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KWAZULU-NATAL PROVINSIE  
ISIFUNDAZWE SAKWAZULU-NATALI

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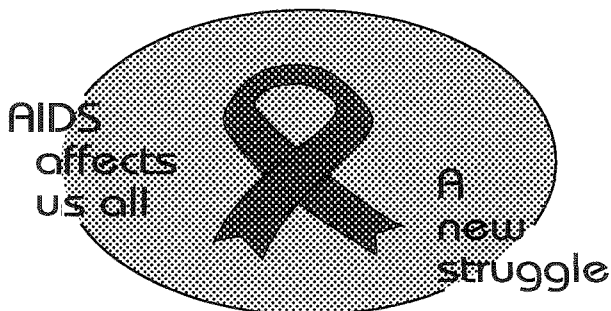
**Vol. 5**

**PIETERMARITZBURG,**

8 JUNE 2011  
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**No. 589**

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**MUNICIPAL NOTICES**

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**No. 63****8 June 2011****MKHAMBATHINI BY-LAWS**

The Mkhambathini Municipality, acting under the authority of section 160 (4) and section 162 of the Republic of South Africa Act No. 108 of 1996, read with section 12 and 13 of the Local Government: Municipal Systems Act No. 32 of 2000 hereby publishes the by-laws set hereunder as adopted by the Council, which will come into operation on the date of publication in the KwaZulu Natal Provincial Gazette.

**DA PILLAY**  
**MUNICIPAL MANAGER**

## OUTDOOR ADVERTISING BY-LAWS

Be it enacted by the Council of the Mkhambathini Municipality, in terms of Section 156 of the Republic of South Africa Act No. 108 of 1996, read with section 11 of the Local Government: Municipal Systems Act No. 32 of 2000, as follows:

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## CHAPTER 1

### DEFINITIONS

#### Definitions

1. In this Bylaw, unless the context otherwise indicates-

"advertisement" means any visible representation of a word, name, object or of an abbreviation of a word or name, or of any sign or symbol which is not intended solely for illumination or as a warning against any danger;

"authorised official" means any official of the Council who has been authorised by the Council to administer, implement or enforce the provisions of these bylaws;

"building control officer" means any person appointed or deemed to be appointed as a building control officer by the Council in terms of section 5 of the National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977);

"Council" means the council of the Mkhambathini Municipality and its Executive Committee or any other body acting by virtue of any power delegated to it in terms of legislation, as well as any officer to whom the Council has delegated any powers and duties with regard to these bylaws;

"display" means, in relation to an advertisement, to display the advertisement within public view;

"flat sign-board-board" means any sign-board affixed to a wall and which at no point projects more than 230 mm from the surface of the wall;

"ground sign-board" means any sign which is affixed to the ground and is not attached to a building;

"projecting sign-board" means any sign-board affixed to a wall and which at any point projects more than 230 mm from the surface of the wall;

"roof" means any roof of a building but does not include that portion of a roof which is the roof of a verandah or balcony;

"sign-board" means any structure or device used or intended or adapted for the display thereon of an advertisement;

"sky sign-board" means any sign-board affixed to a roof or the top of a parapet of a roof; and

“wall” means any external wall of a building, but does not include a parapet balustrade or railing of a verandah or balcony.

## CHAPTER 2

### APPLICATION

#### Application of regulations

2. (1) Subject to the provisions of sub-section (2), this by-law shall apply to all advertisements displayed or to be displayed within the area of jurisdiction of the Council.
- (2) The following categories of advertisements shall be exempted from the provisions of this by-law:
  - (a) an advertisement, commonly referred to as builders' or contractors' boards, displayed within the boundaries of any erf during the course of building operations including plumbing, electrical wiring, painting and renovations;
  - (b) an advertisement relating to the immediate sale of newspaper within the public road; provided the advertisement does not obstruct vehicle or pedestrian traffic or the lines of sight of drivers or pedestrians;
  - (c) an advertisement required to be displayed by law;
  - (d) an advertisement displayed on any vehicle which is being used on a public road; provided that the main purpose for which that vehicle is being used is not to display such advertisement;
  - (e) an advertisement affixed to or painted on any part of any building other than a dwelling-house which indicates only the following:
    - (i) the name or address of such building;
    - (ii) the name of the occupier or owner thereof;
    - (iii) a general description of the type of business lawfully carried on in such building;
    - (iv) the hours of attendance or business; and

- (v) the telephone number of such business;  
provided that such advertisement,  
including any sign-board on which it is  
displayed, does not exceed 0,8 m<sup>2</sup> in area  
and does not project more than 100 mm  
from the surface to which it is affixed;
- (f) an advertisement affixed to or painted on any part of any building used  
as a dwelling-house which merely indicates -
  - (i) the name or address of the dwelling-house; and
  - (ii) the name of the owner or occupier the dwelling house;  
provided that such advertisement, including any sign-board on  
which it is displayed, does not exceed 0,8 m<sup>2</sup> in area and does  
not project more than 100 mm from the surface to which it is  
attached;
- (g) an advertisement designed solely for the issuing of any direction,  
request or warning to any person entering upon an erf or premises on  
the erf; provided that such advertisement is displayed within the  
boundaries of the erf and provided that the advertisement, including any  
sign-board on which it is displayed, does not exceed 0,8 m<sup>2</sup> in area;
- (h) an advertisement advertising the sale or lease of any erf, or the fact that  
such erf has been sold; provided that such advertisement is displayed  
within the boundaries of the erf and provided that the advertisement,  
including any sign-board on which it is displayed, does not exceed 0,8  
m<sup>2</sup> in area; and
- (i) an advertisement displayed from the interior of any building enclosed by  
walls, windows and doors.

### CHAPTER 3

#### TYPES OF ADVERTISEMENTS

##### Temporary and portable advertisements

- 3. (1) Any advertisement -
  - (a) intended to be displayed solely for or in connection with a particular  
event including but not limited to an election or referendum; or

- (b) displayed on any sign-board intended or adapted to be carried or conveyed, shall only be displayed with the prior written consent of the authorised official and subject to the requirements of sub-section (2) and any other conditions which the authorised official may impose.
- (2) Any advertisement displayed in terms of subsection (1) shall –
  - (a) not exceed 0,8 m<sup>2</sup> in area; and
  - (b) not be displayed for longer than 14 days before or after the event.
- (3) Every application for permission in terms of sub-section (1) shall be accompanied by a fee and a deposit prescribed by the Council, the deposit being refundable when all advertisements concerned have been removed to the satisfaction of the authorised official.
- (4) Any person who, having displayed or caused to be displayed any advertisement in respect of which approval has been given under sub-section (1), fails to remove it or cause it to be removed within the relevant time, shall be guilty of an offence and the authorised official shall be entitled to remove any such advertisement and deduct from any deposit made in terms of sub-section (6) the sum of R50.00 in respect of each and every advertisement so removed; provided that any excess shall be a civil debt due to the Council; provided further that when any advertisement is so removed in terms of these regulations the Council shall be entitled to destroy any such advertisement without giving notice to anyone, after a period of 14 days from the date of such removal.
- (5) Any person who displays or causes, permits or suffers to be displayed any advertisement referred to in sub-section (1) shall be presumed to be the displayer until it is proved to the contrary.

#### **Display of permanent advertisements prohibited**

- 4. No person shall display or cause to be displayed any permanent advertisement, in the area of jurisdiction of the Council unless any such advertisement was approved in writing by the Council and is displayed in accordance with this by-law.

#### **Application for display of permanent advertisements**

- 5. (1) Any person intending to erect, alter or display any permanent advertisement for which the prior written permission of the Council is required, shall apply for such permission to the Council on the prescribed application form attached to this By-law as Schedule 2. Such form shall be signed by the applicant and by the owner



(if he or she is not also the applicant) of the site upon which such advertisement is or is to be located.

- (2) An application referred to in sub-section (1) shall be accompanied by -
- (a) a full specification showing the dimensions of such sign, its location or proposed location on a building or other supporting structure, the materials of construction, the name and address of the manufacturer, and where applicable, the number of electric lights and electrical details in regard thereto;
  - (b) a drawing indicating –
    - (i) the position of such sign on the site at a scale of not less than 1: 50;
    - (ii) the full text of the advertisement;
    - (iii) the colour of the material;
    - (iv) the construction;
    - (v) the overall dimensions;
    - (vi) the method of attachment, suspension or support; and
    - (vii) any other details required by the Council;
  - (c) in the case of ground signs, information in regard to all calculations upon which such size is based;
  - (d) the prescribed application fee R30.00.
- (3) The Council may refuse or grant such application subject to such conditions as it may think proper.

#### **Consideration of application of display of permanent advertisements**

6. (1) The Council may grant, on such conditions as it may determine, or refuse an application referred to in section 5, but the Council shall not grant an application if it is of the opinion that, having regard to –
- (a) the design;

- (b) colour;
- (c) other characteristics of the advertisement in question;
- (d) its proposed position in relation to the building or premises upon or in which it is to be displayed; and
- (e) the neighbouring properties,

such advertisement will detract from or disfigure the appearance of the building or premises concerned or neighbouring properties, or otherwise be unsightly.

### **Sign-boards affixed to buildings**

7. (1) The following sign-boards and no others may, subject to the provisions of this by-law, be affixed to buildings:
- (a) flat sign-board-boards;
  - (b) projecting sign-boards, and
  - (c) sky sign-boards
- (2) No flat sign-board-board shall -
- (a) extend above the top or beyond either side of the wall to which it is affixed;
  - (b) project in any part more than 100 mm from the wall to which it is affixed;
  - (c) exceed 15% of the height of the building to the eaves or 15% of the area of the wall to which it is affixed.
- (3) No projecting sign-board shall -
- (a) be affixed otherwise than at right angles to the road line;
  - (b) be affixed at a clear height of less than 2,5 m;
  - (c) exceed 225 mm in thickness;
  - (d) extend beyond the top of the wall to which it is affixed;

- (e) project in any part more than 1,5 m from the wall to which it is affixed;
- (f) extend over or nearer than 1,2 m to any overhead electricity wires or cables; or
- (g) be affixed otherwise than in a vertical plane.

### **Advertisement painted on buildings**

8. (1) Only the following types of advertisements may be painted on buildings:
- (a) advertisements painted on the walls of buildings; and
  - (b) advertisements painted on the roofs of buildings used in connection with industry or a manufacturing process.
- (2) No advertisement painted on a wall of a building shall exceed 15% of the height of the building from the ground to the eaves or 15% of the area of the wall on which it is painted.
- (3) An advertisement painted on the roof of a building shall contain only the name (or an abbreviation thereof) of the person, firm, company, society or association occupying such building.

### **Ground sign-boards**

9. Every ground sign-board shall -
- (1) be supported by poles or standards or pylons the bases of which are firmly embedded and fixed in the ground and which are entirely self-supporting, rigid and inflexible;
  - (2) not exceed 2 m x 0,3 m (300 mm);
  - (3) not extend or project beyond the road line; and
  - (4) not exceed 6,5m in height.

### **Flashing advertisements**

10. The Council shall only approve flashing illuminated advertisements if it is of the opinion that, having regard to the proposed position and characteristic of the advertisement, the display of the advertisement will not be likely to distract or disturb persons using

any public road or to create the conditions contemplated in section 11(2).

### **General prohibitions relating to advertisements**

11. (1) No person shall display any advertisement so as to obstruct any fire escape or the means of egress to a fire escape or to obstruct or interfere with any window or opening required for ventilation purposes.
- (2) No person shall display any advertisement –
- (a) in a position which obscures, obstructs or otherwise interferes with any road traffic sign or is likely to so obscure, obstruct or otherwise interfere;
  - (b) which is illuminated and contains the colours, red, green or amber or any one or more of such colours, unless such sign has a clear height of 6 m or unless such sign is more than 15 m (measured horizontally) from the vertical line of the road line at the corner of a public road; or
  - (c) which is of such intense illumination so as to disturb the residents or occupants of adjacent or nearby residential buildings.
12. (a) Directional signs may not be erected on road reserves other than on directional signboard frames erected by the Council, and on payment of the prescribed fee. Such directional signs shall be either 2m long and 0,3 (300 mm) high or 1 m long and 0,3m (300 mm) high and be constructed to the satisfaction of the Council.
- (b) A directional signboard frame shall not exceed 4m in height from ground level save with the express approval of the Council in writing.

### **Construction of sign-boards**

13. (1) Every sign-board shall be neatly and properly constructed and finished in a workmanlike manner to the satisfaction of the building control officer.
- (2) (a) Every sign-board attached to a building or wall shall be rigidly and securely attached thereto so that it is safe and that movement in any direction is prevented.
- (c) The method of attachment shall be such that it is capable of effectively securing, supporting and maintaining not less than twice the mass of the sign-board in question with the addition of any force to which the sign may be subjected.

- (c) The use of nails or staples for the purpose of the anchorage and support of a sign-board is prohibited.
- (3) Every projecting sign-board shall, unless the building control officer otherwise approves, have not less than four supports –
  - (a) which shall be of metal;
  - (b) any two of which shall be capable of supporting the mass of the sign-board;
  - (c) the designed strength of which acting together shall be calculated on a mass equal to twice the mass of the sign-board with a superimposed horizontal wind pressure of 1,5 kPa; and
  - (d) which shall be neatly constructed as an integral part of the design of the sign-board or otherwise concealed from view.
- (4)
  - (a) All sign-boards which are attached to brickwork, masonry or concrete shall be securely and effectively attached thereto by means of bolts securely embedded in such brickwork, masonry or concrete or passing through the same and secured on the opposite side.
  - (b) Such bolts shall be of such a size and strength as will ensure effective compliance with sub-section (2) or (3).
- (5) Every illuminated sign-board and every sign-board in which electricity is used shall -
  - (a) be constructed of a material which is not combustible;
  - (b) be provided with an external switch in an accessible position approved by the building control officer whereby the electricity supply to such sign-board may be switched off; and
  - (c) be wired and constructed to the satisfaction of the building control officer.
  - (5) All exposed metalwork of a sign-board shall be painted or otherwise treated to prevent rust, decay and insect attack and thereafter painted.

#### **Maintenance of permanent advertisements**

14. The person having possession or control of any permanent advertisement shall, while such advertisement is displayed, at all times maintain such advertisement, including any sign-board on which it is displayed, in good repair and safe condition.

#### **Alterations of and additions to permanent advertisements**

15. (1) Any person wishing to alter or add to any permanent advertisement, including any sign-board on which it is displayed, shall first apply to the Council in writing for its approval.
- (2) An application referred to in sub-section (1) shall specify the nature and extent of the proposed alteration or addition.
- (3) A person who has applied in terms of sub-section (2) for the Council's approval shall furnish such additional particulars in connection with his application as the Council may require.

#### **Removal of permanent advertisements**

16. (1) When there is a displayed permanent advertisement -
- (a) for which no approval was granted under section 4; or
- (b) which is displayed in contravention of this by-law,
- the Council may, by notice in writing, direct the person having possession or control of the advertisement to remove it or to effect such alterations as may be prescribed in the notice, and to effect such removal or alteration within such period (which shall be not less than fourteen days as from the date on which the notice was given) as may be specified in the notice.
- (2) If a person to whom a notice has been given in terms of subsection (1) fails to comply with a direction contained in that notice within the period therein specified, the Council may, at any time after the expiration of that period, through the agency of any person authorised thereto by the Council, enter upon the land upon which the advertisement to which the notice relates and remove the advertisement or effect the alterations prescribed in the notice.
- (3) The Council may recover the expenses which it incurred by any action taken under subsection (2) from any person to whom the notice in question was given.

#### **Delegation of Council's powers**

- 17 (1) The Council may by resolution delegate to the building control officer any power

conferred upon it by this by-law on such conditions as the Council may determine.

- (2) Any delegation under sub-section (1) shall not prevent the exercise of the relevant power by the Council itself.

## **CHAPTER 4 GENERAL PROVISIONS**

### **Offences**

18. Any person who contravenes any provision of this by-law shall be guilty of an offence and shall be liable on conviction to a fine not exceeding to be determined by the Council from time to time.

### **Repeal of existing by-laws**

19. The Council's existing Outdoor Advertising by-laws are hereby repealed.

### **Short title and commencement**

20. These by-laws shall be called the Outdoor Advertising by-law, and shall come into operation on the date of publication in the KwaZulu Natal Provincial Gazette.

## ANIMAL POUND BY-LAW

Be it enacted by the Council of the Mkhambathini Municipality, in terms of Section 156 of Constitution of the Republic of South Africa Act No. 108 of 1996, read with section 11 of the Local Government: Municipal Systems Act No. 32 of 2000, as follows:

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### Definitions

1. In these bylaws, unless inconsistent with the context –

"animal" means any equine or bovine animal or any donkey, sheep, goat, pig or domesticated ostrich, or any hybrid of such animals, or any poultry;

"Council" means the council of the Mkhambathini Municipality;

"impounded animal" means any animal received into a pound as contemplated in section 5;

"owner" in relation to any animal includes the agent of the owner or any other person having lawful custody of the animal;



"owner" in relation to any land includes the registered owner, the lessee and any lawful occupier of such animal;

"pound" means any premises on which a pound has been established by or on behalf of the Council for the impounding of animals under these bylaws; and

"pound manager" means the person appointed from time to time by the Council to manage a pound established by the Council and any other person appointed by such person to act in his or her stead during his absence from the pound.

"public place" any place to which the public has access including, without limiting the generality of the foregoing, any square, park, recreation ground, sports ground, open space, beach, shopping centre on municipal land, unused/vacant municipal land or cemetery; and

"public road" shall mean a public road as described under Section 1 of the Road Traffic Act, 1996 (Act No. 93 of 1996).

### **Application**

2. Nothing prevents any animal detained in terms of these by-laws from being impounded in a pound or any similar facility established by any other municipality, the provincial government or other lawful authority.

### **Establishment of pound**

- 3 (1) The Council may establish a pound at any convenient place within its area of jurisdiction and, whenever the Council deems it necessary, may disestablish such pound.
- (2) The Council shall give notice of the establishment of a pound, or the disestablishment thereof, by publishing a notice in at least two newspapers circulating in the area of jurisdiction of the Council.

### **Detention and removal of animals**

- 4(1) Any animal –
  - (a) found trespassing on land; or

- (b) straying or wandering unattended in a public road or other public place, may be removed and taken to a pound by the owner of such land, an official of the Council, a member of the South African Police Services or the pound manager.
- (2) Any person who has detained an animal for the purpose of impounding shall -
- (a) remove such animals to a pound within 24 hours after seizure; and
  - (b) ensure that proper care is taken of the seized animal until the animal is received at the pound.

### **Receipt of animals**

- 5(1) Any person removing an animal to a pound shall provide the pound manager with-
- (a) his or her name and permanent residential address;
  - (b) the time and place of detention of the animal; and
  - (c) the capacity in which he or she detained the animal.
- (2) The pound manager shall, upon receipt of a detained animal -
- (a) record the particulars furnished in terms of section 5(1) and enter the same in a book maintained for the purpose;
  - (b) furnish the person delivering the animal with a receipt reflecting –
    - (i) his or her name;
    - (ii) a description of the animal; and
    - (iii) the date and time of receipt of the animal at the pound; and
  - (c) keep a copy of each receipt issued in terms of section 5(2)(b).
- (3) No person shall release or attempt to release, otherwise than in accordance with these bylaws, any animal which has been received at a pound.

**Care of animals**

- 6.(1) The pound manager shall take proper care of any animal impounded in terms of these bylaws.
- (2) The pound manager shall not use or cause or permit to be used any animal impounded in terms of these bylaws.
- (3) In the event of the injury or death of any impounded animal, the pound manager shall record the cause of such injury or death and shall retain any veterinary certificate issued.
- (4) The pound manager shall keep records of any expense incurred in respect of an impounded animal including, but not limited to, the feeding and veterinary care of the animal.

**Release of animals**

7. The pound manager shall release an impounded animal to any person who has –
- (1) satisfied the pound manager that he or she is the owner of the impounded animal;
- (2) paid the conveyance and pound fees prescribed by resolution of the Council from time to time; and
- (3) paid any veterinary or other expenses incurred in the impounding of the animal.

**Disposal of animals**

- 8(1) The pound manager may sell by public auction and for cash any impounded animal which has not been claimed within 30 days of being impounded, and in respect of which –
- (a) the Council has taken all reasonable steps to locate and notify the owner;
- (b) the owner has not been located or, despite having been given 10 day's notice, has failed to remove the impounded animal; and

- (c) 10 days prior notice of the proposed sale has been given in terms of section 8(2).
- (2) The sale of an impounded animal shall be advertised by placing a notice on a public notice board at a place designated by the Council for that purpose –
- (a) describing the animal, its sex, its approximate age and any particular brands or marks; and
  - (b) stating that the animal will be sold by public auction if not claimed within 10 days.
- (3) The proceeds of any sale shall be applied in defraying the fees and expenses referred to in section 7 and the balance, if any, shall be forfeited to the Council if not claimed within one month by a person who establishes to the satisfaction of the pound manager that he or she is the owner of the impounded animal.
- (4) If the pound manager is for any reason unable to sell any impounded animal or if, in the opinion of the pound manager the animal is so dangerous, vicious, diseased or severely ill or in such a physical condition that it ought to be destroyed, the pound manager may cause the animal to be destroyed subject to any applicable law relating to the protection of animals or otherwise dispose of the animal in a manner approved by the Council.
- (5) Any shortfall between the proceeds of sale, if any, and the fees and expenses referred to in section 7, or the costs of destruction as contemplated in clause 8(4), may be claimed by the Council from the owner.

### **Indemnity**

9. The Council, the pound manager and any officer, employee, agent or councillor of the Council shall not be liable for the death of or injury to any animal arising as a result of its detention, impounding or release, or arising during its impoundment.

### **Offences and penalties**

10. Any person who contravenes or fails to comply with any provision of these by-laws shall be guilty of an offence and liable for a fine not exceeding R2 000 or imprisonment for a period not exceeding two months or for both such fine and imprisonment.

**Repeal of existing By-laws**

11. All Council's existing by-laws that relate to pounding are hereby repealed and replaced by this by-law.

**Short title and commencement**

12. This by-law shall be called the Animal Pound by-law and shall come into operation on date of publication in the KwaZulu Natal Provincial Gazette.

## CEMETARY AND CREMATORIA BY-LAW

Be it enacted by the Council of the Mkhambathini Municipality, in terms of Section 156 of the Republic of South Africa Act No. 108 of 1996, Funeral, Burial and Cremation Services Act of 2002 in the Province of KwaZulu- Natal, read with section 11 of the Local Government: Municipal Systems Act No. 32 2000, as follows :

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## CHAPTER 1

### GENERAL

#### 1. Definitions

In this by-law, unless the context otherwise indicates:-

“**adult**” means a deceased person over the age of 12 years and any deceased person the dimensions of whose coffin cannot be accommodated in an excavation of 1,40m in length and 400 mm in width;

“**after-hours fee**” means a fee over and above the set norm of fee for burial or cremation outside normal week day cemetery operating hours, save in the case of cremations or burials, which, because of religious belief, are undertaken after such hours, or in the case of burial, where the mourners undertake to close the grave;

“**ashes**” means the cremated remains of a body;

“**Births and Deaths Registration Act**” means the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992);

“**body**” means any dead human body, including the body of a stillborn child;

“**burial order**” means an order issued in terms of the Births and Deaths Registration Act;

“**burial**” means burial or inhumation into earth or any other form of burial and includes a tomb and any other mode of disposal of a body;

“**cemetery**” means any land or part thereof within the municipal area set aside by the Council or approved by the Council as a cemetery;

“**child**” means a deceased person who is not an adult;

“**Commonwealth war grave**” means any grave, tombstone, monument or memorial connected with a Commonwealth war burial in terms of the Commonwealth War Graves Act, 1992 (Act No. 8 of 1992);

“**Council**” means the Mkhambathini Municipal Council

“**cremation**” means the process of disposing of a human body by fire;

“**crematorium**” means a crematorium as defined in section 1 of the Ordinance and includes the buildings in which the ceremony is conducted and the cremation carried out;

“**crematorium section**” means a section of a cemetery or crematorium set aside by the Council for the burial of ashes;

“**cremated remains**” means all recoverable ashes after the cremation process;

“**exhumation**” means the removal of a body from its grave;

“**garden of remembrance**” means a section of a cemetery or crematorium set aside for the erection of memorial work , placing or scattering of ashes, but does not include a columbarium;

“**grave**” means any piece of land excavated for the burial of a body within a cemetery and includes the contents, headstone or other marker of such place and any other structure on or associated with such place;

“**grave of conflict**” means the grave of a person who died while defending the country;

“**hero**” means a person who performed a heroic act for the country and is given the status of a hero by the Council;

“**indigent person**” means a destitute person who has died in indigent circumstances, or if no relative or other person, welfare organisation or non governmental organization can be found to bear the burial or cremation costs of such deceased person and includes a pauper;

“**indigent relief**” means assistance received for the burial or cremation of an indigent person;

“**medical officer of health** ” means the officer appointed by Council or any other person acting in the capacity of the medical officer of health;

“**memorial section**” means a section of a cemetery set aside for the erection of memorials;

“**memorial wall**” means a wall in a cemetery or crematorium section provided for the placement of inscribed tablets commemorating deceased persons;

“**memorial work**” means any headstone, monument, plaque, or other work, or object, erected or intended to be erected in any cemetery or crematorium to commemorate a deceased person, and includes a kerb demarcating a grave, and a slab covering a grave;

“**municipal area**” means the area under the control and jurisdiction of the Council;

“**niche**” means a compartment in a columbarium or garden of remembrance for the placing of ashes;



“**officer-in-charge**” means the person in the employ of the Council who, from time to time, is in control of any cemetery.

“**prescribed**” means prescribed by the Council;

“**prescribed fee**” means a fee determined by the Council by resolution of that Council or its successor.

“**South African Heritage Resources Agency**” means the South African Heritage Resources Agency, established in terms of section 11 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999)

“**stone mason**” means a person carrying on business as a stone mason;

“**victim of conflict**” means a person defined in section 1 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999).

## CHAPTER 2

### ESTABLISHMENT AND MANAGEMENT OF CEMETERIES

#### 2. Establishment of cemeteries

- (1) The Council may from time to time set aside and reserve suitable municipal land within the municipality for the establishment and management of a cemetery. The Council may consider and approve an application for the establishment and management of a cemetery. The Council may consider and approve an application for the establishment and maintaining of a private cemetery or a private columbarium on private land on the conditions that the Council may deem necessary.
- (2) The Council may set aside, reserve and demarcate within a cemetery, in accordance with an approved layout plan, such areas as the Council may deem necessary for exclusive use by the members of a particular religion or denomination, or for the burial of adults, children, security forces or war heroes, or for the creation and management of the following sections:
  - (a) Berm-section where memorial work of a restricted size may be erected only on a concrete base provided by the Council at the top or bottom end of a grave the top surface of graves are level and the Council will cut planted as well as natural grass as part of its maintenance program;
  - (b) Monumental-section where memorial work erected shall cover the entire grave area,
  - (c) 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 Council;
- (d) Natural-grass section where the surface of graves are levelled. Graves are identified by numbers affixed on top of the graves in such a way that lawnmowers can be used to cut the natural grass without damaging the numbers:

- (e) Traditional-section where 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. The surfaces of graves are level;
- (f) Columbarium-section where ashes may be buried in a niche in a memorial wall or wall of remembrance provided by the Council;

### **3. Official hours**

- (1) The cemetery and the office of the caretaker shall be open during the hours as determined by the Council. The cemetery office of the caretaker shall be open from Monday to Friday.
- (2) Burials shall take place on the days and during the hours as determined by the Council.
- (3) The Council has the right to close a cemetery or any portion thereof to the public for such periods and for such reasons as the Council may deem fit
- (4) No person shall be or remain in a cemetery or part thereof before or after the official hours as determined by the Council or during any period when it is closed for the public, without the permission of the caretaker.

### **4. Register**

- (1) A register of graves and burials shall be kept by the caretaker.
- (2) Such register shall 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.

### **5. Numbering of graves**

- (1) All graves in a cemetery that are occupied or for which a burial has been authorised in terms of the provisions of this by-law shall be numbered by the Council.
- (2) The number shall be affixed to the grave and indicated on a plan to be kept available in the caretaker's office.

### **6. Reservation of graves**

- (1) No reservation of a grave in a cemetery shall be allowed.
- (2) Reservation of graves made and recorded in the official records of the Council in terms of any previous by-laws shall still be valid and the Council shall honour such reserved rights.

### **7. Transfer of reserved rights**

- (1) A reserved right as contemplated in section 6(2) may not be transferred without the prior approval of the Council.
- (2) Application to transfer such right shall be made to the caretaker in writing by completing and submitting a prescribed application form.
- (3) If the application is granted, a certificate will 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 Council, the amount paid by the holder (if any) minus 10% administration fees, will be refunded to the holder.

### **8. Number of corpses in a grave**

- (1) Only one corpse may be buried in a grave with measurements as contemplated in this by-law.
- (2) Only two corpses may be buried in a grave with measurements as set out in sub-section 15(4): Provided that application for the burial of two corpses has been made to the caretaker in writing by completing and submitting the required application form before the first corpse is buried.
- (3) After the re-opening of a grave for the purpose of the burial of a second corpse as mentioned in sub-section 9(2) in that grave, a concrete layer of not less than 25 mm thick shall be cast above the coffin previously buried.
- (4) If on re-opening 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 will be handled in consultation with the Medical Officer of Health.

### **9. Number of Corpses in a coffin**

- (1) A deceased stillborn child and his or her deceased mother may be buried in the same coffin at the fee for a single interment of an adult.
- (2) Still-born twin babies may be buried in the same coffin at the fee for a single interment of a stillborn child.

## **CHAPTER 3**

### **BURIALS**

#### **10. Application for a burial**

- (1) Application for permission for a burial in a cemetery shall be made to the caretaker in writing by completing and submitting a prescribed application form. An application shall be accompanied by:
  - (a) the prescribed burial order;
  - (b) the prescribed fees; and
  - (c) a reservation certificate, if applicable;

- (2) No person shall, without the prior written approval of the Council, execute, cause, or allow a burial in any other place in the municipality than in a cemetery established and managed by the Council. This includes the burial of a corpse, of ashes and of a cadaver.
- (3) An application for permission for a burial must be submitted to the caretaker at least 24 working hours prior to the planned burial, failing which the caretaker may refuse the application.
- (4) No person shall execute a burial or cause or allow a burial to be executed in a cemetery, unless written permission 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 shall have regard to the customs of the deceased's relatives and their religion or church affiliation.
- (6) In allocating a grave the caretaker shall as far as practicable possible 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 choice, but not the individual grave of his or her choice. The allocation of a specific grave is the sole responsibility and discretion of the caretaker and a burial shall be executed only in a grave allocated by him or her.
- (7) The Council may allow in its discretion a burial without payment of the prescribed fees in a part of a 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.
- (10) Except with the permission of the Council, no person shall place or cause any coffin constructed of any material other than natural wood or other perishable material to be placed in any grave.

#### **11. Burial of a corpse**

- (1) All graves shall be provided by the caretaker with the exception of brick-lined or concrete-lined graves, in which cases the brickwork or concrete work shall be carried out by the undertaker under the supervision of the caretaker and in conformity with the specifications applicable to ordinary graves.
- (2) There shall 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 shall be placed in a coffin for the burial thereof, except as provided for the Muslim community.

- (4) No person shall 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 cemetery reserved by the Council in terms of the provisions of this by-law, for the use of some other denomination.
- (5) No person shall permit any hearse in a cemetery to leave the roads provided, and every hearse shall 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 shall comply with the directions of the caretaker as to the route to be taken within the cemetery.
- (7) No person shall 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 any burial shall be marked with a number corresponding to the number in the register referred to in section 4 and shall be filed and preserved by the Council for a period of not less than ten years.
- (9) Every coffin or body upon being placed in any grave shall, at once, be covered with 500 mm of earth.
- (10) No person shall disturb any human remains or any soil adjacent thereto in any cemetery, except where such disturbance is expressly permitted by this bylaw or by an order of court.

## **12. Burial of ashes**

- (1) Ashes may be buried in a coffin and only two such coffins containing ashes may be buried in an extra deep grave; provided that a coffin does not exceed the average body weight of 70 kg, and further-more that the grave is re-adjusted to the prescribed depth and measurements.
- (2) No person shall execute a burial or cause a burial of ashes to be executed in a cemetery, unless written permission 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.
- (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 shall be made to the caretaker in writing by completing and submitting a prescribed application form.
- (4) Niches will be allocated by the caretaker strictly in the order in which the applications therefore are received and no reservations for future use will be made.
- (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 may refuse the application.

- (6) An urn or casket containing ashes that has been deposited in a building, columbarium, or other facility shall not be removed without the caretaker's prior written consent.
- (7) Every niche containing ashes shall be sealed by a tablet approved by the Council and shall 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 will once again be sealed.
- (8) Application for the opening of a niche shall be made to the caretaker in writing by completing and submitting a prescribed application form.
- (9) No person shall 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 from Council;
  - (b) approval for the erection of the memorial work has been obtained from Council; and,
  - (c) the prescribed fees have been paid which shall be determined by Council from time to time.
- (10) Any person engaged upon any work on the columbarium, shall execute such work to the satisfaction of the caretaker, and such work shall be undertaken during the official office hours of the cemetery.
- (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 cemetery hours as determined by Council.
- (13) Plaques shall be made of material approved by the Council and shall be affixed simultaneously with the placing of the ashes and within 30 days of the obtaining of the consent.

### **13. Burial of a cadaver**

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 sub-section 15(4) : Provided that a coffin does not exceed the average body weight of 70 kg, and furthermore that the grave is re-adjusted to the prescribed depth and measurements.

### **14. Persons dying outside the municipal area**

The provisions of these by-laws shall apply *mutatis mutandis* to any burial in a cemetery of a person who has died outside the municipality

### **15. Grave measurements**

- (1) The excavation of a grave for an adult shall be at least 1820 mm deep, 2300 mm long, and 760 mm wide.
- (2) The excavation of a grave for a child shall 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 or width than those specified above is required, application in respect thereof, together with extra prescribed fees that are due, shall be made to the caretaker together with the application to obtain permission for a burial.
- (4) The excavation of an extra deep grave for the burial of two corpses shall be at least 2400 mm deep 2300 mm long and 760 mm wide.
- (5) Deviations from measurements of graves shall be as follows:

Extra wide	: 2300 mm long
	: 840 mm wide
Extra long	: 2530 mm long
	: 760 mm wide
Rectangular small	: 2300 mm long
	: 900 mm wide
Brick-nogging	: 2600 mm long
	: 1050 mm wide
- (6) The area of a rectangular grave for an adult shall be 1500 mm wide by 2600 mm long.
- (7) The area of a grave for an adult shall be 1210 mm wide by 2430 mm long.
- (8) The area of a grave for a child shall be 1210 mm wide by 1520 mm long. If a coffin is too large, an adult grave shall be used.

#### **CHAPTER 4**

#### **RE - OPENING OF GRAVES AND EXHUMATIONS**

##### **16. Conditions of exhumations**

- (1) No person may exhume or cause to be exhumed a body without the written consent of the -
  - (a) Premier of the Provincial Government;
  - (b) the Council;
  - (c) the provincial Department of Health;
  - (d) the Administrator of cemeteries;
  - (e) the Council's Medical Officer of Health or
  - (f) by an order of a court having jurisdiction over such matters.

- (2) Whenever an exhumation is to take place, the officer-in-charge must inform the Provincial Commissioner of the South African Police Services.
- (3) A member of the South African Police Services must always be present when an exhumation is being conducted.
- (4) An exhumation must not take place when the cemetery is open to the public and must take place under the supervision of the officer-in-charge.
- (5) If remains are to be exhumed from any grave, only the undertaker under the supervision of the officer-in-charge, may cause the grave to be excavated for such exhumation;
- (6)
  - (a) If a grave is to be excavated for exhumation, the officer-in-charge must be given 48 hours written notice before the time of exhumation, and
  - (b) The authority referred to in paragraph (1)(d) of this Section and the prescribed fee must accompany such notice.
- (7) A person who wishes to exhume the remains of an indigent person must pay the costs incurred by the Council at the time of burial, to the Administrator of Cemeteries.
- (8) The person carrying out the exhumation must ensure that the body and grave are properly disinfected and deodorized.
- (9) The South African Police Services must -
  - (a) if there is proof of illegal burial immediately exhume the body; and
  - (b) take it to a government mortuary for investigation.
- (10) A grave of victims of conflict and a grave which is older than 60 years may only be exhumed with the permission of the South African Heritage Resources Agency.
- (11) A Commonwealth war grave may only be exhumed in accordance with the provisions of section 3 of the Commonwealth War Graves Act, 1992.

#### **17. Exhumation and reburial**

- (1) The Council may, if a body has been buried in contravention of these By-laws, cause the body to be exhumed and re-buried in another grave.
- (2) The relatives of the deceased must be -
  - (a) notified of the intended exhumation and re-burial; and
  - (b) allowed to attend.



**18. Screening of exhumation**

- (1) A grave from which a body is to be exhumed must be screened from the view of the public during the exhumation.
- (2) The person carrying out the exhumation must provide a suitable receptacle for each body or remains.

**CHAPTER 5****MISCELLANEOUS****19. Injuries and damages**

- (1) A person using a cemetery do so at his own risk, and the Council 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 aforementioned usage of the cemetery.
- (2) A person using a cemetery accepts full responsibility for any incident, damages or injuries that may be caused by or that may result from the aforementioned use of the cemetery and he or she accordingly indemnifies the Council, its members, employees or agents, whether in personal or official capacity, against liability for all claims from whichever nature by himself, his or her dependants or third parties in respect of any patrimonial loss, consequential damages, injuries or personal prejudice that may be suffered or sustained in connection with or resulting from such a person's use of a cemetery. The aforementioned indemnity also applies to injuries sustained by employees of the Council while on duty at the cemetery, as well as damages to Council property at the cemetery.

**20. Fire-arms and traditional weapons**

No fire-arms and traditional weapons shall be allowed in a cemetery.

**21. Offences and penalties**

- (1) Any person contravening or failing to comply with any of the provisions of these by-laws shall be guilty of an offence and shall upon conviction by a court be liable to a fine not exceeding R 60 000, or imprisonment for a period not exceeding three years or both a fine as well as period of imprisonment, or such other fine or period of imprisonment which the Minister of Justice may from time to time determine in terms of the provisions of section 92 of the Magistrate's Courts Act, 1944 (Act No 32 of 1944).
- (2) Any expense incurred by the Council 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 Council from the person who committed the contravention or who failed to do such thing.

**22. Complaints**

Any person wishing to lodge a complaint shall lodge such complaint, in writing with the Director.

**23. Charges**

The charges set forth in "the tariff" in respect of the various items therein contained, shall be paid to the Council in advance.

**24. Rights on Graves**

No person shall acquire any right to or interest in any ground or grave in any cemetery.

**25. Consents, Notices and Orders**

Any written consent, notice or other order issued by the Council in terms of these by-laws, with the exception of consent by the Director or any officer authorised by him and shall be prima force evidence of the contents of such a signed consent, notice or other order.

**26. Religious Ceremonies**

- (1) The members of any religious denomination may conduct religious ceremonies in connection with any interment of memorial service subject to the control and by-laws of the Council.
- (2) No animal may be slaughtered on the premises of the cemetery regardless of any religious ceremony which may require an animal to be slaughtered.

**27. Hearses and vehicles at Cemeteries**

- (1) No person shall cause any hearse or vehicle, as defined by the Road Traffic Act, while within a cemetery to depart from the carriage drives or certain any hearse within any cemetery after the removal of the body from such hearse or vehicle. Every hearse or vehicle such removal shall leave the cemetery by the route indicated by the caretaker.
- (2) The cemetery is a public place and all laws applicable to the driving of a vehicle and the use of a public road will be applicable inside the premises of the cemetery.

**28. Exposure of Bodies**

No person shall convey a dead body, which is not covered, or whose any such body or any part thereof in any street, cemetery or public place.

**29. Instruction of Caretaker**

Every person taking part in any funeral procession or ceremony shall comply with the directions of the caretaker while such person is within a cemetery.

**30. Music Inside Cemetery**

Only sacred singing shall be allowed in any cemetery, except in the case of police and military funerals.

**31. Interments Attended by large Numbers of People**

In any case where it is probable that an unusually large number of persons will be present at any interment, the person giving notice of such interment shall notify the caretaker the day before the funeral.

**CHAPTER 6****REPEAL OF BY-LAWS****Repeal of existing By-laws**

32. All Council's existing by-laws that relate to cemetery and crematoria are hereby repealed and replaced by this by-law.

**Short title and commencement**

33. This by-law shall be called the Cemetery and Crematoria by-law and shall come into operation on the date of publication in the KwaZulu Natal Provincial Gazette

## CREDIT CONTROL AND DEBT COLLECTION BY-LAWS

Be it enacted by the Council of the Mkhambathini Municipality, in terms of Section 156 of the Republic of South Africa Act No. 108 of 1996, read with section 11 of the Local Government: Municipal Systems Act No. 32 of 2000, as follows:

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## CHAPTER 1

### DEFINITIONS AND APPLICATION

#### Definitions

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

“account” means a notification by means of a statement of account to a person liable for payment of any amount for which he or she is liable to pay the Council in respect of the following:

- (a) Electricity consumption or availability fees based on a meter reading or estimated consumption;

- (b) water consumption or availability fees based on a meter reading or estimated consumption;
- (c) refuse removal and disposal~
- (d) sewerage services and sewer availability fees;
- (e) rates;
- (f) interest; and
- (g) miscellaneous and sundry fees and collection charges;

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

“authorised official” means any official or agent of the Council who has been authorised by it to administer, implement and enforce the provisions of these By-laws;

“availability fee” means a fee as contemplated in sections 81(1), 83(1)(c) and 141(b) of the Local Government Ordinance, 1939 (Ordinance No. 17 of 1939), or any other law;

“by-law” means a by-law adopted and promulgated by the Council;

“Municipal Manager” means —

- (a) the person appointed by the Council as the Municipal Manager in terms of section 82 of the Local Government : Municipal Structures Act, 1998 (Act No. 117 of 1998), and includes any person acting in that position; or
- (b) in relation to a service provider referred to in paragraph (d) of the definition of “Council”, the chief executive officer of that service provider.

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

- (a) of reminding customers of arrears;
- (b) for the termination, restriction and reinstatement of municipal services;
- (c) of any notice rendered, sent or delivered in terms of these By-laws; and
- (d) all legal costs, including attorney and client costs, incurred in the recovery of arrear amounts;

“Council” means —

- (a) the Mkhambathini; or
- (b) its successor in title; or
- (c) a structure or person exercising a delegated power or carrying out an instruction, where any power in these by-laws has been delegated or sub-delegated, or an instruction given, as contemplated 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 law, as the case may be;

“customer” means any occupier of premises to which the Council has agreed to provide or is actually providing any municipal service, or if there is no occupier, the owner of the premises concerned;

“fee” means a fee prescribed for or in respect of any municipal service;

“municipal service” means any or all of the services specified in subparagraphs (i) to (iv), inclusive, of section 2(1)(b);

“occupier” means any person who occupies any premises or part thereof, without 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 favour of whom the right is registered;
- (c) in relation to a right referred to in paragraph (c) of the definition of “property”, means a person in favour of whom the right is registered or to whom it was granted in terms of any law; and
- (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, and includes a person who the Council may for the purpose of these By-laws regard 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 the

- owner of which is 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 favour 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 Council and is let by it; or
  - (viii) a buyer, in the case of a property that was sold by the Council and of which possession was given to the buyer pending registration of ownership in the name of the buyer;

“Policy” means the Credit Control and Debt Collection Policy adopted by the Council;  
 “prescribed” means prescribed by the Council from time to time, by resolution;

“premises” means any piece of land, with or without any building or structure thereon, 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 No. 9 of 1927), or in terms of the Deeds Registry Act, 1937 (Act No. 47 of 1937); or
- (b) a sectional plan registered in terms of the Sectional Titles Act, 1986 (Act No. 95 of 1986),

which is situated within the area of jurisdiction of the Council;

“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 favour of a person, excluding a mortgage bond registered against the property;
- (c) a land tenure right registered in favour of a person or granted to a person in terms of any law; or
- (d) public service infrastructure;

“rates” means a municipal rate on property levied in terms of the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004), or any prior law;

#### **Application of By-law**

2. (1) This By-law only apply in respect of amounts of money due and payable to the Council for —



- (a) rates;
  - (b) fees, surcharges on fees in respect of the following municipal services:
    - (i) The provision of water and the availability thereof;
    - (ii) refuse removal and disposal;
    - (iii) sewerage and the availability thereof; and
    - (iv) electricity consumption and the availability thereof;
  - (c) interest which has or will accrue in respect of any amount of money due and payable or which will become due and payable to the Council in regard to rates and municipal services; and
  - (d) collection charges;
- (2) This By-law also apply to any municipal service provided through pre-paid meters, in so far as the By-laws may be relevant.

## CHAPTER 2

### SERVICE AGREEMENTS AND GENERAL TERMS AND CONDITIONS OF PROVISION OF MUNICIPAL SERVICES

#### Provision of municipal services to applicants

3. (1) No municipal service may be provided to any applicant, unless and until —
- (a) application for the service has been made in writing on a form substantially similar to the form prescribed;
  - (b) any information and documentation required by the Council have been furnished;
  - (c) a service agreement, in the form substantially similar to the form of agreement prescribed, has been entered into between the customer and the Council; and
  - (d) an amount equal to the amount prescribed, in cash or a bank cheque, has been deposited as security or other acceptable security, as prescribed, has been furnished.
- (2) If an applicant for a municipal service is an existing customer of the Council in respect of any other municipal service in respect of which the account is in arrears —
- (i) such arrears must be paid; or
  - (ii) an agreement for payment of the arrears in terms of section 22 must have been entered into and payment in terms thereof must not be in arrears, before an application for a new service in terms of this section may be considered.

- (3) The Council may at any time require a customer to increase a deposit paid or security furnished in terms of subsection (1)(d);
- (4) No interest is payable on any amount deposited in terms of subsection (1)(d) or (3).

#### **General terms and conditions for the provision of municipal services**

4. The general terms and conditions for the provision of any municipal service set out in a service agreement contemplated in section 3(1)(c) are deemed to be incorporated in these Bylaws and apply to the provision of such service to any customer.

#### **Estimated consumption**

5. The Council may have an estimate made of the consumption of water or electricity for any relevant period if —
  - (a) no meter reading could be obtained in respect of the period concerned; or
  - (b) no meter has been installed to measure the consumption on the premises concerned, and the customer concerned is liable for payment of the prescribed fee in respect of such estimated consumption.

#### **New service agreements and deposits or security by existing customers**

6. (1) Any existing customer, or the trustee, liquidator, judicial manager or curator of such customer, may be required by the Council to enter into a new service agreement to replace an existing agreement of the customer concerned, and to pay a deposit or furnish security contemplated in section 3, notwithstanding the fact that a service agreement was previously entered into in respect of the municipal service concerned and the provisions of section 3(3) apply in respect of such new agreement.
- (2) The provisions of section 3(4) apply to a deposit referred to in subsection (1).

#### **Termination of service agreements**

7. (1) Subject to the provisions of sections 14 and 22 —
  - (a) a customer may terminate an agreement for the provision of any municipal service by notice in writing of not less than seven days' to the Council, of his or her intention to do so;

- (b) the Council may, subject to compliance with the provisions of these By-laws and any other applicable law, by notice in writing of not less than 14 days, to a customer, terminate his or her agreement for the provision of the municipal service concerned, if the customer -
- (i) has not used the municipal service during the preceding six months and has not made arrangements to the satisfaction of the Council for the continuation of the agreement; or
  - (ii) has, in relation to the municipal service concerned, failed to comply with any provision of these By-laws and has failed to rectify such failure after the service on him or her of a notice of compliance in terms of section 8;
  - (iii) has failed to pay any prescribed fee, collection charge or interest due and payable in respect of the municipal service concerned; or
  - (iv) has made an arrangement with another services provider to provide the municipal service concerned to the customer; or
  - (v) has vacated the premises to which the agreement concerned relates.
- (2) A customer to whom notice has been given in terms of subsection (1)(b), may within the period of 14 days referred to in that subsection, make written representations to the Council why the agreement concerned should not be terminated and if such representations are unsuccessful, either wholly or in part, the agreement concerned may only be terminated if the decision on such representations justifies it.

### Notices of compliance

8. If a customer fails or refuses to comply with any provision of these By-laws, a notice of compliance must be served on that customer, requesting him or her, subject to the provisions of section 7(2), to forthwith comply with the provision concerned to avoid the termination of his or her agreement in terms of section 7(1)(b)(ii).

## CHAPTER 3

### ACCOUNT ADMINISTRATION

#### Accounts

9. (1) Accounts must be rendered and administered in accordance with the Policy, other prescribed requirements and any other law.
- (2) Failure by the Council to render an account does not relieve a customer of the obligation to pay any amount that is due and payable in terms of these By-laws.
- (3) The Council may, in accordance with the provisions of section 102 of the Act —

- (a) consolidate any separate accounts of a customer liable for payments in terms of these by-laws to the Council;
  - (b) credit any payment by such customer against any account of that customer; and
  - (c) implement any of the debt collection and credit control measures provided for in these y-laws in relation to any arrears on any of the accounts of a customer.
- (4) The amount due and payable by a customer constitutes a consolidated debt, and any payment made by a customer of an amount less than the total amount due, will, subject to the provisions of section 20(1), be allocated in reduction of the consolidated debt in the order prescribed.
- (5) (a) Any amount paid by a customer in excess of an existing debt may be held in credit for the customer in anticipation of future rates and fees for municipal services or for the purposes contemplated in section 15(b).
- (b) No interest is payable on any amount contemplated in paragraph (a)

#### **Account information**

10. Accounts must contain the following —

- (a) the consumption or estimated consumption as determined for the measuring or consumption period;
- (b) the measuring or consumption period;
- (c) the applicable prescribed fee;
- (d) the amount due based on the estimated consumption;
- (e) the amount due and payable for any other municipal service;
- (f) the amount in arrears, if any;
- (g) the interest payable on any arrears, if any;
- (h) collection charges insofar as they may be relevant;
- (i) the final date for payment; and
- (j) the methods, places and approved agents where payment may be made.

#### **Account administration**

11. The Council must, subject to the provisions of section 5, endeavour to ensure —

- (a) accurate metering of consumption at fixed intervals with the minimum delay between service connection and first and subsequent rendering of accounts;
- (b) accurate and up-to-date information in accounts;
- (c) accurate monthly accounts with the application of the appropriate and correct

- prescribed fees, rates and other related amounts due and payable;
- (d) the timely dispatch of accounts;
- (e) adequate provision and the efficient operation of facilities for payment throughout the municipal area;
- (f) the appointment of agents to accept payments on behalf of the Council; and
- (g) appropriate hours of business in order to facilitate account payments.

#### **Queries or complaints in respect of accounts**

12. (1) A customer may lodge a query or complaint in respect of the accuracy of any amount due and payable in terms of an account rendered to him or her in terms of these Bylaws.
- (2) A query or complaint must be lodged with the Council before or on the due date for payment specified in the account concerned, or as soon as reasonably possible thereafter.
- (3) If a query or complaint is lodged after the due date for payment specified in the account concerned, such query or complaint must be accompanied by the payment of at least an amount equal to the average amount per month that was due and payable in respect of the service concerned during the preceding three months.
- (4) An authorised official must register the query or complaint and provide the customer with a reference number.
- (5) The Council 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 received; and
  - (b) inform the customer, in writing, of its finding as soon as possible after conclusion of the investigation, instructing that any amount found to be due and payable must, subject to the provisions of section 22, be paid within 21 days from the date on which the customer is notified thereof, unless an appeal is lodged within that period in terms of subsection (6) or section 13.
- (6) A customer may, subject to the provisions of section 13, lodge an appeal with the Municipal Manager 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.
- (7) The Council must inform the customer concerned in writing of the decision on the appeal, instructing that any amount found to be due and payable, must be paid within seven days from the date on which the customer is notified thereof.

#### **Appeals against decision by service providers on queries and complaints**

13. (1) If a decision contemplated in section 12(5) has been made in respect of a municipal service provided by a service provider referred to in paragraph (d) of the definition of Council in section (1), a customer may lodge an appeal against that decision by giving written notice of the appeal and reasons to the chief executive officer of the service provider concerned, within 21 days of the date of the notification of the decision.
- (2) The chief executive officer must promptly submit the appeal to the appropriate appeal authority specified in subsection (4).
- (3) The appeal authority must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation may detract from any rights that may have accrued as a result of the decision.
- (4) If an appeal is against a decision taken by —
- (a) a staff member, other than the chief executive officer, the chief executive officer is the appeal authority;
  - (b) the chief executive officer or any committee of the service provider —
    - (i) the board of directors of the service provider; or
    - (ii) a committee of directors who were not involved in the decision concerned and appointed by the board of directors for this purpose, is the appeal authority.
- (5) An appeal authority contemplated in subsection (4), must commence with an appeal within 42 days and decide the appeal within a reasonable period.
- (6) A service provider must comply with the provisions of section 12(7).

#### **Arrear accounts**

14. (1) If a customer fails to pay an amount due and payable for any municipal service or rates on or before the due date for payment specified in the account concerned, a final demand notice may be sent to the customer.
- (2) Failure by the Council to send a final demand notice does not relieve a customer from paying the arrears concerned.
- (3) A final demand notice referred to in subsection (1), must contain the following

- (a) the amount in arrears and any interest payable, and a statement that payment must be made within 14 days of the date of the final demand notice;
- (b) that the customer may in terms of section 22, conclude a written agreement with the Council for payment of the amount in arrears in installments within the period contemplated in paragraph (a);
- (c) that if no such agreement is entered into within the period stipulated in paragraph (b), that the water or electricity services may be terminated or restricted and that legal action may be instituted for the recovery of any amount in arrear without further notice;
- (d) that the customer's name may be made public, and may be listed with a credit bureau in terms of section 21(1)(a);
- (e) that the account may be handed over to a debt collector or attorney for collection;
- (f) that proof of registration as an indigent person in terms of section 25 and any other documentation required by the Council must be furnished to the Council on or before the date for payment contemplated in paragraph (a);
- (g) that an indigent person referred to in paragraph (f) is only entitled to benefits relating to municipal services as stipulated in the Council's policy relating to the supply of municipal services to indigent persons; and
- (h) that the customer has an opportunity to make representations in writing on any matter referred to in a final demand notice within the period of 14 days contemplated in paragraph (a).

#### **Action to secure payment**

15. The Council may, in addition to the normal civil legal steps to secure payment of any in arrear amount of accounts, take the following action to secure payment of such amount:
- (a) The termination or restriction of the provision of any municipal service in terms of section 16; and
  - (b) the allocation of the whole or a portion of a payment of an account, or the whole or a portion of a pre-payment for future accounts as contemplated in section 9(5)(a), as payment for arrear municipal service fees or rates, in terms of section 20.

#### **Power to terminate or restrict provision of municipal services**

16. (1) For the purposes of subsection (2), a final demand notice means a notice contemplated in sections 12(5)(b), 12(7), 13(6) and 14(1).
- (2) Subject to the provisions of subsection (4), the Council may terminate or restrict the provision of water or electricity, or both, whichever service is relevant, in terms of the prescribed termination and restriction procedures, to any premises if the customer in respect of the municipal service concerned —
- (a) fails to make full payment of arrears specified in a final demand notice sent to

the customer concerned, before or on the date for payment contemplated in sections 12(5)(b), 12(7), 13(6) or 14(1), whichever is applicable, and no circumstances have arisen which requires the Council to send a further final demand notice to that customer in terms of any of those sections, and the customer —

- (i) fails to enter into an agreement in terms of section 22, in respect of the arrears concerned before termination or restriction of the service concerned; or
  - (ii) fails to submit written proof of registration as an indigent person in terms of section 25, before such termination or restriction;
- (b) fails to pay any installment payable in terms of an agreement referred to in paragraph (a)(i) before or on the due date;
  - (c) fails to comply with any condition of provision in respect of electricity or water, as the case may be, imposed by the Council;
  - (d) obstructs the efficient provision of electricity or water to another customer;
  - (e) provides electricity or water to a person who is not entitled thereto or permits such provision to continue;
  - (f) causes a situation relating to electricity or water which, in the opinion of the Council, is dangerous or constitutes a contravention of any applicable law, including the common law;
  - (g) in any way reinstates the provision of a previously terminated or restricted electricity or water service;
  - (h) is placed under provisional sequestration, liquidation or judicial management, or commits an act of insolvency in terms of the Insolvency Act, 1936 (Act No. 24 of 1936) or is subject to an administration order granted in terms of section 74 of the Magistrates Court Act, 1944 (Act No. 32 of 1944), and there is a failure to enter into a new service agreement within 14 days of the Council requiring such service agreement in terms of section 6.
- (3) The Council may send a termination notice to a consumer informing him or her —
- (a) that the provision of the service concerned will be, or has been terminated on the date specified in such notice; and
  - (b) of the steps which can be taken to have the service reinstated.
- (4) Any action taken in terms of subsections (1) and (2) is subject to compliance with:
- (a) sections 3 and 4 of the Water Services Act, 1997 (Act No. 108 of 1997), if the provision of water is involved;
  - (b) the relevant provisions of the Electricity Act, 1987 (Act No. 41 of 1987), if the provision of electricity is involved;
  - (c) the relevant provisions of the Health Act, 1977, (Act No. 63 of 1977), and any



- regulations made in terms of that Act; and
- (d) the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), in so far as it is applicable.

#### **Reinstatement of municipal services**

17. (1) The Council must reinstate full levels of provision of any electricity or water service terminated or restricted in terms of section 16(1) after —
- (a) the full amount of arrears, including interest and collection charges, if any, have been paid; or
  - (b) an agreement for payment of the arrears contemplated in paragraph (a) has been entered into in terms of section 22; or
  - (c) the full amount of arrears in respect of any agreement referred to in paragraph (b), including interest and collection charges if any, and any increase deposit, have been paid, or any additional security required has been provided, and any other condition of the Policy that the Council may consider appropriate, has been complied with.
- (2) Any reinstatement in terms of subsection (1) may only be done after an authorised official has issued a written certificate of authorisation to the effect that every applicable condition contemplated in subsection (1) has been complied with and that the municipal service concerned may be reinstated.

#### **Interest charges**

18. All arrears in respect of accounts for rates and municipal services bear interest at a rate prescribed.

#### **Collection charges**

19. A prescribed collection charge may be levied against the account of a customer, in respect of any relevant action taken in terms of, or for the purposes of, these By-laws.

#### **Full and final settlement of an amount**

20. (1) The Council may appropriate monies received in respect of any debt contemplated in these By-laws at its sole discretion, unless the customer otherwise instructs in writing.
- (2) If any amount due and payable to the Council in terms of these By-laws has not been paid in full, any lesser amount tendered to and accepted by any municipal employee, does not constitute payment in full and final settlement of the full amount, unless the lesser amount was accepted in full and final settlement in writing, under a power delegated or sub-delegated to such employee in terms of section 59 of the Act.

**Accounts outstanding after the due date**

21. (1) If an account for assessment rates or any municipal service is rendered to a customer remains unpaid, wholly or in part, after the due date for payment stipulated in the account concerned —
- (a) the defaulting customer's name may be made public, and may be listed with a credit bureau; and
  - (b) may be handed over to a debt collector or an attorney for collection.
- (2) A customer is liable for any interest and collection charges and in addition payment of a higher deposit or the provision of additional security, if required by the Council.
- (3) No action taken in terms of this section may be suspended or withdrawn, unless the arrears, any interest thereon, collection charges, and higher deposit, if required by the Council, have been paid in full or, instead of a higher deposit, additional security has been provided, if so required.

**Agreements for the payment of arrears in installments**

22. (1) A customer with positive proof of identity or a person authorised, in writing, by such customer, may, subject to the approval of the Council, enter into an agreement in a form substantially similar to a form prescribed, for the payment of arrears in installments.
- (2) The amount due and payable by a customer in terms of an agreement contemplated in subsection (1), constitutes a consolidated debt and any payment made by a customer of an amount less than the total amount due, must be allocated in reduction of the consolidated debt in the order prescribed, unless the customer otherwise instructs in writing.
- (3) A customer may be required to arrange a debit order for the payment of arrears in respect of which an agreement, contemplated in subsection (1), has been entered into.
- (4) Subject to the provisions of subsection (5), no agreement for the payment of arrears may allow for a period of payment of longer than 24 months.
- (5) (a) The Council may allow a period of payment in excess of 24 months for the payment of arrears, but not exceeding a period of 60 months, if special circumstances which the customer could not reasonably have prevented or avoided, prevail and which, in the opinion of the Council, warrant a longer period of payment.

- (b) Documentary proof of any special circumstances as contemplated in paragraph (a), must be furnished by a customer on request by the Council.
- (6) The Council must, in exercising its discretion in terms of subsection (5), have regard to a customer's —
- (a) credit record;
  - (b) consumption;
  - (c) ability to afford the proposed installments, taking into account the customer's financial situation;
  - (d) level of service;
  - (e) previous breaches of agreements for the payment of arrears in installments; and
  - (f) any other relevant factor.
- (7) A copy of an agreement contemplated in subsection (1), must, on request, be furnished to the customer concerned.
- (8) If a customer fails to comply with an agreement contemplated in subsection (1), the total outstanding amount, including the arrears, any interest thereon, any collection charges, and payment of a higher deposit if required by the Council, will immediately become due and payable, and additional security, if so required, must be provided, without further notice.
- (9) If a customer fails to comply with an agreement contemplated in subsection (1), entered into after receipt of a termination notice for water or electricity services, or both, as the case may be, the municipal service concerned may be terminated without further notice, in addition to any other action taken against or which may be taken against the customer concerned.
- (10) No customer is permitted to enter into an agreement contemplated in subsection (1), if that customer has failed to honour a previous agreement for the payment of arrears in installments, unless the Council otherwise decides.
- (11) Once an agreement contemplated in subsection (1), has been concluded, the amount in arrears must be reflected as a current amount, and no further interest may be added.

### **Disputes as to amounts owing**

23. If any dispute arises as to any amount owing by a customer, the customer must, pending resolution of that dispute, continue to make regular monthly payments in respect of rates, if applicable, and in respect of any municipal service concerned based on the average monthly fees for the preceding three months prior to the dispute arising, plus interest if applicable, until the resolution of that dispute.

### **Dishonoured cheques**

24. If any payment is made to the Council by a negotiable instrument, and such negotiable instrument is dishonoured, the Council may levy costs and administration fees against the account of the defaulting customer at a prescribed rate.

## **CHAPTER 4**

### **INDIGENT PERSONS**

#### **Registration as indigent person**

25. (1) A person who wishes to receive assistance in terms of the Council's policy for the provision of municipal services to indigent persons, must make application for registration as an indigent person on a prescribed form at any of the Council's offices.
- (2) An application in terms of subsection (1), must be considered by the Council which must adhere to the principles of transparency, equity, consistency, non-discrimination, accessibility, empathy, integrity, confidentiality and objectivity during the evaluation process.
- (3) An applicant, contemplated in subsection (1), must, at the request of the Council, furnish any further information to enable the Council to arrive at a decision and the Council may, for the purpose of properly evaluating the application, also conduct any investigation which it considers appropriate.
- (4) An applicant must be informed that he or she will automatically be disqualified from receiving any assistance contemplated in subsection (1), and be liable to-
- (a) refund the amount of any such assistance received from the Council, if the application or information contemplated in subsection (3), contains any false information; and
- (b) prosecution if any false information as contemplated in paragraph (a) is furnished by the applicant.
- (5) If the Council finds an applicant to be indigent, such applicant is entitled to assistance in terms of the Policy referred to in subsection (1), and his or her personal particulars must be recorded in a prescribed register of indigent persons.
- (6) The position of every indigent person so recorded, must be reviewed annually by an

authorised official in accordance with the directives of the Council.

- (7) A successful applicant must be informed in writing that he or she must immediately notify the Council when his or her indigent status has changed.

## CHAPTER 5

### MISCELLANEOUS

#### Council's right of access to premises

26. The Council may exercise its right of access to premises in terms of section 101 of the Act through the City Manager or any authorised official or any duly appointed agent of the Council, authorised thereto in writing.

#### Conflicting laws

27. If there is any conflict between a provision in these by-laws and a provision of any other by-law, the provision in these By-laws must prevail.

#### Preservation of rights consequent on non-compliance

28. A failure by the Council to comply with any provision of these By-laws does not in any way affect the liability of any person to pay any amount due and payable to the Council as contemplated in these By-laws, nor the Council's right to recover such amount.

#### Transmission of documentation

29. Subject to the provisions of any law, if in terms of or for the purposes of these By-laws any written communication must or may be rendered, sent or delivered —
- (a) by the Council to any person, such communication must be —
- (i) delivered by hand —
- (aa) to that person's *domicilium citandi et executandi*, as stipulated in an agreement entered into in terms of section 3(1)(c) or 6(1); or
- (bb) in the absence of such agreement, to that person's most recently recorded address; or
- (cc) to the premises concerned in respect of which rates are levied or any municipal service is provided, whichever is relevant; or
- (ii) sent by post to the address referred to in subparagraph (i)(aa) or (bb), whichever is applicable, or to the address of the premises contemplated in subparagraph (i)(cc).

- (b) by any person to the Council, such communication must be —
  - (i) delivered by hand to —
    - (aa) the Council's domicilium citandi et executandi stipulated in the agreement contemplated in paragraph (a)(i)(aa); or
    - (bb) another address, if the Council in writing furnished such an address to the person concerned; or
  - (ii) sent by post to the address referred to in subparagraph (i)(aa) or, in the circumstances contemplated in subparagraph (i)(bb), to the address contemplated in that subparagraph.

#### **Prima facie evidence of documentation**

30. For the purposes of the recovery of any amount due and payable to the Council in terms of these By-laws —
- (a) a copy of any relevant account; and
  - (b) an extract from the Council's records relating to the quantity of consumption or provision of any municipal service and the period of provision of such service,

certified by an authorised official as being correct, constitute prima facie evidence of the information contained in such documents.

## **CHAPTER 6**

### **APPEALS**

#### **Appeals**

- 31(1) A person whose rights are affected by a decision taken by any authorised official under these by-laws, may appeal against the decision by giving written notice of the appeal and reasons to the municipal manager within 21 days of the date of the notification of the decision.
- (2) The municipal manager must promptly submit the appeal to the appropriate appeal authority mentioned in subsection (4).
  - (3) The appeal authority must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.
  - (4) When the appeal is against a decision taken by –

- (a) a staff member other than the municipal manager, the municipal manager is the appeal authority; or
  - (b) the municipal manager, the executive mayor is the appeal authority.
- (5) An appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable period.

## CHAPTER 7

### GENERAL

#### Offences

32. Any person who -

- (a) contravenes or fails to comply with any provisions of these by-laws;
- (b) fails to comply with any lawful instruction given in terms of these by-laws; or
- (c) obstructs or hinders any authorised official in the execution of his or her duties under these by-laws –

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding R5 000 or imprisonment for a period not exceeding 3 months or both.

#### Repeal of existing by-laws

33. The Council's existing Credit Control and Debt Collection by-laws are hereby repealed.

#### Short title and commencement

34. This by-law shall be called the Credit Control and Debt Collection by-law and shall come into operation on the date of publication in the KwaZulu Natal Provincial Gazette.

## PROPERTY ENCROACHMENT BY-LAW

Be it enacted by the Council of the Mkhambathini Municipality, in terms of section 156 of the Constitution of the Republic of South Africa Act, 1996 (Act No. 108 of 1996), read with section 11 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), as follows:

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### CHAPTER 1

#### DEFINITIONS

##### Definitions

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

“**Council**” means the Council of the Mkhambathini Municipality;

“**council property**” means any property, including but not limited to public roads –



- (a) which is owned by the Council;
- (b) over which the Council has control over; or
- (c) in respect of which a servitude or other property right has been registered in favour of the Council;

**“encroachment”** means any physical object which intrudes on Council property;

**“prescribed”** means determined by resolution of the Council made from time to time;

**“prescribed fee”** means a fee determined by the Council by resolution from time to time;

**“public road”** means any road, street or thoroughfare or any other place (whether a thoroughfare or not) which is commonly used by the public or any section thereof or to which the public or any section thereof has a right of access, and includes –

- (a) the verge of any such road, street or thoroughfare;
- (b) any bridge, ferry or drift traversed by any such road, street or thoroughfare; and
- (c) any other work or object forming part of or connected with or belonging to such road, street or thoroughfare.

#### **Council permission required**

2.(1) No person may, without prior written permission, make or construct any encroachment into, over or under any Council property.

(2) The Council may -

- (a) refuse the permission required in terms of subsection (1); or

- (b) grant such permission either unconditionally or upon the conditions and subject to the payment of the prescribed fee annually or the performance of the works or services determined by the Council in each case.
- (3) The prescribed fees mentioned in subsection (2) are payable in advance at the beginning of each year which is calculated from date of approval or the period determined by the Council, and the owner is liable for the payment of prescribed fees in terms of these by-laws for each encroachment.
- (4) The owner of any existing encroachment must within three months after the date of commencement of these by-laws make application to the Council on the prescribed form for permission for the existence of the encroachment in terms of these by-laws.

#### **Rules for the construction of encroachments**

- 3.(1) The design, arrangement and construction of verandas, balconies, bay windows and other encroachments over Council property, as well as the paving, kerb and gutter thereof, must be to the satisfaction of and to the levels approved by the Council.
- (2) If corrugated iron is used for covering a veranda, its exposed surfaces must be painted.
- (3) A veranda over a public road must correspond in line, height and detail with existing adjoining verandas.

#### **Columns**

- 4.(1) The Council may determine areas within the municipal boundary where no person is permitted to place veranda columns over any public road or pavement.
- (2) No person may place any veranda column -
  - (a) over any pavement where such pavement is less than 2,6 m wide;
  - (b) more than 3 m from the building line measured to the outside of the column or at less than 3 m centre to centre;

- (c) over any pavement at the corner of a public road that is beyond the alignment of the building lines; and
  - (d) at a distance lesser than 600 mm back from the front edge of any kerb.
- (6) No person may place a twin or double veranda column over any public road or pavement.
- (7) Where verandas are supported on columns-
  - (a) the columns may not have square arris;
  - (b) no base may project more than 50 mm beyond the bottom diameter of the column; and
  - (c) the maximum horizontal axial dimensions of such base may not exceed 350 mm.
- (8) Where the form of a column is classic in character, the shaft must have suitable entasis and cap and base in due proportions.
- (9) Columns, including cap and base, may not be less than 3 m or more than 3,6 m in height and not more than 4,5 m including plinth.
- (10) The minimum height from the footway or sidewalk to the underside of each cantilever or fascia girder is 3 m.
- (11) A coping, blocking course or balustrade, if any, may not extend less than 750 mm nor more than 1,05 m above the floor of a balcony.
- (12) Nothing in these by-laws prohibits –
  - (a) the erection and use of a party column common to two adjoining verandas if the column stands partly on the extended boundary lines of two properties or adjoins the same; or

- (b) in the case of adjoining verandas, the placement of any column upon a plinth if this is necessary for alignment and all the other provisions of these by-laws are observed.

### **Balconies and bay windows**

- 5.(1) Balconies, bay windows or other similar encroachments may not –
  - (a) overhang a public road if they are at a height of less than 3 m above the pavement;
  - (b) encroach more than 1,35 m over any public road; or
  - (c) encroach more than 900 mm over any public road.
- (2) The aggregate horizontal length of bay windows at any level over a public road may not exceed one-third of the length of the building frontage to that road.
- (3) Any balcony superimposed upon any veranda must be set back at least 1,2 m from the line of such veranda.
- (4) No part of any balcony that is attached to any veranda, may be carried up to a height greater than two storeys above the pavement level except that, where the top portion of the balcony is roofed with a concrete flat roof forming a floor, a balustrade not exceeding 1 m in height is allowed above the level of the floor.
- (5) Any dividing wall across a balcony over a public road may not exceed 1 m in height or 225 mm in thickness.
- (6) A balcony over any public road may not be the sole means of access to any room or apartment.
- (7) No person may place or permit or cause to be placed any article upon any balcony over a public road, except ornamental plants, tables, chairs, canvas blinds and awnings not used for signs or advertisements.

- (8) Where any floor of a building is used solely for the parking of a motor vehicle, bay windows at the level of the floor may not project over any public road for more than 1,35 m for the full length of the building frontage to that road.

#### **Plinths, pilasters, corbels and cornices**

- 6.(1) No plinths, pilasters or other encroachments beyond building lines carried up from ground level are permitted to encroach on a public road.
- (2) Any pilaster, cornice, corbel or similar architectural feature that is at least 3 m above the ground may not exceed the following level of encroachment over a public road:
- (a) a pilaster: 450 mm the total aggregate frontage length of the pilaster may not exceed one-fifth of the building frontage and bay windows in the same storey must be included in the calculation of the maximum aggregate length for bay windows;
  - (b) a fire-resisting ornamental hood or pediment over a door: 600 mm and in any part not less than 2,75 m in height above the footway or pavement;
  - (c) a cornice: 1,05 m where not exceeding 10,5 m above the footway or pavement and one-tenth of the height from the footway or pavement if exceeding 10,5 m with a maximum of 1,8 m.

#### **Verandas around corners**

7. Where verandas are built around corners of public roads they must be properly splayed or rounded to follow the curves of the kerb.

#### **Pavement openings**

- 8.(1) No pavement opening may –
- (a) be the sole means of access to any vault or cellar; and
  - (b) extend more than 1,2 m beyond the building line.

- (2) Where flaps are permitted in pavement openings each flap may not exceed 0,75 square metres in area and must open upwards and while open, must be provided with stout iron guard rails and stanchions.
- (3) Flap openings may be opened and used only for the purpose of lowering and raising goods and must be kept closed except when lowering and raising operations are in progress.
- (4) The front wall or wall parallel to the kerb in every opening must be built with a suitable batter to the satisfaction of the Council.
- (5) No pavement opening may be covered with metal bar gratings or with metal plates or with wood.

#### **Encroachment erected in front of building**

9. Where any encroachment has been erected or constructed in front of any building, the owner must at his, her or its own expense –
  - (1) pave the whole of the footway or pavement under the encroachment or in front of the building in which the pavement opening is fixed; and
  - (2) lay the road kerbing and guttering and paving in front of the building for the full width of the footway or pavement.

#### **Maintenance, removal and tenancy of projections**

10. (1) The owner of any encroachment must maintain the encroachment in good order and repair.
  - (2) Pavement openings, pavement lights, walls thereof and basement walls must be made and kept water-tight by the owner.
  - (3) The owner of any encroachment on, under or over any public road or pavement, or sign or other fixture on or over any public road, is regarded a tenant in respect of the encroachment, sign or fixture and, if called upon by the Council to remove any or all of

them and restore the public road or pavement to its former conditions, and must do so within a reasonable time.

### **Encroachments**

- 11.(1)(a) Any person other than the owner wishing to erect or construct an encroachment or any other fixture on, under or over any public road, or any immovable property owned by or vested in the Council, must apply to the Building Control Officer on a form provided by the Council for that purpose.
- (b) Where in the opinion of the Building Control Officer drawings are required for the conclusion of an encroachment agreement, the prescribed charge in addition to any other prescribed charge is payable to the Council.
- (2) The owner of the building in connection with which any encroachment or fixture exists, or is proposed –
- (a) must defray any cost incurred in connection with wires or property of the Council;
- (b) must allow the Council to erect on, or attach to the encroachment or fixture or anything required in connection with electrical or other activities.

### **Offences and penalties**

12. A person who contravenes any provision of this by-law shall be guilty of an offence and be liable on conviction to a fine not exceeding R500.00 or to imprisonment not exceeding 6 months or to both that fine and that imprisonment.

### **Repeal of existing By-laws**

13. The Council's existing by-laws are hereby repealed.

### **Short title and commencement**

14. This by-law shall be called the Property Encroachment by-law, and shall come into operation on date of publication in the KwaZulu Natal Provincial Gazette.

## FIRE PREVENTION BY-LAWS

Be it enacted by the Council of the Mkhambathini Municipality, in terms of Section 156 of the Republic of South Africa Act No. 108 of 1996, read with section 11 of the Local Government: Municipal Systems Act No. 32 of 2000, as follows:

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## CHAPTER 1

### DEFINITIONS

#### Definitions

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

**"above ground storage tank"** means a tank situated above ground for the storage of a flammable liquid;

**"automatic releasing hold-open device"** means a device used to hold open a fire door and operates on the detection of a fire to close the fire door;

**"building"** means any structure, whether of a temporary or permanent nature and irrespective of the materials used in the construction thereof, erected or used for or in connection with:

- (i) the accommodation or convenience of human beings or animals;
  - (ii) the manufacture, processing, storage or sale of any goods;
  - (iii) the rendering of any service;
  - (iv) the destruction or treatment of combustible refuse or combustible waste;
  - (v) the cultivation or growing of any plant or crop;
- (a) any wall, swimming pool, reservoir or bridge or any other structure connected therewith;
  - (b) any fuel pump or any tank used in connection therewith;
  - (c) any facilities or system, or part or portion thereof, within or outside or 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;

**"bund wall"** means a containment wall surrounding an above ground storage tank, constructed of an impervious material and designed to contain 100% of the contents of the tank;

**"combustible material"** means combustible refuse, combustible waste or any other material capable of igniting;

**"combustible refuse"** means any combustible rubbish, litter or other material that has been discarded;

**"combustible waste"** means any combustible waste material which is salvageable, retained or collected for scrap or reprocessing;

**"dangerous goods"** means a flammable gas, liquid or solid as contemplated in SABS 0228;

**"division separating element"** means a building element or component which separates one area in a building from another and has a fire resistance of not less than that required by the National Building Regulations (T1) read with the SABS 0400;

**"emergency evacuation plan"** means a plan specifically designed to aid in the evacuation of occupants from a building in the event of a fire or other threatening danger and assigns responsibility to various staff, indicates escape routes to be used and provides for general contingencies for a safe and quick evacuation from a building;

**"emergency route"** means that part of an escape route that provides fire protection to the occupants of any building and which leads to an escape door;

**"emergency vehicle"** means any fire, rescue or other vehicle intended for use at fires and other threatening dangers;

**"escape door"** means the door in an escape route, which at ground level leads directly to a street or public place or to any approved open space which leads to a street or public place;

**"escape route"** means the entire path of travel from the furthest point in any room in a building to the nearest escape door and may include an emergency route;

**"escape route plan"** means a diagram indicating the floor layout, the occupant's current position and the route of travel to the nearest primary and secondary escape routes in the building, as well as the action to be taken in the event of a fire or other threatening danger:

**"Fire Brigade Services Act"** means the Fire Brigade Services Act, 1987 (Act 99 of 1987);

**"fire damper"** means an automatic damper and its assembly that complies with the requirements contained in SABS 193;

**"fire door"** means an automatic or self-closing door or shutter assembly especially constructed to prevent the passage of fire for a specific length of time;

**"fire extinguisher"** means a portable or mobile rechargeable container which has a fire extinguishing substance that is expelled by the action of internal pressure for the purposes of extinguishing a fire;

**"fire hazard"** means any situation, process, material or condition which may cause a fire or explosion or provide a ready fuel supply to increase the spread or intensity of the fire or explosion and which poses a threat to life or property;

**"fire lanes"** means the road, path or other passageway constructed or designated to allow access for emergency vehicles;

**"fire protection system"** means any device or system designed and installed to-

- (a) detect, control or extinguish a fire, or
- (b) alert occupants or the fire service, or both, to a fire, but excludes portable and mobile fire extinguishers;

**"fire wall"** means a wall that is able to withstand the effects of fire for a specific period of time as contemplated in the National Building Regulations (T1) read with SABS 0400;

**"flammable gas"** as contemplated in SABS 0228, means a gas that at 20 degrees centigrade and at a standard pressure of 101,3 kilopascals:

- (a) is ignitable when in a mixture of 13% or less (by volume) with air,  
or
- (b) has a flammable range with air of at least 12 percentage points, regardless of the lower flammable limit;

**"flammable liquid"** means a liquid, or mixtures of liquids, or a liquid containing solids in solution or in suspension that give off a flammable vapour at or below 60,5 degrees centigrade;

**"flammable solid"** means a solid that is easily ignited by external sources, such as sparks and flames, solids that are readily combustible, solids that are liable to cause, or contribute to, a fire through friction or solids that are desensitised (wetted) explosives that can explode if not diluted sufficiently;

**"flammable substance"** means a flammable liquid or a flammable gas;

**"flammable store"** means a store that is used for the storage of flammable liquids and complies with the criteria set out in section 46 of this by-law;

**"Hazardous Substances Act"** means the Hazardous Substances Act, 1973 (Act 15 of 1973);

**"National Building Regulations"** means the regulations promulgated in terms section 17(1) of the National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977), and:

- (a) "National Building Regulations (A2)" means the provisions regulating the submission of building plans and particulars to the Council;
- (b) "National Building Regulations (A20)" means the provisions regulating the classification and designation of occupancies;
- (c) "National Building Regulations (A21)" means the provisions regulating the population of a building;
- (d) "National Building Regulations (T1)" means the provisions regulating general requirements for fire protection of a building, and
- (e) "National Building Regulations (T2)" means the provisions regulating the offences for non-compliance with the National Building Regulations (T1);

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

**"non-combustible"** means a substance or material classified as non-combustible when tested in accordance with SABS 0177: Part 5;

**"occupancy separating element"** means a building element or component which separates one occupancy in a building from another and has a fire resistance of not less than that required by the National Building Regulations (T1) read with the SABS 0400;

**"Occupational Health and Safety Act"** means the Occupational Health and Safety Act, 1993 (Act 85 of 1993);

**"operator"** means the person responsible for the use of a motor vehicle and who has been registered as the operator of such a vehicle in terms of the National Road Traffic Act;

**"owner"** means:

- (a) in relation to premises, other than a building, either a natural or juristic person whose identity is determined by operation of law;
- (b) in relation to a building, either a natural or juristic person in whose name the land on which such building was or is erected or such land, as the case may be, is registered in the deeds office in question;
- (c) in relation to an installation, either a natural or juristic person in whose name a contract is entered into regarding approval, erection and maintenance of the installation; provided that such a person is not the owner mentioned in (b), and
- (d) in the event of the Council being unable to determine the identity of a person mentioned in (a), (b) and (c), any person who is entitled to the benefit of the use of such premises, building or installation or who enjoys such benefit;

**"person in charge"** means:

- (a) in relation to premises, either a natural or juristic person who is permanently or temporarily responsible for the management, or utilisation of the premises;
- (b) in relation to a building, either a natural or juristic person who is permanently or temporarily responsible for the management, maintenance or utilisation of the building;
- (c) in relation to an installation, either a natural or juristic person who is permanently or temporarily responsible for the management or utilisation of the installation; provided that such a person is not the