

RATES BY-LAWS

MKHAMBATHINI MUNICIPALITY

Adopted by the _____ Council
on the _____ day of _____ 2009

DRAFT RATES BY-LAWS

Be it enacted by the Council of the Mkhambathini Municipality, in terms of section 156(2) of the Constitution, 1996, read with section 11(3)(m) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), and section 6 of the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004), as follows:

ARRANGEMENT OF SECTIONS

Section

1. Definitions
2. Rates policy
3. Principles
4. Categories of property
5. Categories of owners of property
6. Properties used for multiple purposes
7. Differential rating
8. Exemptions
9. Rebates
10. Reductions
11. Process for granting exemptions, rebates and reductions
12. Short title
13. Commencement

Definitions

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

“agricultural purpose”, in relation to the use of a property, excludes the use of a property for the purpose of ecotourism or for the trading in or hunting of game;

“annually” means once every financial year;

“category” –

- (a) in relation to property, means a category of property determined in terms of section 4 of these by-laws;
- (b) in relation to owners of property, means a category of owners of property determined in terms of section 5 of these by-laws;

“exemption”, in relation to the payment of a rate, means an exemption granted in terms of section 8 of these by-laws;

“land tenure right” means an old order right or a new order right as defined in section 1 of the Communal Land Rights Act, 2004 (Act No. # of 2004);

“multiple purposes”, in relation to property, means the use of property for more than one purpose;

“municipal council” or **“council”** means a municipal council referred to in section 18 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“municipality” means the Mkhambathini Municipality established in terms of section 155(6) of the Constitution, 1996, and established by and under section 11 and 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), read with sections 3, 4 and 5 of the KwaZulu-Natal Determination of Types of Municipality Act, 2000 (Act No. 7 of 2000).

“owner” –

- (a) in relation to property referred to in paragraph (a) of the definition of “property”, means a person in whose name ownership of the property is registered;
- (b) in relation to a right referred to in paragraph (b) of the definition of “property”, means a person in whose name the right is registered;
- (c) in relation to a land tenure right referred to in paragraph (c) of the definition of “property”, means a person in whose name the right is registered or to whom it was granted in terms of legislation, or
- (d) in relation to public service infrastructure referred to in paragraph (d) of the definition of “property”, means the organ of state which owns or controls that public service infrastructure as envisaged in the definition of “publicly controlled”,

provided that a person mentioned below may for the purposes of these By-laws be regarded by the municipality as the owner of the 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 property in a deceased estate;
- (iii) a trustee or liquidator, in the case of property in an insolvent estate or in liquidation;
- (iv) a judicial manager, in the case of property in the estate of a person under judicial management;
- (v) a curator, in the case of property in the estate of a person under curatorship;
- (vi) a usufructuary or other person in whose name a usufruct or other personal servitude is registered, in the case of 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 a municipality and of which possession was given to the buyer pending registration of ownership in the name of the buyer;
- (ix) the holder of a right of extension in terms of the Sectional Titles Act, 1986, (ct No. 95 of 1986);

“permitted use”, in relation to property, means the limited purposes for which the property may be used in terms of –

- (a) any restriction imposed by –
 - (i) a condition of title;
 - (ii) a provision of a town planning or land use scheme; or
 - (iii) any legislation applicable to any specific property or properties; or
- (b) any alleviation of any such restrictions;

“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.

“property register” means a register of properties referred to in section 23 of the Act;

“protected area” means an area that is or has to be listed in the register referred to in section 10 of the National Environmental: Protected Areas Act, 2003 (Act No. 57 of 2003);

“public benefits organization” means an organization conducting specified public benefit activities as defined in the Act and registered in terms of the Income Tax Act, 1962 (Act No. 58 of 1962) for a tax reduction because of those activities;

“publicly controlled” means owned or otherwise under the control of an organ of state, including –

- (a) a public entity listed in the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (b) a municipality; or
- (c) a municipal entity as defined in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

“public service infrastructure” means publicly controlled infrastructure of the following kinds:

- (a) national, provincial or other public roads on which goods, services or labour move across the municipal boundary;
- (b) water or sewer pipes, ducts or other conduits, dams, water supply reservoirs, water treatment plants or water pumps forming part of a water or sewer scheme serving the public;
- (c) power stations, power substations or power lines forming part of an electricity scheme serving the public;
- (d) gas or liquid fuel plants or refineries or pipelines for gas or liquid fuels, forming part of a scheme for transporting such fuels;
- (e) railway lines forming part of a national railway system;
- (f) communication towers, masts, exchanges or lines forming part of a communications system serving the public;
- (g) runways or aprons at national or provincial airports;
- (h) breakwaters, sea walls, channels, basins, quay walls, jetties, roads, railway or infrastructure used for the provision of water, lights, power, sewerage or similar services of ports, or navigational aids comprising lighthouses, radio navigation aids, buoys, beacons or any other device or system used to assist the safe and efficient navigation of vessels;
- (i) any other publicly controlled infrastructure as may be prescribed; or
- (j) rights of way, easements or servitudes in connection with infrastructure mention in paragraphs (a) to (i).

“rate” means a municipal rate on property envisaged in section 229(1)(a) of the Constitution, 1996;

“rateable property” means property on which a municipality may in terms of section 2 of the Act levy a rate, excluding property fully excluded from the levying of rates in terms of section 17 of the Act;

“rebate”, in relation to a rate payable on property, means a discount in the amount of the rate payable on the property granted in terms of section 9 of these by-laws;

“reduction”, in relation to a rate payable on property, means the lowering of the amount for which the property was valued and the rating of the property at that lower amount granted in terms of section 10 of these by-laws;

“residential property” means property included in a valuation roll in terms of section 48(2) of the Act as residential;

“sectional title scheme” means a scheme as defined in section 1 of the Sectional Titles Act;

“sectional title unit” means a unit as defined in section 1 of the Sectional Titles Act

“specified public benefit activity” means an activity listed in item 1 (welfare and humanitarian), item 2 (health care) and item 4 (education and development) of Part 1 of the Ninth Schedule to the Income Tax Act, 1962 (Act No. 58 of 1962);

“the Communal Land Rights Act” means the Communal Land Rights Act, 2004 (Act No. 11 of 2004);

“the Communal Property Associations Act” means the Communal Property Associations Act, 1996 (Act No. 28 of 1996);

“the Provision of Land and Assistance” means the Provision of Land and Assistance Act, 1993 (Act No. 126 of 1993);

“the Restitution of Land Rights Act” means the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994);

“the Sectional Titles Act” means the Sectional Titles Act, 1986 (Act No. 95 of 1986);

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

“**vacant land**” means land on which no immovable improvements have been erected.

Rates Policy

2.(1) The municipal council must, by resolution, adopt a policy on the levying of rates on rateable property in the municipality.

(2) The rates policy adopted by the municipal council in terms of section 2(1) must comply with the provisions of the Act.

(3) The municipality must levy rates in accordance with the Act; these by-laws; and the rates policy adopted by the municipal council in terms of section 2(1).

Principles

3. The rates policy adopted by the municipal council must comply with the following principles –

- (a) All ratepayers within a specific category, as determined by the municipal council from time-to-time, must be treated equitably.
- (b) A fair and transparent system of exemptions, rebates and reductions must be adopted and implemented by the municipality.
- (c) Relief measures in respect of the payment of rates may not be granted on an individual basis, other than by way of exemption, rebate or reduction.
- (d) Exemptions, rebates and reductions must be used to alleviate the rates burden on –
 - (i) the poor;
 - (ii) public benefit organizations; and
 - (iii) public service infrastructure.
- (e) Provision must be made for the promotion of local, social and economic development; and
- (f) . . .

Categories of Property

4.(1) For the purpose of levying different rates on different categories of property, the municipal council must –

- (a) determine different categories of property; or
- (b) provide criteria for determining different categories of property.

(2) The different categories of property determined by the municipal council in terms of section 4(1)(a); or the criteria for determining different categories of property provided by the municipal council in terms of section 4(1)(b) must be

specified in the rates policy adopted by the municipal council in terms of section 2(1).

(3) The different categories of property determined by the municipal council in terms of section 4(1)(a) may include, but are not limited, to those set out below –

Properties used for agricultural purposes

Commercial and business

Industrial

Residential

Municipal use

Public Service Infrastructure

State and Trust Land

Properties acquired by a land reform beneficiary

Properties on which national monuments are proclaimed and used for such

Properties used for any specific public benefit activities listed in Part 1 of the Ninth Schedule to the Income Tax Act

Properties used for multiple purposes

Properties used for crèche purposes

Properties used for clinic purposes

Properties used for library purposes

Properties used for post office purposes

Properties used for police station purposes

Properties used for magistrates courts

Properties used for education purposes

Properties used for place of worship purposes

Properties used for sport facility purposes

Properties used for cemeteries

Properties used for racetrack

Properties used for quarry

Properties used for zoo and/or game reserve

Sectional Title properties

A Real Right of Extension registered in terms of a Sectional Titles Scheme
Rural Communal Land

(4) The criteria for determining different categories of property provided by the municipal council in terms of section 4(1)(b) may include, but are not limited, to those set out below –

- (a) the actual use of the property;
- (b) the permitted use of the property;
- (c) the size of the property;
- (d) the geographical area in which the property is located; or
- (e) State Property held in Trust.

Categories of Owners of Properties

5.(1) For the purpose of levying rates on different categories of property or for the purpose of granting exemptions, rebates or reductions, the municipal council must –

- (a) determine different categories of owners of property; or
- (b) provide criteria for determining different categories of owners of property.

(2) The different categories of owners of property determined by the municipal council or the criteria for determining different categories of owners of property provided by the municipal council must be specified in the rates policy adopted by the municipal council in terms of section 2(1).

(3) The different categories of owners of property determined by the municipal council in terms of section 5(1)(a) may include, but are not limited, to the following categories –

- (a) indigent owners;
- (b) owners dependent on pensions or social grants for their livelihood;
- (c) owners temporarily without an income;
- (d) owners of property situated within an area affected by a disaster or any other serious adverse social or economic condition;
- (e) owners of residential property whose market value is below the amount indicated in the municipality's rates policy before the first R15 000 mandatory exclusion;
- (f) owners of agricultural property who are *bona fide* farmers; or
- (g) . . .

(4) The criteria for determining different categories of owners of property provided by the municipal council in terms of section 5(1)(b) may include, but are not limited, to the following criteria –

- (a) income of the owner of the property;

- (b) source of income of the owner of the property;
- (c) occupation of the owner of the property;;
- (d) market value of the property;
- (e) use of the property;
- (f) disasters or any other serious adverse social or economic condition; or
- (g) . . .

Properties used for Multiple Purposes

6.(1) The municipal council must determine the criteria in terms of which multiple-use properties must be rated.

(2) The criteria determined by the municipal council in terms of section 6(1) must be specified in the rates policy adopted by the municipal council in terms of section 2(1).

(3) The criteria determined by the municipal council in terms of section 6(1) must be either –

- (a) the permitted use of the property;
- (b) the dominant use of the property; or
- (c) the multiple-uses of the property

(4) If the criterion set out in section 3(c) is adopted by the municipal council, the rates levied on multiple-use properties must be determined –

- (a) by apportioning the market value of such a property to the different purposes for which the property is used; and
- (b) by applying the relevant cent amount in the rand to the corresponding apportioned market value.

Differential Rating

7.(1) Subject to and in conformity with the Act, the municipality may levy different rates on different categories of property.

Exemptions

8.(1) Subject to and in conformity with the Act, the municipality may exempt –

- (a) the owners of any specific category of property; and/or
 - (b) any specific category of owners of property,
- from the payment of rates.

(2) If the municipality chooses to exempt the owners of any specific category of property or any specific category of owners of property from the payment of

rates, it must exercise this power in accordance with the criteria determined by the municipal council in terms of section 3(3)(b)(ii) of the Act.

(3) The criteria determined by the municipal council in terms of section 3(3)(b)(ii) of the Act must be specified in the rates policy adopted by the municipal council in terms of section 2(1).

Rebates

9.(1) Subject to and in conformity with the Act, the municipality may grant a rebate –

- (a) to the owners of any specific category of property; and/or
 - (b) to any specific category of owners of property,
- on the rate payable in respect of their properties.

(2) If the municipality chooses to grant a rebate to a specific category of property or to a specific category of owners of property from the payment of rates, it must exercise this power in accordance with the criteria determined by the municipal council in terms of section 3(3)(b)(iii) of the Act.

(3) The criteria determined by the municipal council in terms of section 3(3)(b)(iii) of the Act must be specified in the rates policy adopted by the municipal council in terms of section 2(1).

Reductions

10.(1) Subject to and in conformity with the Act, the municipality may grant a reduction:

- (a) to the owners of any specific category of property; and/or
 - (b) to any specific category of owners of property,
- in the rate payable in respect of their properties.

(2) If the municipality chooses to grant a reduction to a specific category of property or to a specific category of owners of property from the payment of rates, it must exercise this power in accordance with the criteria determined by the municipal council in terms of section 3(3)(b)(iii) of the Act.

(3) The criteria determined by the municipal council in terms of section 3(3)(b)(iii) of the Act must be specified in the rates policy adopted by the municipal council in terms of section 2(1).

Process for granting exemptions, rebates and reductions

12.(1) Applications for exemptions, rebates and reductions must be made in accordance with the procedures determined by the municipal council.

(2) The procedures determined by the municipal council in terms of section 12(1) must be specified in the rates policy adopted by the municipal council in terms of section 2(1) or the credit control policy, or as specified by the Municipality from time to time.

(3) The municipality retains the right to refuse an application for an exemption, rebate or reduction if the details supplied in support of such an application are absent, incomplete, incorrect or false.

Short title

14. These by-laws will be called the Mkhambathini Municipality By-Laws, 2009

Commencement

15. These by-laws come into force and effect on 1 July 2009.