

MKHAMBATHINI MUNICIPALITY SPATIAL PLANNING AND LAND USE MANAGEMENT AMENDMENT BY-LAW, 2016

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments

_____ Words underlined with a solid line indicate insertions in existing enactments

AMENDMENT BY-LAW

To amend the Mkhambathini Municipality Spatial Planning and Land Use Management By-law, 2016, so as to amend the name of the By-law, to redefine the definition of “Municipality”, to decrease the period for lodging appeals to 21 days, to improve the provisions relating to subsequent municipal planning approval, to provide for amnesty, to revise the categorisation of applications, to allow only parties to an application to make representations at a hearing on an application for municipal planning approval and to require an applicant to give notice to all parties who commented on an application for municipal planning approval, if the applicant applies for the late lodging of a memorandum of appeal.

Amendment of the name of the principal By-law

1. The name of the Mkhambathini Municipality Spatial Planning and Land Use Management By-law, hereinafter referred to as the principal By-law, is hereby amended by the substitution for the name of the following:

“[MPENDLE MUNICIPALITY,] MKHAMBATHINI MUNICIPALITY, [uMNGENI MUNICIPALITY, MPOFANA MUNICIPALITY, RICHMOND MUNICIPALITY AND uMSHWATHI MUNICIPALITY PLANNING AND LAND USE MANAGEMENT BY-LAW] PLANNING AND LAND USE MANAGEMENT BY-LAW”

Amendment of section 1 of the principal By-law

2. Section 1 of principal By-law, is hereby amended by the substitution for the definition of “Municipality” of the following definition:

“**Municipality**” means the [Local Municipality in whose area the land is located] Mkhambathini Municipality.”

Amendment of section 57 of the principal By-law

3. Section 57 of the principal By-law is hereby amended –

(a) by the substitution for subsection (3) of the following subsection:

“(3) An appellant must lodge a memorandum of appeal, contemplated in item 1 of Schedule 10, within **[30]** 21 days of being regarded as having been notified of a Municipal Planning Authorised Officer or Municipal Planning Tribunal’s decision.”; and

(a) by the substitution for subsection (4) of the following subsection:

“(4) The right to appeal to the Municipal Planning Appeal Authority against a decision by a Municipal Planning Authorised Officer or the Municipal Planning Tribunal lapses, if an appellant fails to lodge a memorandum of appeal within **[30]** 21 days of being regarded as having been notified of the decision.”.

Amendment of section 77 of the principal By-law

4. Section 77 of the principal By-law is hereby amended by the substitution for paragraph (a) of subsection (3) of the following subsection:

“(a) failure to lodge a memorandum of appeal within **[30]** 21 days of being regarded as having been notified of the Municipality’s decision; and”.

Amendment of section 100 of principal By-law

5. Section 100 of the principal By-law is hereby amended by the deletion of subsections (2) and (3).

Insertion of section 100A and 100B

6. The following sections are inserted after section 99 of the principal By-law:

“Administrative penalty for failing to obtain prior municipal planning approval

100A. (1) If the Municipal Planning Approval Authority approves an application for municipal planning approval, despite –

- (a) a building having been erected on the land or the land having been used without prior municipal planning approval;
- (b) the applicant having been convicted of an offence contemplated in section 87(1); or
- (c) a court order contemplated in section 96(2).

the Municipal Planning Approval Authority may impose an administrative penalty.

(2) The Municipal Planning Approval Authority must consider the following matters when it determines whether to impose an administrative penalty and the amount to impose, if applicable –

- (a) the municipality’s policy on the imposition of an administrative penalty in terms of this Act, if any;
- (b) the Municipality’s Integrated Development Plan, including its Spatial Development Framework, in terms of section 25(1) of the Municipal Systems Act;
- (c) if the use of the land is similar or compatible with other land uses in the surrounding area, irrespective of whether or not the surrounding land uses have planning approval;
- (d) site specific circumstances in favour or against the use of the land for the purpose for which it is used;
- (e) whether the applicant was the owner or occupant of the land at the time that the buildings were erected on the land or the land was used without prior planning approval;
- (f) the extent to which the applicant has co-operated with the Municipality and the Municipal Planning Approval Authority;
- (g) whether any act, omission or negligence by the Municipality contributed to the failure to obtain prior planning approval;
- (h) the nature, duration and impact of the activity for which prior municipal planning approval was not obtained;
- (i) the extent and value of any significant profit or other benefit derived from the failure by the applicant to obtain prior municipal planning approval;

(i) any loss or damage suffered by the Municipality or a third party as a result of the applicant or the person that erected buildings on the land or used the land without prior planning approval's failure to obtain prior municipal planning approval;

(k) the extent of the applicant's knowledge and experience of municipal planning and the law related thereto; and

(l) whether the applicant has previously been found in contravention of this By-law or any other planning law.

(3) An administrative penalty may not exceed –

(a) the value of any building or part of a building erected without the Municipal Planning Authority's prior approval; or

(b) the value of the unlawful activity, if –

(i) the unlawful activity is performed in an existing building that was previously lawfully used for a different purpose; or

(ii) the unlawful activity is not performed in a building.

(4) Unless proven otherwise, the value of an unlawful activity must be regarded as 10% of the aggregate annual turnover generated by the activity –

(a) calculated over the last 36 months of operation; or;

(b) if it has been in operation for less than 36 months, calculated over the period that the activity has been in operation.

(5) The applicant bears the onus of proving the value of the building or part thereof or the value of the unlawful activity.

(6) The Municipal Planning Approval Authority may request proof from an applicant to substantiate the amount claimed by it to be the value of the building or part thereof or the value of the unlawful activity.

(7) The Municipal Planning Approval Authority may refuse an application for subsequent municipal planning approval, if an applicant failed to submit adequate proof of the value of the building or part thereof or the value of the unlawful activity.

(8) The Municipal Planning Approval Authority must specify the period or date by which the administrative penalty must be paid in its Record of Decision, which may not be more than 3 years after notice of municipal planning approval was served on the applicant.

(9) An administrative penalty imposed in terms of this section constitutes a levy that must be paid in full before the transfer of a property may be registered as contemplated in section 118(1) of the Municipal Systems Act.

(10) Municipal planning approval does not lapse as a result of failure by an applicant to pay an administrative penalty within the period specified in the Municipal Planning Approval Authority's Record of Decision.

(11) An applicant may claim an amount equivalent to the amount paid as an administrative penalty to the Municipality together with the costs that he or she incurred in paying the administrative penalty from –

(a) the person who owned the land at the time that the building was erected on the land without the municipality's prior approval; or

(b) the person who first conducted the unlawful activity, if –

(i) the unlawful activity is performed in an existing building that was previously lawfully used for a different purpose; or

(ii) the unlawful activity is not performed in a building.

Amnesty

101B.(1) The Municipality may by notice in a newspaper circulating in its area declare a period in which it will not impose an administrative penalty for failure to obtain prior municipal planning approval as contemplated section 100A.

(2) The notice in the newspaper must –

(a) specify the beginning and end date of the amnesty period; and

(b) invite any person who has failed to obtain prior municipal planning approval before the start of the amnesty period to apply to the Municipal Planning Approval Authority for municipal planning approval.

Amendment of section 128 of the principal By-law

7. Section 128 of the principal By-law is hereby amended by the substitution for section 128 of the following subsection:

“128. This By-Law is called the [Impendle Municipality], Mkhambathini Municipality, [uMngeni Municipality, uMpofana Municipality, and uMshwati Municipality] Planning and Land Use Management By-law, 2016, and comes into operation on the date of this gazette”.

Amendment of item 1 of Schedule 2 of the principal By-law

8. Item 1 of Schedule 2 of the principal By-law is hereby amended –

(a) by the insertion after sub item (a) of the following sub item:

“(aA) the approval for a development situated outside the area of land use scheme, if the floor area of the building that is the subject of the application is 400m² or less.” and

(b) by the insertion after sub item (e) of the following sub item:

“(eA) the notarial tying of adjacent properties.”

Amendment of item 3 of Schedule 2 of the principal By-law

9. Item 3 of Schedule 2 of the principal By-law is hereby amended –

(a) by the deletion of paragraph (b);

(b) by the substitution for paragraph (c) of the following paragraph:

“(c) approval for a development situated outside the area of land use scheme, if the floor area of the building that is the subject of the application is more than 400m².”;

(c) by the deletion of paragraph (d);

(d) by the insertion after paragraph (c) of the following paragraphs:

“(d)(A) the subdivision of land that involves an amendment to the land use scheme clauses or a rezoning;

(d)(B) the subdivision of land within the land use scheme into more than 10 properties, excluding land to be used exclusively for the accommodation of engineering services;

(d)(C) the subdivision of land outside the land use scheme for non-agricultural purposes, excluding land to be used exclusively for the accommodation of engineering services.”; and

(e) by the deletion of paragraph (f).

Amendment of item 17 of Schedule 4 of the principal By-law

10. Item 17 of Schedule 4 of the principal By-law is hereby amended –

(a) by the substitution for the expression “public hearing” of the expression “hearing”;

(b) by the substitution for paragraph (a) of sub item (4) of the following paragraph:

“(a) in writing notify –

(i) the applicant; and

(ii) all parties who commented on an application for municipal planning approval, of the **[public]** hearing **[;]**”;

(c) by the deletion of paragraphs (b) and (c) of sub item (4); and

(d) by the substitution for sub item (7) of the following sub item:

“(7) **[Any member of the public may attend a hearing but]** A person who is present at a hearing who is not a party to the application, representing a party to the application or designated by the Chairperson of the Municipal Planning Tribunal to decide the application contemplated in section 16(1), may not speak at the hearing **[with]** without the leave of the **[Chairperson of the hearing]** Presiding Officer who may impose any conditions limiting the person’s address.

Amendment of the heading of Schedule 6 of the principal By-law

11. The heading of Schedule of the principal By-law is hereby amended by the substitution for the heading by the following heading –

“SCHEDULE 6

PROCEDURE FOR AMENDING AN APPLICATION OR DECISION FOR MUNICIPAL PLANNING APPROVAL AND CANCELLATION OF MUNICIPAL PLANNING APPROVAL

(Sections **[53(4)]** 53(3) and 70)”.

Amendment of item 1 of Schedule 10 of the principal By-law

12. Item 1 of Schedule 10 of the principal By-law is hereby amended by the substitution for sub item (3) of the following sub item:

“(3) If the appellant is a person who lodged a written comment in terms of item 2(d) of Schedule 5, the appellant must serve the memorandum of appeal on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipal Manager; and

(c) the applicant.

Amendment of item 3 of Schedule 10 of the principal By-law

13. Item 3 of Schedule 10 of the principal By-law is hereby amended by the substitution for sub item (b) of the following item:

“(b) a person who has lodged a written comment in terms of **[items 7(d) of Schedule 6]** item 2(d) of Schedule 5 –

(i) who has lodged an appeal against the decision of the Municipality; or

(ii) who has lodged a responding memorandum.

Amendment of item 1 of Schedule 11 of the principal By-law

14. Item 1 of Schedule 11 of the principal By-law is hereby amended –

(a) by the substitution for sub item (1) of the following sub item:

“(1) An applicant or a person who has a right of appeal, may, within the **[30]** 21 days allowed for the lodging of an appeal, apply to the Chairperson for an extension of the period within which to lodge a memorandum of appeal.”; and

(b) by the substitution for sub item (3) of the following sub item:

“(3) An application for an extension of the period within which to lodge a memorandum of appeal must be served on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipality; **[and]**

(c) the applicant, if the person lodging the application for the late lodging of a memorandum of appeal is not the applicant **[.]**; and

(d) all parties who commented on an application for municipal planning approval, if the person lodging the application for the late lodging of a memorandum of appeal is the applicant.

Short title and commencement

15. This By-law is called the Mkhambathini Municipality Spatial Planning and Land Use Management Amendment By-law, 2016.