

## MAKHUDUDTHAMAGA LOCAL MUNICIPALITY WASTE MANAGEMENT BY-LAWS

Municipal Manager of Makhuduthamaga hereby in terms of Section 13 of the Local Government: Municipal Systems Act ,No 32 of 2000 publishes the Waste Management By-Laws for the municipality as said out hereunder.

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## CHAPTER 1: INTERPRETATION

### 1. Definitions

For the purpose of these by-laws, any word or expressions to which a meaning has been assigned in the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) shall bear the same meaning in these by-laws, and unless the context indicates otherwise—

**“affected person”** means a person who has been issued, or who is being issued, with an enforcement notice;

**“approved”** in the context of bins, bin liners, containers, receptacles and wrappers means approved by the municipality for the collection and storage of waste;

**“authorised official”** means a person authorised by the municipality in terms of these by-laws to execute work, conduct an inspection and monitor and enforce compliance with these by-laws;

**“basic services”** means a service provided exclusively by the municipality or its service provider to collect domestic waste, business waste and dailies in accordance with the provisions of the Systems Act and Chapter 4 of these by-laws, and which in the case of business waste extends only to waste deposited in bin liners, bins and 240 litre wheeled bins;

**“Bill of Rights”** means chapter 2 of the Constitution of the Republic of South Africa, 1996;

**“bin”** means an approved receptacle for the storage of less than 1, 5 cubic metres of waste which may be supplied by the municipality to premises in terms of these by-laws;

**“bin liner”** means an approved loose plastic or other suitable material liner for use in the interior of a bin;

**“building waste”** includes all waste produced during the construction, alteration, repair or demolition of any structure, and includes building rubble, earth, vegetation and rock displaced during such construction, alteration, repair or demolition;

**“bulky waste”** means business waste or domestic waste which by virtue of its mass, shape, size or quantity is, in the opinion of the municipality, inconvenient to remove in the routine door-to-door basic service provided by the municipality;

**“business waste”** means waste, other than hazardous waste, healthcare risk waste, building waste, industrial waste, garden waste, bulky waste, recyclable waste and special industrial waste, generated on premises used for non-residential purposes;

**“commercial services”** means any service, excluding basic services, relating or connected to accumulating, collecting, managing, recycling, sorting, storing, treating, transporting, disposing, buying or selling of waste or any other manner of handling waste;

**“container”** means an approved receptacle having a capacity greater than 1, 5 cubic metres for

the temporary storage of waste in terms of these by-laws;

**“damage to the environment”** means any pollution, degradation or harm to the environment whether visible or not;

**“dailies”** means putrescible waste generated by hotels, restaurants, food shops, hospitals, and canteens that must be collected on a frequent (normally daily) basis, to prevent the waste from decomposing and being either a nuisance or a risk to the environment or public health;

**“domestic waste”** means waste generated on premises that are used solely for a residential purpose and for the purpose of public worship, but does not include business waste, building waste, garden waste or bulky waste;

**“dump”** means placing waste anywhere other than an approved receptacle, or a place designated as a waste handling facility or as a waste disposal facility, by the municipality;

**“enforcement notice”** means a notice issued by an authorised official under section 48 of these by-laws;

**“environment”** means the surroundings within which humans exist made up of -

- (a) the land, water and atmosphere of the earth,
- (b) micro-organisms, plant and animal life,
- (c) any part or combination of (a) and (b) and the interrelationships among and between them, and
- (d) the physical, chemical aesthetic and cultural properties and conditions of the foregoing that influence public health and well-being;

**“environmental emergency”** means an unexpected sudden occurrence, including a major emission, fire or explosion leading to serious danger to the public or potentially serious pollution of or detriment to the environment, whether immediate or delayed;

**“firm”** includes any juristic person or any association of persons established or operating in the Republic of South Africa;

**“garden waste”** means waste generated as a result of normal domestic gardening activities, including grass cuttings, leaves, plants, flowers and other similar small and light organic matter, but does not include tree branches with a diameter thicker than 40 mm at any point of its length, bulky waste, building waste or any waste generated as a result of garden service activities;

**“garden service”** means the provision of gardening services by a licensee including the cutting of grass, pruning of trees or any other horticultural activity including landscaping, to any domestic, business, commercial or industrial premises;

**“garden waste handling facility”** means a waste handling facility that receives and temporarily stores garden waste or any other recyclable waste;

**“hazardous waste”** means waste containing or contaminated by poison, a corrosive agent, a flammable substance having an open flash–point of less than 90 deg C, an explosive, radioactive material, a chemical or any other waste that has the potential, even in low concentrations, of having an adverse effect on public health or the environment because of its inherent toxicological, chemical and physical characteristics;

**“health care risk waste”** means all hazardous waste generated at health care facilities such as hospitals, clinics, laboratories, medical research institutions, dental and medical practitioners and veterinarians;

**“industrial waste”** means waste generated as a result of manufacturing, maintenance, fabricating, processing or dismantling activities, but does not include building waste, business waste, dailies, special industrial waste, hazardous waste, health care risk waste or domestic waste;

**“land reclamation”** means the planned and engineered disposal of inert or other appropriate waste for the purpose of constructing any facility or changing the natural features of any piece of land;

**“level of service”** means the frequency of the basic service and the type of service point;

**“licensee”** means any person who has obtained a licence in terms of Chapter 8 of these by–laws;

**“litter”** means any object or matter which is discarded by a person in any place except in an approved receptacle provided for that purpose or at a waste handling facility or waste disposal facility;

**“local community”** in relation to the municipality means that body of persons comprising–

- (a) the residents of the municipality,
- (b) the ratepayers of the municipality,
- (c) any civic organisation and non–governmental, private sector or labour organisation or bodies which are involved in local affairs within the municipality, and
- (d) persons who, despite residing outside the municipality, because of their presence in the municipality, make use of the services provided by the municipality;

**“local waste plan”** means any integrated waste management planning system which the municipality must develop under national or provincial legislation or in terms of the municipality’s integrated development plan as more fully described in Chapter 2;

**“municipality”** includes, subject to the provisions of any other law, the municipal manager, but

only if his inclusion is impliedly required or permitted by these by-laws and only in respect of the performance of any function, or the exercise of any duty, obligation or right in terms of these by-laws or any other law;

**“municipal manager”** means the municipal manager as defined in section 82(1)(a) of the Structures Act;

**“National Road Traffic Act regulations”** means the regulations made in terms of section 75 of the National Road Traffic Act, 1996 (Act 93 of 1996) and published as Notice 225 in the Regulation Gazette No 6748 of the Government Gazette No 20963 dated 17 March 2000;

**“nuisance”** means any injury, harm, damage, inconvenience or annoyance to any person which is caused in any way whatsoever by the improper handling or management of waste, including but not limited to, the storage, placement, collection, transport or disposal of waste or by littering;

**“occupier”** includes any person in actual occupation of the land or premises without regard to the title under which he occupies, and, in the case of premises, or parts of premises, let to a lodger or any other person, includes the person receiving the rent payable by a lodger or any other person whether for himself or as an agent for any other person;

**“owner”** includes any person that has the title to any premises or land, or any person receiving the rent or profits for allowing the occupation or use of any land, premises or part of any premises, or who would receive rent or profit if land or premises were let or used, whether he does so on his own account or for another;

**“panel”** means the Licence Adjudication Panel established in terms of section 32 of these by-laws;

**“person”** means a natural or juristic person and includes a licensee;

**“pollution”** means any change in the environment caused by—

- (a) substances;
- (b) radioactive or other waves; or
- (c) noise, odours, dust or heat;

emitted from any activity, including the storage or treatment of waste or substances, construction and the provision of services, whether engaged in by any person or an organ of state, where that change has an adverse effect on human health or wellbeing or on the composition, resilience and productivity of natural or managed ecosystems, or on materials useful to people, or will have that effect in the future;

**“premises”** means an erf or any other portion of land, including any building, or part of a

building on it, or any other structure utilised for business, industrial or residential purposes;

“**public place**” includes any public building, public road, overhead bridge, subway, foot pavement, footpath, sidewalk, lane, square, open space, garden, park, enclosed space vested in a municipality, and any road, place or pathway or thoroughfare however created which is used by the public or to which the public has a right of use or a right of access;

“**public road**” means any road, street, pathway, or thoroughfare or any other place (whether a thoroughfare or not) of a similar nature which is commonly used by the public or to which the public or a segment of the public has a right of access and includes—

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

“**radioactive material**” means any substance consisting of, or containing, any radioactive nuclide, whether natural or artificial;

“**radioactive waste**” means any radioactive material which is or is intended to be disposed of as waste;

“reasonable time” means a reasonable time as mentioned in Section 40 (2).

“**recyclable waste**” means waste which has been separated from the waste stream, and set aside for purposes of re-use or reclamation;

“**recycling**” means the use, re-use or reclamation of a material so that it re-enters the industrial process rather than becoming waste;

“**resident**” means in relation to a municipality a person who is ordinarily resident within the jurisdiction of the municipality;

“**road reserve**” means that portion of a road, street or thoroughfare which is improved, constructed or intended for vehicular traffic and which is between the edges of the roadway, or that portion of a road, street or thoroughfare, including the sidewalk, which is not the roadway or the shoulder;

“**SANS Codes**” means the South African National Standards Codes or the South African Bureau of Standards Codes as defined in Regulation No. 1373 published in Government Gazette 24002, dated 8 November 2002 in terms of the Standards Act, 1993 (Act 29 of 1993);

“**service delivery agreement**” means an agreement between the municipality and a service provider in terms of which the service provider is required to provide basic services;

“**service provider**” means any person who has entered into a service delivery agreement with the municipality in terms of section 81(2) of the Systems Act;

“**special industrial waste**” means waste consisting of a liquid, sludge or solid substance, resulting from a manufacturing process, industrial treatment or the pre-treatment for disposal purposes of any industrial or mining liquid waste;

“**storage**” means the storage of waste for a period of less than ninety days;

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

“**sustainable development**” means the integration of social, economic and environmental factors into planning, implementation and decision-making so as to procure that development serves present and future generations;

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

“**target**” means any desired air, water quality or waste standards contained in any legislation;

“**tariff**” means the charge to users for the provision of basic services, determined and promulgated by the municipality, or adjusted by a service provider, in terms of Tariff Policy and its By-laws adopted under section 75 of the Systems Act;

“**waste**” shall not exclude a substance merely because it may be reprocessed, re-used or recycled and shall include—

- (a) any substance (whether solid, liquid or gaseous) that is discharged, emitted or deposited in the environment in a volume, constituency or manner so as to cause an alteration in the environment; or
- (b) any discarded, rejected, unwanted, surplus or abandoned substance; or
- (c) any otherwise discarded, rejected, unwanted, surplus or abandoned substance intended for sale or for recycling, reprocessing, recovery or purification by a separate operation from that which produced the substance, or
- (d) any substance “prescribed” as waste in these by-laws or any other legislation;

“**waste disposal facility**” means any facility or site which receives waste for treatment or disposal, and which is operated in terms of a permit obtained from the competent national authority, and includes garden waste handling facilities and incinerators;

“**waste generator**” means any person or firm that generates or produces waste;

“**waste handling facility**” means any facility that accepts, accumulates, handles, recycles, reprocesses, sorts, stores or treats waste prior to its transfer for treatment by way of

incineration or for final disposal;

“**waste stream**” means a type of waste, including building waste, business waste, bulky waste, dailies, domestic waste, garden waste, hazardous waste, health care risk waste, industrial waste, recyclable waste; and special industrial waste;

“**workplace**” means any place within the municipality on or in which or in connection with which, a person undertakes basic services or commercial services; and

“**wrapper**” means a plastic or other suitable or approved material covering that totally encloses bales or slugs of compacted waste.

## CHAPTER 2: LOCAL WASTE PLAN

### 2. Preparation of a Local Waste Plan

Subject to any other legislation, the municipality may prepare a local waste plan.

### 3. Objectives of a Local Waste Plan

(1) The objectives of a local waste plan include—

- (a) establishing a means of ensuring that waste is collected, re-used, recycled or disposed of without causing harm to human health or damage to the environment and, in particular, without—
  - (i) risk to water, air, soil, plants or animals;
  - (ii) causing nuisance through noise or odours; or
  - (iii) adversely affecting rural or urban areas or areas of special interest;
- (b) establishing an integrated network of waste handling and waste disposal facilities to ensure that—
  - (i) comprehensive and adequate basic and commercial services are established within the municipality;
  - (ii) the disposal of waste occurs at accessible waste disposal facilities; and
  - (iii) the most appropriate methods and technologies are used in order to ensure a high level of protection for and prevention of damage to the environment and harm to human health;
- (c) encouraging the minimisation or reduction of waste;
- (d) promoting the recovery of waste by means of recycling or re-use through proven alternative technology; and



(e) any other object which would enhance sustainable development.

#### **4. Scope of a Local Waste Plan**

(1) A local waste plan includes but is not be limited to the following matters:

- (a) population and development profiles within the municipality;
- (b) an assessment of all significant sources and generators of waste within the municipality;
- (c) an assessment of the quantities and classes of waste currently generated and projected to be generated within the municipality;
- (d) an assessment of the existing markets for each waste category;
- (e) an assessment of the existing options for waste reduction, management and disposal within the municipality;
- (f) an assessment of the number of persons within the municipality who are not receiving basic services and proposed strategies and targets for providing these services to such persons;
- (g) proposed strategies and targets for managing and reducing waste in the municipality and for the efficient disposal of waste that cannot be re-used or recycled;
- (h) strategies for waste education and initiatives for separating waste at its source;
- (i) strategies for raising awareness of waste management issues;
- (j) strategies for establishing the information system described in Chapter 3 of these by-laws;
- (k) an implementation programme that identifies the required time-frames, resources and responsibilities for achieving these strategies and targets;
- (l) a mechanism for monitoring performance in light of these targets and strategies;
- (m) current and anticipated waste collection, transportation, transfer and disposal costs;
- (n) a consideration of how the local waste plan relates to other relevant plans of the municipality; and
- (o) any other matters required by any other legislation, regulation or guidelines.

## **5. Requirements in Preparing a Waste Plan**

(1) If the municipality prepares a local waste plan, it must, subject to any other legislation—

(a) take into consideration any integrated development plan or land development objectives of the municipality, and the requirements of any national or provincial legislation or policy;

(2) take reasonable steps to bring its draft local waste plan to the notice of the local community by—

(a) inviting comment on it from members of the local community;

(b) allowing not less than two months for submitting such comments;

(c) and considering comment received before finalising the local waste plan;

(3) send copies of the draft local waste plan to the competent national authority and neighbouring Municipalities for their information; and

(4) send a copy of the draft local waste plan to the Province in which the municipality is situated for comment and finalise the local waste plan after considering such comment.

## **CHAPTER 3: WASTE MANAGEMENT INFORMATION SYSTEM**

### **6. Establishment a Waste Management Information System**

(1) The municipality may establish and maintain a waste management information system in terms of this chapter to record how waste is managed within the municipality.

### **7. Purpose of the Information System**

(1) The purpose of an information system is for the municipality to—

(a) record data relating to the implementation of the local waste plan, if any, and the management of waste in the municipality;

(b) record information held by the municipality in relation to any of the matters referred to in subsections 9(2)(a) to 9(2)(h);

(c) furnish information upon request or as required by law to the provincial or national government; and

(d) gather information and undertake strategic planning regarding potential and actual waste generators, service providers and licensees;

- (e) provide information to waste generators, service providers, licensees and the local community in order to—
  - (i) facilitate monitoring of the performance of the municipality, service providers and licensees, and, where applicable, waste generators;
  - (ii) stimulate research; and
  - (iii) assist the municipality to achieve the main objects of these by-laws.

## **8. Content of the Information System**

(1) An information system established by the Municipality may include any information relating to or connected to the management of waste within the municipality.

(2) The local community is entitled to reasonable access to the information contained in the information system, subject to any limitations imposed by law.

(3) In giving effect to the right in subsection (2), the municipality must—

- (a) at the request of a member of the local community, provide information contained in the information system;
- (b) take steps to ensure that the information provided is in a format appropriate for lay readers; and
- (c) may impose a fee for providing such information in order to cover the cost of providing the information requested.

## **9. Provision of Information**

(1) The municipality may, subject to the provisions of any other law including the common law, require any waste generator, licensee, service provider or person involved in or associated with the provision of basic services or commercial services within the municipality to furnish information to the municipality that may reasonably be required for the information system.

(2) The information referred to in subsection (1) may concern—

- (a) significant sources of waste generation and the identification of the generators of waste;

- (b) quantities and classes of waste generated;
- (c) waste handling, waste treatment and waste disposal facilities;
- (d) population and development profiles;
- (e) reports on progress in achieving any waste management targets;
- (f) the management of radioactive waste;
- (g) markets for waste by class of waste or category; and
- (h) any other information required by legislation, regulation or guidelines.

(3) The municipality may, at its sole discretion, determine when and how often information must be furnished.

## **CHAPTER 4: BASIC SERVICES**

### **Part I: Providing Access to Basic Services**

#### **10. The Provision of Basic Services**

(1) The municipality must take reasonable measures within its available resources progressively to ensure regular access by the local community to basic services.

- (a) In planning for and setting service standards and levels of service for the provision of basic services and in providing basic services, the municipality may differentiate between geographical areas and categories of users within the local community but, in doing so, the municipality must comply with national legislation and in particular the requirements of section 73 of the Systems Act.

#### **11. Requirements for Basic Services**

(1) The following matters in respect of basic services shall be determined by the municipality, and the power to make a determination in this section may not be assigned to a service provider in terms of section 27(2)—

- (a) the quantities of waste that will be collected;
- (b) which residential or commercial premises require basic services more frequently than the regular collection service for reasons of health, safety and environmental protection; and
- (c) the maximum amount of waste that may be placed for collection without the provision of an additional service or the imposition of an additional tariff.

(2) The following additional matters in respect of basic services may be determined by

the municipality–

- (a) collection schedules;
- (b) locations for placing approved receptacles for collection;
- (c) which types of waste generated by the occupier of any premises are separable for the purposes of recycling and determine the conditions for their separation, storage or collection; and
- (d) which waste items are unsuitable for collection because they do not constitute domestic waste, and where such waste is determined to be unsuitable for collection, a process for the collection of these items must be recommended to the owner of the waste.

**(3) The municipality must notify in writing all generators of domestic waste, business waste and dailies of any decisions taken in terms of subsections (1) or (2), and may at any time review these decisions.**

(4) The municipality may provide, or require the generator of the waste to provide, an approved receptacle for the storage of domestic waste, business waste and dailies pending collection.

(5) Where a receptacle referred to in subsection (4) is provided by the municipality, it remains the property of the municipality.

(6) The municipality may require a generator of dailies and business waste to compact that portion of the waste that is compactable when—

- (a) the quantity of dailies or business waste generated on premises requires daily removal of more than the equivalent of eight 240-litre bins; and
- (b) in the opinion of the municipality, the major portion of such waste is compactable.

(7) The occupier of premises may elect to compact any volume of such waste and place it into a receptacle or wrapper that is approved by the municipality: Provided that—

- (a) the capacity of the wrapper must not exceed 85 litres and the mass of the wrapper and contents must not exceed 35 kilograms; and
- (b) after the waste has been compacted and put into the wrapper, it must be placed in the approved receptacle and must be stored so as to prevent damage to the wrapper or any nuisance arising until it is collected.

## **Part II: Using Basic Services**

### **12. Obligations of Generators of Domestic Waste, Business Waste and Dailies**

(1) Any person generating domestic waste, business waste and dailies (other than waste

which has been designated by the municipality as recyclable) must place domestic waste, business waste and dailies in an approved receptacle.

(2) No person may allow an animal in his control to interfere with, overturn or damage a receptacle, which has been placed for collection.

(3) The occupier of premises must ensure that—

- (a) no hot ash, unwrapped glass or other domestic waste, business waste and dailies, which may cause damage to approved receptacles or which may cause injury to employees of the municipality while carrying out their duties in terms of these by-laws, is placed in approved receptacles;
- (b) no material, including any liquid, which because of its mass or other characteristics is likely to render an approved receptacle unreasonably difficult for employees of the municipality to handle or carry, is placed in a receptacle;
- (c) every approved receptacle on the premises is kept closed except when waste is being deposited in it or discharged from it, and every approved receptacle is kept in a clean and hygienic condition;
- (d) the approved receptacle delivered by the municipality is not used for any purpose other than the storage of domestic waste, business waste and dailies and, in particular, that no fire may be lit in a bin or container;
- (e) the approved receptacle is placed outside the entrance to the premises before a time and on a day of the week specified by the municipality by **notice** to the owner or occupier of the premises, except where, on written application to the municipality, the municipality has indicated in writing that it is satisfied that a person is physically infirm or otherwise incapable of complying with the notice;
- (f) the approved receptacle, placed in accordance with subsection (3)(e), must be undamaged and properly closed so as to prevent the dispersal of its contents; and
- (g) dailies are not placed in a receptacle or compactor where they are able to contaminate other waste streams.
- (h) The owner or occupier of premises must provide adequate space considered necessary by the municipality, on the premises for the storage of approved receptacles.

(4) space provided in terms of subsection (3)(3)(h) must—

- (a) be in such a position on the premises as will allow the storage of approved receptacles without their being visible from a street or public place;

(b) where dailies are generated on the premises—

- (i) be in such a position as will allow their collection and removal by the municipality's employees without hindrance; and
- (ii) be placed not more than 20m from the entrance to the premises used for the collection of waste by the municipality;

(c) be so located as to permit convenient access and egress for the municipality's waste-collection vehicles;

(d) comply with any further reasonable requirements imposed by the municipality by written notice to the owner or occupier of the premises; and

(e) be constructed in accordance with the requirements of any applicable building regulations.

(5) The occupier of premises must place or cause the approved receptacles to be placed in the space provided in terms of subsection(3)(h) and must at all times keep them there, except where the municipality is unable to collect and remove waste from the space provided in terms of subsection (3)(h).

(a) The municipality may, having regard to the avoidance of nuisance and the convenience of collection of waste, indicate a position within or outside the premises where the approved receptacles must be placed for the collection and removal of such waste and such receptacles without their being visible from a street or public place;

(b) where dailies are generated on the premises—

- (i) be in such a position as will allow their collection and removal by the municipality's employees without hindrance; and
- (ii) be placed not more than 20m from the entrance to the premises used for the collection of waste by the municipality;

(c) be so located as to permit convenient access and egress for the municipality's waste-collection vehicles;

(d) comply with any further reasonable requirements imposed by the municipality by written notice to the owner or occupier of the premises; and

(e) be constructed in accordance with the requirements of any applicable building regulations.

(6) The occupier of premises must place or cause the approved receptacles to be placed in the space provided in terms of subsection (3)(3)(h) and must at all times keep them there,

except where the municipality is unable to collect and remove waste from the space provided in terms of subsection (3)(h).

(7) The municipality may, having regard to the avoidance of nuisance and the convenience of collection of waste, indicate a position within or outside the premises where the approved receptacles must be placed for the collection and removal of such waste and such receptacles must then be placed in such position at such times and for such period as the municipality may require.

### **13. Liability to Pay for Basic Services**

The owner of premises is liable to the municipality for the payment of rates or tariffs or both for the provision of basic services, and is not entitled to exemption from the liability to make payment because no use or only partial or limited use is made of basic services.

## **CHAPTER 5: COMMERCIAL SERVICES**

### **Part I: Provision of Commercial Services by Licensees and Flow Control**

#### **14. Provision of Commercial Services by Licensees**

(1) Except in the case of garden waste, and subject to subsection 29(3), only a licensee may provide commercial services.

(2) Any person requiring commercial services must satisfy himself that the contractor is licensed to collect and dispose of the category of waste that has been generated and must take reasonable steps to ensure that the relevant waste is collected and disposed of in terms of these by-laws.

#### **15. Provision for Municipality Co-Ordination of Waste Disposal**

The municipality may direct, by a notice published in the Provincial Gazette, that a category of waste be disposed of at a particular depot or disposal site; and no person may dispose of waste other than as specified in a notice that has been gazetted under this section or as specified by the municipality under other legislation prior to the coming into operation of these by-laws.

### **Part II: Business, Industrial and Recyclable Waste**

#### **16. Storage of Business, Industrial and Recyclable Waste**

The owner or occupier of premises on which business, industrial or recyclable waste is generated must ensure that until such time as such waste is collected by a licensee from the premises on which it was generated—

- (a) the waste is stored within a bulk container or other approved receptacle; and
- (b) no nuisance or health risk of any kind whatsoever is caused by the waste in the



course of generation, storage, or collection.

### **17. Collection and Disposal of Industrial, Business and Recyclable Waste**

(1) The owner or occupier of premises where business, industrial and recyclable waste is generated must ensure that—

- (a) the container in which the waste is stored is not kept in a public place except for the purpose of collection;
- (b) the waste is collected by a licensee within a reasonable time after its generation; and
- (c) that the service rendered by a licensee is in respect only of that portion of the business, industrial or recyclable waste authorised in its license.

(2) A licensee must dispose of business, industrial or recyclable waste at an appropriately permitted waste handling facility or waste disposal facility; and in disposing of waste, a licensee must comply with any notice given in terms of section 15 and with the provisions of section 26.

### **Part III: Garden Waste and Bulky Waste**

#### **18. Storage, Collection and Disposal of Garden Waste and Bulky Waste**

(1) The owner or occupier of the premises on which garden waste is generated may compost garden waste on the property, but may do so only if the composting does not cause a nuisance or public health risk.

(2) The occupier of the premises on which garden waste is generated and not composted, or on which bulky waste is generated, must ensure that such waste is collected and disposed within a reasonable time after its generation.

(3) Any person or licensee may remove garden waste and bulky waste, but may do so only if the waste is deposited at a garden waste handling facility in accordance with the provisions of section 26.

(4) At the written request of the occupier of premises, the municipality may, in its sole discretion, deliver an approved receptacle for the purpose of storing garden waste in addition to any approved receptacle delivered to the premises for the storage of domestic waste; and the provisions contained in section 12, read with the necessary changes must apply to an approved receptacle delivered in terms of this section.

(5) Where, in the course of providing basic services, the municipality or the service provider providing the service, is of the opinion that it would cause inconvenience to members of the public not to remove garden and bulky waste at the same time, the municipality may remove such waste, in which event the tariff for domestic waste applies.

## **Part IV: Building Waste**

### **19. Generation of Building Waste**

(1) The owner or occupier of premises on which building waste is to be generated must ensure that –

- (a) until disposal, all building waste, together with the containers used for its storage, collection or disposal, is kept on the premises on which the waste was generated;
- (b) the premises on which the building waste is generated does not become unsightly or cause a nuisance as a result of accumulated building waste;
- (c) any building waste which is blown off the premises is promptly retrieved; and
- (d) pursuant to any instructions from the municipality, any structure necessary to contain the building waste is constructed.

### **20. Storage of Building Waste**

(1) The municipality may establish conditions, subject to subsection (2), to place a receptacle for the storage and collection of building waste in the road reserve.

(2) Every receptacle used for the removal of building waste, must—

- (a) have clearly marked on it the name, address and telephone number of the person in control of such receptacle;
- (b) be fitted with reflecting chevrons or reflectors on its front and back; and
- (c) be covered at all times other than when actually receiving or being emptied of building waste so that no displacement of its contents can occur.

### **21. Collection and Disposal of Building Waste**

(1) The owner or occupier of premises on which building waste is generated must ensure that the waste is disposed of by a licensee.

(2) All building waste must be disposed at a waste disposal facility designated for that purpose by the municipality in terms of a notice under section 15, unless the municipality has given written consent for the building waste to be used for the purpose of land reclamation or for recycling.

## **Part V: Special Industrial, Hazardous or Health Care Risk Waste**

### **22. Generation of Special Industrial, Hazardous or Health Care Risk Waste**

(1) No person may carry on an activity which may cause special industrial, hazardous or health care risk waste to be generated, without notifying the municipality in writing, prior to the generation of such waste, of the composition of such waste, the estimated quantity generated, the method of storage, the proposed duration of storage, the manner in which it will be collected and disposed, and the identity of the licensee removing such waste: Provided that where such waste is being generated as a result of activities which commenced prior to the commencement of these by-laws, the generator must give the municipality such notice within 6 months of the commencement of these by-laws.

(2) If so required by the municipality, the notification referred to in subsection (1) must be substantiated by an analysis of the composition of such waste certified by an appropriately qualified industrial chemist.

(3) The person referred to in subsection (1) must notify the municipality in writing of any changes occurring with respect to the generation, composition, quantity and method and location of disposal of the special industrial, hazardous, or health care risk waste.

### **23. Storage of Special Industrial, Hazardous or Health Care Risk Waste**

(1) Any person carrying on an activity which may cause special industrial, hazardous or health care risk waste must ensure that the special industrial, hazardous or health care risk waste generated on the premises is kept and stored, until it is collected, on the premises.

(2) Special industrial, hazardous or health care risk waste stored on premises must be stored in a manner that does not become a nuisance or cause harm to public health or damage to the environment, and in accordance with the requirements of any applicable building regulations or additional by-laws.

(3) Special industrial, hazardous or health care risk waste must be stored in an approved receptacle for a period not exceeding three months or any other period stipulated by the Department of Water and Environmental Affairs, the Provincial Government, or the municipality.

(4) The municipality may enact additional by-laws providing guidelines for the management of health care risk waste.

## **24. Collection and Disposal of Special Industrial, Hazardous or Health Care Risk Waste**

(1) Only a licensee may transport special industrial, hazardous and health care risk waste and must do so in accordance with the requirements of the municipality, stipulated as licence conditions or in additional by-laws, as well as in the relevant SANS codes, in respect of the type of vehicle, the markings and manner of construction of the type of vehicle, procedures for safety and cleanliness, and documentation relating to the source, transportation and disposal of such waste, and the requirements of any other legislation.

(2) A licensee, who is licensed to collect and dispose of special industrial, hazardous or health care risk waste, must inform the municipality prior to the date of collection of the date of collection, the quantity and the composition of the waste collected and the facility at which the waste has been disposed.

(3) A licensee must dispose of special industrial, hazardous or health care risk waste at a waste disposal facility designated by notice by the municipality as a waste disposal facility for that purpose in terms of section 15 and in accordance with the provisions of section 26.

## **CHAPTER 6: TRANSPORTATION AND DISPOSAL OF WASTE**

### **25. Transportation of Waste**

(1) No person may—

- (a) operate a vehicle for the conveyance of waste upon a street unless the vehicle has a body of adequate size and construction for the type of waste being transported;
- (b) fail to maintain the vehicles used for the conveyance of waste in a clean, sanitary and roadworthy condition at all times;
- (c) fail to cover loose waste on an open vehicle with a tarpaulin or suitable net;
- (d) cause or permit any waste being transported in or through the municipality to become detached, leak or fall from the vehicle transporting it, except at a waste disposal facility; and
- (e) knowingly dispose waste at a waste disposal facility that is not permitted to accept that waste.

(2) Subject to subsection (1), all transportation of waste must comply with the National Road Traffic Act, 1996 (Act 93 of 1996).

## 26. Disposal of Waste

(1) Waste generated within the municipality must be disposed of at a waste disposal facility that has been appropriately permitted by the competent national authority.

(2) In disposing of waste, licensees must comply with any notices issued in terms of section 15 and in accordance with the provisions of any other law regulating the disposal of waste.

(3) No person may dispose of waste by burning it, either in a public or private place.

(4) No person may incinerate waste either in a public or private place except in an incinerator permitted by the relevant national and provincial authorities to do so, or at a place designated by the municipality for such purpose.

(5) Notwithstanding the provisions of subsection (1), any person may dispose of those forms of recyclable waste specified by the municipality in a notice in terms of section 15 at designated garden waste handling facilities, but may do so only if the waste is brought to the facility in vehicles able to carry a maximum load of one tonne or less.

(6) The disposal of waste at any waste disposal facility may, in addition to any conditions imposed by the competent national authority, be subject to any condition the municipality may from time to time specify, including the hours of opening and closing, the nature of the waste which may be disposed of, the manner of disposing of waste and any other matters which the municipality considers necessary to ensure the environmentally sound management of waste.

(7) Every person who enters a waste disposal facility must—

- (a) enter the waste disposal facility at an access point determined by the operator of the waste disposal facility;
- (b) on request, provide the municipality or the operator of the waste disposal facility with any information regarding the composition of the waste; and
- (c) follow all instructions issued by the operator of the waste disposal facility in regard to access to the actual place where, and the manner in which, the waste should be deposited.

(8) No person may—

- (a) bring any liquor or intoxicating or narcotic substance on to a waste disposal facility or enter such facility in an intoxicated state;
- (b) enter a waste disposal facility for any purpose other than the disposal of waste in terms of these by-laws, unless authorised to do so by the operator of the waste disposal facility or the municipality and then only at such times and on such

conditions as the municipality or operator may from time to time determine;

(c) dispose of waste at a waste disposal facility which is not permitted for waste of that kind; or

(d) light any fire upon or near any disposal area without authorisation.

(9) Any person who contravenes subsection 26(8)(c) will be liable for all reasonable costs incurred by the municipality in removing or otherwise dealing with waste improperly disposed of at a waste disposal facility.

(10) The operator of the waste disposal facility may at any time require a vehicle, or a container on a vehicle, that has entered the waste disposal facility for the purposes of disposing waste, to be weighed at a weighbridge.

(11) The municipality, the operator of the waste disposal facility, an authorised official or any other persons duly authorised by the municipality may, at a waste disposal facility, inspect the content and nature of waste to be disposed of or processed and may take samples and test any waste found on any vehicle to ascertain its composition.

(12) Any person contravening any of the provisions of this section may be refused entry or be removed from a waste disposal facility.

(13) No person may store waste for more than ninety consecutive days without a permit from the competent national authority in terms of section 20(1) of the Environment Conservation Act, 1989 (Act 73 of 1989).

## **CHAPTER 7: SERVICE PROVIDERS**

### **27. Agreement, Delegation and Customer Charter**

(1) The municipality may, subject to its responsibilities under section 81 of the Systems Act, discharge any of its obligations under section 10(1) of these by-laws by entering into a service delivery agreement with a service provider or service providers.

(2) Subject to the provisions of the Systems Act or any other law, the municipality may assign to a service provider any right or power enjoyed by the municipality under these by-laws whenever the assignment is required to enable the service provider to discharge an obligation under its service delivery agreement.

(3) If a municipality has entered into a service delivery agreement with a service provider, it must publish a notice in the Provincial Gazette for the province in which it is situated listing which rights and powers of the municipality under which provisions of these by-laws have been assigned to the service provider.

(4) Where the term "municipality" appears in a provision of these by-laws listed in the notice in subsection (3) it shall be read as "service provider" in that provision.

## **28. Customer Charter**

Service providers must provide services in accordance with a customer charter which must be drawn up in consultation with the municipality and must—

- (a) accord with the provisions of these by-laws;
- (b) be accessible to the public; and
- (c) establish the conditions of supplying the service.

## **CHAPTER 8: LICENSEES**

### **29. Establishment of a Licensing System**

(1) A municipality may establish a licensing system in terms of this chapter.

(2) A decision to establish a licensing system in terms of subsection (1) must be published by a notice in the Provincial Gazette and comes into operation on the date announced in the notice which may not be less than 3 months from the date of its publication.

(3) If a municipality has not established a licensing system, firms providing waste management services may be treated as licensees by generators of waste for the purpose of chapter 4 of these by-laws.

### **30. Licence Requirements**

(1) If a licensing system is established in terms of section 29(1), no person may collect or transport any of the waste streams listed in subsection (2)—

- (a) without having first obtained and being in possession of a valid licence; and
- (b) except in properly constructed, watertight vehicles or in containers that prevent spillage of waste and are suitable for the waste stream which is being collected or transported, as specified in the National Road Traffic Act, 1996 (Act 93 of 1996).

(2) There are seven categories of waste covered by licences issued under chapter 7 of these by-laws—

- (a) business (bulk containerised) waste;
- (b) industrial waste;
- (c) special industrial waste;
- (d) hazardous waste;
- (e) recyclable waste
- (f) health care risk waste; and

(g) building waste.

(3) Licences issued under these by-laws—

(a) may not be ceded or assigned without the prior written consent of the municipality;

(b) are valid only for the category of waste specified; and

(c) expire within one year of the date of issue unless extended by the municipality in terms of section 32(8) or section 34(2).

### **31. Licence Application**

(1) An application for a licence must be in writing on a form prescribed by the municipality.

(2) The form prescribed by the municipality must specify the information to be included in the application, as well as any necessary documentation, and the time available for making the application, which period must not, subject to section 32(8) or section 34(2), be less than two months in duration.

(3) The information provided in the application form must include the following:

(a) the name and the residential and postal address of the person providing commercial services and, if the person providing commercial services is a company or close corporation, its registration number, the names of its directors or members and the address of its registered head office; and

(b) the nature of the commercial services to be provided or intended to be provided by the person.

(4) The municipality must determine the fees to be imposed on each vehicle used by a person to collect or transport waste, and the application must be accompanied by the relevant fees.

### **32. The Licence Adjudication Panel**

(1) The municipality must appoint a panel to adjudicate licence applications on its behalf known as the Licence Adjudication Panel.

(2) A person appointed to the panel must not be—

(a) an employee or director of a service provider or licensee; or

(b) a councillor of the municipality; and must be—

(c) suitably qualified to adjudicate applications in terms of this section.

(3) Where the panel consists of two or more persons—



- (a) the municipality must appoint one person from amongst the panel members to act as a chairperson;
  - (b) all decisions of the panel must be taken by a majority vote of panel members present and voting at the meeting at which the matter is considered;
  - (c) where there is an equality of votes, the chairperson must cast a second or casting vote.
- (4) The panel must consider each application, having regard to the following:
- (a) the applicant's compliance with the National Road Traffic Act, 1996 (Act 93 of 1996) and with these by-laws;
  - (b) the environmental, health and safety record of the applicant;
  - (c) the nature of the commercial service to be provided; and
  - (d) any other matter which the panel considers relevant.
- (5) After considering the application in terms of subsection (4), the panel must either—
- (a) approve the application by issuing a licence subject to any term or condition it considers appropriate; or
  - (b) refuse the application, which refusal must be accompanied by written reasons.
- (6) The panel may refuse an application only because the applicant—
- (a) failed to submit a complete and satisfactory application to the municipality; or
  - (b) failed to comply with the standards established in these by-laws.
- (7) If the panel refuses an application for a licence, the applicant may appeal to the committee that is responsible for solid waste disposal services established in terms of section 80 of the Structures Act, or if no such committee has been established, to the municipal manager of the municipality, on the basis set out in section 50(1) to 50(5) of these by-laws with all the changes that may be necessary to apply those provisions.
- (8) If the panel fails to consider and grant or refuse the licence application within two months of its receipt of the application, the validity of an existing licence is automatically extended until the panel makes its decision, and the municipality must—
- (a) inform the applicant in writing that the period for consideration is extended; and
  - (b) inform the applicant of the date by which the decision will be made.

### 33. Licence Terms and Conditions

(1) When issuing a licence the municipality may, subject to the provisions of subsection (2), impose any reasonably necessary licence conditions in furtherance of national, provincial or municipal waste management policy.

(2) Licences issued by the municipality must—

- (a) specify the licence period and the procedure for the renewal of a licence;
- (b) specify the category or categories of waste that the licence holder may collect and transport;
- (c) contain a requirement that the licence holder must comply, and ensure compliance by its employees, agents and sub-contractors, with these by-laws and applicable provincial and national legislation; and
- (d) require the licence holder to keep monthly written records on a form prescribed by the municipality in respect of the quantities of each category of waste it collects and transports during the licence period, which quantities must be confirmed and verified by the municipality in any application for renewal of a licence or application for a new licence by the same contractor.

(3) In prescribing licence conditions in terms of this section, the municipality must comply with its local waste plan if it has one.

### 34. Renewal of Licences

(1) If licence holders intend to renew their licence, they must do so within two months before the expiry of an existing licence; and the panel must assess and grant or refuse the licence application within two months of the receipt of that application in accordance with section 32(5).

(2) If the panel fails to consider or to grant or refuse the licence renewal application within two months, the validity of an existing licence is automatically extended until the panel makes its decision, and the municipality must—

- (a) inform the applicant in writing that the period for consideration is extended; and
- (b) inform the applicant of the date by which the decision will be made.

(3) When considering whether to grant another licence, the panel must confirm and verify the previous records kept by the licence holder in terms of section **Error! Reference source not found.** of these by-laws.

### **35. Display of Waste Licence**

(1) Upon issuing a licence to a contractor to collect or transport a specific category of waste, the municipality must issue to the contractor a numbered sticker for each vehicle to be used by him which shall—

- (a) confirm that the licence holder is authorised to collect or transport the category of waste specified on the sticker; and
- (b) be colour coded for easy identification of the waste stream to which the licence applies.

(2) The contractor must affix the sticker referred to in subsection (1) to each vehicle to be utilised in providing the service and display it at all times.

(3) A waste disposal facility is authorised and directed to admit waste to its facility for processing or disposal only from contractors who are licensed and whose vehicles display the necessary sticker as required in subsection (1) above.

### **36. Prohibited Conduct**

Licence holders may not—

- (a) operate in contravention of the terms and conditions of their licence;
- (b) fail or refuse to give information, or give false or misleading information when required to do so in terms of these by-laws; or
- (c) fail to take all reasonable steps to prevent an act or an omission by an employee acting in the course and scope of his/her duties which are unlawful in terms of these by-laws.

### **37. Suspension and Revocation of Licences**

(1) A licence issued under these by-laws may be suspended or revoked by the municipal manager of the municipality on the grounds that the licence holder—

- (a) has failed to comply with the obligations set out in these by-laws;
- (b) has failed to comply with any national or provincial legislation which regulates the collection, transportation or disposal of any waste;
- (c) has failed to comply with the terms of a licence and any condition set out in section 33; or
- (d) on any other ground that the municipal manager considers relevant, and which is

fair and reasonable in the circumstances.

(2) A licence may only be suspended or revoked by the municipal manager after—

(a) **he has given adequate notice to the licence holder in terms of section 3(2)(b)(i) of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000) that he intends to make a decision regarding the suspension or revocation of the licence; and**

(b) after the licence holder has been given a reasonable opportunity to make representations to the municipal manager as to why its licence should not be suspended or revoked in terms of section 3(2)(b)(ii) of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000).

(3) The length of time given to the licence holder to make representations and the nature of the representations allowed must be fair and reasonable in the circumstances, taking into account the nature and severity of the infringement, the potential risk of harm to the environment, human life or property, or any other factor relevant in the circumstances.

(4) The municipal manager must make a decision within two weeks of receiving the representations, if any, of the licence holder, or within two weeks after the closing date for making representations specified by the municipal manager in terms of subsection (3); and must inform the licence holder of his decision within seven days of making it.

(5) If a licence is suspended or revoked in terms of subsection (4), the holder of the suspended licence may appeal to the committee that is responsible for solid waste disposal services established in terms of Section 80 of the Structures Act, or if no such committee has been established – to the executive committee municipality, on the basis set out in Section 50 with all the necessary amendments of the wording to those provisions.

(6) At no time may the municipality disclose any confidential commercial information submitted as part of the licence application procedure to any other party, other than to the party who disclosed such information to the municipality.

### **38. Transitional Provisions and Exemptions**

(1) Any person lawfully providing commercial services within the municipality when a notice is issued in terms of section 29(2) that the municipality intends to establish a licensing system, must, if that service requires a licence, apply for a licence but may continue to provide commercial services while the licence application is being considered by the municipality, but may do so only if that person has submitted an application for a licence within three months after the Section 29 notice is issued.

(2) The municipality may, having regard to the main object of these by-laws and its Local Waste Plan, exempt any form of commercial service from the provisions of Chapter 8 of these by-laws and must indicate the terms and scope of any exemption in a notice published in the Provincial Gazette.

## **CHAPTER 9: LITTERING, DUMPING AND ABANDONED ARTICLES**

### **39. Duty to Provide Facilities for Litter**

(1) The municipality, or owner in the case of privately owned land, must take reasonable steps to ensure that sufficient approved receptacles are provided for the discarding of litter by the public, in any place to which the public has access.

(2) The municipality, or owner of privately owned land, must ensure that all approved receptacles installed on the premises for the collection of litter are—

- (a) maintained in good condition;
- (b) suitably weighted and anchored so that they cannot be inadvertently overturned;
- (c) constructed in such a manner as to ensure that they are weatherproof and animal proof;
- (d) of suitable size to contain all litter likely to be generated on the premises and by the users of the receptacle;
- (e) placed in locations convenient for the use by users or occupants of the premises in order to discourage littering or the unhealthy accumulation of waste; and
- (f) emptied and cleansed regularly or when full, and the emptying and cleansing of approved receptacles must be sufficiently frequent as to ensure that no receptacle or its contents may become a nuisance or health hazard or provide reasonable grounds for complaint.

#### **40. Prohibition of Littering**

(1) No person may—

- (a) cause litter;
- (b) sweep any waste into a gutter, onto a road reserve or onto any other public place;
- (c) disturb anything in, or remove anything from any receptacle which has been placed for the purposes of collecting litter in such a manner as to cause the contents of the receptacle to spill or fall onto the ground around it; and
- (d) allow any person under his control to do any of the acts contemplated in paragraphs (a), (b) or (c) above.

(2) Notwithstanding the provisions of subsection (1), the municipality, or owner in the case of privately owned land to which the public has access, must within a reasonable time after any litter has been discarded, dumped or left behind, remove such litter or cause it to be removed; and for the purposes of this section, a reasonable time means that period of time before the litter becomes a nuisance, a health hazard or a cause for complaint.

#### **41. Prohibition of Dumping and Abandoning Articles**

(1) No person may, without authorisation in writing by the municipal manager, deposit or permit the depositing of any waste whether for gain or reward or otherwise, upon any land or in any building of which he is the owner or occupier except when he does so in accordance with the provisions of these by-laws.

(2) Subject to any provisions to the contrary contained in these by-laws, no person may leave any article, or allow any article under his control, to be left at a place with the intention of abandoning it.

(3) No person may dump waste.

(4) Any article, other than a motor vehicle deemed to have been abandoned in terms of regulation 320 of the National Road Traffic Act regulations, which, 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 of such article, is reasonably regarded by the municipality as having been abandoned, may be removed and disposed of by the municipality as it may consider fit; but if the article is, in the opinion of the municipality, of significant financial value, the municipality must place a notice in a daily newspaper indicating its intention to sell the article for the best price reasonably obtainable, as well as consult with the police prior to selling the article.

## CHAPTER 10: ADMINISTRATIVE ENFORCEMENT PROVISIONS

### Part I: Appointment of Authorised Officials

#### 42. Appointment of Authorised Officials

(1) The municipality must appoint authorised officials vested with the power to exercise the powers of an authorised official under these by-laws and to discharge the municipality's right of access to premises in terms of section 101 of the Systems Act.

(2) An authorised official is not a peace officer within the meaning of the Criminal Procedure Act, 1977 (Act 51 of 1977) and has no powers of arrest in respect of any offence created in these by-laws.

(3) In appointing an authorised official, the municipality must have regard to—

- (a) a person's technical understanding and experience of matters related to waste management; and
- (b) any other factor that may be relevant to supervision and enforcement of these by-laws, whether technical or administrative.

(4) An authorised official may be an employee of the municipality or any service provider of the municipality, but neither the service provider nor any of its employees may be involved in enforcing compliance with these by-laws by licensees.

(5) Upon appointment, authorised officials must be issued with a means of identification by the municipality which must state the name and function of the authorised official, and must include a photograph of the officer.

(6) An authorised official, acting within the powers vested in him by these by-laws, is required to:

- (a) present identification on demand by any member of the public;
- (b) liaise with or co-ordinate action with any environmental management inspector designated under the National Environmental Management Act, 1998 (Act 107 of 1998) enforcing the National Environmental Management Act, 1998 (Act 107 of 1998) or any specific environmental management Act within the municipality.

## Part II: Powers of Authorised Officials

### 43. Powers to Execute Work and Inspect Vehicles and Premises

(1) In addition to the powers an authorised official has as an authorised representative of the municipality under section 101 of the Systems Act or any other legislation, an authorised official, may—

- (a) enter any land or premises to execute work or conduct an inspection; and
- (b) may search any vehicle or other mode of conveyance with the consent of the owner or person in charge of the vehicle.

(2) Where consent is not obtained in terms of subsection 43(1)(b), a vehicle or other mode of conveyance may be searched or stopped and searched, only pursuant to a warrant issued in accordance with the procedure set out in section 44.

(3) A search conducted in terms of these by-laws must be conducted in a manner that conforms to the requirements of the Bill of Rights and any other law and, in particular, must be conducted with strict regard to decency and order, respect for a person's dignity, freedom and security, and personal privacy.

(4) To the extent that access to premises does not fall within the scope of section 101 of the Systems Act or any other legislation, an authorised official who has reasonable grounds to suspect that there is an environmental emergency and that any delay in obtaining a search warrant will cause harm to public health or damage to the environment may, without warrant, enter and search any premises associated with the emergency: Provided that the entry and search be conducted in conformity with the requirements of the Bill of Rights and any other law, and in particular, with strict regard to decency and order, respect for a person's dignity, freedom and security, and personal privacy.

(5) Where, in the opinion of an authorised official, any search of a vehicle, as contemplated in these by-laws, gives rise to the reasonable apprehension that the presence of waste in or on that vehicle is a serious and immediate danger to public health or to the environment, the authorised official may seize that vehicle in order to prevent, or where that is impossible, to mitigate harm to public health or damage to the environment.

(6) In the event of the seizure of any vehicle under subsection (5), the municipality must—

- (a) forthwith take steps to dispose of such waste in order to prevent, and where that is impossible, to mitigate, harm to public health or damage to the environment; and the cost of such disposal must be borne by the owner of the vehicle; and
- (b) return the said vehicle, within 48 hours after disposing of such waste, to the control of the licensee or person from whose possession or control it was taken.



#### 44. Procedure for Issuing a Warrant

(1) An authorised official may search any vehicle or other mode of conveyance if a magistrate or a justice has issued a written authorisation allowing the authorised official to do so.

(2) A magistrate or a justice may issue a written authorisation to search any vehicle or other mode of conveyance, if, from information on oath, there are reasonable grounds to believe either—

- (a) that, in the interest of the public, it is necessary to search a vehicle or other mode of conveyance; or
- (b) that there is non-compliance with the terms of these by-laws or any other law in respect of the vehicle or other mode of conveyance.

(3) A written authorisation in terms of subsection (2) may be issued at any time and must specifically—

- (a) identify the vehicle or other mode of conveyance; and
- (b) authorise the authorised official to conduct the search of the vehicle or other mode of conveyance.

(4) A written authorisation in terms of subsection (2) remains valid until—

- (a) it is carried out;
- (b) it is cancelled by the person who issued it or, in that person's absence, by a person with similar authority;
- (c) the purpose for which it was issued has lapsed; or
- (d) three months have passed since it was issued.

(5) Before commencing any work or inspection, designated officers who carry out a written authorisation must either—

- (a) if the owner of or a person apparently in control of the vehicle or other mode of conveyance is present—
  - (i) identify themselves and explain their authority to that person or furnish proof of their authorisation; and
  - (ii) hand a copy of the written authorisation to that person; or
- (b) if the owner or person apparently in control of the vehicle or other mode of conveyance is absent or refuses to accept a copy, attach a copy of the written

authorisation to the land or premises in a prominent and visible place.

#### **45. Powers to Question**

(1) In order to monitor or enforce compliance with these by-laws, the authorised official, may, subject to the requirements of the Bill of Rights, and any other law including the common law, require a licensee or any other person to disclose information, either orally or in writing, and either alone or in the presence of witnesses, on any matter to which these by-laws relate, require that the disclosure be made on oath or affirmation, and exercise any other power of an authorised official.

(2) An authorised official may be accompanied by an interpreter and any other person reasonably required to assist the authorised official in conducting the inspection.

(3) An authorised official must, on request, provide his identification as an authorised official.

#### **46. Supervision of Licensees**

(1) If a licensing system has been established in terms of section 29 of these by-laws, authorised officials must inspect the workplace of a licensee not less than twice a year, and an authorised official is entitled to enter the workplace of a licensee for this purpose.

(2) Such an inspection must be conducted in conformity with the requirements of the Bill of Rights, and any other law and, in particular, an authorised official in conducting an inspection under subsection (1) must do so with strict regard to decency and order, respect for a person's dignity, freedom and security, and personal privacy.

(3) If an authorised official is of the opinion, after such an inspection, that a licensee is complying with these by-laws, he may, subject to the provisions of subsection (4), issue the licensee with a certificate confirming compliance, which must state -

- (a) the name and residential and postal address of the licensee;
- (b) the time, date and scope of the inspection; and
- (c) any remarks which in the opinion of the authorised official may be relevant.

(4) If a licensee fails to obtain a certificate confirming compliance at three inspections over a period of two years, the authorised official may recommend that the municipality review the licence, and should there be reasonable grounds, the municipality may revoke the licence in terms of section 37, but may do so only if the consecutive inspections occur at not less than four month intervals.

(5) Authorised officials must keep a register recording each inspection that has been

undertaken.

#### **47. Supervision of Owners and Occupiers**

Owners and occupiers must keep their premises clean and free from any waste which in the opinion of an authorised official is likely to cause a nuisance, harm to public health or damage to the environment, and must take reasonable steps to prevent an employee acting in the course of his employment, from committing an act or omission that may cause a nuisance, harm to public health or damage to the environment.

### **Part III: Enforcement Notices**

#### **48. Enforcement Notices**

(1) If, in the opinion of the authorised official, a person is—

- (a) causing a nuisance, harm to public health or damage to the environment; or
- (b) as licensee, is failing to comply with the terms of a licence granted in terms of these by-laws; or
- (c) as owner or occupier, has failed to satisfy an obligation in terms of section 47 of these by-laws,

the authorised official may issue or cause to be issued on that person an enforcement notice in terms of this section.

(2) An enforcement notice issued under this section must state—

- (a) the name and also the residential and postal address, if either or both of these be known, of the affected person;
- (b) the nature of the nuisance, harm to public health or damage to the environment that the affected person is causing or is likely to cause;
- (c) the steps required to forestall or remediate the nuisance, harm to public health or damage to the environment in sufficient detail to enable compliance with the enforcement notice;
- (d) that the affected person must not later than 21 calendar days from the date on which the enforcement notice is issued take steps to comply with the notice;
- (e) that failure to comply with the requirements of the enforcement notice within the period contemplated in paragraph (d) may result in civil and criminal liability; and
- (f) that written representations may be made to the municipality, in terms of section 50, or a designated committee or internal functionary to which or to whom powers under these by-laws have been delegated, at a specified place, within 21 calendar

days of receipt of the notice.

(3) If an affected person fails to comply with an enforcement notice, the municipality or anyone authorised by the municipality, may perform the steps required in the enforcement notice, provided that the municipality does so in conformity with the requirements of the Bill of Rights and any other law, and, in particular, an authorised official must act with strict regard to decency and order, respect for a person's dignity, freedom and security, and personal privacy.

(4) Where the municipality incurs any expenditure as a result of performing such steps, the municipality may recover any reasonable expenditure from the person who failed to act as directed or, where criminal proceedings have not been instituted, by means of civil proceedings.

(5) If a licensee commits an offence in terms of section 36 and has, within the last two years, been convicted of the same offence, the municipality may revoke his licence immediately.

#### **49. Complaints**

Any person may lodge a complaint with an authorised official, or through any other channel established by the municipality, that any other person is causing harm to public health or damage to the environment by engaging in basic services or commercial services, in which event the authorised official, unless he has reasonable grounds to believe that the complaint is frivolous, must investigate the complaint and may, if he is satisfied that such harm is, or is likely to be, caused, issue an enforcement notice.

#### **50. Representations**

(1) Any affected person may make representations to the municipality, or a designated committee or internal functionary of the municipality to which the municipality has delegated its powers, in the manner specified in the enforcement notice.

(2) Representations must be made by submitting a written statement that has been sworn or affirmed to the municipality, designated committee or internal functionary within 21 calendar days of the service of the notice.

(3) Any representation not lodged within 21 calendar days shall not be considered, except where the affected person has shown good cause and the municipality, the designated committee or internal functionary condones the late lodging of the representation.

(4) The municipality, or designated committee or internal functionary, must duly consider the representations and any response to them by an authorised official or any other person, if there be such a response; and may, on its own volition, conduct any further investigation to verify the facts if that, in its opinion, is necessary.

(5) If the municipality, or designated committee or internal functionary, should conduct

any further investigations, the results of the investigation must be made available to the affected person, who must be given an opportunity of making a further response if he so wishes, and the municipality, or designated committee or internal functionary, must also consider his further response.

(6) After the municipality, or designated committee or internal functionary, is satisfied that the requirements of subsection (5) have been satisfied, the municipality, or designated committee or internal functionary, must make an order in writing and give a copy of it to the affected person setting out its findings. Such an order must –

- (a) confirm, alter or set aside in whole or in part, an enforcement notice; and
- (b) if compliance with the order (or the altered order) is required, specify the period within which the affected person must comply with any order made by it.

(7) If the enforcement notice is confirmed, in whole or in part, or is altered but not set aside, the municipality, or designated committee or internal functionary, must inform the affected person that he must discharge the obligations set out in the enforcement notice.

(8) If an affected person lodges a representation, any requirement in terms of section 48 of these by-laws requiring compliance with an enforcement notice, is suspended unless, in the opinion of the municipality, the affected person has caused an environmental emergency in which event and without derogation from any right that the affected person may have, or may in the future have, at common law or under any other law, to any relief of whatever nature, the affected person must immediately comply with any such requirement on being ordered by the municipality, orally or in writing, to do so.

(9) If there is an environmental emergency and if the affected person, despite receiving a lawful order made in terms of subsection (8), fails to comply with it, the municipality may itself cause the environmental emergency to be stopped, reversed or abated, in which event the municipality may institute civil proceedings for the recovery of any reasonable and necessary expenditure which it has incurred or may incur in effecting such a stoppage, reversal or abatement.

#### **Part IV: Administrative Penalties**

##### **51. Establishment of an Administrative Penalty System**

- (1) The municipality may establish an administrative penalty system in terms of this part.
- (2) A decision to establish an administrative penalty system in terms of subsection (1) must be published by a notice in the Provincial Gazette and comes into operation on the date announced in the notice which may not be less than 3 months from the date of its publication.

##### **52. Infringement Notices**

(1) If a municipality has established an administrative penalty system, an authorised official may issue an infringement notice to any person whom he believes may have committed an offence which must be listed.

(2) The infringement notice must—

- (a) specify, at the time when the notice is issued, the name and also the residential and postal address, if either or both of these be known, of the person on whom the infringement notice is served;
- (b) state the particulars of the infringement;
- (c) specify the amount of the penalty payable in respect of that infringement designated under the listed offences.
- (d) specify the place where the penalty may be paid; and
- (e) inform the person on whom the infringement notice is served that, not later than 28 calendar days after the date of service of the infringement notice, he may –
  - (i) pay the penalty; or
  - (ii) inform the municipality in writing at an address set out in the notice that he elects to be tried in court.

(3) If it appears to the authorised official that an alleged offence cannot adequately be punished by the payment of an administrative penalty then the authorised official may refrain from accepting the administrative penalty and may cause civil or criminal proceedings to be brought against the alleged offender in an appropriate court in terms of Chapter 10 of these by-laws if, in his opinion, there are good grounds for doing so.

### **53. Trial**

If a person who elects to be tried in court in terms of subsection 52(2)(e)(ii), notifies the municipality of his election, the authorised official must, if he believes that there are sufficient grounds in law for doing so, within 10 calendar days, take all necessary steps, as envisaged in the Criminal Procedure Act, 1977 (Act 51 of 1977), in order to secure the attendance and prosecution of the accused, in which event, or in the event of his considering that there are no grounds for taking further steps, the infringement notice is cancelled.

### **54. Withdrawal of Infringement Notice**

(1) Within one year after the infringement notice has been issued an authorised official may, whether or not the penalty has been paid, withdraw an infringement notice on the basis that new information has been received by the municipality or on any other good cause, by—

- (a) sending to the alleged offender a notice in the prescribed form stating that the

infringement notice has been withdrawn; and

- (b) providing reasons to the municipal manager for the withdrawal of the infringement notice.

(2) Where an infringement notice is withdrawn after the penalty has been paid, the amount shall be refunded.

### **55. Infringement Notice Not an Admission**

Payment of a penalty shall not be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

## **CHAPTER 11: JUDICIAL ENFORCEMENT PROVISIONS**

### **56. Offences**

- (a) Subject to subsection (1), any person who—contravenes or fails to comply with any provisions of these by-laws, other than a provision relating to payment for basic services;
- (b) fails to comply with any notice or order issued or condition imposed in terms of or for the purposes of these by-laws;
- (c) fails to comply with any lawful instruction given in terms of or for the purposes of these by-laws, or
- (d) who obstructs or hinders any authorised representative or employee of the municipality in the execution of his duties under these by-laws,

is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 6 months and in the case of any continued offence, to a further fine not exceeding R500.00.

(1) No person shall be liable to imprisonment if he is unable to afford to pay a fine, and shall instead be liable to a period of community service.

(2) Any person committing a breach of the provisions of these by-laws shall be liable to recompense the municipality for any loss or damage suffered or sustained by it in consequence of the breach.

## CHAPTER 12: GENERAL PROVISIONS

### 57. Ownership

(1) A person holding a permit to operate a waste disposal facility is deemed to be the owner of the waste disposed at that facility.

(2) Domestic waste belongs to the generator of that waste until such time as it is placed in a bin and placed outside of the premises with the intention that the municipality collect and dispose of that waste, at which time the waste becomes the property of the municipality.

(3) A person who abandons an article, even if it constitutes waste under these by-laws, remains liable for any damage which that article may cause, as well as the cost of removing the article, notwithstanding the fact that that person may no longer be the owner of the article.

### 58. Service of Documents and Process

For the purposes of the service of any notice, order or other document relating to non-payment for the provision of basic services, the address of the owner of the premises on which domestic waste and dailies is generated is the place where service of documents and process shall be made.

### 59. Service of Notices

(1) Any notice, order or other document that is served on any person in terms of these by-laws must, subject to the provisions of the Criminal Procedure Act 1977 (Act 51 of 1977), be served personally, falling which it may be regarded as having duly been served—

- (a) when it has been left at that person's place of residence or business, or, where his household is situated in the Republic, when it has been left with a person who is apparently 16 years or older;
- (b) 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 either personally or in the manner provided by paragraphs (a), (c) or (d); or
- (c) if that person's address and the identity or the address of his agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the property or premises, if any, to which it relates; or
- (d) if sent by registered post, whether service by registered post is, or is not required, if effected by sending it by properly addressing, prepaying and posting a registered letter containing the notice, order or other document, and unless the contrary be proved, shall be presumed to have been effected at the time at which the letter would be delivered in the ordinary course of post.

(2) When any notice or other document must be authorised or served on the owner,



occupier or holder of any property or right in any property, it is sufficient if that person is described in the notice or other document as the owner, occupier or holder of the property or right in question, and it is not necessary to name that person.

(3) Any legal process is effectively and sufficiently served on the Municipality when it is delivered to the municipal manager or a person in attendance at the municipal manager's office.

(4) Any legal process is effectively and sufficiently serviced on the service provider when it is delivered to the managing director or a person in attendance at the managing director's office.

#### **60.Short title and commencement**

These by-laws shall be called **Makhuduthamaga Waste Management By-Laws** and shall commence to operate on the date of their publication in the Provincial Gazette.