



PROVINCE OF THE EASTERN CAPE
IPHONDO LEMPUMA KOLONI
PROVINSIE OOS-KAAP

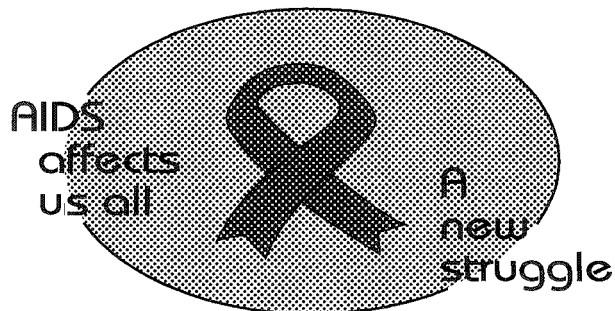
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We all have the power to prevent AIDS



**AIDS
HELPLINE**

0800 012 322

DEPARTMENT OF HEALTH

Prevention is the cure

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LOCAL AUTHORITY NOTICES

LOCAL AUTHORITY NOTICE 41

UMZIMVUBU MUNICIPALITY

The Municipal Manager hereby publishes, in terms of section 13 of the Local Government: Municipal Systems Act, 2000 [Act No. 32 of 2000] read with section 162 of the Constitution of the Republic of South Africa Act 1996 [Act No. 108 of 1996] the By-laws Relating to Street Trading which come into operation on the date of publication thereof.

BY-LAWS RELATING TO STREET TRADING

PREAMBLE

WHEREAS the Council of the Municipality is vested with legislative authority in terms of the Constitution of the Republic of South Africa, 1996 [Act No. 108 of 1996];

AND WHEREAS the Council of the Municipality in the exercise of its functions has the right to regulate street trading in the municipal area for the benefit of the public residing in or visiting the Municipality;

NOW THEREFORE be it enacted by the Council as follows:

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[1] **DEFINITIONS**

In these by-laws, any word or expression to which a meaning has been assigned in the Businesses Act, 1991 [Act No. 71 of 1991], has the meaning so assigned and words used in the masculine gender include the feminine, the singular includes the plural and vice versa and unless the context otherwise indicates –

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

"authorized official" means –

- [a] an official who has been authorized by the Council to administer, implement and enforce the provisions of these by-laws;
- [b] a traffic officer appointed in terms of section 3A of the National Road Traffic Act, 1996;
- [c] a member of the police service, as defined in terms of section 1 of the South African Police Service Act, 1995; or
- [d] a peace officer contemplated in section 334 of the Criminal Procedure Act, 1977.

"foodstuff" means any article or substance, except a drug as defined in the Drugs and Drug Trafficking Act, 1992, ordinarily eaten or drunk by persons or purporting to be suitable or manufactured or sold for human consumption and includes –

- [a] any part or ingredient of any such article or substance; or
- [b] any substance used or intended or destined to be used as a part or ingredient of any such article or substance.

"garden or park" means a garden or park where the public has a right of access;

"goods" means any movable property and includes a living thing;

"intersection" means an intersection as defined in the regulations promulgated in terms of the National Road Traffic Act, 1996;

"kerb line" means a kerb line as defined in section 1 of the National Road Traffic Act, 1996;

"litter" includes any receptacle, container or other matter which has been discarded, abandoned or left behind by street traders or by their customers;

"motor vehicle" means a motor vehicle as defined in section 1 of the National Road Traffic Act, 1996;

"municipal services" means any system conducted by or on behalf of a Municipality for the collection, conveyance, treatment or disposal of refuse, sewage, storm-water, or for the generation, impounding, storage, purification or supply of water, gas or electricity, or municipal services;

"municipal service works" means all property or works of whatever nature necessary for or incidental to any municipal services;

"Municipality" means the uMzimvubu Municipality established in terms of section 12 of the Local Government: Municipal Structures Act, 1998 and includes any political structure or political office bearer as defined in the said Act, Councillor, duly authorized agent thereof or any employee thereof acting connection with these by-laws by virtue of a power vested in the Municipality and delegated to such political structure, political office bearer, Councillor, agent or employee;

"prescribed" means determined, from time to time, by resolution of the Municipality;

"property", in relation to a street trader, means any article, container, vehicle or structure used or intended to be used in connection with such business, and includes goods for trade;

"public building" means a building belonging to or occupied solely by an organ of state including the municipality and also includes municipal service works;

"public monument" means any one of the "public monuments and memorials" as defined in the National Heritage Resources Act, 1999 or any similar legislation;

"public place" means any square, park, recreation ground or open space that is vested in the Municipality or to which the public has the right to use or is shown on a general plan of a township filed in the deeds registry or a Surveyor-General's Office and has been provided for the use of the public or the owners of erven in such township;

"public road" means a public road as defined in section 1 of the National Road Traffic Act, 1996;

"roadway" means a roadway as defined in section 1 of the National Road Traffic Act, 1996;

"sell" and **"sale"** have a corresponding meaning and includes –

- [a] barter, exchange or hire out;
- [b] display, expose, offer or prepare for sale;
- [c] storing on a public road or public place with intention to sell; or
- [d] providing a service for reward;

"sidewalk" means a sidewalk as defined in section 1 of the National Road Traffic Act, 1996;

"street furniture" means any furniture installed by the Council on a street for public use;

"street trader" means a person who carries on the business of street trading and includes any employee of such person;

"street trading" means the selling of any goods or the supplying or offering to supply any service for reward, in a public road or public place, by a street trader;

"the Act" means the Businesses Act, 1991 [Act No. 71 of 1991] and includes the regulations promulgated in terms thereof; and

"verge" means a verge as defined in section 1 of the National Road Traffic Act, 1996.

[2] SINGLE ACT CONSTITUTES STREET TRADING

For the purpose of these by-laws, a single act of selling or offering or rendering of services in a public road or public place constitutes street trading.

[3] ASSIGNING POWERS OF A COUNCIL EMPLOYEE TO EMPLOYEE OF A SERVICE PROVIDER, WHERE A SERVICE PROVIDER HAS BEEN APPOINTED

If any provision in these by-laws vests or imposes any power, function or duty of the Municipality in or on an employee of the Municipality and such power, function or duty has in terms of section 81[2] of the Local Government: Municipal Systems Act, 2000, or any other law, been assigned to a service provider, the reference in that provision to that employee must be read as a reference to the service provider or, where applicable, an employee of the service provider authorized by it.

[4] PROHIBITED CONDUCT

[1] No person may carry on the business of a street trader –

[a] at a place or in an area declared by the Municipality in terms of section 6A[2] [a] of the Act as a place or area in which street trading is prohibited;

[b] in a garden or a park to which the public has a right of access;

[c] on a verge near –

[i] a building belonging to or occupied solely by an organ of state including the Municipality;

[ii] a church, mosque, synagogue or other place of worship;

[iii] a building declared to be a public monument;

[iv] an automatic banking machine;

[d] at a place where it causes an obstruction to –

[i] a fire hydrant;

- [e]** place or stack property in such a manner that it constitutes a danger to any person or property or is likely to injure Any person or cause damage to any property;
- [f]** display goods or other property on or in a building, without the consent of the owner, lawful occupier, or person in control of such building or property;
- [g]** attach any property by any means to any building, structure, pavement, tree, parking meter, lamp, pole, electricity pole, telephone booth, post box, traffic sign, bench or any other street furniture in or on a public road or public place;
- [h]** carry on business in such a manner as to –
 - [i]** create a nuisance;
 - [ii]** damage or deface the surface of any public road or public place or any public or private property; or
 - [iii]** create a traffic and/or health hazard, or health risk, or both.
- [i]** make an open fire on a public road or public place;
- [j]** interfere with the ability of a person using a sidewalk to view the goods displayed behind a shop display window or obscure such goods from view.
- [k]** obstruct access to a pedestrian crossing, a parking or loading bay or other facility for vehicular or pedestrian traffic;
- [l]** obstruct access to, or the use of, street furniture and any other facility designed for the use of the general public;
- [m]** obscure any road traffic sign displayed in terms of the National Road Traffic Act, 1996, or any marking, notice or sign displayed or made in terms of these by-laws;
- [n]** carry on business, or take up a position, or place his property on a portion of a sidewalk or public place, in contravention of a notice or sign erected or displayed by the Municipality for the purposes of these by-laws;
- [o]** other than in a refuse receptacle approved or supplied by the Municipality, accumulate, dump, store, or deposit, or cause or permit to be accumulated, dumped, stored or deposited, any litter on any land or premises or any public road or public place or on any public property;

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- [p] place on a public road or public place property that is not capable of being easily removed to a storage place away from such public road or public place at the end of the day's business;
- [q] store property in a manhole, storm-water drain, public toilet, bus shelter or in a tree;
- [r] handle any foodstuffs including meat in a manner contrary to applicable law;
- [s] carry on such business in a place or area in contravention of any prohibition or restriction approved by the Council in terms of section 6A[2] [a] of the Act.
- [2] Any person carrying on the business of a street trader must ensure that their property or area of activity –
- [a] does not cover an area of a public road or a public place which is greater than 6m² with a maximum length of 3m in extent, unless otherwise approved by the Municipality; and
- [b] in respect of any sidewalk, leaves an unobstructed space for pedestrian traffic, being not less than 1.5m wide when measured from any contiguous building to the property or area of activity, and not less than 0.5m wide when measured from the kerb line to the property or area of activity;
- [3] Any person carrying on the business of a street trader must –
- [a] upon request by an authorized official or supplier of telecommunication or electricity or other municipal services, move his property so as to permit the carrying out of any work in relation to a public road, public place or any such service; and
- [b] on concluding business for the day, remove his property, except any structure permitted by the Municipality, to a place which is not part of a public road or public place;
- [6] **CLEANLINESS**
- Any person carrying on the business of a street trader must –
- [a] keep the area or site occupied by him for the purposes of such business in a clean and sanitary condition;
- [b] keep his property in a clean, sanitary and well maintained condition;

- [c] dispose of litter generated by his business in whatever receptacle is provided by the Municipality for the public or at a dumping site of the Municipality;
- [d] not dispose of litter in a manhole, storm water drain or other place not intended for the disposal of litter;
- [e] ensure that, on completion of business for the day, the area or site occupied by him for the purposes of trade is free of litter;
- [f] take such precautions in the course of conducting his business as may be necessary to prevent the spilling of any fat, oil or grease onto a public road or public place or into a storm-water drain;
- [g] ensure that no smoke, fumes or other substance, odours, or noise emanating from his activities cause pollution of any kind; and
- [h] on request by an authorized official of the Municipality, move his property so as to permit the cleansing of the space of the area or site where he is trading or the effecting of municipal services.

[7] SIGNS INDICATING RESTRICTED AND PROHIBITED AREAS

- [1] The Municipality may, by resolution and in terms of section 6A[2] of the Act, declare any place in its area of jurisdiction to be an area in which street trading is restricted or prohibited and must, to enable compliance therewith, prescribe or make signs, markings or other devices indicating –
 - [a] specified hours, places, goods or services in respect of which street trading is restricted or prohibited;
 - [b] the location of boundaries of restricted or prohibited areas;
 - [c] the boundaries of a stand or area set apart for the purposes of the carrying on of the business of street trading;
 - [d] any other restriction or prohibition against street trading in terms of these by-laws;
- [2] The Municipality must display any such sign, including a pictograph marking or device in such a position and manner as will indicate any restriction or prohibition and/or the location or boundaries of the area or stand concerned;
- [3] Any sign erected in terms of these by-laws or any other law serves as sufficient notice to a street trader of the prohibition or restriction of the area concerned; and
- [4] Any sign may be amended from time to time and displayed by the Municipality for the purpose of these by-laws and any such sign has the same effect as a road sign in terms of the National Road Traffic Act, 1996.

[8] PROVISION OF AND LEASE OF VERGES AND STANDS OR AREAS FOR THE PURPOSE OF STREET TRADING

- [1]** The Municipality may, by resolution, in terms of section 6A[3] [a] to [c] of the Act –
- [a]** lease any municipal land, including any verge or any portion of a verge, to the owner or occupier of contiguous land on condition that such owner or occupier must admit a specified number of street traders to trade on stands or places on such land designated by such owner or occupier for informal trading;
 - [b]** set apart municipal land in the Municipality and demarcate stands or areas on such land for the purpose of informal trading;
 - [c]** let or otherwise allocate any stand or area; and
 - [d]** extend, reduce or disestablish any stand or area referred to in the previous subsections.
- [2]** Any land leased by or allocated by the Municipality aforesaid for informal trading must be so let on an economic rental basis.
- [3]** The Municipality may, in addition to setting aside land in its municipal area for informal trading, also make available to informal traders, subject to such conditions as it may determine, suitable structures, shelters and devices for the conduct of the business of informal trading.

[9] REMOVAL AND IMPOUNDMENT

- [1]** An authorized official may remove and impound any property of a street trader –
- [a]** reasonably suspected of being used or intended to be used or that has been used in or in connection with street trading; and
 - [b]** that is found at a place where street trading is restricted or prohibited and that constitutes an infringement of any such restriction or prohibition, regardless of whether or not such property is in possession or under the control of any person at the time of such removal or impoundment.
- [2]** The removal and impoundment of property in terms of subsection [1] may be effected irrespective of whether or not such property is in the possession or under the control of any third party at the time.
- [3]** Any authorized official acting in terms of subsection [1] must, except where goods have been left or abandoned, issue to the person carrying on the business of a street trader, a receipt for any property so removed and impounded, which receipt must –
- [a]** itemise the property to be removed and impounded;
 - [b]** provide the address where the impounded property will be kept and the period of such impoundment;
 - [c]** state the conditions for the release of the impounded property;

- [d] state the terms and conditions relating to the sale of unclaimed property by public auction;
 - [e] state the terms and conditions relating to the sale of unclaimed property by public auction; and
 - [f] provide the name and address of a municipal official to whom any representations regarding the impoundment may be made and the date and time by which this must be done.

- [4] If any property about to be impounded is attached to any immovable property or a structure, and such property is under the apparent control of a person present thereat, any authorized official of the Municipality may order such person to remove the property, and any such person who refuses or fails to comply is guilty of an offence.

- [5] When any person fails to comply with an order to remove the property referred to in subsection [4], any authorized official of the Municipality may take any necessary steps to remove such property.

- [6] The Municipality must provide sufficient and adequate storage facilities for the storage of any property impounded in terms of this section.

- [7] In the event that an authorized official removes and impounds any property in terms of the preceding subsections, all reasonable steps must be taken to ensure that such property is not damaged or lost.

- [8] The Municipality is not liable for any damage or loss caused to any such property that is removed and impounded unless such damage or loss is caused as a result of the negligence of the Municipality.

- [10] **VICARIOUS RESPONSIBILITY OF PERSONS CARRYING ON BUSINESS**
 - [1] When an employee or agent of a street trader contravenes a provision of these by-laws, the street trader is deemed to have personally committed such contravention unless he satisfies the court that reasonable steps were taken to prevent such contravention.

 - [2] The fact that a street trader issued instructions to the employee or agent mentioned in subsection [1] to prevent a contravention is not in itself sufficient proof of reasonable steps to prevent a contravention.

[11] WAIVER OF PROVISIONS

- [1] The Municipality may, if it deems it desirable to do so in the public interest, waive compliance with or relax the provisions of these by-laws; provided that any person whose rights are adversely affected by such waiver or relaxation will not be bound thereby.
- [2] In each case in which such waiver or relaxation has been granted to any person, the Municipality must serve a written notice upon such person citing the relevant provision waived or relaxed and the extent to which such provision has been waived and, in addition, the Municipality must keep a record containing an identical copy of each such notice, which record must be available for inspection by members of the public at the offices of the Municipality.

[12] COMPLIANCE NOTICE

- [1] If an authorized official reasonably believes that a provision of these by-laws is being contravened, he may serve a compliance notice on an offender, or any one or more of the following persons:
- [a] the owner of any premises;
 - [b] the occupier of any premises;
 - [c] any person apparently in charge of undertaking the aforesaid use on the premises.
- [2] A compliance notice must state –
- [a] why the authorized official believes that these by-laws are being contravened;
 - [b] the measures that must be taken to ensure compliance with these by-laws;
 - [c] the time period within which the measures must be taken;
 - [d] the possible consequences of failing to comply with the notice; and
 - [e] how to appeal against the notice.
- [3] If a person fails to comply with a Compliance Notice that requires a particular action to be taken, the Municipality may –
- [a] take the required action specified in the compliance notice; and
 - [b] recover, as a debt, from the person to whom the notice was given, the costs and expenses reasonably incurred in taking the required action; or
 - [c] direct that a prohibition notice be served on such person in terms of section 13 of these by-laws.

[13] PROHIBITION NOTICE

- [1] An authorized official may, after inspecting any premises, thing or any place contemplated in section 12 of these by-laws, serve a prohibition notice on the owner, occupier or user of such place, premises or thing.

- [2] The authorized official must give the person on whom he intends serving a prohibition notice a reasonable opportunity to make representations before serving the notice.
- [3] A prohibition notice must state –
- [a] the reasons for serving the notice;
 - [b] whether or not the Municipality will withdraw the notice if certain measures are taken, and if so, the measures that must be taken;
 - [c] the possible consequences of failing to comply with the notice; and
 - [d] how to appeal against the notice.
- [4] Unless a prohibition notice provides otherwise, it comes into effect when it is served under subsection [1] and remains in force until it is withdrawn.
- [5] The authorized official must as soon as possible affix a copy of the notice in a conspicuous position on the premises.
- [6] It is a defence for any person charged with failing to comply with a prohibition notice to prove that –
- [a] he did not know of the existence of the prohibition order and could not reasonably be expected to have known of its existence; and
 - [b] he had complied with the prohibition notice within 48 hours of the time that the notice was affixed to the premises in terms of subsection [5].

[14] WITHDRAWAL OF PROHIBITION NOTICE

- [1] The authorized official must, within 48 hours of receiving a written request for the withdrawal of a prohibition contained in a prohibition notice, carry out an investigation of the premises.
- [2] After completing the investigation, the authorized official must inform the person on whom the prohibition notice was served or that person's agent in writing, whether or not the prohibition has been removed or withdrawn.
- [3] The Municipality may charge the owner or occupier of any premises where an investigation is carried out in terms of subsection [1], a fee as prescribed in the applicable tariff policy for undertaking the investigation.

[15] DELIVERY OF NOTICES

- [1] A notice, order or other document is to be regarded as having been properly served if –
- [a] it has been delivered to that person personally;
 - [b] sent by registered post to the person to whom it is addressed at his last known address;

- [c] it is served on a person apparently not less than 16 years of age and apparently in charge of the premises at the addressee's last known address;
 - [d] if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided for in subsections [1] [a], [b] or [c]; or
 - [e] if that person's address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the premises to which it relates.
- [2] A notice, order or other document that may in terms of these by-laws be served on the owner or occupier of premises –
 - [a] may be addressed to the owner or occupier of the specified premises and need not name the owner or occupier; and
 - [b] if the Municipality does not know the address of the owner or occupier of the premises and cannot easily obtain it, the notice, order or other document is to be regarded as having been properly served if it is affixed to a conspicuous place on the premises.

[16] APPEAL

- [1] A person whose rights are affected by a decision of an official may appeal against that decision by giving written notice of the appeal and reasons to the Municipal Manager within 21 days of the date of the notification of the decision.
- [2] The Municipal Manager must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.
- [3] 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;
 - [b] the Municipal Manager, the Executive Committee is the appeal authority; or
 - [c] a political structure or political officer bearer, or a Councillor Council is the appeal authority.
- [4] The appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable time.

[17] OFFENCES AND PENALTIES

- [1]** Any person is guilty of an offence who, in respect of these by-laws –
- [a]** contravenes or fails to comply with any provision;
 - [b]** fails to comply with any notice; or
 - [c]** fails to comply with any lawful instruction; or
 - [d]** fails to comply with any condition imposed by the Municipality in any authorization or permit; or
 - [e]** obstructs or hinders any authorized official of the Municipality in the execution of his duties.
- [2]** Any person guilty of an offence in terms of subsection [1] is liable on conviction –
- [a]** to a fine; or
 - [b]** in default of payment of a fine mentioned in subsection [2] [a], to imprisonment for a period not exceeding six months; and
 - [c]** in the case of a continuing offence, to a further fine not exceeding R50; or
 - [d]** in default of payment of the amount mentioned in subsection [2] [c], to imprisonment not exceeding one day for every day during the continuance of such offence after a written notice has been issued by the Municipality and served on the person concerned requesting the discontinuance of such offence.
- [3]** A court sentencing a street trader who is found guilty of a contravention of these by-laws may also order the convicted street trader to pay the Municipality the reasonable costs it may have incurred in impounding and storing any goods impounded under these by-laws.
- [4]** An admission of guilt fine as contemplated in terms of sections 56 and 57 of the Criminal Procedure Act, 1977 may be paid in respect of a summons or written notice issued for any contravention of these by-laws.

[18] REPEAL OF BY-LAWS

- [1]** Any by-law adopted by the Municipality or a municipality now forming an administrative unit of the Municipality and relating to any matter regulated by these by-laws are, from date of promulgation of these by-laws, hereby repealed.
- [2]** Any permission obtained, right granted, condition imposed, activity permitted or anything done under a repealed law is deemed to have been obtained, granted, imposed, permitted or done under the corresponding provision [if any] of these by-laws, as the case may be.

LOCAL AUTHORITY NOTICE 42**UMZIMVUBU MUNICIPALITY**

The Municipal Manager hereby publishes, in terms of section 13 of the Local Government: Municipal Systems Act, 2000 [Act No. 32 of 2000] read with section 162 of the Constitution of the Republic of South Africa Act 1996 [Act No. 108 of 1996] the By-Laws Relating to the Impoundment of Animals that come into operation on the date of publication thereof.

BY-LAWS RELATING TO THE IMPOUNDMENT OF ANIMALS**PREAMBLE**

WHEREAS the Council of the Municipality is vested with legislative authority in terms of the Constitution of the Republic of South Africa, 1996 [Act No. 108 of 1996];

AND WHEREAS the Council of the Municipality in the exercise of its functions has the right to establish and maintain facilities for the impoundment of animals within the area of jurisdiction of the Municipality;

NOW THEREFORE be it enacted by the Council as follows:

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SCHEDULES

[1] DEFINITIONS

In these by-laws, any word or expression importing any gender or the neuter includes both genders and the neuter, the singular includes the plural and vice versa and, unless the context otherwise, indicates:-

“**animal**” includes a horse, bovine, camel, donkey, sheep, goat, pig, ostrich, small bird, dog, cat or the hybrid of any such animal;

“**authorized official**” means –

- [a] an official who has been authorized by the Council to administer, implement and enforce the provisions of these by-laws;
- [b] a traffic officer appointed in terms of section 3A of the National Road Traffic Act, 1996;
- [c] a member of the police service, as defined in terms of section 1 of the South African Police Service Act, 1995; or
- [d] a peace officer contemplated in section 334 of the Criminal Procedure Act, 1977.

“**Court**” means a Magistrate’s Court as referred to in section 166[d] of the Constitution, 1996, having jurisdiction in the area in which the pound is situated;

“**Gazette**” means the official Provincial Gazette of Eastern Cape;

“Municipality” means the Municipality of uMzimvubu and includes the Council of the Municipality and any other duly authorized political structure, political office bearer or official thereof and, where the text so requires, also a pound keeper employed by the Municipality;

“owner” includes an owner who is known, or whose identity, with the exercise of reasonable diligence, can be ascertained and in relation to any -

- [a] animal, includes the agent of the owner or other person having the lawful custody or possession of such animal; or
- [b] land, includes the owner, lessee or lawful occupier of such land or his agent;

“pound” means a pound established as contemplated in section 3;

“pound keeper” means the person appointed from time to time as contemplated in section 4 and includes any person acting for or on behalf of the appointed pound keeper;

“public place” means any place to which the public has access including, without limiting the generality of the aforesaid, any –

- [a] square;
- [b] park;
- [c] recreation ground;
- [d] sports ground;
- [e] open space;
- [f] beach;
- [g] shopping centre on municipal land;
- [h] unused or vacant municipal land; or
- [i] cemetery;

“public road” means a public road as contemplated in section 1 of the Road Traffic Act, 1996 [Act No. 93 of 1996]; and

“service delivery agreement” means a service delivery agreement as defined in section 1 of the Local Government: Municipal Systems Act, 2000 [Act No. 32 of 2000].

[2] APPLICATION

These by-laws apply to the area of jurisdiction of the municipality; provided that nothing prevents any animal detained in terms of these by-laws from being impounded in a pound or any similar facility established by any person or body with whom the Municipality has concluded a service level agreement, another Municipality or duly authorized institution.

[3] ESTABLISHMENT OF POUND

These by-laws must be applied subject to any provincial legislation authorizing a Municipality to establish a pound or regulating a pound and in the event of conflict between these by-laws and such legislation, the provisions of such provincial legislation will apply.

[4] APPOINTMENT OF POUND KEEPER

[1] Subject to subsection [2], the Municipality –

[a] must appoint a suitably skilled and experienced person as a pound keeper; and

[b] may appoint an authorized official to administer the implementation and enforcement of these by-laws.

[2] If a pound is operated by a person or body in terms of a service delivery agreement concluded with the Municipality, the relevant contracting party is obliged to appoint a suitably skilled and experienced person as a pound keeper for each pound for which such party is responsible in terms of the relevant service delivery agreement;

[3] The provisions of these by-laws will, with the necessary changes, apply to a pound established in terms of a service delivery agreement concluded by the Municipality.

[5] GENERAL DUTIES OF THE POUND KEEPER

[1] The pound keeper must take all reasonable measures to ensure that a public health hazard or a public health nuisance does not occur on, or rise or emanate and he must take all reasonable measures to ensure that the public health hazard or a public health nuisance is eliminated or reduced as far as possible.

[2] For the purpose of subsection [1] the following measures must be taken:

[a] Fly-traps must be installed to catch or kill flies;

[b] accumulated water must be covered with oil and drained regularly;

[c] containers in which mosquitoes may breed, must be disposed of or kept in such a manner to prevent breeding of mosquitoes;

[d] ditches, gutters and pipes must be cleaned regularly so as to prevent the collection of water; and

[e] appropriately humane method of vermin control must be adopted.

[6] TRESPASSING OR STRAYING ANIMALS MAY BE IMPOUNDED

[1] The owner of land upon which any animal is found trespassing may seize such animal; provided that, if the identity of the owner of such animal is known to the owner of land upon which it is found trespassing, such animal may not be removed to a pound before notice is given to the owner thereof in writing no less than 48 [forty-eight] hours prior to its removal to a pound.

- [2] Any animal found straying unattended upon any public road or public place may be seized for impounding by –
- [a] an authorized official; or
 - [b] the owner of any land through or alongside which such road passes or which abuts on such public place.
- [3] No person may keep an animal, seized for purposes of impounding in terms of in subsections [1] and [2], for a period longer than 6 [six] hours without supplying such animal with adequate food and water.
- [4] Any person who has seized an animal for purposes of impounding must comply with the provisions of the Code of Good Practice on the Handling and Transportation of Impounded Animals contained in **SCHEDULE 1** to these by-laws.

[7] **ANIMALS TOO VICIOUS, INTRACTABLE OR WILD TO BE IMPOUNDED**

If a state veterinarian or official contemplated in section 6[2] [a] to [e] is satisfied that an animal found trespassing on any land, or straying unattended upon any public road or public place, is too vicious, intractable or wild to be impounded, he may authorize the humane destruction or other disposal of the animal, after giving written reasons and written notice thereof to the owner of the animal concerned.

[8] **RELEASE OF ANIMALS BEFORE REMOVAL TO POUND**

- [1] The owner of an animal, seized in terms of section 6[1] may apply to the owner of land contemplated in such section for the release of the animal concerned prior to its removal to a pound.
- [2] The owner of land referred to in section 6[1] may –
- [a] release such animal forthwith; or
 - [b] refuse the release of the animal; and
 - [c] in the event that such owner refuses to release the animal as contemplated in subsection [b], apply to Court for authority to –
 - [i] impound the animal; or
 - [ii] claim any damages he may have suffered, in which event the Court may make such order, including an order as to costs that it deems just and equitable.
- [3] The owner of an animal seized in terms of section 6[2] may apply to the relevant person referred to in section 6[2] for the release of such animal prior to its removal to the pound.
- [4] A person referred to in section 6[2] who receives an application contemplated in subsection [3] may either permit or refuse the release of the animal.

[5] In the event that the person referred to in section 6[2] permits the release of the animal, it must be released without undue delay.

[9] **CARE OF TRESPASSING ANIMALS**

A person may not work, use or ill-treat an animal found trespassing on any land or whilst it is in the process of being removed to a pound.

[10] **POUND TO WHICH ANIMALS MUST BE TAKEN**

An animal seized for the purposes of impounding as contemplated in section 6, must be removed to the nearest accessible pound by and within the shortest practical route and within the shortest practical time; provided that animals of different species must be separated at all times according to their species.

[11] **INFORMATION TO BE SUPPLIED TO POUND KEEPER**

Any person sending animals to a pound must advise the pound keeper thereof in writing of –

- [a] the number and descriptions of the animals;
- [b] the land upon which they were found trespassing; and
- [c] the distance in kilometres, by the shortest practical route, between the place on such land where they were seized and the pound.

[12] **ACCEPTANCE AT POUND OF ANIMALS TO BE IMPOUNDED**

The pound keeper may not refuse to accept an animal for impounding.

[13] **POUND REGISTER**

The pound keeper must -

- [a] maintain a pound register containing the information contemplated in **SCHEDULE 2**, which register must be available for public inspection at all reasonable times; and
- [b] complete the pound register immediately upon the acceptance into the pound of any animal.

[14] **NOTICE TO OWNERS OF ANIMALS**

[1] The owner of an animal contemplated in section 6[1], 7, 15[4], 16[c], 18[b], 22[1] [b] and 24[a], must be notified by -

- [a] addressing a written notice to him; or
- [b] placing a copy of the notice to the owner on the official notice board of the Municipality ; and
- [c] publishing a copy of the notice on at least two consecutive days in a newspaper of general circulation in the Municipality.

- [2]** A notice, order or other document is to be regarded as having been properly served if –
- [a]** it has been delivered to that person personally;
 - [b]** sent by registered post to the person to whom it is addressed at his, her or their last known address;
 - [c]** it is served on a person apparently not less than 16 years of age and apparently in charge of the premises at the addressee's last known address;
 - [d]** if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided for in subsections [1][a], [b] or [c]; or
 - [e]** if that person's address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the premises to which it relates.
- [2]** A notice, order or other document that may in terms of these by-laws be served on the owner or occupier of premises –
- [a]** may be addressed to the owner or occupier of the specified premises and need not name the owner or occupier; and
 - [b]** if the Municipality does not know the address of the owner or occupier of the premises and cannot easily obtain it, the notice, order or other document is to be regarded as having been properly served if it is affixed to a conspicuous place on the premises.

[15] CARE OF IMPOUNDED ANIMALS

- [1]** The pound keeper –
- [a]** is responsible for the proper care of all impounded animals;
 - [b]** must ensure that fresh water and sufficient food is available to impounded animals at all times; and
 - [c]** is liable to the owner of an impounded animal for any damage caused by his willful or negligent acts or omissions.
- [2]** A pound keeper must apply to the Court if he is of the opinion that an impounded animal is dangerously vicious, permanently disabled or terminally ill.
- [3]** A Court considering an application contemplated in subsection [2] may, if the Court is satisfied that its condition warrants its destruction or disposal, authorize the destruction or other disposal of such animal.
- [4]** Where the Court authorizes the destruction or disposal of an animal on application by the pound keeper, the pound keeper must immediately notify the owner in writing of the order of Court and the destruction or disposal of the animal concerned.

[16] ISOLATION OF INFECTED ANIMALS

If the pound keeper suspects, or is aware, that an impounded animal, or an animal to be impounded, is infected with any disease contemplated in the Animal Diseases Act, 1984 [Act No. 35 of 1984], he must -

- [a] provide separate accommodation for such animal;
- [b] immediately isolate the animal and report the disease to the nearest state veterinarian; and
- [c] immediately notify the owner of the animal of such disease in writing.

[17] TREATMENT OF IMPOUNDED ANIMALS

The pound keeper –

- [a] may not work or in any way make use of an impounded animal or permit any such animal to be worked or made use of by any other person; and
- [b] must ensure that all impounded male animals are at all times kept apart from female animals.

[18] DEATH OF OR INJURY TO IMPOUNDED ANIMALS

Any pound keeper must, upon discovering that an impounded animal is injured or has died –

- [a] record the injury or cause of death in the pound register referred to in section 13; and
- [b] notify the owner of the animal in writing of its injury or death.

[19] COPIES OF BY-LAWS

The pound keeper must ensure that legible copies of these by-laws in the languages determined by the Municipality are available at the pound for perusal by interested parties.

[20] FEES AND COSTS PAYABLE

The pound keeper must –

- [a] charge the owner of an impounded animal the fees as set by the Municipality from time to time as contemplated in section 75A of the Local Government: Municipal Systems Act, 2000 [Act No. 32 of 2000]; and
- [b] recover from the owner the cost of any dipping, medical treatment, inoculation or other treatment that may be necessary or required in terms of these by-laws or in accordance with any other law.

[21] RELEASE OF IMPOUNDED ANIMALS

[1] The pound keeper must immediately release an impounded animal and give the owner thereof a receipt, upon such owner -

- [a] providing proof of ownership of such animal; and
- [b] paying the fees and costs contemplated in section 20.

- [2] The pound keeper may retain an animal contemplated in subsection [1] in order to recover such fees or costs as may be due and payable in the event that the owner of an impounded animal is unable to pay the fees or costs contemplated in section 20.

[22] SALE OF IMPOUNDED ANIMALS

- [1] The pound keeper must –
- [a] within 14 days of the impounding of an animal, apply to the Court for authority to sell the impounded animal; and
 - [b] in the application contemplated in paragraph [a], provide the Court with proof that he lodged a statement as contemplated in subsection [2] with the owner.
- [2] The statement contemplated in subsection [1] [b] must include –
- [a] the fees and costs due in terms of these by-laws; and
 - [b] the amount of any damages that the owner of the land on which the impounded animal trespassed, may have suffered.
- [3] The Court, whether the amounts set forth in the statement contemplated in sub-section [1] [b] are disputed or not, must –
- [a] summarily enquire into the matter;
 - [b] enquire whether notice was given to the owner of the animal by the pound keeper; and
 - [c] make such order as it considers just and equitable, including an order –
 - [i] as to costs; and
 - [ii] on the process to be followed by the pound keeper in the sale of the animal.

[23] POUND KEEPER MAY NOT PURCHASE IMPOUNDED ANIMALS

- [a] The pound keeper, or a family member, or a close associate of such pound keeper, may not purchase an animal offered for sale at a pound sale, either personally or through any other person or either directly or indirectly.
- [b] A pound keeper who contravenes subsection [a] is guilty of an offence.

[24] ANIMALS UNSUCCESSFULLY OFFERED FOR SALE

In the event that any animal is not sold in the manner contemplated in section 23 –

- [a] the pound keeper must immediately advise the Court and the owner of its estimated value and the fees and costs incurred; and
- [b] the Court may make such order as it may deem just and equitable in the circumstances.

[25] PROCEEDS

[1] All proceeds from the collection of fees and costs contemplated in section 22 must be paid into the municipal revenue fund; provided that the revenue from the sale of any impounded animal that is in excess of the fees and costs incurred and any damages awarded in terms of section 22[3] [c] must be paid to the owner of the sold animal within 30 days of the sale.

[2] The excess must be paid into the municipal revenue fund if the owner of an animal contemplated in subsection [1] cannot be established.

[26] ACTION FOR RECOVERY OF DAMAGES

Nothing in these by-laws prevents the owner of land or any other person from instituting action against the owner of a trespassing animal, in any Court with jurisdiction, for the recovery of damages suffered by reason of such trespassing animal.

[27] PROCEDURE TO BE FOLLOWED IN APPLICATION TO COURT

[1] An application to Court for the impoundment of an animal in terms of these by-laws must comply with the following procedure contemplated in Rule 55 of the Rules of Court; and

[2] An application to Court for the sale of an impounded animal in terms of these by-laws must comply with the following procedures:

[a] Section 66 of the Magistrates' Courts Act, 1944 [Act No. 32 of 1944]; and

[b] Rule 41 of the Rules of Court made by the Rules Board for Courts of Law in terms of section 6 of the Rules Board for Courts of Law Act, 1985 [Act No. 107 of 1985] and published under Government Notice No. R.1108 in Regulation Gazette No. 980 of 21 June 1968, as amended from time to time, read with the necessary changes.

[28] APPEAL

[1] A person whose rights are affected by a decision of an official may appeal against that decision by giving written notice of the appeal and reasons to the Municipal Manager within 21 days of the date of the notification of the decision.

[2] The Municipal Manager must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

[3] 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;

[b] the Municipal Manager, the Executive Committee is the appeal authority; or

[c] a political structure or political officer bearer, or a Councillor Council is the appeal authority.

[4] The appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable time.

[29] OFFENCES AND PENALTIES

[1] A person is guilty of an offence who contravenes any provision of these by-laws or unlawfully –

- [a] releases an animal that was lawfully seized for the purpose of being impounded or which has been lawfully impounded;
- [b] seizes an animal for the purpose of impounding it;
- [c] impounds an animal;
- [d] makes a false entry in the pound register;
- [e] destroys or erases any previous entry in the pound register;
- [f] delivers a false copy or extract from the pound register to any person;
- [g] hinders or interferes with an authorized official in the execution of his duties in terms of these by-laws;
- [h] falsely professes to be an authorized official;
- [i] furnishes false or misleading information when complying with a request of an authorized official; or
- [j] fails to comply with a request of an authorized official.

[2] A person convicted of an offence under these by-laws is liable –

- [a] to a fine, or to imprisonment for a period not exceeding one year; and
- [b] in the case of a continuing offence –
 - [i] to an additional fine; or
 - [ii] to an additional period of imprisonment of 10 days; or
 - [iii] to such additional imprisonment without the option of a fine; or
 - [iv] to both such additional fine and imprisonment for each day on which such offence is continued; and
 - [v] to a further amount equal to any costs and expenses found by the court to have been incurred by the Municipality as a result of such contravention or failure.

[30] SCHEDULES 1 AND 2 FORM PART OF THESE BY-LAWS

Schedules 1 and 2 to these by-laws form part thereof for all purposes.

[31] REPEAL OF BY-LAW

- [1] Any by-law adopted by the Municipality or a municipality now forming an administrative unit of the Municipality and relating to any matter regulated by these by-laws are, from date of promulgation of these by-laws, hereby repealed.
- [2] Any permission obtained, right granted, condition imposed, activity permitted or anything done under a repealed law, is deemed to have been obtained, granted, imposed, permitted or done under the corresponding provision [if any] of these by-laws, as the case may be.

SCHEDULE 1**CODE OF GOOD PRACTICE ON THE HANDLING AND TRANSPORTATION OF IMPOUNDED ANIMALS****PART I: PADDOCK REQUIREMENTS**

- [1] Different species of animals must be kept in separate paddocks.
- [2] Animals may not be penned in overcrowded paddocks and penning space provided for in each paddock must be sufficient to permit all animals to lie down at the same time and must not be less than 1,5 square metres of floor area for each animal.
- [3] Fractious animals may not be kept with other animals.
- [4] Young, weaned juvenile animals may not be penned with adult animals, except in the case of mother and offspring.
- [5] Provision must be made in paddocks for -
 - [a] facilities such as racks, mangers or other suitable feed containers that are easy to clean, which will allow the feeding of an animal off the floor and which can be serviced without disturbing the animals;
 - [b] water troughs with an adequate supply of suitable fresh water at all times;
 - [c] sufficient facilities for the adequate cleaning of paddocks; and
 - [d] facilities for the safe handling of animals.
- [6] The paddocks must at all times be maintained in a good state of repair.
- [7] Sharp points such as wire ends, broken boards, jagged ends or protruding hinges or bolts, which could cause injury to animals, must be removed or otherwise suitably covered.
- [8] The floor of the entire paddock, including the off-loading banks, races and passages, must be so constructed as to provide adequate non-slip surfaces that can be efficiently and suitably cleaned and kept dry and in a condition fit for the holding of animals.

PART II: HANDLING OF ANIMALS

- [1] Animals must at all times be handled humanely and with patience and tolerance.
- [2] The following must be observed when handling animals -
 - [a] animals respond more readily to being driven when the driver stands behind the animal but within its field of vision; and
 - [b] herd animals respond more readily to being driven when in a group rather than singly.
- [3] Animals may not be dragged by their legs or carried by their head, ears or tail.
- [4] Young calves must be carried if they cannot walk with ease, by lifting the calf around the chest and hindquarters, alternatively they must be guided with one hand on the hindquarters and the other near shoulder or neck and walked in the required direction at an appropriate and comfortable pace.

- [5] Only sticks with canvas or belting flaps may be used when driving animals and it is preferable to strike the ground behind the animal rather than to hit the animal.
- [6] Electric prodders, sticks or goads may not be used on young calves.
- [7] Electric prodders may not be used excessively or indiscriminately or applied to the face, anal or genital areas of animals.

PART III: MOVEMENT OF ANIMALS

- [1] Animals driven on the hoof must at all times be under proper and competent supervision.
- [2] Animals on the hoof must be driven in a calm manner at a gait that is relaxed and comfortable, natural to that animal and not faster than the pace of the slowest animal.
- [3] Animals may not be driven for periods in excess of 10 hours without being given rest of at least one hour and provided with sufficient suitable fresh water that is available to all the animals.
- [4] No animal on the hoof may be moved in excess of the following distances –
 - [a] during a journey of not more than one day's duration -
 - [i] 20 kilometres for sheep and goats; and
 - [ii] 30 kilometres for cattle; and
 - [b] during a journey of more than one day's duration -
 - [i] 20 kilometres during the first day and 15 kilometres during each subsequent day for sheep and goats; and
 - [ii] 25 kilometres during the first day and 20 kilometres during each subsequent day for cattle.
- [5] Animals must be watered and fed immediately on reaching their night camp or final destination, with sufficient food of a quality and of a type compatible with the species.
- [6] Animals may not be moved in the dark.
- [7] No sick, injured or disabled animal may be moved on the hoof.

PART IV: VEHICLES USED IN TRANSPORTING ANIMALS

- [1] Vehicles and all trailers used in the transport of hoofed animals must be suitable for the transport of such animals and in a roadworthy condition.
- [2] All vehicles and trailers referred to in item 1 must have –
 - [a] a suitable non-slip floor which may not impede the cleaning of the floor of the vehicle, with hinged or removable battens or steel grids being permissible;
 - [b] adequate ventilation and light whilst in motion as well as when stationary, with no vehicle being totally enclosed;
 - [c] adequate protection from exhaust gasses, as exposure fumes could interfere with the respiration of the animal or cause distress;
 - [d] sidewalls high enough to prevent animals from escaping or falling out of the vehicle; provided that –

- [b] at a loading bank equal to the height of the floor of the vehicle or, at off-loading, not more than 310 millimetres below the level of the off-loading vehicle and with an incline not exceeding 25 degrees.
- [4] Where a truck is equipped with an onboard removable loading ramp, it must have a non-slip surface and be of a sufficient length when lowered, that the inclination is no steeper than the inclines referred to in item 28, with the distance from the ground to the heel of the ramp not exceeding 120 millimetres.
- [5] Ramps must be correctly adjusted to the exact height of the vehicle's floor.
- [6] Journeys must commence as soon as possible after the live animals have been loaded and the animals must be promptly off-loaded upon arrival at the destination.
- [7] Unless adequate provision has been made for effective separation, different species of animals may not be loaded and transported in the same vehicle.
- [8] Animals of different ages, sizes and sexes may not be loaded and transported in the same vehicle unless adequate provision has been made for the effective separation of such animals.
- [9] Adult horned cattle may not be transported with polled cattle and they must also be penned separately.
- [10] When there is reason to believe that an animal is likely to give birth in the course of a proposed journey, the animal may not be loaded onto a vehicle.
- [11] In the case of an animal giving birth during transport, the necessary measures must be taken to ensure the protection of the mother and offspring from being trampled or otherwise injured or harassed by other animals.
- [12] In the event of –
- [a] a breakdown of the transport vehicle;
 - [b] an accident or collision in which the transport vehicle is involved; or
 - [c] injury to, or death of, any animal in transit, the carrier must immediately report the details to, and request assistance from –
 - [i] in the case of paragraph [a], a breakdown service;
 - [ii] in the case of paragraph [b], the South African Police and the traffic authorities; or
 - [iii] in the case of paragraph [c], a veterinarian.

PART VII: RESTRAINING OF ANIMALS DURING TRANSPORTATION

- [1] Where the transport of any animal may cause injury to itself or any other animal, it must be restrained in such a manner as to prevent such injury.
- [2] No animals may be kept in restraint for more than 4 hours in any 24-hour period.
- [3] No wire or bailing twine may be used for tying the animal's legs or feet.
- [4] To avoid strangulation or neck-break, a slipknot may not be used where animals are secured to the vehicle by horns or neck, and the rope must be attached to the vehicle at the level of the animal's knees so that in the event of the animal falling, the possibility of serious injury or death is reduced, with the rope being long enough to allow the animal to lie comfortably in a natural position with its head upright.

SCHEDULE 2**POUND REGISTER INFORMATION**

A pound register must, at least, contain the following information:

- [1] Name of pound
- [2] Date of receipt of animal
- [3] Number and description of animals
- [4] Brands or markings on animal
- [5] Ear tag number assigned by the pound keeper
- [6] Name and address of person who seized the animal
- [7] Name and address of person who delivered the animal to the pound
- [8] Name and address of owner of land
- [9] Name and address of owner of animal
- [10] Name and address or description of place where animal was found
- [11] Distance from location where animal was seized to pound
- [12] Particulars of damage caused by the animal
- [13] Transport fees payable
- [14] Details of destruction or disposal of animal
- [15] Cause of death or injury of impounded animal
- [16] Description and amount of pound fees
- [17] Damages awarded by Court
- [18] Date of release of animal
- [19] Date of sale of animal
- [20] Proceeds of sale of animal
- [21] Name and address of purchaser
- [22] Excess amount [if any] paid to owner or municipality
- [23] Receipt number
- [24] Details of Order of Court with regard to animal not sold in execution.

LOCAL AUTHORITY NOTICE 43**UMZIMVUBU MUNICIPALITY**

The Municipal Manager hereby publishes, in terms of Section 13 of the Local Government Municipal Systems Act, 2000 [Act 32 of 2000] read with Section 162 of the Constitution of the Republic of South Africa Act 1996 [Act 108 of 1996] the By-Law Relating to Public Health Hazard and Nuisances which shall come into operation on the date of publication thereof.

BY-LAW RELATING TO PUBLIC HEALTH HAZARD AND NUISANCES**1. Definitions**

In these by-laws words used in the masculine gender include the feminine, the singular includes the plural and vice versa and, unless the context indicates otherwise -

“**compliance notice**” means a notice issued in terms of section 5 to comply with these by-laws.

“**council**” means the Council of the Municipality of uMzimvubu or its successor in title, and any committee or person to which or whom an instruction has been given or any power has been delegated or sub-delegated in terms of, or as contemplated in, section 59 of the Local Government: Municipal Systems Act, 2000 [Act No. 32 of 2000] as amended.

“**environmental health officer**” means an official appointed by the Council, and who is duly registered as an environmental health officer or environmental health practitioner with the Health Professions Council of South Africa;

“**municipal area**” means the proclaimed area jurisdiction of the Council as envisaged in Section 2 of the Local Government: Municipal Systems Act, 2000 [Act No. 32 of 2000] as amended

“**municipal manager**” means the person appointed by the council in terms of Section 82 of the Local Government: Municipal Structures Act 1998 as amended and includes a person acting in this position.

“**occupier**”, in relation to any premises, means any person –

- (a) occupying the premises;
- (b) leasing the premises;
- (c) who is not occupying the premises but is entitled to do so; or

(d) who manages the premises or a business on the premises on behalf of a person referred to in [a], [b] or [c];

“**owner**” in relation to any premises, means –

(a) the person in whose name the title to the premises is registered, and includes the holder of a stand licence; or

(b) if the person referred to in [a] is dead, insolvent, mentally ill, a minor or under any legal disability, the executor, guardian or other person who is legally responsible for administering that person’s estate;

“**person**” means a natural or juristic person,

“**pest**” means any animal that may create a public health hazard or public health nuisance if it is present in significant numbers and without limitation, includes rats, mice, flies, mosquitoes and cockroaches;

“**premises**” means –

(a) any land without any buildings or other structures on it;

(b) any building or other structure and the land on which it is situated; or

(c) any land that adjoins land referred to in [a] or [b] and any building or other structure on that land, if the land, building or structure is occupied or used in connection with any activity carried out on the premises referred to in [a] or [b];

“**prohibition notice**” means a notice issued in terms of section 6;

“**public health**” means the mental and physical health and well-being of local community in the municipal area;

“**public health hazard**” means any actual threat to public health, and without limitations, includes –

(a) the circumstances referred to in section 3[3];

(b) unsanitary conditions;

(c) circumstances that make it easier for a communicable disease to spread;

(d) circumstances that make food or drink [including water for domestic consumption] unhygienic or unsafe to eat or drink; and

(e) circumstances that allow pests to infest any place where they may affect public health;

“**public health nuisance**” means the use of any premises or place in a manner that creates conditions that significantly increase the risk of a public health hazard occurring or that compromises any aspect of public health to an extent that is more than trivial or insignificant,

2. Purpose

The purpose of these by-laws is to enable the Council to protect and promote the long term health and wellbeing of the local community in its municipal area.

3. Prohibition of causing a public health hazard

- (1)** No person may create a public health hazard anywhere in the municipal area.
- (2)** Every owner or occupier of premises must ensure that a public health hazard does not occur on his premises.
- (3)** An owner or occupier of premises creates a public health hazard if –
 - (a)** his premises are infested with pests or if pests are breeding in large numbers on the premises;
 - (b)** there are conditions on his premises that are conducive to the spread of a communicable disease;
 - (c)** there are unsanitary conditions in any part of his premises; or
 - (d)** any water supply for domestic consumption on his premises is unsafe for human consumption.

(4) Duty to report

- (1)** The owner or occupier of premises who knows of a public health hazard on the premises must within 24 hours of becoming aware of its existence –
 - (a)** eliminate the public health hazard; or
 - (b)** if the owner or occupier is unable to comply with subsection [a], take reasonable steps to reduce the risk to public health and report the existence of the public health hazard to the Council.
- (2)** An owner or occupier who does not comply with subsection [1] commits an offence

(5) Compliance notice

(1) If an environmental health officer, after inspecting premises, reasonably believes that a public health hazard or public health nuisance exists on such premises, the environmental health officer may serve a compliance notice on one or more of the following persons:

- (a)** the owner of the premises;
- (b)** the occupier of the premises;
- (c)** any person apparently responsible for the public health hazard or public health nuisance.

(2) A compliance notice must state –

- (a)** why the environmental health officer believes that these by-laws are being contravened;
- (b)** the measures that must be taken –
 - i.** to ensure compliance with these by-laws; or
 - ii.** to eliminate or minimise any public health nuisance;
 - iii.** the time period within which the measures must be taken
 - iv.** the possible consequences of failing to comply with the notice; and
 - v.** how to appeal against the notice.

(3) If a person fails to comply with a compliance notice that requires a particular action be taken, the Council may –

- (a)** take the required action specified in the compliance notice; and
- (b)** recover, as debt, from the person to whom the notice was given, the costs and expenses reasonable incurred in taking the required action.

6. Prohibition Notice

(1) An environmental health officer may, after inspecting premises, serve a prohibition notice prohibiting the premises from being used for specified purposes and requiring measures to be taken to ensure that this occurs, on one or more of the following persons:

- (a) the owner or occupier of the premises if the environmental health officer reasonably believes that the premises are being used for a purpose or in a manner that is causing a public health hazard or a public health nuisance;
 - (b) any person who is carrying on an activity or using premises for a purpose or in a manner that the environmental health officer reasonably believes is causing a public Health hazard or public health nuisance; or
 - (c) a person on whom a compliance notice was served if the environmental health officer reasonable believes that that person has not complied with the compliance notice;
 - (d) the environmental health officer must give the person on whom he or she intends serving a prohibition notice a reasonable opportunity to make representations before serving the notice unless the environmental health officer reasonably believes that the delay in doing so would significantly compromise pubic health, in which case the person on whom a prohibition notice is served must be given reasonable opportunity to make representations why it should be withdrawn.
- (2) A prohibition notice must state
 - (i) the reasons for serving the notice;
 - (ii) whether or not the Council will withdraw the notice if certain measures are taken, and if so, the measures that must be taken;
 - (iii) the possible consequences of failing to comply with the notice; and
 - (iv) how to appeal against the notice.
- (3) Unless a prohibition notice provides otherwise, it comes into effect when it is served under subsection [1] and remains in force until it is withdrawn.
- (4) The environmental health officer must as soon as possible affix a copy of the notice in a conspicuous position on the premises.
- (5) It is a defence for anyone charged with failing to comply with a prohibition notice to prove that
 - (a) He or she did not know of the existence of the prohibition order and could not reasonably be expected to have known of its existence; and
 - (b) He or she had complied with the prohibition notice within 48 hours of the time that the notice was affixed to the premises in terms of subsection [4].

7. Withdrawal of prohibition notice

- (1) An environmental health officer must, within 48 hours of receiving a written request for the withdrawal of a prohibition contained in a prohibition notice, carry out an investigation of the premises.
- (2) After completing the investigation, the environmental health officer must inform the person on whom the prohibition notice was served or that person's agent in writing, whether or not the prohibition has been removed or the prohibition order withdrawn.
- (3) The Council may charge the owner or occupier of any premises where an investigation is carried out in terms of subsection [1], a prescribed fee for undertaking the investigation.

8. Demolition order

- (1) If the Council believes that a public hazard would be eliminated or a public health nuisance would be significantly reduced by demolishing a building or other structure, it may, subject to the provisions contained in any other law, apply to any court having jurisdiction for an order directing any person to demolish the building or structure or authorising the Council to do so and to recover the costs of doing so from the owner or the occupier of the premises, or from both.
- (2) The Council may not apply to court in terms of subsection [1] unless it has given the owner and the occupier of the premises not less than fourteen day's notice in writing of its intention to make the application.

9. Appeals

- (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 referred to in Section 62 of the Local Government: Municipal Systems Act No. 32 of 2000 as amended.
- (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) An appeal authority must commence with an appeal within six weeks of its submission to the Municipal Manager and decide the appeal within a reasonable period.

10. Offences and penalties**(1)** Any person who –

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

Is guilty of an offence and liable on conviction to a fine or in default of payment to imprisonment for a period not exceeding 6 months.

11. Delivery of notices**(1)** A notice, order or other document is to be regarded as having been properly served if-

- (a)** it has been delivered to that person personally;
- (b)** sent by registered post to the person to whom it is addressed at their last known address;
- (c)** it is served on a person apparently not less than 16 years of age and apparently in charge of the premises at the addressee's last known address;

I. If that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided for in subsection {a}, [b] or [c]; or

II. If that person's address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the premises to which it relates.

(d) A notice, order or other document that may in terms of these by-laws be served on the owner or occupier of premises –

I. may be addressed to the owner or occupier of the specified premises and need not name the owner or occupier; and

II. if the Council does not know the address of the owner or occupier of the premises and cannot easily obtain it, the notice, order or other document is to be regarded as having been properly served if it is posted up in some conspicuous place on the premises.

12. Repeal

Any by-laws adopted by the municipality or the council of a municipality now comprising an administrative unit of the municipality and relating to public health hazards and nuisances or any similar matter referred to or regulated in these by-laws are, from the date of promulgation of these by-laws, repealed.

13. Application to the State

These by-laws binds the state, including the municipality.

LOCAL AUTHORITY NOTICE 44**UMZIMVUBU MUNICIPALITY**

The Municipal Manager hereby publishes, in terms of section 13 of the Local Government: Municipal Systems Act, 2000 [Act No. 32 of 2000] read with section 162 of the Constitution of the Republic of South Africa Act 1996 [Act No. 108 of 1996] the By-laws Relating to Dumping, Littering and Waste Collection that come into operation on the date of publication thereof.

BY-LAWS RELATING TO DUMPING, LITTERING AND WASTE COLLECTION**PREAMBLE**

WHEREAS the Council of the Municipality is vested with legislative authority in terms of the Constitution of the Republic of South Africa, 1996;

AND WHEREAS the Council of the Municipality in the exercise of its functions has the right to promote the achievement of a safe and healthy environment for the benefit of the residents in the area of jurisdiction of the Municipality and to provide for procedures, methods and practices to regulate the dumping of refuse and the removal thereof;

NOW THEREFORE be it enacted by the Council as follows:

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- [9] Dumping, littering and other contraventions
- [10] Garden refuse
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- [12] Builder's refuse
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- [14] Disposal sites for domestic, garden and builder's refuse
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- [23] Repeal of by-laws

[1] **DEFINITIONS**

In these by-laws, words used in the masculine gender include the feminine, the singular includes the plural and vice versa and unless the context otherwise indicates –

"authorized official" means –

- [a] an official who has been authorized by the Council to administer, implement and enforce the provisions of these by-laws;
- [b] a traffic officer appointed in terms of section 3A of the National Road Traffic Act, 1996;
- [c] a member of the police service, as defined in terms of section 1 of the South African Police Service Act, 1995; or
- [d] a peace officer contemplated in section 334 of the Criminal Procedure Act, 1977.

"bin" means a container as contemplated in section 5 of these by-laws;

"builder's refuse" means any waste or refuse resulting from or generated by the construction, renovation or demolition of a building or other structure or works;

"bulky refuse" means any refuse, other than industrial refuse, which emanates from any premises and which by virtue of its mass, shape, size or quantity cannot be conveniently accumulated in or removed from a container with a bin liner;

"charge" means the charge prescribed by the municipality by resolution;

"container" means a standard type of refuse container as approved by the municipality.

"domestic refuse" means any refuse or waste normally emanating from or incidental to the normal occupation of a dwelling, flat, hotel, boarding-house, restaurant, guest house, hospital, school, cafe, shop, old age home or office but must not include stones, soil, gravel, bricks, waste liquids, night soil, or industrial, builder's or trade refuse;

"garden refuse" means any refuse which is generated as a result of normal gardening activities such as grass cuttings, leaves, trees, plants, flowers, weeds and other similar light matter;

"industrial refuse" means any refuse generated as a result of manufacturing, maintenance, production and dismantling activities;

"Municipality" means the Municipality of uMzimvubu established in terms of Section 12 of the Municipal Structures Act, 117 of 1998 and includes any political structure, political office bearer, councillor, duly authorised agent or any employee thereof acting in connection with these by-laws by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, councillor, agent or employee;

"municipal service" means, unless otherwise stated, the provision or supply of water, sewerage or electricity services;

"occupier" for the purposes hereof means the person who controls and resides in or who controls and otherwise uses immovable property and includes joint occupiers;

"owner" means and includes –

- [a] the person or persons in whom the registered title in immovable property is vested;
- [b] the person administering an estate as curator, executor, proxy, trustee or administrator of a person in whom the legal title in immovable property is vested and who is insolvent, dead or of unsound mind;
- [c] the agent or persons receiving the rental of immovable property in cases where the owner as described above is away or absent;
- [d] the beneficiary of a usufruct over immovable property, or
- [e] the fiduciaries of municipal property;
- [f] where the text so requires, includes the occupier of a property;

"premises" means residential, business and industrial premises and includes any land, whether vacant, occupied or with buildings thereon, forming part of a piece of land laid out as a township, irrespective of being proclaimed as a township;

"waste" means **"refuse"** and includes bulky refuse, domestic garden refuse and industrial refuse;

"trade refuse" means any trade material or trade waste as determined by the municipality and agreed to by the owner or occupier.

[2] **DOMESTIC REFUSE REMOVAL**

The Municipality must provide a service for the removal and disposal of domestic refuse subject to such conditions as it may determine.

[3] **USE OF SERVICE COMPULSORY**

Every owner or occupier of immovable property must make use of the service for the removal and disposal of domestic refuse provided by the Municipality in respect of all domestic refuse which emanates from such property.

[4] **MUNICIPALITY TO REMOVE REFUSE**

No person other than the Municipality or person authorised thereto in writing by the Municipality may remove domestic refuse from any property or dispose of it in any manner.

[5] **ACCUMULATION AND REMOVAL OF DOMESTIC REFUSE**

[1] Subject to the provisions of subsection [6], the Municipality may require every occupier of a property to provide on such property a container with a capacity of not less than 85 litres, constructed of a material approved by the Municipality and with a closefitting lid and two handles for the accumulation of domestic refuse.

[2] If the Municipality is of the opinion that more than one container for the accumulation of domestic refuse is essential on a particular property, it may, according to the quantity of

domestic refuse normally accumulated on such property, require the occupier thereof to provide as many containers as it may determine on such property.

- [3] If a container used by an owner or occupier does not comply with the requirements of the Municipality, it may instruct such owner or occupier by written notice to obtain and use some other suitable container complying with its requirements.
- [4] The Municipality may, where it considers it necessary or desirable of its own accord supply containers to particular classes of owners or occupiers, or to particular classes of properties or in particular areas, in which event the cost of such containers must be recovered from the owners or occupiers of the properties concerned.
- [5] All containers must be equipped with bin liners, unless the Municipality determines otherwise.
- [6] The Municipality may, generally or in particular, issue instructions to owners and occupiers by written notice on the manner in which or the arrangements according to which refuse or refuse bags must be placed in containers, be removed from them, be tied and thereafter be placed or deposited for removal.
- [7] Any disregard of instructions contemplated in subsection [6] constitutes a contravention of these by-laws.
- [8] No material, including any liquid which, by reason of its mass or other property is likely to render such bin liners or containers difficult for the Municipality's employees to handle or carry, may be placed in such bin liners or containers.
- [9] The containers or bin liners, or both, must be removed by the Municipality at such intervals as the Municipality may deem necessary but only if such containers or bin liners, or both, have been placed or deposited at the prescribed places as determined by the Municipality.
- [10] The Municipality is not liable for the loss of or for any damage to a container or bin liner.
- [11] In any case where the occupier of a property is not also the owner, the Municipality may hold the owner himself, instead of the occupier, liable for compliance with the provisions of these by-laws.
- [12] The Municipality may, in specific cases, impose different requirements, other than the use of an 85 litre container, for the removal and disposal of refuse and the owner or occupier of immovable property, as the case may be, to which such requirements relate are obliged to comply with the aforesaid directions of the Municipality.
- [13] The Municipality may prescribe policy with regard to the reclamation of refuse in which case directions may be issued in terms of which certain types of refuse must be separated and disposed of.

[6] **ACCUMULATION OF DOMESTIC REFUSE**

The owner or occupier of any property must ensure that all domestic refuse generated on such property is accumulated only in a container as determined by section 5 and in no other manner.

[7] **ACCESS TO PREMISES**

Except where otherwise approved by the Municipality, the owner of premises must ensure that access from the nearest public road to the waste storage area on the premises is independent and unimpeded and the owner who fails to do so commits an offence.

[8] RIGHT OF ENTRY

- [1]** At any reasonable time on any day, or at any other time at which the service is ordinarily rendered, any authorised employee of the Municipality is entitled to enter premises in respect of which the Municipality's waste management services are rendered in order to –
- [a]** collect and supervise the collection of waste;
 - [b]** replace waste bins; or
 - [c]** inspect the means of access to the premises, or the space where waste bins are kept so as to ensure that they are accessible and convenient for the collectors.
- [2]** The owner of the premises may not refuse access to the premises by an employee of the Municipality.
- [3]** An owner of premises commits an offence if he —
- [a]** denies access to the premises to an authorised employee of the Municipality in the performance of his duties; or
 - [b]** obstructs or impedes such employee of the Municipality in the performance of his duties.

[9] DUMPING, LITTERING AND OTHER CONTRAVENTIONS

- [1]** No person may –
- [a]** litter or cause or permit littering;
 - [b]** dump or cause or permit the dumping of any waste;
 - [c]** burn or cause or permit the burning of any waste, otherwise that provided for in any law;
 - [d]** accumulate or store waste, or cause or permit the accumulation and storage of waste in any way which, in the opinion of the Municipality, is unsightly or is or may become a nuisance or health hazard; or
 - [e]** deal or cause or permit the dealing with waste in any way other than provided for in any law.
- [2]** Where any of the provisions of subsection [1] are contravened, the Municipality may direct any or all of the following persons within a specified time to cease the contravention or to prevent a further contravention or the continuation of the contravention:
- [a]** any person responsible for, or who directly or indirectly contributed to, such contravention;
 - [b]** the owner of the waste, whether or not such owner is responsible for the contravention;
 - [c]** the owner of the land or premises on or at which the contravention takes place, where such owner failed to take the steps required in terms of these by-laws;

- [d] the person in control of, or any person who has or had a right to use, the land or premises on or at which the contravention takes place at the time of the contravention, where such person failed to take the steps required in terms of these by-laws;
- [e] any person who negligently failed to prevent the contravention from taking place;
- [3] Notwithstanding a direction in terms of subsection [1] from the Municipality to any or all of the persons referred to in subsections [9] [a] to [e], the Municipality may further direct such persons to take whatever steps the Municipality considers necessary to clean up or remove the waste, to rehabilitate the premises or place at which the contravention takes place and to ensure that the waste is disposed of lawfully.
- [4] The Municipality may itself take whatever steps it deems necessary to clean up or remove the waste, to rehabilitate the premises or place at which the contravention takes place and to ensure that the waste is disposed of lawfully and then recover the costs of taking such steps from any persons listed in subsection [2], who must, where applicable, be jointly held responsible.
- [5] The costs claimed in terms of subsection [4] must be reasonable and may include labour, administrative and other overhead costs.
- [6] No person who owns land or premises or who is in control of or has a right to use land or premises may use or permit the use of such land or premises for the purposes of unlawful dumping, burning or storage of waste and such persons must take reasonable steps to prevent the use of such land or premises for those purposes.
- [7] Every occupier of premises, whether the premises are residential or commercial, must keep the area immediately surrounding such premises clean, neat and free of litter to the satisfaction of the Municipality.
- [8] The Municipality must issue the notices for the purposes of giving directions in terms of subsection [2], compelling persons to comply with their obligations under subsections [5] and [6] and for any other purpose under these by-laws.
- [10] **GARDEN REFUSE**
- [1] Garden refuse may be removed from property where it accumulates according to any arrangements which the owner or occupier of such property desires to make, provided that, should any accumulation of garden refuse not be removed and should such accumulation in the opinion of the Municipality constitute a nuisance or danger to public health or an unnecessary fire hazard to nearby property, the Municipality may order such owner or occupier by written notice to cause such accumulation to be removed within a specified period.
- [2] If it has sufficient facilities available, the Municipality may in its discretion and on application from the owner or occupier of property, remove garden refuse from such property at the cost of the owner or occupier and subject to such terms and conditions as the Municipality may determine.
- [3] No garden refuse may be dumped, kept or stored in or on any sidewalk or vacant ground.

[11] REMOVAL OF BULKY AND INDUSTRIAL REFUSE

- [1] The occupier or, in the case of premises occupied by more than one person, the occupiers of premises in which bulky or industrial refuse is generated must ensure that such refuse is disposed of in terms of these by-laws within a reasonable period after the generation thereof.
- [2] Bulky and industrial refuse must, once it has been removed from the premises on which it was generated, be deposited on a site designated by the Municipality as a disposal site for such refuse.
- [3] The Municipality is not responsible for the removal of bulky or industrial refuse.

[12] BUILDER'S REFUSE

- [1] Builder's refuse accumulated in the course of the construction, alteration, renovation or demolition of any structure or works must be removed from the property concerned according to suitable arrangements to be made by the owner of such property with the Municipality.
- [2] If there is any undue delay in the removal of the refuse contemplated in subsection [1] after the completion of the works involved, the Municipality may direct, by written notice to such owner, that the refuse be removed within a specified time to an approved disposal site.

[13] TRADE REFUSE

The Municipality may enter into an agreement with the owner or occupier of any premises for the removal of trade refuse by the Municipality at a charge fixed by the Municipality.

[14] DISPOSAL SITES FOR DOMESTIC, GARDEN AND BUILDER'S REFUSE

- [1] The Municipality must set aside and maintain a place or places where domestic, garden and builder's refuse must be deposited or dumped.
- [2] Any person dumping domestic, garden and builder's refuse in any other place is guilty of an offence.
- [3] The Municipality may, from time to time, determine tariffs for the dumping of refuse at a dumping or disposal site.

[15] OWNERSHIP OF REFUSE

All refuse removed by the Municipality and all refuse on disposal sites controlled by the Municipality are the property of the Municipality and no person who is not duly authorised by the Municipality to do so, may remove or in any manner interfere with such refuse.

[16] ABANDONED OBJECTS

Any object other than a vehicle deemed to have been left or abandoned anywhere in terms of the National Road Traffic Act, 1996 [Act No. 93 of 1996], which is, in the light of such factors as the place where it is found, the period it has been lying at such place and the nature and condition thereof, be reasonably regarded by the Municipality as having been abandoned, may be removed and disposed of by the Municipality in a manner as it may deem fit.

[17] LIABILITY

[1] Where any object has been removed and disposed of by the Municipality in terms of section 16, the owner or person responsible for such object is liable to pay the Municipality the charge fixed by it for its removal, disposal or custody.

[2] For the purposes of subsection [1], the person responsible is –

- [a]** the owner of the object, including any person who is entitled to be in possession of the object by virtue of a hire-purchase agreement or an agreement of lease at the time when it was abandoned or deposited in the place from which it was so removed, unless he can prove that he was not concerned in and did not know that it had been deposited in such place; or
- [b]** any person who deposits the object in the place aforesaid; or
- [c]** any person who knowingly permits or permitted the object to be deposited in the aforesaid place.

[18] CHARGES AND DEPOSIT

The charges payable to the Municipality for the establishment, provision and maintenance of a refuse removal service and the amount a person making use of such service must deposit with the Municipality must be determined by resolution adopted by the Municipality and reflected in its schedule of tariffs.

[19] WAIVER OF PROVISIONS

[1] The Municipality may, if it deems it desirable to do so in the public interest, waive compliance with or relax the provisions of these by-laws, provided that any person whose rights are adversely affected by such waiver or relaxation will not be bound thereby.

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

[20] DELIVERY OF NOTICES

[1] Notwithstanding section 9[2], a notice, order or other document is to be regarded as having been properly served if –

- [a] it has been delivered to that person personally;
- [b] sent by registered post to the person to whom it is addressed at his last known address;
- [c] it is served on a person apparently not less than 16 years of age and apparently in charge of the premises at the addressee's last known address;
- [d] if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided for in subsections [1] [a], [b] or [c]; or
- [e] if that person's address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the premises to which it relates.

- [2] A notice, order or other document that may in terms of these by-laws be served on the owner or occupier of premises –
 - [a] may be addressed to the owner or occupier of the specified premises and need not name the owner or occupier; and
 - [b] if the Municipality does not know the address of the owner or occupier of the premises and cannot easily obtain it, the notice, order or other document is to be regarded as having been properly served if it is affixed to a conspicuous place on the premises.

[21] APPEAL

- [1] A person whose rights are affected by a decision of an official may appeal against that decision by giving written notice of the appeal and reasons to the Municipal Manager within 21 days of the date of the notification of the decision.
- [2] The Municipal Manager must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.
- [3] 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;
 - [b] the Municipal Manager, the Executive Committee is the appeal authority; or
 - [c] a political structure or political officer bearer, or a Councillor Council is the appeal authority.
- [4] The appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable time.

[22] OFFENCES AND PENALTIES

- [1] Anyone is guilty of an offence and upon conviction by a court liable to a fine or to imprisonment for a period not exceeding six months if he –