the *Provincial Gazette*

**No. 14**

## **MBHASHE LOCAL MUNICIPALITY**

### **CEMETERIES AND CREMATORIA BY-LAWS**



**MBHASHE LOCAL MUNICIPALITY****NOTICE**

Notice is hereby given in terms of section 13 of the Local Government Municipal Systems Act, 2000(Act 32 of 2000), as amended, read with sections 156 and 162 of the Constitution of the Republic of South Africa, 108 of 1996 as amended, that Mbashe Local Municipality in terms of resolution number 3.2.1 dated 31 October 2012, resolved to adopt the following Cemeteries and Crematoria By-Laws

**BY-LAWS**

**To provide for the establishment and management of cemeteries in the Mbashe Municipality; and for matters connected therewith.**

**BE IT ENACTED** by Mbashe Municipality, as follows:.

**TABLE OF CONTENTS****CHAPTER 1****Interpretation**

1. Definitions

**CHAPTER 2****Establishment and management of cemeteries**

2. Establishment of cemeteries
3. Official hours
4. Register
5. Numbering of graves
- G. Reservation of graves and niches in municipal cemeteries
7. Transfer of reserved rights
8. Number of corpses in a single grave in a municipal cemetery

**CHAPTER 3****Burials**

9. Application for a burial
10. Burial of a corpse
11. Burial of ashes
12. Burial of a cadaver
13. Persons dying outside the Municipality

14. Measurements of graves

#### **CHAPTER 4**

##### **Cremation**

15. Cremation

#### **CHAPTER 5**

##### **Exhumation**

16 Exhumation from a municipal cemetery

#### **CHAPTER 6**

##### **Memorial work**

17. Memorial work

18. Graves supplies with a berm

#### **CHAPTER 7**

##### **Maintenance**

19. Maintenance of graves

#### **CHAPTER 8**

##### **General conduct in municipal cemeteries**

20. General conduct in municipal cemeteries

#### **CHAPTER 9**

##### **Private cemeteries**

21. Establishment of private cemeteries

22. Application to establish private cemeteries

23. Record of private cemeteries to be kept by the Municipality

24. Land on which a private cemetery has been established may be used for burials only

25. Exhumation of corpses from private cemeteries

## CHAPTER 10

### Miscellaneous

- 26. Injuries and damages
- 27. Firearms and traditional weapons
- 28. Penalty clause and expenses
- 29. Short title

## CHAPTER 1

### Definitions

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

**"adult"** where the word is used to describe a corpse, means a corpse buried in a coffin that will fit into a grave for adults as contemplated in section 14;

**"ashes"** means the remains of a corpse after it has been cremated;

**"building control officer"** means any person appointed or deemed to be appointed as building control officer by the Municipality in terms of section 5 of the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977);

**"burial"** means burial in earth or any other method of disposal of a corpse, ashes or a cadaver in the manner provided for in this By-law;

**"burial order"** means an order issued in terms of the provisions of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992) authorising a burial;

**"caretaker"** means the officer appointed by the Municipality to supervise and control a municipal cemetery or municipal cemeteries, and his or her delegates;

**"cemetery"** means land or part thereof, including the buildings and works thereon, duly set aside and reserved for the purpose of burials and must include a columbarium;

**"child"** (where the word is used to describe a corpse) means a corpse that is being buried in a coffin that fits into a grave for a child as contemplated in section 14;

**"columbarium"** means a memorial wall or a wall of remembrance provided by the owner of a cemetery for the burial of ashes;

**"corpse"** means any dead human body, including the body of a stillborn child;

**"developed area"** means that portion of the area of jurisdiction of the Municipality which –

- (a) has by actual survey been subdivided into erven;
- (b) is surrounded by surveyed erven; or

(c) is an informal settlement;

**"grave"** means a piece of land in a cemetery laid out, prepared and used for a burial;

**"holder"** means a person to whom a reservation certificate for a specific grave in a municipal cemetery has been issued in terms of section 6 or a law repealed by section 29;

**"Medical Officer of Health"** means the officer appointed by the Municipality from time to time in such position and his or her delegates;

**"memorial work"** means any headstone, monument, inscription or other similar work or portion thereof erected or intended to be erected upon a grave or a columbarium;

**"municipal cemetery"** means a cemetery that is owned and controlled by the Municipality and made available for public use from time to time;

**"Municipality"** means the Mphashe Municipality;

**"Municipal Manager"** means the person appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

**"niche"** means the cavity in a columbarium provided for the burial of ashes;

**"plaque"** means a tablet erected on the columbarium for identification purposes;

**"prescribed fees"** means the fees as determined from time to time by the Municipality;

**"private cemetery"** means a cemetery situated –

- (a) inside the area of jurisdiction of the Municipality; and
- (b) outside a developed area,

not owned and controlled by the Municipality, made available from time to time by the owner thereof for private use and must include a single grave;

**"resident"** means a person who at the time of his or her death, was ordinarily resident within the Municipality or under law liable for the payment of assessment rates, rent, service charges or levies to the Municipality;

**"responsible person"** means the nearest surviving relative of the deceased person or a person authorised by such relative, or if the caretaker is satisfied that such person does not exist or that the signature of such relative or authorised person cannot be obtained timeously for the purpose of completing the necessary

application forms, another person who satisfies the caretaker as to his or her identity, interest in the burial, capacity to pay the prescribed fees and to comply with the applicable provisions of this By-law; and

"**stillborn**" in relation to a child, means that it had at least 26 weeks of intra-uterine existence, but showed no sign of life after complete birth.

## **CHAPTER 2**

### **Establishment and management of cemeteries**

#### **Establishment of cemeteries**

2. (1) The Municipality may from time to time set aside and reserve suitable municipal land within the Municipality for the establishment and management of a municipal cemetery.

(2) The Municipality may, in accordance with the provisions of Chapter 9, consider and approve an application for the establishment and maintaining of a private cemetery or a private columbarium on private land.

(3) A cemetery established under a law repealed by these By-Laws, or that otherwise existed when these By-Laws come into operation, is deemed to be established under this section.

(4) The Municipality may set aside, reserve and demarcate within a municipal cemetery, in accordance with an approved layout plan, such areas as the Municipality may deem expedient for exclusive use by the members of a particular religion or denomination, or for the burial of adults, children, members of security forces or war heroes, or for the creation and management of -

- (a) a berm section where memorial work of a restricted size may be erected only on a concrete base provided by the Municipality at the top or bottom end of a grave, while the top surface of the grave is leveled;
- (b) a monumental section where memorial work erected must cover the entire grave area;
- (c) a semi-monumental section where memorial work, without a restriction on the size, may be erected only on a concrete base at the top end of a grave, which base will not be provided by the Municipality;
- (d) a natural-grass section where the surface of graves are leveled and identified by numbers affixed on top of the graves in such a way that a lawnmower can be used to cut the natural grass without damaging the numbers;

- (e) a traditional section where the surface of graves are leveled and memorial work does not have to cover the entire grave area, and may be erected on graves that are not supplied with a concrete base as required in the berm section;
- (d) a columbarium section where ashes may be buried in a niche in a memorial wall or wall of remembrance provided by the Municipality.

### **Official hours**

3. (1) The municipal cemetery and the office of the caretaker must be open during the hours as determined by the Municipality and the cemetery office of the caretaker must be open from Monday to Friday.

(2) Burials in a municipal cemetery must take place on the days and during the hours determined by the Municipality.

(3) The Municipality has the right to close a municipal cemetery or any portion thereof to the public for such periods and for such reasons as the Municipality may deem fit.

(4) No person must be or remain in a municipal cemetery or part thereof before or after the official hours as determined by the Municipality or during any period when it is closed for the public, without the permission of the caretaker.

### **Register**

4. A register of graves and burials must be kept by the caretaker of a municipal cemetery and such register must be completed as far as possible immediately after a burial has taken place, with reference to the prescribed particulars contained in the burial order concerned.

### **Numbering of graves**

5. (1) All graves in a municipal cemetery that are occupied or for which a burial has been authorised in terms of the provisions of section 9, must be numbered by the Municipality.

(2) The number must be affixed to the grave and indicated on a plan to be kept available in the caretaker's office.

### **Reservation of graves and niches in municipal cemeteries**

6. (1) Any person who wishes to reserve a specific grave for future use in a municipal cemetery, must apply to the caretaker of that cemetery and such application must -

- (a) be done in writing on the form provided by the Municipality; and
- (b) be accompanied by the prescribed fees.

(2) The Municipality may grant or refuse the application.

(3) If the application is granted, the Municipality must issue a reservation certificate to the applicant setting out the conditions subject to which the certificate is issued.

(4) If the Municipality refuses the application, it must set out its reasons for such refusal in writing, and return the fees referred to in subsection (i)(b) to the applicant.

(5) The reservation of a grave made and recorded in the official records of the Municipality in terms of a law repealed by section 29, is deemed to be done under this section.

(6) The provisions of subsections (1) to (5) must apply necessary changes in respect of the reservation of a specific niche in a municipal columbarium.

#### **Transfer of reserved rights**

7. (1) A reserved right as contemplated in section 6 may not be transferred without the prior written approval of the Municipality.

(2) Application to transfer such right must be made to the caretaker in writing by completing and submitting a prescribed application form.

(3) If the application is granted, a certificate must be issued in favour of the transferee who will become the holder.

(4) The reserved right may be cancelled on request of the holder and if the request is approved by the Municipality, the amount paid by the holder (if any), minus 10 % administration fees, will be refunded to the holder.

#### **Number of corpses in a single grave in a municipal cemetery**

8. (1) Only one corpse may be buried in a grave with measurements as contemplated in section 14(1) or (2).

(2) Only two corpses may be buried in a grave with measurements as set out in section 14(4), if application for the burial of two corpses has been made to the caretaker in writing by submitting an application mentioned in section 9(1) before the first corpse is buried.

(3) After the reopening of a grave for the purpose of the burial of a second corpse as mentioned in subsection (2) in that grave, a concrete layer of not less than 25 mm thick must be cast above the coffin previously buried.

(4) If on reopening any grave, the soil is found by the Medical Officer of Health to be offensive or dangerous to the general health of people, the situation must be handled in consultation with the Medical Officer of Health.

## **CHAPTER 3**

### **Burials**

#### **Application for a burial**

9. (1) Application for permission for a burial in a municipal cemetery must be made to the caretaker on the prescribed application form and such application must

- (a) the prescribe burial order;
- (b) the prescribed fees; and
- (c) a reservation certificate, where applicable.

(2) No person must, without the prior written permission of the Municipality, execute, cause or allow a burial, including the burial of ashes or a cadaver, in any other place in the Municipality than in a municipal cemetery.

(3) An application for permission for a burial must be submitted to the caretaker of a municipal cemetery at least 24 working hours prior to the planned burial, failing which the caretaker may refuse the application.

(4) No person must execute a burial or cause or allow a burial to be executed in a municipal cemetery, unless written approval for the burial has been obtained, a specific grave has been allocated for the purpose of the burial and a date and time for the burial has been arranged with the caretaker.

(5) In allocating a date and time for a burial, the caretaker must have regard to the customs of the deceased's relatives and their religion or church affiliation.

(6) The allocation of a specific grave is the responsibility and in the sole discretion of the caretaker and a burial must be executed only in a grave allocated by him or her, but in allocating a grave the caretaker must as far as practicable allow the responsible person access to a plan of the cemetery showing the various sections, and allow him or her to select the section of his or her choice, but not the individual grave of his or her choice.

(7) The Municipality may allow in its discretion a burial without payment of the prescribed fees in a part of a municipal cemetery set aside for such purposes and in such manner as it may deem fit.



(8) Notice of cancellation or postponement of a burial must be submitted to the caretaker at least 4 working hours before the time set for the burial.

(9) The granting of permission for a burial and the allocation of a specific grave in a cemetery, does not give the applicant, the responsible person or any other person any right in respect of such grave other than to bury a corpse in the grave.

### **Burial of a corpse**

10. (1) All graves in a municipal cemetery must be provided by the caretaker, with the exception of brick-hed or concrete-lined graves, in which cases the brickwork or concrete work must be carried out by the undertaker under the supervision of the caretaker and in conformity with the specifications applicable to ordinary graves.

(2) There must be at least 1200 mm of soil between the top of an adult coffin and the ground surface, and at least 900 mm of soil between the top of a child coffin and the ground surface.

(3) All corpses must be placed in a coffin for the burial thereof, except as provided for the Muslim community.

(4) No person must, without the prior permission of the caretaker, conduct any religious ceremony or service according to the rites of one denomination in any portion of a municipal cemetery reserved by the Municipality in terms of the provisions of section 2(4) for the use of some other denomination.

(5) No person must permit any hearse in a municipal cemetery to leave the roads provided, and every hearse must leave the cemetery as soon as possible after the funeral for which it was engaged.

(6) Every person taking part in any funeral procession or ceremony must comply with the directions of the caretaker as to the route to be taken within the municipal cemetery.

(7) No person must convey, or expose a corpse or any part thereof, in an unseemly manner in any street, cemetery or public space.

(8) Every application and every document relating to a burial in a municipal cemetery must be marked with a number corresponding to the number in the register referred to in section 4 and must be filed and preserved by the Municipality for a period of not less than ten years.

### **Burial of ashes in municipal cemeteries**

11. (1) Ashes may be buried in a municipal cemetery in a coffin and only two such coffins containing ashes may be buried in an extra deep grave as contemplated in section 14(4), if a coffin does not exceed the average body weight of 70 kg, and furthermore, that the grave is readjusted to the prescribed depth and measurements.

(2) No person must execute a burial or cause a burial of ashes to be executed in a municipal cemetery, unless written approval for the burial has been obtained, a specific grave or niche has been allocated for the purposes of the burial and a date and time for the burial has been arranged with the caretaker of the municipal cemetery.

(3) Application for the burial of ashes for definite periods or in perpetuity, or for the provision of memorial tablets of approved material to be fixed on the building, columbarium or other facility, must be made to the caretaker of the municipal cemetery on the prescribed application form.

(4) Subject to section 6, niches must be allocated by the caretaker of the municipal cemetery strictly in the order in which the applications therefore are received.

(5) An application for permission for a burial must be submitted at least 24 working hours prior to the planned burial, failing which the caretaker of the municipal cemetery may refuse the application.

(6) An urn or casket containing ashes that has been deposited in a building, columbarium or other facility of the Municipality, must not be removed without the caretaker's prior written consent.

(7) Every niche containing ashes must be sealed by a tablet approved by the Municipality and must only be opened for the purpose of withdrawing an urn or casket contained therein for disposal elsewhere, or for the purpose of depositing an additional urn or casket therein where after it must once again be sealed.

(8) Application for the opening of a niche must be made to the caretaker of the municipal cemetery on the prescribed application form.

(9) No person must introduce any material into the columbarium for the purpose of constructing or erecting any memorial work therein, unless and until -

- (a) approval for the burial has been obtained in terms of the provisions of section 9;
- (b) approval for the erection of the memorial work has been obtained in terms of the provisions of section 17(1); and
- (c) the prescribed fees have been paid.

(10) Any person engaged upon any work on the columbarium, must execute such work to the satisfaction of the caretaker, and such work must be undertaken during the official hours of the caretaker as set out in section 3.

(11) No permanent wreaths, sprays, flowers or floral tributes may be placed in or on a columbarium.

(12) The columbarium may be visited daily during the official hours set out in section 3.

(13) Plaques must be made of material approved by the Municipality and must be affixed simultaneously with the placing of the ashes and within 30 days of the obtaining of the consent.

### **Burial of a cadaver**

**12.** The remains of a Corpse used at an educational institution for the education of students, generally known as a cadaver, may be buried in one coffin and two such coffins containing cadavers may be buried in an extra deep grave as contemplated in section 14(4), if a coffin does not exceed the average body weight of 70 kg, and furthermore, that the grave is readjusted to the prescribed depth and measurements.

### **Persons dying outside the area of the Municipality**

**13.** The provisions of these By-Laws must apply with the necessary changes to any burial in a cemetery of a person who has died outside the Municipality.

### **Measurements of graves**

**14. (1)** The excavation of a grave for an adult must be at least 1820 mm deep, 2300 mm long and 760 mm wide.

(2) The excavation of a grave for a child must be at least 1370 mm deep, 1520 mm long and 610 mm wide.

(3) In the event that a grave of a greater depth, length and width than those specified above is required, an application in respect thereof, together with extra prescribed fees that are due, must be made to the caretaker of the municipal cemetery, together with the application to obtain permission for a burial.

(4) The excavation of an extra deep grave for the burial of two corpses must be at least 2400 mm deep, 2300 mm long and 760 mm wide.

(5) Permitted deviation from measurements of graves must be as follows:

- (a) extra wide 2300 mm long 840 mm wide;
- (b) extra long 2530 mm long 760 mm wide;
- (c) rectangular small 2300 mm long 810 mm wide;
- (d) rectangular big 2400 mm long 900 mm wide; or

- (e) brick-noggin 2600 mm long 1050 mm wide.
- (6) The area of a rectangular grave for an adult must be 1500 mm wide and 2600 mm long.
- (7) The area of a grave for an adult must be 1210 mm wide and 2430 mm long.
- (8) The area of a grave for a child must be 1210 mm wide and 1520 mm long, and if a coffin is too large, an adult grave must be used.

## **CHAPTER 4**

### **Cremation**

15. Cremation within the Municipality must only take place in an approved crematorium established for that purpose, and in accordance with the provisions of the Cremation Ordinance, 1926 (Ordinance No. 6 of 1926).

## **CHAPTER 5**

### **Exhumation from a municipal cemetery**

16. (1) No person must, without the written approval contemplated in section 3 of the Exhumation Ordinance, 1980 (Ordinance No. 12 of 1980), and then only after notifying the Municipality, exhume or cause or allow any corpse or the mortal remains of a corpse to be exhumed from a municipal cemetery.
- (2) Any person duly authorised to exhume a corpse as set out above, must furnish such authority to the caretaker at least 8 working hours before the time proposed for the exhumation of such corpse, and must at the same time pay the prescribed fees.
- (3) An exhumation and removal of any corpse from a municipal cemetery must be made only in the presence of the caretaker or any authorized member of the cemetery personnel, accompanied by the funeral undertaker and in accordance with the stipulated legislation applicable to exhumations and reburials.
- (4) A grave from which any corpse is to be removed must, if required by the caretaker, be effectively screened from public view during the exhumation.
- (5) The person who applied for the exhumation of a corpse must provide an acceptable receptacle for the remains and must remove the remains after the exhumation.
- (6) No person must be permitted to reopen a grave in a municipal cemetery, unless he or she has satisfied the caretaker that he or she is authorized thereto.

(7) After the exhumation of a corpse and the removal of the remains from a municipal cemetery, all rights in the grave must revert to the Municipality, and the reuse of the grave must be done in consultation with the Medical Officer of Health.

(8) If at any time and for whatever reason the exhumation and transfer of a corpse to another grave in a municipal cemetery must become necessary, the Municipality may, after the relatives of the deceased person have been notified accordingly, exhume such body and transfer it to another grave.

## CHAPTER 6

### Memorial work

(1) Application for the erection of memorial works must be made to the caretaker of the municipal cemetery on the prescribed application form.

(2) The erection of a trellis around a grave is prohibited.

(3) No person must bring or cause any material to be brought into any municipal cemetery for the purpose of the erection or construction of any memorial work, unless and until -

- (a) approval for the burial has been obtained in terms of the provisions of section 9;
- (b) approval for the erection of the memorial work has been obtained in terms of the provisions of subsection (1); and
- (c) the prescribed fees have been paid.

(4) Graves of war heroes which are in the care of or maintained by the South African War Graves Board or by any other recognised body or by the government of any foreign country, must upon application to the Municipality, be exempted from the requirement of payment of the prescribed fees.

(5) The Municipality may refuse its consent for the erection of any proposed memorial work if the plan and specification thereof reveals that it will be of inferior quality or in any manner likely to disfigure a cemetery or which bears any inscription likely to cause offence to users of the municipal cemetery or to visitors thereto.

(6) No person engaged upon any memorial work in a municipal cemetery must at any time disturb any adjacent graves and on completion of such work he or she must leave the grave and the cemetery in a clean and tidy condition and remove any building material or surplus ground therefrom.

(7) A person engaged in the erection of a memorial work in a municipal cemetery, must –

- (a) make arrangements beforehand with the caretaker with regard to the date and time of the intended erection;
  - (b) ensure that all separate parts of any memorial work other than masonry-construction are affixed by copper or galvanised iron dowel-pins of a length and thickness sufficient to ensure the permanent stability of the work;
  - (c) ensure that any part of such work which rests upon any stone or other foundation is fairly squared and pointed;
  - (d) ensure that the underside of every flat stone memorial and the base or landing of every headstone is set at least 50 mm below the natural level of the ground;
  - (e) ensure that all headstones are securely attached to their bases;
  - (d) ensure that flat stones consist of one solid piece in the case of all graves;
  - (g) ensure that all headstones consist of granite, marble, bronze or any other durable metal or stone approved by the Municipality;
  - (h) ensure that all curbing or memorial work on graves are erected on concrete foundations at least 1210 mm wide and 200 mm deep over the full width in the case of adults' graves and 910 mm wide and 200 mm deep in the case of children's graves;
  - (i) ensure that the sizes of monumental tombstones (all inclusive) are:
    - (i) Single grave 2440 mm long 1070 mm wide;
    - (ii) Child grave 1370 mm long 760 mm wide; and
    - (iii) Double grave 2440 mm long 2290 mm wide;
  - (j) ensure that all curbs on larger graves than single graves must be fixed on substantial concrete mats at the four corners and where joints occur;
  - (k) ensure that any concrete foundation on any grave, upon instruction of the Municipality, is reinforced where it is considered necessary owing to the weight of the memorial work.
- (8) No person must erect any memorial work within a municipal cemetery, unless the number and section-letter of the grave upon which such work is to be erected, are engraved thereon in such a position that it will be legible at all times from a pathway, and, only with the consent of

the family of the deceased, the name of the maker of such memorial work may be placed upon any footstone.

(9) Memorial work must be constructed and erected in a municipal cemetery only during the official office hours as contemplated in section 3.

(10) No person must fix or place any memorial work in a municipal cemetery during inclement weather or where the soil is in an unsuitable condition.

(11) Every person carrying out work within a municipal cemetery must under all circumstances comply with the directions of the caretaker.

(12) The Municipality may, after due notice, at any time change or alter the position of any memorial work in any municipal cemetery, but in any case where any memorial work has originally been placed in a certain position with the express consent of the caretaker, any alterations of such position in terms of the provisions of this By-law, must be executed at the expense of the Municipality.

### **Graves supplied with a berm**

18. (1) Despite anything to the contrary contained in this By-law, a grave which is supplied with a berm must be subject to the conditions set out in subsection (2).

(2) (a) No kerbing must be erected at such grave.

(b) The berm provided by the Municipality must be 1200 mm long, 500 mm wide and 300 mm deep.

(c) The base of the memorial work to be erected on the berm of a single grave must not be larger than 1000 mm long and 230 mm wide, and the memorial work, together with the base, may not be higher than 1200 mm from the ground surface.

(d) A memorial work must not protrude beyond the base.

(e) No object must be placed and kept on any grave, but a memorial work or a vase for flowers or foliage placed in the orifice provided in the berm, may be placed and kept on a grave until such time as the ground surface over the grave is leveled.

## **CHAPTER 7**

### **Maintenance of graves**

19. (1) A memorial work erected upon a grave must at all times be maintained in good order and condition by the responsible person.

(2) Should any such work fall into a state of disrepair or constitute a danger or be a disfigurement of the municipal cemetery, the Municipality may by written notice addressed to the responsible person by registered post at his or her last known postal address, require of him or her to effect such repairs as may be considered necessary.

(3) On failure to effect the required repairs within 1 month of the date of such notice, the Municipality may have the repairs effected or may have the memorial work removed as it deem fit and may recover the costs for such repairs or removal from the responsible person.

(4) Unless otherwise provided for in this By-law, the Municipality must be responsible for keeping municipal cemeteries in a neat and tidy condition.

(5) Grass may be planted on a grave by family members of the deceased, subject to the directions of the caretaker, but the Municipality must maintain the grave, as part of the cemetery, at its own cost and in accordance with its own standards and programs.

(6) All memorial work which has been dismantled for purposes of a further burial, must be re-erected or removed from the municipal cemetery within 2 months of the date of such dismantling.

(7) On failure to do so, the Municipality must be entitled to remove any such dismantled memorial work from the cemetery without further notice, and to recover the costs of such removal from the responsible person.

(8) No person must plant any tree, shrub, bush or any other plant on or in the vicinity of a grave.

(9) The Municipality must have the right to remove, trim or prune any plants which extend beyond the limits of any grave or which are untidy.

(10) No person must deposit any flowers, grass, weeds or other materials removed from a grave, on any other grave, roadway or any other place in the cemetery, except in the refuse bins intended for that purpose.

## **CHAPTER 8**

### **General conduct in municipal cemeteries**

20. (1) No person under the age of 12 years must enter a municipal cemetery unless he or she is in the care of an adult or with the approval of the caretaker.

(2) No person must enter or leave any municipal cemetery, except through the gates provided for that purpose, nor must any person enter any office or enclosed place in any cemetery, except on business or with the consent of the caretaker.

(3) No person must make a false statement or provide false information in an application or other form or document to be completed and submitted in terms of these By-Laws.



- (4) No person must carry on any trade, or touting activity or solicit any business, or distribute or leave any business card or advertisement with any cemetery or on any public place within 30 m of the boundary of any municipal cemetery, except with the written approval of the Municipality and on such conditions as the Municipality may determine.
- (5) No person must sit, stand on or over any tombstone, memorial work, gate, wall, fence or building in any municipal cemetery.
- (6) No person must hold a demonstration of any kind in any municipal cemetery or allow or participate in such demonstration.
- (7) No person must bring into or allow any animal to enter any municipal cemetery, and any animal found in a cemetery may be impounded.
- (8) Directives from the caretaker to ensure the orderly procession of the ceremony concerning the placement of structures, chairs, voice amplification equipment, volume and the type of music to be played, must be adhered to.
- (9) No person must with any municipal cemetery obstruct, resist or oppose the caretaker or any official of the Municipality, whilst acting in the course of his or her official duty, nor refuse to comply with any reasonable order or request of the caretaker or any official of the Municipality.
- (10) No person must remove from the municipal cemetery any soil, sand or other substance or thing of a similar nature without the express permission of the caretaker.
- (11) No person must wantonly or wilfully damage or cause to be damaged, nor must any person mark, draw or erect any advertisement, bill or placard upon or in any manner deface any grave, tombstone, monument, wall, building, fence, path or other construction within any municipal cemetery.
- (12) No person must bribe any employee in the service of the Municipality in regard to any matter in connection with a cemetery or burial, neither with money, gifts or any other benefit.
- (13) No person must, except where expressly permitted by this By-law, or with the consent of the caretaker, disturb the soil, or plant or uproot any plant, shrub or flower, or in any way interfere with any grave or construction in any municipal cemetery.
- (14) No person must play any game or take part in any sport, or discharge any firearm, except as a salute at a military funeral, or discharge any air gun or catapult with any municipal cemetery, or disturb or annoy any person present therein.
- (15) No musical instrument must be played in a municipal cemetery without the consent of the caretaker.

## CHAPTER 9

### Establishment of private cemeteries

21. (1) The owner of land situated outside a developed area may, with the prior written permission of the Municipality, and subject to the conditions determined by the Municipality, establish a private cemetery on such land, but a private cemetery consisting of a columbarium only, may also be established inside a developed area.

(2) Any existing private cemetery must be deemed to have been established in terms of subsection (1).

(3) The owner of land on which a private cemetery is situated, must be responsible for keeping such cemetery in a neat and tidy condition.

### Application to establish private cemeteries

22. (1) The owner of land situated outside a developed area, desirous of establishing a private cemetery on such land, must –

- (a) on the form provided by the Municipality, direct his or her application to the Municipal Manager;
- (b) provide the Municipal Manager with a plan -
  - (i) indicating the location of the proposed private cemetery on the land concerned; and
  - (ii) containing the detail layout of the proposed private cemetery, showing the exact location and number of each grave; and
- (c) provide such further information as may be required by the Municipal Manager.

(2) The Municipal Manager must refer the application to the building control officer, who must do, or cause to be done, an inspection of the land concerned and make a recommendation regarding the application to the Municipality.

(3) After the Municipality has considered the recommendations of the building control officer, it must –

- (a) grant the permission contemplated in section 21 (1); or
- (b) refuse the application, stating its reasons for such refusal, and forthwith, in writing, notify the applicant accordingly.

(4) The owner of land on which a private cemetery is deemed to have been

established in terms of section 21(1) must, in respect of that cemetery, within a year after the commencement of these By-Laws, provide the Municipality with -

- (a) the plan contemplated in subsection (1)(b); and
- (b) a declaration stating the name of the deceased person buried in each grave if it is known to the owner.

#### **Record of private cemeteries to be kept by the Municipality**

**23. (1)** The Municipality must keep proper record of all private cemeteries, established or deemed to have been established, within its area of jurisdiction.

(2) The Municipality must update the records of private cemeteries within its area of jurisdiction regarding -

- (a) each new grave added to a private cemetery by the owner of the land not already shown on the plan contemplated in section 22(1)(b)(ii); and
- (b) each burial that takes place in a private cemetery.

(3) The owner of land on which a private cemetery is situated, must provide the Municipality with the particulars referred to in subsection (2), within 7 days after a burial has taken place, accompanied by a copy of the burial order and a statement indicating the number of the grave in which the deceased person has been buried.

#### **Land on which a private cemetery has been established may be used for burials only**

**24.** A private cemetery may be used for burials only, except where the Municipality gives written permission to the owner of the land to discontinue the use of the private cemetery for burials and determines how the mortal remains of persons buried in such cemetery must further be disposed of.

#### **Exhumation of corpses from private cemeteries**

**25.** No person may, without the prior written permission of the Municipality and subject to any law governing the exhumation of corpses, exhume a corpse from a private cemetery.

### **CHAPTER 10**

#### **Miscellaneous**

#### **Injuries and damages**

**26.** A person using a municipal cemetery must do so on his or her own risk, and the

Municipality accepts no liability whatsoever for any personal injuries sustained by such person or for any loss of or damage to such person's property relating to or resulting from the afore-mentioned usage of the cemetery.

#### **Firearms and traditional weapons**

27. No firearm or traditional weapon must be allowed in a municipal cemetery.

#### **Penalty clause and expenses**

28. (1) Any person contravening or failing to comply with any of the provisions of these By-Laws, must be guilty of an offence and upon conviction by be liable to a fine or imprisonment for a period not exceeding 3 years or to both such fine and such imprisonment.

(2) Any expense incurred by the Municipality as a result of a contravention of these By-Laws, or in the doing of anything which a person was directed to do under these By-Laws, and which he or she failed to do, may be recovered by the Municipality from the person who committed the contravention or who failed to do such thing.

#### **Short title and Commencement**

29. These By-Laws are called the Cemeteries By-Laws, 2012 and will come into operation on the date of publication in a Provincial Gazette.

**No. 15**

# **MBHASHE LOCAL MUNICIPALITY**

## **FENCES AND FENCING BY-LAWS**

**MBHASHE LOCAL MUNICIPALITY****NOTICE**

Notice is hereby given in terms of section 13 of the Local Government Municipal Systems Act, 2000(Act 32 of 2000), as amended, read with sections 156 and 162 of the Constitution of the Republic of South Africa, 108 of 1996 as amended, that Mbashe Local Municipality in terms of resolution number 3.2.1 dated 31 October 2012, resolved to adopt the following Fencing and Fences By-Laws

**BY-LAWS**

In terms of and under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), the Mbashe Municipality enacts as follows:-

**TABLE OF CONTENTS**

1. Interpretation
  2. Principles and objectives
  3. Application
  4. Fences
  5. Penalties
  6. Notice of compliance and representations
  7. Costs
  8. Demolition order
  9. Authentication and service of notices and other documents
  10. Appeal
  11. Implementation and enforcement
  12. Saving and transitional provision
  13. Exemptions
  14. Liaison forums in community
  15. Revocation of By-Laws
  16. Short title and commencement
- Schedule

**1. Interpretation**

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

“**alter**” includes to cause, allow or permit to be altered;

“**boundary**” means the real or notional line marking the limits of premises;

“**agent**”, in relation to the owner of a property, means a person appointed by the owner of the property-

- (a) to receive rental or other payments in respect of the property on behalf of the owner; or
- (b) to make payments in respect of the property on behalf of the owner;

**“erect”** includes to cause, allow or permit to be erected;

**“fence”** means any fence, together with any gate or any contrivance forming part or serving the purpose of such a gate, erected as a boundary between any erven, lots or stands within the municipal area, and includes a fence which is not erected on a boundary, such as a garden fence or a freestanding wall on an erf, lot or stand;

**“ground level”** means the natural level of the ground, except where such level has been disturbed, in which case the street level is to be regarded as the ground level;

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

**“public land”** means land the ownership of which is vested in an organ of state;

**“repair”** has the meaning assigned to it in the Fencing Act, 1963 (Act 31 of 1963).

## 2. Principles and objectives

The Municipality, aware of its duty to provide a safe and healthy environment, in these By-Laws regulate fencing with the aim of safeguarding its residents and visitors to the area.

## 3. Application

Subject to the provisions of the Fencing Act, 1963 (Act 31 of 1963), the provisions in this By-Laws relating to an electrical fence, barbed wire and razor wire do not apply to land zoned for agricultural purposes, except where such electrical fence, barbed wire or razor wire is erected on the boundary between the land and public land.

## 4. Fences

(1) No person may, without the consent of the Municipality, on a boundary of premises –

- (a) erect a fence which is more than 2 metres in height from ground level;
- (b) alter or make an addition to an existing fence which is more than 2 metres in height from ground level;
- (c) erect or may have on a boundary, an electrified fence, electrified railing or other electrified barrier, unless it–
  - (i) is erected on top of a wall which may not be less than 2 metres high and built of brick, cement, concrete or similar material; and
  - (ii) it complies with the Electrical Machinery Regulations, as

published in Government Notice R1593, dated 12 August, 1988; and

- (d) Erect a barbed-wire fence, railing, or other barrier with spikes or other sharp or pointed protrusions unless it is erected on top of a wall of not less than 2 metres in height
- (2) A person who wishes to obtain the consent of the Municipality must submit an application form similar to the form contained in the Schedule A to the Municipality, and the Municipality may refuse or grant consent.
- (3) Should the Municipality refuse permission, it must, on request, supply the applicant in writing with the reasons for the refusal.
- (4) Should the Municipality grant consent, it may impose conditions, requirements or specifications according to each individual case, and subject to the provisions of SANS Code No. 1372 relating to Prefabricated Concrete Components for Fences, and the consent must be entered in Item C of the form referred to in subsection (2), and a person who has obtained consent, must at the request of an authorised official, immediately produce the form.
- (5) A person who has obtained consent in terms of subsection (4) must ensure that the fence is maintained in a good condition.
- (6) No person may –
- (a) without the prior written consent of the Municipality demolish, interfere with or damage a fence for which consent has been granted in terms of subsection (4);
  - (b) having opened a gate in a fence, leave such gate open or unfastened;
  - (c) climb over or crawl through a fence without the permission of the owner or occupier of the land;
  - (d) erect a fence covered with –
    - (i) canvas, reeds, grass or any combustible material, except poles or split poles, or approved wood, within 4,5 metres of any street; or
    - (ii) sheet iron, corrugated galvanised iron or any other sheeting along or within 4,5 metres of any street;
  - (e) allow a fence to fall into disrepair; and
  - (f) affix to or allow to be affixed to a fence any posters, placards or similar notices, or draw or apply anything on a fence unless it is done so in terms of the Outdoor Advertising By-Laws .
- (7) The Municipality may, whenever it appears that, in the interests of safety –



- (a) a fence needs to be erected or repaired, instruct the owner or occupier on whose premises such fence needs to be erected or repaired, to undertake such steps as stipulated in the instruction; or
- (b) the height of a wall, hedge or fence at a street corner needs to be reduced, by order in writing instruct the owner or occupier property to reduce the height of such wall, hedge or fence to a height specified in such order.

(8) A person commits an offence if he or she contravenes a provision of subsections (1) and (6) or fails to produce a form at the request of an authorised official as contemplated in subsection (4).

(9) Should a person fail to comply with a provision of subsection (1), with a condition, requirement or specification contemplated in subsection (4), or subsection (5) or an instruction issued in terms of subsection (7), the Municipality may serve a notice of compliance or a demolition order on the person.

## **5. Penalties**

A person who has committed an offence in terms of these By-Laws is 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.

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

(1) The notice of compliance must state –

- (a) the name and residential or postal address of the affected person;
- (b) the requirement which has not been complied with;
- (c) detailed measures required to remedy the situation;
- (d) that the person must within a specified period take the measures to comply with the notice and to complete the measures before a specified date; and
- (e) the right to appeal as contained in section 10.

(2) Where a person does appeal and fails to take the measures before the date contemplated in subsection (1)(d), he or she commits an offence, and the Municipality may, irrespective of any penalty which may be imposed under section 5, act in terms of subsection (3).

(3) The Municipality may take such measures as it deems necessary to remedy the situation, including the demolition of the fence, and the cost thereof must be paid to the Municipality in accordance with section 7.

## **7. Costs**

(1) Should a person fail to take the measures required of him or her by a notice of compliance, the Municipality may, subject to subsection (3) recover, as a debt, all costs incurred as a result of it remedying the situation from that person and any or all of the following persons:

- (a) the owner of the land, building or premises; or
- (b) the person or occupier in control of the land, building or premises or any person who has or had a right to use the land at the time when the situation came about.

(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 Municipality under section 6(3).

(3) 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 emergency resulting from their respective failures to take the required measures.

## **8. Demolition order**

(1) A person on whom a demolition order has been served must demolish the fence and remove the materials.

(2) Should the Municipality demolish a fence, it may dispose of the whole or any part of the materials from any fence by public auction or public tender.

(3) The Municipality may deduct from the proceeds of any materials disposed of the costs of any pulling down, removal or demolition and the costs incurred of disposal and will thereafter pay any balance to the owner of the fence removed or demolished.

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

(1) A notice issued by the Municipality in terms of these By-Laws is deemed to be duly issued if it is signed by an officer authorised by the Municipality.

(2) Any notice or other document that is served on a person in terms of these By-Laws is regarded as having been duly 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 16 years;

- (b) 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 acknowledgment 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 land or business premises to which it relates;
- (f) in the event of a body corporate, when it has been delivered at the registered office of the business premises of such body corporate; or
- (g) when it has been delivered, at the request of that person, to his or her e-mail address.

(3) Service of a copy is deemed to be service of the original.

(4) When any notice or other document is served on the owner, occupier, or holder of any property, or right in any property, it is sufficient if that person is described in the notice or other document as the owner, occupier, or holder of the property or right in question, and it is not necessary to name that person.

## 10. Appeal

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

## 11. Implementation and enforcement

(1) The Municipality may appoint an official to administer the implementation and enforcement of these By-Laws.

(2) A person commits an offence if he or she –

- (a) hinders or interferes with an official in the execution of his or her official duties;
- (c) falsely professes to be an official;
- (c) furnishes false or misleading information when complying with a request of an official; or
- (d) fails to comply with a request of an official.

## **12. Saving and transitional provision**

An owner or occupier whose premises, at the date of commencement of these By-Laws, do not comply with the provisions of this By-Laws must, within a period of 6 months, ensure that his or her premises comply with the provisions of these By-Laws.

## **13. Exemptions**

(1) Any person may in writing apply to the Municipality for exemption from any provision of these By-Laws.

(2) The Municipality may –

- (a) grant an exemption in writing and set and determine the period for which such exemption is granted;
- (b) alter or cancel any exemption or condition in an exemption; or
- (c) refuse to grant an exemption.

(3) An exemption does not take effect before the applicant has undertaken in writing to comply with the conditions imposed by the Municipality, however, if an activity is commenced before such undertaking has been submitted to the Municipality, the exemption lapses.

(4) If any condition of an exemption is not complied with, the exemption lapses immediately.

## **14. Liaison forums in community**

(1) The Municipality may establish one or more liaison forums in a community for the purposes of obtaining community participation with regard to the matters dealt with in these By-Laws.

(2) A liaison forum may consist of –

- (a) a member of members of an interest group, or an affected person;
- (b) a designated official or officials of the Municipality; and
- (c) a councillor.

(3) (a) The Municipality may, when considering an application for consent, permit or exemption in terms of this By-Laws, request the input of a liaison forum.

(b) A liaison forum or any person contemplated in sub section (2) may on own initiative submit an input to the Municipality for consideration.

**15. 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-Laws, 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.

**16. Short title and commencement**

These By-Laws are called the Fences and Fencing By-Laws, 2012 and commences on the date of publication thereof in the Provincial Gazette.

**SCHEDULE A**

(Section 4(2))

**APPLICATION TO ERECT FENCE****A. OWNER OR OCCUPIER**

Surname and first names of person

.....

I.D. Number .....

Address: Postal address:

.....

.....

.....

Residential address:

.....

.....

.....

.....

Telephone number: Business .....

Residential .....

**B. PARTICULARS OF PREMISES AND FENCE**

Erf Number .....

Address where the premises can be inspected

.....

.....

**NATURE OF FENCE TO BE ERECTED/ALTERED**

.....

.....

.....

**C. ISSUING LOCAL AUTHORITY**

Consent is hereby granted in terms of section 4(4) of the Mbhashe Fences and Fencing By-Laws that the above-mentioned fence may be erected on above-mentioned premises

Conditions, requirements or specifications in terms of section 4(4):

.....

.....

.....

.....

SIGNATURE OF INSPECTOR DATE

.....

Name of inspector:

.....

Official designation:

.....

**No. 16**

# **MBHASHE LOCAL MUNICIPALITY**

## **FINANCIAL BY-LAWS**

**MBHASHE LOCAL MUNICIPALITY****NOTICE**

Notice is hereby given in terms of section 13 of the Local Government Municipal Systems Act, 2000(Act 32 of 2000), as amended, read with sections 156 and 162 of the Constitution of the Republic of South Africa, 108 of 1996 as amended, that Mbashe Local Municipality in terms of resolution number 3.2.1 dated 31 October 2012, resolved to adopt the following Financial By-Laws

**BY-LAWS**

To provide for financial control in the Municipality; collection of and control monies due to the Municipality by the Chief Financial Officer; to provide for investments of monies not needed for immediate expenditure in approved financial institutions and to provide for matters incidental thereto.

BE IT ENACTED by the Council of Mbashe Local Municipality, as follows:

**TABLE OF CONTENTS**

1. Definitions
2. Financial year
3. Estimates
4. Expenditure
5. Excess expenditure
6. Collection and control of revenue
7. Accumulated and reserve funds
8. Tenders and contracts
9. Application of By-Laws
10. Submission of tenders
11. Opening of tenders
12. Consideration of tenders
13. Transactions with officials and members of the Municipality
14. Withdrawal of tender and failure to execute a contract
15. Acceptance of tenders



16. Sanctions
17. Amendment of tender documents
18. Payments
19. Stores and material
20. Capital expenditure
21. Assets
22. Investments and securities
23. Insurance
24. Payment of salaries, wages and allowances
25. Losses and writing off of money
26. Internal auditing and accounting
27. Custody of documents
28. Repeal of Municipality Finance and Tendering By-Laws
29. Offences and penalties
30. Short Title

#### DEFINITIONS

1. In these By-laws, unless the context otherwise indicates -

“ **capital expenditure**” means any expenditure incurred in connection with the purchase or improvement of land, buildings, engineering structures, vehicles, machinery and equipment, office furniture and equipment for the Municipality;

“**Council**” means —

- (a) the Municipal Council of Mbhashe Municipality exercising its legislative and executive authority through the Municipality;
- (b) its successor in title;
- (c) a structure or person exercising a delegated power or carrying out an instruction, where any power in these By-Laws has been delegated or sub delegated or an instruction given, as referred to in section 59 of the Act; or

- (d) a service provider fulfilling a responsibility under these By-Laws, assigned to it in terms of section 81(2) of the Act, or any other By-Law, as the case may be;

**"department"** means any department, section or branch of the Municipality;

**"Finance Committee"** means a committee established by the Municipality to advise the Municipality on financial regulations, fiscal affairs and remedies;

**"Chief Financial Officer"** means the official who is appointed by the Municipality in terms of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003), who is responsible for the financial administration of the Municipality;

**"head of department"** means an official in a department who is directly responsible and accountable to the Municipal Manager;

**"MEC"** means the Member of the Executive Municipality responsible for Local Government in the Eastern Cape Provincial Government;

**"Municipal Manager"** means the official appointed by the Municipality in terms of the Municipal Systems Act, 2000 (Act No. 32 of 2000) as amended;

**"Municipal Council"** means Mbhashe Municipal Council contemplated in section 59 read with section 81(2) of the Local Government Municipal Systems Act, 2000 (Act No. 32 of 2000), in terms of Section 157(1) of the Constitution of the Republic of South Africa, 1996 (Act 108, 1996), or person designated by any legislation or resolution of Municipality to represent it;

**"Municipality"** means Mbhashe Local Municipality and its legal successors, and when referred to as-

- (a) a legal entity, means Mbhashe Local Municipality as described in section 2 of the Local Government: Municipal Systems Act, (Act No. 32 of 2000); and
- (b) a geographic area, means the municipal area of the Mbhashe Local Municipality as determined from time to time in terms of the Local Government : Municipal Demarcation Act, 1998 (Act No 27 of 1998).

## FINANCIAL YEAR

2. The financial year of the Municipality shall start on the first day of July of each year and end on the 30<sup>th</sup> day of June of the following year.

## ESTIMATES

3 (1) The operating and capital estimates of the Municipality must be submitted to the MEC or his or her delegates in the form prescribed by him or her from time to time.

(2) The Chief Financial Officer must make the necessary arrangements before or on the 31<sup>st</sup> day of January of each year and supply to each departmental head the financial information

which he/she deems necessary for the preparation of draft estimates with regards to operating and capital accounts for the following financial year.

(3) Every departmental head must submit the draft estimates referred to in subsection (2) with regard to his or her department to the Chief Financial Officer before the expiry date determined by the Chief Financial Officer.

(4) The Chief Financial Officer must submit a consolidated estimate to the Municipal Manager for the submission to the Municipality before the expiry date determined by the Municipal Manager.

(5) The Municipal Manager must submit a Municipality's estimate to the MEC or his or her delegate together with such comments, as he/she may deem necessary.

4 (1) the Municipality must make no decision regarding expenditure, unless the Executive Committee after consideration of a report submitted by the Municipal Manager, has reported thereon.

(2) Recommendations to the Executive Committee on how the expenditure is to be charged must state that an additional vote or an excess vote is required therefore.

(3) The Municipality may incur expenditure in order to-

- (a) make grants and donations to an institution, establishment, society, excluding political and church organisations, where no member of Municipality or participating local body must receive any financial or other gain. Such a grant or donation must, in the option of the Municipality, be in the interest of the Municipality or the inhabitants of the region served by the Municipality but the total expenditure on the said grants and donations must not in any financial year exceed 0.5% of a Municipality's total levy income collected during the previous financial year;
- (b) obtain membership of and pay membership fees to non political, non church or non societies organizations or institutions which, in the option of the Municipality, must be in the interest of the Municipality of the inhabitants of the region served by the Municipality, including expenses associated with the attendance of meetings and congresses resulting from membership;
- (c) arrange insurance cover for Municipality members and other officials against bodily harm, incapacity or deaths;
- (d) grant bursaries in accordance with conditions stipulated by the Municipality, to its employees in order to enable them to study at a university, college or similar educational institution or to follow an appropriate training course at an institution or institute;
- (e) purchase a wreath as the Municipality may deem fit for the burial of any person;
- (f) contribute to any official emergency relief funds; and

- (g) arrange receptions, entertainment or exhibitions and advertise and the total expenditure incurred in this regard during a financial year must not exceed the amount approved in the budget of the Municipality.

### **EXCESS EXPENDITURE**

5. (1) In every case where the actual expenditure or the revenue account has exceeded or in the opinion of the accounting officer may exceed the estimated figures or may be less than the estimated figures, the head of the department concerned must at the request of the accounting officer, submit a report in writing, giving all the reasons for the excess or the shortfall, as the case may be.

(2) The Management Committee must consider the report mentioned in subsection (1) together with a report in writing of the accounting officer in connection therewith and must make a recommendation to the Municipality.

(3) When the full amount provided for a specific purpose in the estimates on revenue account is not spent for that purpose, the balance must not be used for another purpose in order to meet expenditure in excess of an amount provided for that other purpose.

### **COLLECTION AND CONTROL OF REVENUE**

6. (1) All money due to the Municipality must be collected by the accounting officer from the department.

(2) The Municipality must open an account at a registered commercial bank of its choice, which must be called the operating account of the Municipality.

(3) All moneys collected must be reconciled at least on a weekly basis and in the manner the accounting officer may determine and must be deposited in the operating account of the Municipality.

(4) Where monies are collected by some other agencies on behalf of the Municipality they must be paid over to the Municipality or be deposited in the Municipality's operating account in a manner prescribed by the accounting officer.

(5) The receipt of all moneys collected by the Municipality must be acknowledged forthwith by the issue of a numbered official receipt or in any other manner approved by the accounting officer.

(6) No alterations must be made with regard to-

- (a) the name of the payee;
- (b) the amount;
- (c) the date on the receipt; or
- (d) other form of acknowledgement issued in terms of subsection (5),

but any such erroneous entry must be rectified by the issue of a new acknowledgement of receipt and the cancellation of the erroneous one, including all copies thereof.

(7) A receipt or other form of acknowledgement cancelled in terms of subsection (6) and all duplicates thereof must be kept in safe custody by the responsible officer.

(8) Any cash surplus must immediately be cleared by the issuing of a receipt and must be deposited in the operating funds, while all cash deficits must be immediately reported and be replenished in accordance with the manner prescribed by the accounting officer.

## **TENDERS AND CONTRACTS**

8. (1) Where the Municipality is legally empowered to enter into contracts for the purchase of any goods by the Municipality for execution of any works for or on behalf of the Municipality, the controller of stores and buyer may enter into such contracts, not exceeding the amount as laid down from time to time in the asset management policy of the Municipality but tenders referred to in section 15 (2) need not be invited and subject to section 15(2).

(2) The Municipality must once a year hold an information sharing and educational workshop on tendering in all three regions of its area of jurisdiction.

(3) The Municipality must prescribe asset management practices for different amounts of supplies, services rendered to the Municipality or contracts entered into by the Municipality according to the Municipality's Asset management Policy.

## **APPLICATION OF BY-LAWS**

9. (1) These By-laws are applicable in all cases where supplies and services for the Municipality are obtained and property is to be disposed of but unless the Municipality otherwise decides, no provision contained in these By-laws will apply to the purchase of stores, or rendering of a service to or by the Government department, Municipality or similar body.

(2) Before the Municipality enters into any contract for the execution of any work for or on behalf of the Municipality or the purchase or sale of any goods to the value or for the amount laid down from time to time by the MEC, the Municipality must-

- (a) give at least 14 days notice in an English newspaper circulating in the area of the Municipality;
- (b) place on a notice board at the Municipality's office a notice of intention to enter into a contract, expressing the purpose thereof and inviting any person willing to enter into such contract to submit a tender for that purpose.

(3) The foregoing provisions will not apply where the Municipality after considering a report from the Municipal Manager, is of the opinion that the proposed contract is an emergency or is a special case of necessity for which the invitation of quotations should not be invited or where the proposed contract is for sale or purchase of goods, and that such goods must be purchased by public auction.

## SUBMISSION OF TENDERS

10. (1) Each tender must be in writing and, where applicable, on the prescribed form in a sealed envelope on which the tender number and the nature of the supply or service and the closing date are written, and must be placed in the locked tender box provided for that purpose not later than the date and time specified in the invitation to tender.

(2) A tender received otherwise than by deposit in the tender box must as soon as it has been so received, be placed by an authorized officer in the tender box mentioned in subsection (1).

(3) When a tender received other than by deposit in the tender box is found not to comply with the requirements of subsection (1) it must immediately be placed in a sealed cover on which must be noted-

- (a) the date and time of receipt of the tender;
- (b) the tender number;
- (c) the nature of the goods or works to which it relates;
- (d) the condition in which the tender was received; and
- (e) the closing date of the tender,

and it must then be placed in the tender box.

(4) If on the opening of the tender box, a tender is found not to comply with the requirements of these By-laws the person opening tenders must declare in what respects it does not comply and endorse accordingly.

(5) A tender received by telegram, telex or facsimile machine on or before the specified date or hour may be allowed depending on the conditions of tender and provided the name of the tenderer, the tender number, the goods or work to which it relates, the amount of the tender and the period of delivery are clearly specified therein.

(6) Subject to the provisions of these By-laws a tender received after the specified date and hour must not be considered and the tenderer must be notified thereof.

(7) Tenders must be accepted for consideration only on condition that the tenderer has fully bound himself or herself with the provisions of these By-laws.

(8) A tenderer must be a business, which adheres to statutory labour practices, a legal entity registered with the South African Revenue Service and a continuing and an independent enterprise for profit providing a commercially useful function.

## OPENING OF TENDERS

11. (1) Immediately after the opening of the tender box all the tenders must be opened in public by the Municipal Manager or his proxy in the presence of the Chief Financial Officer or an official authorized by him or her and the person opening the tenders must in each case read out the name of the tenderer and if any tender so request, the amount of the tender.

(2) As soon as a tender is opened -

- (a) it must be stamped with an official stamp of the Municipality and endorsed with the signatures of the person who opened it and of the person in whose presence it was opened as prescribed by subsection (1);
- (b) the name of the tenderer must be recorded in a register kept for that purpose; and
- (c) the person who opened the tender must forthwith place his or her initials against the total amount mentioned in the tender documents.

(3) If a tender consists of one single item, the amount tendered must be read out when it is opened, but if it consists of more than one item the Municipal Manager or an official designated by him or her, or his or her proxy must in his or her discretion, decide whether or not all prices must be read out.

(4) After being recorded in the register mentioned in subsection (2), the tenders must be handed over to the person responsible for supervision of the process and he/she must acknowledge receipt by signing the register.

(5) A deposit or security received with the tenders must immediately be handed over to the Chief Financial Officer for official acknowledgement and receipt.

## CONSIDERATION OF TENDERS

12. (1) The Municipal Manager must present the tenders to the Tender Committee together with-

- (a) a comparative Schedule of the tenders;
- (b) a substantial recommendation;
- (c) a statement that the tender price is regarded as fair and reasonable, if the tender recommended for acceptance is the only one; and
- (d) the reasons why the acceptance of the tender is deemed to be in the interest of the Municipality if such tender is not the lowest.

(2) The financial provisions of the contract, which the Municipality intends to enter into in terms of the tender, must be referred to the Chief Financial Officer for his or her recommendations before the contract is entered into.

(3) The Chief Financial Officer must in respect of every contract referred to in subsection (2) and entered into by the Municipality, keep a record setting out the financial rights and

obligations of the Municipality and must enter in that record on a continuous basis every payment made by or to the Municipality in terms of that contract.

(4) No member or officer of the Municipality must disclose to any person other than a member or officer of the Municipality who, in the course of his or her official duties, is involved with the tender, any information relating to it contained in any report of an officer, consultant or other adviser of the Municipality but this section must not apply to any part of a report of an officer, consultant or other adviser of the Municipality, who is in a report of the Municipal Manager and who is not intended for the confidential information of the Municipality.

(5) If at any time after publication of an invitation to tender, the Municipality considers it necessary to depart from the original conditions of tender, fresh tenders must be invited.

(6) Where the Municipality calls for tenders for the supply and delivery of goods or the execution of work, the Municipality's conditions of tender and conditions of contract must apply.

(7) In respect of each contract created by the acceptance of the tender, each tenderer must indicate a place in the Republic and specify it in his or her tender as his or her domicile where all process may be served on him or her.

(8) Each tenderer must bind himself or herself to accept the jurisdiction of the magistrate court.

(9) Each foreign tenderer must state in his tender the name of his or her accredited agent in the Republic in which the necessary legal competence is vested and who has been appointed to sign any contract.

(10) A tenderer or a contractor must not abandon, transfer, assign, cede or sublet his or her contract to another person without the approval of the Municipality.

## **TRANSACTIONS WITH OFFICIALS AND MEMBERS OF THE MUNICIPALITY**

13 (1) No transaction of purchase, sale, hire or lease must be entered into with an official employee of the Municipality without the approval of the Municipality but this provision will not apply where such a transaction is entered into as a result of-

- (a) the acceptance of a tender; or
- (b) a sale at a public auction.

(2) The provisions of subsection (1), including where there is a financial interest, will apply with the necessary changes to the members of Municipality but the prior approval of the MEC must be obtained to the conclusion of such a transaction in the interest of the Municipality.



(3) The speaker and the members of the Municipality must declare in advance to the Municipality any financial interest that they have in a transaction in which the Municipality may become involved.

## **WITHDRAWAL OF TENDER AND FAILURE TO EXECUTE CONTRACT**

14(1) If a tenderer amends or withdraws his or her tender after the specified date and hour, but before he or she is notified of its acceptance, or if a tenderer after having been notified that his or her tender has been accepted -

- (a) gives notice of his or her inability to execute the contract in accordance with his or her tender;
- (b) fails to sign a contract within the period stipulated in the tender requirements or any extended period determined by the Municipality;
- (c) fails to execute the contract; or
- (d) fails to meet any requirements of the tender,

he or she must pay additional expenses which the Municipality may have to incur in inviting fresh tenders and pay the difference between his tender and any less favourable tender accepted and any consequential loss which may arise as a result of his non-fulfilment of his or her contract obligations but the Municipality may exempt a tenderer from the provisions of this subsection if it is of the opinion that the circumstances justify it.

(2) When in the circumstances referred to in subsection (1) it is not deemed expedient to invite tenders, the Municipal Manager may, at the request of the department head recommend a tender for the acceptance from those already received.

## **ACCEPTANCE OF TENDERS**

15. (1) The Municipality is not obliged to accept the lowest or any tender but must furnish reasons for the acceptance or rejection of any tender, and may accept the whole or part of a tender or, in the event of a number of items being tendered for, any item or part of an item and may lay down any conditions it deems necessary for an acceptance thereof.

(2) The Municipality may ignore any tender -

- (a) that is incomplete;
- (b) on which unauthorized alterations have been effected;
- (c) that does not comply with the provisions contained in the advertisement; or
- (d) that in no way qualifies.

(3) A decision of the Municipality for acceptance of the tenders is final.

### **SANCTIONS**

16 (1) If the Municipality is satisfied that any person, firm or company-

- (a) Is executing a contract with the Municipality unsatisfactorily;
- (b) has offered, promised or given a bribe or other remuneration, to a Municipality member, an official or an employee of the Municipality in connection with the obtaining or execution of a contract;
- (c) has acted in a fraudulent manner or in bad faith or in any other unsatisfactory manner in obtaining or executing a contract with any government department, public body, company or person that he/she or it has managed his or her or its affairs in such a way that he/she or it has in consequence been found guilty of an offence;
- (d) has approached a Municipality Member, an official or employee before or after tenders have been invited for the purpose of influencing the award of the contract in his or her favour;
- (e) has withdrawn or amended his or her tender after the specified date and hour;
- (f) when advised that his or her tender has been accepted, has given notice of his or her inability to execute the contract or fails to execute or sign the contract to furnish security required,

the Municipality may, in addition to any claim which it may have in terms of section 14 and in addition to any other legal recourse, decide that any contract between the Municipality and such person, firm or company must be cancelled and that no tender from such person, firm or company must be considered for a specific period.

(2) If the Municipality is satisfied that any person, firm or company is or was a shareholder, or that any person is or was a director of a firm or company which, in terms of subsection (1) is one from which no tender must be considered for a specified period, the Municipality may also decide that no tender from that firm or company must be considered for a specific period.

(3) The Municipality may reverse or amend any decision in terms of subsection (1).

(4) Any restriction imposed, in terms of these regulations upon any person, firm or company must be applicable to any other undertaking with which such person, firm or company is actively associated and any authorized employee or agent of such a person, firm or company.

## AMENDMENT OF TENDER DOCUMENTS

17 (1) If it is necessary or desirable to amend, alter or replace samples, specifications copies or conditions subsequent to the specified date and hour and before notification of the acceptance has been given, new tenders must be invited.

(2) If it is necessary in the interest of the Municipality to alter the conditions after a tender has been accepted, the Municipality must make the best arrangements for such alterations with the contractor.

## PAYMENTS

18. (1) Each payment, except advance payments in terms of subsection (5) must be made from a banking account of the Municipality within 30 days and each cheque drawn on such a banking account must be signed by three officials designated as signatories by the Municipality.

(2) The accounting officer or an official authorized by him or her in writing, must certify on the strength of supporting vouchers with regard to each account to be paid for goods supplied or services rendered or work performed for the Municipality, that-

- (a) the goods or services were supplied or rendered;
- (b) the work was done;
- (c) the price charged is reasonable or according to the contracts;
- (d) it falls within a vote authorized by the Municipality; and
- (e) the account may be paid.

(3) Progress payments in respect of contracts must be limited to the value of the work done and the material supplied, as certified in terms of subsection (2), less the amount of the previous payments made and the amount of the retention money withheld in terms of the contract.

(4) The accounting officer must not in respect of any contract make any payments in excess of the total amount authorized by the Municipality or make any payment expected to exceed the amount authorized by the Municipality unless the Municipality has resolved otherwise after a written report stating the reason why the excess expenditure was incurred.

(5) (a) An impressed account for petty cash may be opened with the approval of the Municipal Manager .

(b) The Chief Financial Officer and the Municipal Manager must determine the amount that may be kept in the impressed account, the nature and extent of payments that may be made from it and the supporting vouchers that are to be completed in respect of such payments.

(6) The Chief Financial Officer must submit before the 15<sup>th</sup> day of the following month to the Municipal Manager, a report of the immediately preceding month setting out the cash and bank balances as at the beginning of that month, the total amount received during that month, and payments made and cash and bank balances as at the end of the month reconciled with the bank statements.

(7) Not later than the last day of January of each year the Chief Financial Officer must submit a report to the Municipal Manager in respect of cases in which, in his or her opinion, the discrepancy between the actual and the estimated income or between the actual and the estimated expenditure for at least the first five months of that financial year is of such a serious nature as to require it to be brought to the attention of the Municipality.

### STORES AND MATERIAL

19. (1) A stores register reflecting full particulars of purchases and issues and which may be balanced at any time, must be kept by the Chief Financial Officer.

(2) Except where the Chief Financial Officer after consultation with the departmental head is of the opinion that special reasons exist for so doing, no department will carry stores in excess of what are in his or her opinion and the Chief Financial Officer its normal requirements.

(3) Whenever the Chief Financial Officer is of the opinion that compliance by him or her with a request to purchase any material would be contrary to the provisions of subsection (2) he/she must inform the head of the department concerned of that fact and if the request is not withdrawn he/she will submit a written report setting out fully the facts of the dispute.

(4) The decision of the Municipal Manager regarding a matter referred to in subsection (3) is final.

(5) (a) With the exception of petty cash disbursements made from an impress account, all goods and material must be purchased by the Chief Financial Officer or a person authorized by him or her and no goods or material so purchased must be issued otherwise than against a requisition signed by the head of the department requiring the goods or material.

(b) All stores belonging to the Municipality must be kept in a place or places approved by the Chief Financial Officer but such stores as the Chief Financial Officer may approve may, subject to the conditions as he/she may determine, be kept by the departmental head or a person authorized by him or her, in a place under his or her control.

(6) If the stores and equipment can be marked or if it is deemed necessary to mark them, they must be marked clearly so as to indicate the ownership of the Municipality.

(7) The Chief Financial Officer must submit a written report stating the quantity and value of any surplus or shortage of goods and material revealed by stock-taking together with the reasons therefore to the Municipal Manager and the Municipal Manager may in respect of the stores require the head of the department to furnish him or her with such reasons in writing.

(8) (a) All printed matter offered for sale and all face value receipts, receipt books and cheque forms must be purchased and issued by the Chief Financial Officer only.

(b) The Chief Financial Officer must keep a register of all purchases and issues made in terms of paragraph (a).

(c) The receipt of anything issued in terms of paragraph (a) must be acknowledged by means of the signature of the receiver.

(d) Receipt, license, cheques, face value or other forms having a potential must be numbered and supplied in the manner prescribed by the Chief Financial Officer, and such forms must be used in numerical order and the originals, duplicates and counterfoils of cancelled forms and duplicates and counterfoils of used forms must be preserved.

(e) The Chief Financial Officer must make necessary arrangements to ensure that the particulars of all face value and other forms with potential value, which are printed for the Municipality, are recorded in an appropriate register.

(9) A store's requisition must not be executed unless particulars of the vote to be debited in respect of the goods or material supplied, are indicated thereon.

(10) Subject to the provisions of subsection (9), no store's requisition in respect of a uniform or other clothing will be executed unless it states, in the case of an issue to a specific person, the name and official designation of the person for whom such uniform or clothing is required and unless the Chief Financial Officer has indicated on it that it complies with the policy of the Municipality regarding such issue.

(11) If by order of the Chief Financial Officer delivery is made of goods or material by the supplier directly at a place other than a store, the person authorized by the head of the department concerned to do so shall take delivery and sign the delivery note which must be sent to the Chief Financial Officer by the head of the department.

(12) Goods, material or plant must not be regarded as redundant or obsolete unless the Municipality so authorizes and in such case the Municipality must give directions as to its disposal.

(13) (1) Any goods remaining unused after the completion of the work or the fulfilment of the purpose for which they were issued must be returned to the store and must be taken into stock.

(14) No order for the purchase of goods must be placed on behalf of the Municipality or must be valid unless-

(a) it is handed in on a prescribed order form approved by the Municipal Manager ; and

(b) such order form is signed by the Chief Financial Officer or other officer authorized by him or her.

(15) A head of a department shall be responsible for the safe custody of goods or material issued to his or her department and must, if requested to do so by the Chief Financial Officer, furnish full details of any goods or material held by the department.

(16) The Chief Financial Officer must establish a thorough internal control system to ensure that when a change of officials responsible for stores, material and equipment takes place, accountability with regard to the losses and deficits can be clearly established.

(17) (a) Whenever Municipality stores have to be disposed of, the Chief Financial Officer must be furnished with a list of such stores and with the reasons for their disposal.

(b) No Municipality stores which have been disposed off must be handed over to the purchaser before the full purchase price has been paid or other satisfactory arrangements have been made in advance with the Municipality.

### **CAPITAL EXPENDITURE**

20. (1) Capital expenditure, however financed and despite the fact that provision has been made therefore in the annual budget, must only be incurred with the express approval of the Municipality.

(2) The Municipal Manager or his or her proxy must in respect of a recommendation made by him or her for the execution of work or other undertaking entailing capital expenditure, submit with such a recommendation a report setting out the following information in respect of such works or undertaking:

- (a) the total estimated cost with a complete analysis thereof and any consequential expenditure which will arise as a result of the work or undertaking;
- (b) the estimated capital amount to be expended annually in respect of the works or undertaking;
- (c) the estimated annual income to be derived and the estimated annual expenditure of any kind, including expenditure on staff, to be incurred when the work or undertaking is taken into use;
- (d) the estimated life of the asset to be created by means of loan funds;  
and
- (e) any other information required by the Municipality.

(3) Capital expenditure, which must be met by a loan, must not be incurred until the necessary approval required in terms of these By-Laws has been obtained.

### **ASSETS**

21. (1) The Chief Financial Officer or his or her authorized representative must keep a register in which must be recorded particulars of all movable and immovable assets of the Municipality except those referred to in subsection (5).

(2) At such a date during every financial year of the Municipality as the Chief Financial Officer may determine, stock taking must be done of all assets recorded in the register prescribed in subsection (1) and the Chief Financial Officer must report to the Municipal Manager in writing and must include in the report a statement of all relevant facts and shortages for submission to the Municipality.

(3) When an asset under the control of the departmental head has been purchased, sold or demolished, destroyed or any other event materially affecting its value has occurred, such head must forthwith report the facts in writing to the Municipal Manager and the Chief Financial Officer

(4) A departmental head must at such intervals as the Chief Financial Officer may prescribe submit to him a written report giving such particulars concerning all assets under the control of such head as the Chief Financial Officer may require.

(5) Each departmental head must keep inventories, in a form approved by the Chief Financial Officer of all moveable assets in respect of which the Chief Financial Officer had not required complete records to be kept in the register referred to in section (1).

(6) At such time in each financial year, the Municipal Manager may decide that, each departmental head must cause a comparison to be made between the inventories referred to in subsection (1) and the assets in the possession of this department and must report to the Chief Financial Officer in writing the results of such comparison.

(7) If any assets referred to in the above inventories is found not to be in the departments possession the departmental head must include a statement of all the facts relevant to the shortage in the report referred to in subsection (6).

(8) The Chief Financial Officer must submit a report in writing, setting out all the relevant facts relating to the absence of any assets brought to his or her notice in terms of subsection (7) and the Municipal Manager must report to the Municipality.

## **INVESTMENTS AND SECURITIES**

22. (1) The Municipality must invest with any bank any money not needed immediately to meet expenses in terms of the Municipality's approved budget registered in terms of the Bank's Act, 1965 (Act No 23 of 1965), any Mutual Building Societies Act, 1965 (Act No 24 of 1965), any building society registered in terms of the Building Societies Act 1986 (Act No 82 of 1986) or any other institution, which has been approved by the MEC for this purpose.

(2) The Chief Financial Officer must invest the funds of the Municipality in a manner determined by the Municipality and must be authorized to buy or sell any securities.

## **INSURANCE**

23.(1) The Chief Financial Officer must whenever necessary submit for the Municipality's approval a written report to the Municipal Manager setting out such insurance of Municipality's property or interests that should in his or her opinion be effected.

(2) The Chief Financial Officer may at any time require from a head of a department, who must duly supply a statement setting out the assets held by that department, the risks requiring to be insured and any other information which the Chief Financial Officer deems necessary and the Chief Financial Officer must according to such statement and subject to the provisions of subsection (1) effect such insurance as in the interests of the Municipality.

(3) The head of the department must notify the Chief Financial Officer without delay of any new insurable risk or of any alteration in an existing insurable risk that has arisen in his or her department.

(4) If any event gives rise or is likely to give rise to a claim by or against the Municipality or against its insurers, the head of the department concerned must notify the Chief Financial Officer of that event and the Chief Financial Officer must as soon as possible notify the Municipality's insurer.

(5) The Chief Financial Officer must keep a register in which particulars of all insurance policies held by the Municipality must be entered into and he/she must be responsible for the payment of all premiums and must ensure that claims which arise under such policies are instituted.

#### **PAYMENT OF SALARIES, WAGES AND ALLOWANCES**

24. (1) The Municipality must keep a record in which all relevant particulars relating to salary, wages, allowances and leave of officials are recorded.

(2) The Chief Financial Officer must pay salaries, wages and allowances in a manner determined by him or her in consultation with the Municipal Manager.

(3) The Chief Financial Officer must approve pay-rolls and payment must be made in accordance therewith.

(4) A departmental head or departmental head whose department deals with staff matters, must notify the Chief Financial Officer of all appointments, promotions, alterations to salary scales, dismissals, resignations, transfers, leave of any description and all matters related to the remuneration of Municipalities and officials of the Municipality.

#### **LOSSES AND WRITING OFF OF MONEYS**

25 (1) Any loss arising from any-

- (a) improper payment, fruitless expenditure or subject to subsection (6);
- (b) failure to collect any moneys due to the Municipality, or any deficit in or loss, destruction or damage to money, stamps, or face-value instruments; and
- (c) forms having a potential value, securities, stores or other property of the Municipality,



must be reported immediately by the departmental head to the Municipal Manager, who must report it to the Auditor General, furnishing such particulars as available, but the Municipal Manager, in consultation with the Auditor General may determine that a report need not be submitted or else permit certain losses to be reported by means of statement at the set intervals.

(2) The Municipal Manager must ensure that the official who was responsible or the person who derived the benefit makes all losses good.

(3) If a loss is not made good in full, the Municipality may authorize the writing off of such loss.

(4) In the cases of losses, damage to or destruction of unused, used and cancelled face-value and other form with a potential value, the Municipality may if it is satisfied with the explanation of the department head concerned that no loss of the Municipality's money occurred, and in the case of used forms, the moneys of such forms are properly accounted for, determine that the said forms need not be submitted for audit purposes.

(5) If the Municipality has no reason to believe that money or property losses were sustained owing to the theft or fraud, the Municipality must immediately report the matter to the South African Police Service and supply the available information and, if the value of such losses exceeds one thousand Rand, the Municipality must report the matter to the Auditor General as soon as possible.

(6) No amount due to the Municipality may, without approval of the Municipality, be written off as irrecoverable but that the Municipality may authorize the Chief Financial Officer to write off amounts to an approved limit, concerning which he/she must report to the Municipality every six months.

## **INTERNAL AUDITING AND ACCOUNTING**

26. (1) The Chief Financial Officer, members of an internal audit staff and any other person authorized by him or her are entitled to demand or have access to all books, accounts and other records relating to the financial matters of any department.

(2) The departmental head and every other officer must at the request of the Chief Financial Officer, to the best of his or her knowledge, furnish the Chief Financial Officer with-

- (a) such information relating to financial matters as he/she may specify; and
- (b) the system operated by the department for the collection of revenue, the keeping of books or any records relating to financial matters as he/she may specify.

(3) No erasure must be-

- (a) made in the books and records and alterations;

- (b) made by ruling out the incorrect answers and inserting corrections above such alterations
- (c) be initialled by the officer marking it, and in the case of computerizing or mechanized systems the necessary adjustments appropriate to the system;
- (d) made if errors are corrected manually, their corrections must be verified immediately and be signed by the supervisor and the checking officer.

### **CUSTODY OF DOCUMENTS**

27. (1) All deeds of transfer, title deeds, agreements, leases and similar documents must, upon completion, be placed in the safe custody in accordance with the prescription of the Municipal Manager.

(2) The Municipal Manager or an officer nominated by him or her must keep or cause to be kept a register of all documents referred to in subsection (1) in which the number, the nature, the period of validity and any other information must be recorded.

### **28. Repeal of Municipality Finance and tendering By-laws**

The provisions of any by-law relating to finance and tendering by the Municipality are repealed insofar as they relate to matters provided for in these By-laws but such provisions are not deemed to be repealed in respect of any By-law which has not been repealed and which is not contrary to these By-laws.

### **29. Offences and penalties**

A person who-

- (a) fails or refuses to give an officer such information as he/she may reasonably require for the purpose of exercising his or her powers or functions under these By-laws or gives such an officer false or misleading information knowing it to be false or misleading;
- (b) contravenes or fails to comply with a provision of these By-laws; or
- (c) fails to comply with the terms of a notice served on him or her in terms of these By-laws;

is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

### **Short title and commencement**

30. These By-Laws are called Financial By-Laws and, 2012 will come into operation on the date of publication in the *Provincial Gazette*.

**No. 17**

# **MBHASHE LOCAL MUNICIPALITY**

## **FOODHANDLING BY-LAWS**

**MBHASHE LOCAL MUNICIPALITY****NOTICE**

Notice is hereby given in terms of section 13 of the Local Government Municipal Systems Act, 2000(Act 32 of 2000), as amended, read with sections 156 and 162 of the Constitution of the Republic of South Africa, 108 of 1996 as amended, that Mbashe Local Municipality in terms of resolution number 3.2.1 dated 31 October 2012, resolved to adopt the following Foodhandling By-Laws

**BY-LAWS**

To provide for promotion of hygienic standards in food handling premises for within the municipal area of the Municipality; for the appointment of inspector to inspect food handling premises ; for food handling premises and manufactures to apply for a certificate of acceptability and to provide for matters incidental thereto.

BE IT ENACTED by the Council of the Mbashe Local Municipality, as follows:

**Table of contents**

1. Definitions
2. Application
3. Certificate of acceptability
4. Prohibition of the handling and transportation of food
5. Standards and requirements for food premises
6. Standards and requirements for facilities on food premises
7. Standards and requirements for containers
8. Standards and requirements for display, storage and temperature of food
9. Standards and requirements for protective clothing
10. Duties of a person in charge of food premises
11. Duties of a food handler
12. Standards and requirements for handling of meat
13. Standards and requirements for the transportation of food
14. Provisions concerning unprocessed products
15. Exemptions, additional requirements and reservations
16. Offences
17. Repeal of By-Laws
18. Short title

**1. Definitions**

In these By-Laws any word or expression to which a meaning has been assigned in the Act must have such meaning and, unless the context otherwise indicates-

**“animal”** means any member of the animal kingdom;

**“available”** includes available elsewhere than on the food premises in question;

**“best available method”** means a method which is practicable and necessary for the protection of food against contamination of spoilage, having due regard to local conditions and circumstances whether at or on food premises or elsewhere, the prevailing extent of established practice and financial implications thereof;

**“certificate of acceptability”** means a certificate of acceptability;

**“clean”** means free of any direct, impurity, objectionable matter or contamination to the extent that state of hygiene is attained, and “keep clean” has a similar meaning;

**“container”** or **“food container”** includes anything in which or with which food is served, stored, displayed, packed, wrapped, kept or transported and with which food is direct contact;

**“contaminate”** means the effect exerted by an external agent on food so that it-

- (a) does not meet a standard or requirement determined by these By-Laws;
- (b) does not meet acceptable food hygiene standards or consumer norms or standards; or
- (c) is unfit for human consumption;

and **“contamination”** has a corresponding meaning;

**“core temperature”** means the temperature reading taken in the estimated center of the food;

**“Council”** means —

- (a) the Municipal Council of Mbhashe Municipality exercising its legislative and executive authority through the Municipality;
- (b) its successor in title; or
- (c) a structure or person exercising a delegated power or carrying out an instruction, where any power in these By-Laws has been delegated or sub delegated or an instruction given, as referred to in section 59 of the Act; or
- (d) a service provider fulfilling a responsibility under these By-Laws, assigned to it in terms of section 81(2) of the Act, or any other By-law, as the case may be;

**“facility”** means any apparatus, appliance, equipment, implement, storage space, working surface of object used in connection with the handling of food;

**“food”** means a foodstuff intended for hum consumption as defined in section 1 of the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No.54 of 1972), excluding food referred to in regulation 14;

**“food handler”** means a person who in the course of his or her normal routine work on food premises comes into contact with food not intended for his or her personal use;

**“food premises”** means a building, structure, stall or other similar structure, and includes a caravan, vehicle, stand or place used for or in connection with the handling of food;

**“good manufacturing practice”** means a method of manufacture or handling or a procedure employed, taking in to account the principles of hygiene, so that food cannot be contaminated or spoiled during the manufacturing process;

**“handle”** includes manufacture, process, produce, pack, prepare, keep, offer, store, transport or display or sale or for serving, and **“handling”** has a corresponding meaning;

**“hands”** includes the forearm or the part of the arm extending from the wrist to the elbow;

**“health hazard”** includes any condition, act or omission that may contaminate or spoil food so that consumption of such food is likely to be dangerous or detrimental to health;

**“inspector”** means a medical officer or health appointed in terms of section 22(1) of the Act, or an environmental health officer or veterinary surgeon appointed in terms of section 24(1) of the Act;

**“Municipality”** means Mbhashe Local Municipality and its legal successors, and when referred to as-

- (a) a legal entity, means Mbhashe Local Municipality as described in section 2 of the Local Government: Municipal Systems Act, (Act No. 32 of 2000); and
- (b) a geographic area, means the municipal area of the Mbhashe Local Municipality as determined from time to time in terms of the Local Government : Municipal Demarcation Act, 1998 (Act No 27 of 1998);

**“perishable food”** means any foodstuff which on account of its composition, ingredients, moisture content and/or pH value and of its lack of preservatives and suitable packaging is susceptible to an uninhibited increase in microbes thereon or therein if the foodstuffs listed in Government Notice No. R.1183 of 1 June 1990, as amended, excluding fruit and vegetables;

**“person in charge”**, with regard to any food premises, means a natural person who is responsible for the food premises and/or the owner of such food premises, as the case may be;

**“pre-packed food”** means food which, before it is presented for sale or for serving, has been packed;

**“ready-to-consume food”** means any perishable food which may be consumed without having to undergo any further process of preparation to make it consumable;

**“serve”** includes the provision of food whether for a consideration or otherwise;

**“the Act”** means the Health Act, 1977 (Act No. 63 of 1977);

**“thermometer”** means an apparatus which can give the temperature readings referred to in these regulations, the combined accuracy of such a thermometer and its temperature-sensitive sensor being approximately 0,5oC;

**“these By-Laws”** includes any annexure to these By-Laws;

**“unsound”** means unwholesome sick, polluted, infected, contaminated, decayed or spoiled, or unfit for human consumption for any reason whatsoever;

**“vehicle”** means train, trolley, wagon, cart, bicycle, sled, truck, boat, ship or aeroplane and includes any other craft, vehicle or conveyance used in the handling or transport of food;

**“water”** means water that complies with the requirements set out in SABS 241: Water for domestic supplies.

### **Application**

2. (1) If the Municipality does not have the services of an inspector at its disposal for any reason may use the services of an inspector from another health authority or in private practice to exercise or execute the powers or duties of an inspector referred to in these By-Laws.

(2) No provision of these By-Laws that is in conflict with regulations made under the Act with regard to the handling or transport of certain foods must be valid in so far as it so conflicts.

### **Certificate of acceptability**

3. (1) Subject to the provisions of subsection (2) and section 15(5), no person must handle food or permit food to be handled-

- (a) on food premises in respect of which valid certificate of acceptability has not been issued or is not in force
- (b) in contravention of any restriction or condition or stipulation contained in such certificate of acceptability.

(2) The provisions of subsection (1) will come into effect in the case of food premises existing at the time of publication of these By-Laws on the first day following a period of six months after the date of promulgation of these By-Laws.

(3) The person in charge of any food premises wishing to obtain a certificate of acceptability in respect of such food premises must apply in writing to the Municipality on a form containing at least the particulars that are substantially the same as those contained in the form in Annexure A to these By-Laws

(4) On receipt of an application referred to in subsection (3), the Municipality must without delay refer the application to an inspector for consideration.

(5) An inspector may, in considering such an application, request such

further information as he or she may deem necessary or expedient from the applicant or from any other person.

(6) If an inspector, after having carried out an inspection, is satisfied that the food premises concerned, having due regard to existing conditions of the adjacent land and facilities, subject to the provisions of sections 4(2) and 15-

- (a) do in all respects comply with the provisions of section 5 and 6, the Municipality must issue a certificate of acceptability in the name of the person in charge in a prescribed form; or
- (b) do not in all respects comply with the provisions of section 5 and 6, a Municipality may, subject to the provisions of section 4(2), grant an extension for a maximum of six months to enable the person in charge so to change or equip the food premises that they comply with the provisions in question, but during the said period of extension the provisions of subsection (1) must not apply to the person concerned.

(7) A certificate of acceptability must be displayed in a conspicuous place for the information of the public on the food premises in respect of which it was issued or a copy thereof must immediately be made available on request where the display thereof is impractical.

(8) If the person in charge of food premises is replaced by another person, such person must inform the Municipality in writing of such replacement within 30 days after the date thereof and the Municipality must subject to the provisions of section 4(2), issue a new certificate of acceptability in the name of the new person in charge.

(9) A certificate of acceptability-

- (a) is not transferable from one person to another person and from one food premises to another food premises;
- (b) is valid only in respect of the nature of handling set out in the application of r a certificate of acceptability;
- (c) may at any time be endorsed by the Municipality by-
  - (i) the addition of any further restriction that may be necessary to prevent a health hazard; and
  - (ii) the removal of any restriction with regard to the category or type of food or the method of handling;
- (a) will expire -
- (b) temporarily for the period during which a prohibition under section 4(2) is in effect;
- (c) permanently if a prohibition referred to in section 4(2) is not removed within a stipulated period which must not exceed six months from the date on which a notice was issued in terms of section 4(2); or



- (d) permanently if the provisions of subsection (8) are not complied with.
- (10) No person may make any unauthorized changes or additions to or forge a certificate of acceptability.

### **Prohibition on the handling and transportation of food**

4. (1) No person must handle food in a manner contrary to the provisions of these By-Laws.

(2) If an inspector following an inspection of food premises or a facility is of the opinion-

- (a) that such food premises or facility-
  - (i) are or is in such a condition or used in such a manner; or
  - (ii) do or does not comply with these sections to the extent;
- (b) that a particular activity with regard to the handling of food takes place in such premises; or
- (c) that such circumstances exist with regard to the food premises or facility or any other activity, that they or it constitute a health hazard and that the continued use of the food premises or facility or the activity should be prohibited,

the Municipality may summarily prohibit the use of the food premises or facility for the handling of food or any of the activities that relate to the handling of food, by serving a written notice in terms of section 52 of the Act on the person in charge or, if he or she is not available, his or her representative informing such person of the prohibition.

(3) A notice referred to in subsection (2) must contain at least the following particulars:

- (a) The reason(s) for the prohibition;
  - (b) a statement that the prohibition will in writing be removed by a Municipality as soon as the reason for the prohibition has been removed and provided the inspector is satisfied that the reason for the prohibition is not likely to recur.
- (4) (a) A prohibition will come into operation from the time at and the date which a notice is served under subsection (2).
- (b) No person must perform any act that is contrary to such prohibition.
- (5) An inspector must, within 72 working hours of receiving a request for the removal of a prohibition carry out an investigation of the food premises, facility, activity or circumstance which gave rise to the prohibition and Municipality

must upon completion of such investigation in writing inform the person on whom the prohibition notice was served or, if he or she is not available, any other person representing such person that the prohibition has been removed or remains, as the case may be.

(6) The Municipality may levy an inspection fee equivalent to the expenses incurred by it for carrying out the inspection on the person in charge for each investigation carried out by an inspector in terms of subsection (5).

### **Standards and requirements for food premises**

5.(1) Subject to section 15 no person must handle food elsewhere other than on food premises that meet the requirements of this section and section 6.

(2) Food premises must be of such location, design, construction and finish and must be so equipped, in such condition and so appointed that they can be used at all times for the purpose for which they were designed, equipped and appointed-

- (a) without creating health hazard; and
- (b) in such manner that food-
  - can be handled hygienically on the food premises or with the equipment thereon; and
  - can be effectively protected by the best available method against contamination or spoilage by poisonous or offensive gases, vapours, odors, smoke, soot deposits, dust,, moisture, insects or other vectors, or by any other physical, chemical or biological contamination or pollution or by any other agent whatsoever.

(3) For the purpose of subsection (2), food premises must meet the following requirements:

- (a) All interior surfaces of walls, sides or ceilings, or of roofs without ceilings, and the surfaces of floors, or any other similar horizontal or vertical surfaces that from part of or enclose the food-handling area must-
  - (i) have no open joints or open seams and must be made of smooth, rust-free, non-toxic, cleanable and non-absorbent material that is dust-proof and water-resistant: Provided that in a food-serving or storage area-
    - (aa) face brick;
    - (bb) similar walls the joints of which are formed properly or are so formed and finished are easy to clean; or

- (cc) decorative wall or ceiling finishes which are easy to clean, may be used;
  - (ii) be of such a nature that they cannot contaminate or contribute to the contamination of food.
- (b) Each room of food premises must be -
  - (i) ventilated effectively by means of-
    - (aa) natural ventilation through openings or unobstructed sections which are directly connected to the outside air and so positioned in the external wall and/or roof that effective cross-ventilation is possible: provided that such openings must have a surface area equal to at least 5% of the floor area of the room concerned; or
    - (bb) artificial ventilation that complies with the requirements of the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977), whichever of the two methods will facilitate the addition of adequate fresh air to and the effective removal of polluted or stale air from the food-handling area to the extent that air contaminants that could contaminate food, and that gas, vapours, steam and warm air that may arise during the handling of food are effectively removed, and that the emergence of any unhygienic or unhealthy condition in the food-handling area is prevented;
  - (ii) illuminated by means of-
    - (aa) unobstructed transparent surfaces in the external wall and/or roof which admit daylight, with an area equal to at least 10% of the floor area in the concerned; and
    - (bb) artificial illumination which complies with the requirements of the National Building Regulations and the Building Standards Act, 1977, and which permits an illumination strength equal to at least 200 lux to fall on all food-handling surfaces in the room concerned.
- (c) Food premises must-
  - (i) have a wash-up facility with hot and cold water for the cleaning of facilities;
  - (ii) be rodent proof in accordance with the best available method, but this requirement will not apply in respect of food premises on which no food is handled or kept after the trading hours of the premises;

- (iii) be provided with effective means of preventing the access of flies or other insects to an area where food is handled;
  - (iv) have a waste-water disposal system approved by the Municipality.
- (d) The following must be available in respect of food premises:
  - (i) The number of latrines, urinal stall and hand washbasins specified in these By-Laws for the use of workers on the food premises and for use by persons to whom food is served for consumption on the food premises, but separate sanitary facilities for workers and clients must not be required and where persons of only one sex or no more than ten persons work on food premises, separate sanitary facilities must not be required for workers of different sexes;
  - (ii) Hand-washing facilities which must be provided with cold and/or hot water for the washing of hands by workers on the food premises and by persons to whom food is served for consumption on the food premises, together with a supply of soap (or other cleaning agents) and clean disposable hand-drying material or other hand-cleaning facilities or hand-drying equipment for the cleaning and drying of hands by such workers and persons;
  - (iii) Liquid proof, easy-to-clean refuse container with close-fitting lids suitable for the hygienic storage of refuse pending its removal from the food-handling area;
  - (iv) Storage space for the hygienic storage of food, facilities and equipment and a suitable separate area for the hygienic storage of refuse container on the food premises;
  - (v) A separate changing area with storage facilities for clothes;
  - (vi) An adequate supply of water.
- (e) No room in which food is handled must have a direct connection with any area-
  - (i) in which gas, fumes, dust, soot deposits, offensive odours or any other impurity is present or may arise in such a manner that food in the food-handling room could be contaminated or spoiled;
  - (ii) in which an act is performed in any manner or where any condition exists that could contaminate or spoil food in the food handling area;

- (f) A room in which food is handled may be connected to a room in which a latrine or urinal is situated-
  - (i) only via a properly ventilated lobby but all relevant interconnecting doors must cover the whole area of their apertures and they must be equipped with durable self-closing devices; or
  - (ii) without such a lobby between them, but the connecting aperture must have a self-closing door as contemplated in item (1) and the latrine or urinal room must be equipped with effective mechanical extraction ventilation to the outside air to render the atmosphere inside such room under a negative pressure in relation to the atmosphere in the food-handling room.

### **Standards and requirements for facilities on food premises**

6. (1) The surface of any table, counter or working surface on which unwrapped food is handled and any equipment, utensil or basin or any other surface which comes into direct contact with food must be made of smooth, rust-proof, non-toxic and non-absorbent material that is free of open joints or seams, but wooden chopping blocks, cutting boards and utensils are not prohibited if such items are kept in such condition that dirt does not accumulate thereon or therein.

(2) No surface referred to in subsection (1), and no crockery, cutlery, utensils, basins or any other such facilities must be used for the handling of food if they are not clean or if they are chipped, split or cracked.

(3) Any utensil or item which is suitable for single use only-

(a) must be stored in a dust-free container until used; and

(b) must not be used more than once.

(4) A surface referred to in subsection (1) and a facility referred to in subsection (2) must be-

(a) cleaned and washed before food come into direct contact with it for the first time during each work shift; and

(b) cleaned and washed, as and when necessary, during and/or immediately after handling of food, so that contamination of food that comes into contact with any such surface or facility must, before food comes into direct contact therewith, contain-

(i) no more than 100 viable micro-organisms per cm<sup>2</sup> upon analysis, conducted in accordance with acknowledged scientific micro-biological methods of investigation, of a sample taken in accordance with the swab technique prescribed by SABS Standard Test Method 763: Efficacy of Cleaning Plant, Equipment and Utensils: Swab Technique; and

(ii) no remains of cleaning material or disinfectants which

may pollute the food.

(5) (a) Every chilling and freezer facility used for the storage, display or transport of perishable food must be provided with a thermometer which at all times must reflect the degree of chilling of the refrigeration area of such facility and which must be in such a condition and positioned so that an accurate reading may be taken unhampered.

(b) Every heating apparatus or facility used for the storage, display or transport or heated perishable food must be provided with a thermometer which at all times must reflect the degree of heating of the heating area concerned and which must be such a condition and positioned so that an accurate reading may be taken unhampered.

#### **Standard and requirements for food containers**

7.(1) No person must sell canned or hermitically sealed food in a container which-

- (a) bulges at the flat or round sides or ends or one side of which bulges when the other side is pressed;
- (b) is in any way blown or from which gas escapes when it is opened or punctured, unless-
  - (i) the container contains an aerated ring; or
  - (ii) gas has been used as a preservative;
- (c) is so rusted or damaged that it is liable to contaminate or spoil the food or that it leaks or has become unsealed;
- (d) had a leak which was resealed.

(2) A container must be clean and free from any toxic substance, ingredient or any other substance liable to contaminate or spoil the food in the container.

(3) Repacked food, depending on the type of food, must be packed in a dustproof and liquid proof container that protects the product therein against contamination under normal handling conditions and must be so packed or sealed that the food cannot be removed from its container with the stopper or lid or similar seal being removed or without the wrapping, container seal being damaged.

(4) Perishable food, excluding the products referred to in section 14 and products that are not pre-packed, except food for consumption as meals on food premises, must, when served to the consumer, be packed in a container that protects the food therein against contamination.

#### **Standards and requirements for the display, storage and temperature of food**

8.(1) Food that is displayed or stored must not be in direct contact with a floor or any ground surface.

(2) Any shelf or display case used for displaying or storing food or any container must be kept clean and free from dust or any other impurity.

(3) Non-repacked, ready-to-consume food, including food served as meals and displayed in an open container, must be protected in accordance with the best available method against droplet contamination or contamination by insects or dust.

(4) (a) Subject to subsection (5) all food specified in these By-Laws must, excluding the time taken by the food to cool down or to be heated to the required temperature in accordance with good manufacturing practice, during the storage, transport or display thereof be kept at a core temperature not exceeding the core temperature specified food must be sold if, in the case of frozen or chilled food products, the core temperature thereof is higher than the required core temperature or the surface temperature thereof is more than 2oC higher than the required temperature thereof is lower than the required core temperature or the surface temperature thereof is more than 2oC lower than the required core temperature.

(c) The provisions of paragraph (a) must not apply to -

- (i) any perishable food that will be sold directly to a consumer within one hour of being processed or prepared or that will be consumed on the food premises within one hour of being processed or prepared;
- (ii) venison, for a period not exceeding eight hours after the animal concerned has been killed: Provided that the surface temperature thereof must not exceed 25oC;
- (iii) unprocessed raw fish, mollusks, crustaceans, raw meat, the carcasses of cattle, sheep, goats, pigs, horses, mules, donkeys, rabbits or ostriches while being transported for a period not exceeding one hour during delivery, but the surface temperature thereof must not exceed 25oC.
- (iv) Any food exposed to high temperatures than those referred to in this regulation during a maturation period or as part of a manufacturing process: Provided that exposure to such higher temperatures must be in accordance with good manufacturing practice.

(4) Any food that is marketed as frozen product and has thawed both the surface temperature of which has not exceeded 7oC may be refrozen, but such refrozen product must be handled in accordance with good manufacturing practice.

(5) The code of practice for measuring the temperature of food set out in Annexure E to these By-Laws must, in so far as it is applicable, be applied to measuring the temperature of food.

**Standards and requirements for protective clothing**

9.(1) No person must be allowed to handle food without wearing suitable protective clothing as specified in subsection (2).

(2) The protective clothing, including head covering and footwear, of any person handling food that is not packed so that the food cannot be contaminated must-

- (a) be clean and neat when such person begins to handle the food;
- (b) at all times during the handling of the food be in such a clean condition and of such design and material that it cannot contaminate the food;
- (c) be so designed that the food cannot come into direct contact with any part of the body, excluding the hands.

**Duties of a person in charge of food premises**

10. A person in charge of food premises must ensure that -

- (a) effective measures are taken to eliminate flies, other insects, rodents or vermin on the food premises;
- (b) any person working on the food premises is adequately trained in food hygiene by an inspector or any other suitable person;
- (c) refuse is removed from the food premises or from any room in which food is handled as often as is necessary and whenever an inspector requires it to be done;
- (d) refuse is stored or disposed of in such a manner that it does not create a nuisance;
- (e) refuse bins are-
  - (i) cleaned regularly; and
  - (ii) disinfected whenever necessary and whenever an inspector requires it to be done;
- (f) waste water on the food premises is disposed of to the satisfaction of the Municipality;
- (g) the food premises and any land used in connection with the handling of food and all facilities, freight compartments of vehicles and containers are kept clean and free from any unnecessary material, goods or items that do not form an integral food premises;
- (h) no person handling non-pre packed food wears any jewellery or adornment that may come into contact with the food, unless it is suitably covered;



- (i) no animal, subject to the provisions of any law, is kept or permitted in any room or area where food is handled, except that-
  - (i) a guide dog accompanying a blind person may be permitted in the sales or serving area of the food premises;
  - (ii) fish, mollusks or crustaceans may be kept alive until prepared for consumption;
  - (iii) a live animal may be killed in a separate room before the carcass is handled, subject to section 2(4);
- (j) no condition, act or omission that may contaminate any food arises or is performed or permitted on the food premises;
- (k) the provisions of these By-Laws are complied with;
- (l) all persons under his or her control who handle food at all times meet the standards and requirements and execute the duties prescribed by sections 9 and 11, respectively;
- (m) a room or area in which food is handled must not be used for-
  - (i) sleeping purposes;
  - (ii) washing, cleaning or ironing of clothing or similar laundry;
  - (iii) any other purpose or in any manner that may contaminate the food therein or thereon;
- (n) no food handler touches ready-to-consume non-pre-packed food with his or her bare hands, unless it is unavoidable for preparation purposes, in which case such food must be handled in accordance with good manufacturing practice;
- (o) the reporting of diseases and conditions contemplated in section 11(2)(b) are properly recorded and kept for perusal by an inspector.

#### **Duties of a food handler**

11. (1) Food, a facility or a container must not be handled by any person-

- (a) whose fingernails, hands or clothes are not clean;
- (b) who has not washed his or her hands thoroughly with soap and water or cleaned them in another effective manner-
  - (i) immediately prior to the commencement of each work shift;
  - (ii) at the beginning of the day's work or after a rest period;

- (iii) after every visit to a latrine or urinal;
- (iv) every time he or she has blown his or her nose or after his or her hands have been in contact with respiration or with his or her hair, nose or mouth;
- (v) after handling a handkerchief, money or a refuse container or refuse;
- (vi) after handling raw vegetables, fruit, eggs, meat or fish and before handling ready-to-use food;
- (vii) after he or she has smoked or on return to the food premises; or
- (viii) after his or her hands have become contaminated for any other reason.

(2) Food, a facility or a container must not be handled by any person-

- (a) who has on his or her body a suppurating abscess or a sore or a cut or abrasion, unless such abscess, sore, cut or abrasion is covered with a moisture-proof dressing which is firmly secured to prevent contamination of the food;
- (b) who is or who is suspected of suffering from or being a carrier of a disease or condition in its contagious stage that can be transmitted by food, unless any such person immediately reports the disease or condition to the person in charge and a certificate by a medical practitioner stating that such person is fit to handle food is submitted;
- (c) whose hands or clothing are not clean.

(3) No person must-

- (a) spit in an area where food is handled or on any facility;
- (b) smoke or use tobacco in any other manner while he or she is handling non-repacked food or while he or she is in an area where such food is handled;
- (c) handle non-pre-packed food in a manner that brings it into contact with any exposed part of his or her body, excluding his or her hands;
- (d) licks his or her fingers when he or she is handling non-prepacked food or material for the wrapping of food;
- (e) cough or sneeze over non-pre-packed food or food containers or facilities;

- (f) spit on whetstones or bring meat skewers, labels, equipment, or any other object used in the handling of food or any part of his or her hands into contact with his or her mouth, or inflate sausage casings, bags or other wrappings by mouth or in any other manner that may contaminate the food;
- (g) walk, stand, sit or lie on food or on non-hermetically sealed containers containing food or on containers or on food-processing surfaces or other facilities;
- (h) use a hand washbasin for the cleaning of his or her hands and simultaneously for the cleaning of facilities; or
- (i) while he or she is handling food, perform any act other than those referred to above which could contaminate or spoil food.

### **Standards and requirements for the handling of meat**

12.(1) (a) No person must on food premises handle meat derived from an animal slaughtered in contravention of section 3 of the Abattoir Hygiene Act, 1992 (Act No. 121 of 1992)

• No person must on food premises handle the meat of an animal exempted from the provisions of sections 3(1) and 10(1) of the Abattoir Hygiene Act, 1992, unless a notice that is clearly visible and legible and that contains the following information or information to that effect, in letters at least 18mm high, is displayed at the food premises: “The meat sold on these premises has been exempted from inspection in terms of section 10(1) of the Abattoir Hygiene Act, 1992 (Act No. 121 of 1992).”

(2) Meat on a carcass must not be handled on food premises, unless-

- (a) the carcass has been properly bled;
- (b) the abdominal viscera were removed within 30 minutes after the killing of content nor any other matter polluted or spoiled the meat; and
- (c) the thoracic viscera were removed within three hours after the killing of the animal.

(3) Unskinned carcasses must not be so handled that the skin thereof comes into contact with other food on food premises or that the meat of such carcasses is contaminated or spoiled.

(4) Subject to section 3 of the Abattoir Hygiene Act, 1992, no animal must be killed, bled, eviscerated, skinned or dressed on food premises other than in a room used specifically and exclusively for that purpose in accordance with good manufacturing practice: Provided that no further handling or processing of any such carcass must take place in that room.

### Standards and requirements for the transport of food

13.(1) No person must transport food including the products referred to in section 14 on or in any part of a vehicle-

- (a) unless that part is clean and has been cleaned to such an extent that chemical, physical or microbiological contamination of the food is prevented;
- (b) together with-
  - (i) contaminated food or waste food;
  - (ii) poison or any harmful substance;
  - (iii) a live animal; or
  - (iv) any object that may contaminate or spoil the food.

(2) Subject to subsections (1) and (4), the freight compartment of a vehicle that is used for the transportation of food that is not packed or wrapped in liquid proof and dustproof sealed container

- (a) must have an interior surface made of an easy-to-clean and smooth, rust free, non-toxic and non-absorbent material without open joints or seams and, before food is loaded into such freight compartment, no square centimeter of the said surface must upon analysis as referred to in section 6(4) contain more than 100 viable micro-organisms;
- (b) must be rustproof;
- (c) must not be used simultaneously for the transport of any person or any other item that may contaminate the food.

(3) Despite any provisions to the contrary contained in this section, no non-pre-packed food must be-

- (a) transported in such a manner that it comes into contact with the floor of a vehicle or the floor covering thereof or a surface thereof that can be walked on or with anything else that could pollute the food; or
- (b) transported or carried in such a manner that the food could be spoiled or contaminated in any way.

(4) Subsections (2) and (3)(a) must not apply to the transport of venison, fish, mollusks or crustaceans between the food premises and the place where the animals are hunted or the place where the fish, mollusks or crustaceans are caught or harvested: Provided that such transport must be by the best available method and within a suitable time limit for transport as required by circumstances

**Provisions concerning unprocessed products**

14. Notwithstanding any provisions to the contrary contained in these regulations, an inspector must, if he or she is of the opinion that conditions prevail that constitute a health hazard with regard to the packing, storage, display, sale or transport of fresh, raw and unprocessed fruit and vegetables and unprocessed maize, wheat, rye, unshelled peanuts, sugar cane, sunflower seed or other unprocessed agricultural crops, or with regard to the handling of food referred to in section 15(5)(a)-

- (a) subject to sections made in terms of section 35 of the Act relating to inspections and investigations in respect of the handling of food, order that any condition that led to or could lead to such or any other health hazard be corrected or that any provision of these regulations be complied with; or
- (b) prohibit the continued use of the facility or food premises for the packing, storage, display, sale or transport of any of the said products, and the provisions of regulations 4 (2) to (5) must with the necessary changes, apply to such prohibition.

**Exemptions, additional requirements and reservations**

15. (1) A person in charge of food premises may, subject to section 3(1)(a), apply to the Municipality concerned for exemption from any of the provisions of these By-Laws excluding exemption from the issuing of a certificate of acceptability.

(2) On receipt of an application referred to in subsection (3)(3) Municipality must refer the application to an inspector without delay, and exemption must not be granted unless the inspect has submitted a report to the Municipality to the effect that he or she is satisfied that -

- (a) the provision from which exemption is requested imposes unreasonable requirements in the case in question; and
- (b) the granting of such exemption does not or will not result in conditions that constitute a health hazard.

(3) An exemption referred to in this section -

- (a) must be subject to the conditions listed by the Municipality in the certificate of acceptability or notice of exemption, as the case may be; and
- (b) must be withdrawn by the Municipality on the rounds of an inspection report and a recommendation by an inspector to the effect that he or she is of the opinion that such exemption will result in conditions that constitute a health hazard.

(4) Subject to section 3(6)(a) the Municipality may, on the grounds of an inspection report and recommendations from an inspector, set additional requirements to be met on any food premises where, despite compliance with any provisions contained in

these regulations, a health hazard exists which is not provided for in these regulations, which additional requirements must, subject to the principles of the best available method and good manufacturing practice, be limited to the minimum necessary to remove the health hazard in question.

(5) (a) Subject to the principles of the best available method and good manufacturing practice, the provisions of sections 3(1) and 5 must not apply in respect of the killing, bleeding or evisceration of an animal after the hunting thereof or of fish, mollusks or crustaceans after the catching or harvesting thereof.

(b) The provisions of section 3(1) must not apply to-

- (i) a private residence where food is handle for the purpose of making it available without compensation to a church, educational or amateur sports organization or any registered welfare or fund-raising organization for sale, but the person in charge of any such organization who receives such food must keep a record of the type of food and the address of the private residence where the food was handled for a period of at least 30 days after receipt of food; and
- (ii) any vehicle used by the person in charge of food premises, for which a certificate acceptability exists, to from such food premises, but must apply in respect of a vehicle used for the transport of perishable food on behalf of another person.

(c) These By-Laws must not apply to a private household which handles food for consumption by such household or, without compensation, by any other person.

## Offences

16. Any person who contravenes a provision of these By-Laws or allows such a contravention to take place must be guilty of an offence and must upon conviction be liable for a payment of a fine not exceeding R4000.00 or a period of imprisonment not exceeding 180 days or both.

## Repeal of By-Laws

17. All previous and erstwhile Council regulations, policies and arrangements on food handling that are in conflict with these By-Laws, are repealed.

## Short title and commencement

18. These By-Laws are called Food handling By-Laws, 2012 and will come into operation on the date of publication in the *Provincial Gazette*.

**ANNEXURE A****[SECTION 8(6)]****CODE OF PRACTICE FOR MEASURING TEMPERATURES OF FOOD****1. Informing the person in charge or person responsible**

The inspector must inform the person in charge, or a person supervising the operation if the person in charge is not available, that he or she wishes to measure the temperatures of the food concerned and must explain to him or her all the procedures contained in this code.

**2. Precautionary measures**

(2) All procedures must be carried out as far as is practicable in a manner that is aseptic and free from chemical pollutants.

(2) In the case of pre-packed food, and if it is necessary, the inspector must remove the packaging in such a manner that the minimum and only the most reasonable essential damage is caused, or the person in charge or the person supervising the operation must remove the packaging at his or her own risk.

(3) The temperature of food must as far as is practicable be measured without removing the food from a chilling, freezing or heating facility.

**3. Measurement of temperature****Pre-packed food**

(1) If the food is pre-packed, the estimated temperature of the food may be measured by placing or at least one minute the stem of a thermometer (hereinafter referred to as the "stem") between two or more food packages or, in the case of a single food package, on the outer surface of the package.

(2) If the temperature reading is not in compliance with the core temperatures specified in Annexure D to these regulations or if the inspector has any doubt regarding the temperature of the food inside the package, the surface to core temperature of the food may be measured to determine the actual temperature.

**Core temperature**

(3) If the food product is frozen a hole must be drilled in the food up to the estimated core of the food product with a sterilized stainless steel bit with an external measurement of about 4mm. The sterilized stem must be inserted in to the hole up to the estimated center of the product and a reading must be taken after two minutes. In the case of a heated, chilled or unchilled product, the sterilized stem must be inserted up to the estimated core of the food product and a reading must be taken after one minute.

**Surface temperature**

The surface temperature must be measured by placing the sterilized

stem directly on the surface of the food for at least one minute or, in the case of liquid, in the liquid for at least one minute, and the reading must be taken immediately thereafter.

#### **4. Presumption in respect of representative temperature reading**

The food temperature determined in accordance with this code of practice must be regarded as being representative of the temperature of all food in the freezing, chilling or heating facility concerned if the inspector is satisfied that such food is in the same condition or has the same characteristics as the food the temperature of which was taken.

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