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CONTENTS • INHOUD

<i>No.</i>		<i>Page No.</i>	<i>Gazette No.</i>
LOCAL AUTHORITY NOTICES			
1	Liquor By-law	3	1814
2	Intsika Yethu Municipality: Street Trading By-law	6	1814
3	do.: By-laws relating to Dumping, Littering and Waste Collection.....	18	1814
4	do.: Credit Control Management: Credit Control By-law	35	1814
5	do.: By-law for the Control over Building	58	1814

LOCAL AUTHORITY NOTICES

No. 1

LIQUOR BY LAW

1. OBJECTIVES :

- i. This by – law is aimed at minimizing the crime at Intsika Yethu Municipality.
- ii. Crime has in the recent past escalated hence this by-law.
- iii. Fatalities have been reported during late hours thus require an immediate Intervention.
- iv. To make Intsika Yethu Municipality a safer place for the tourists and any person who traverses our town at any given time.
- v. To prevent the youth from frequenting the places where liquor is sold this includes the youth that is under age and to whom the sale of liquor is forbidden.
- vi. To promote the image of Intsika Yethu Municipality from investors intending to invest at Intsika Yethu Municipality.

2. DEFINITION OF TERMS:

Public Holiday	: A day recognized by the community as a rest day
Sunday	: A day of worship
Week day	: Monday to Friday
Election day	: A polling / Voting day
Saturday	: A week end
Tavern	: A place where dine & drink liquor are offered, displayed for sale
Off Sales	: Where various kinds of liquor are offered, displayed for Sale
Beer hall	: Where liquor is sold and offered around the table

- Bottle Store : Sells liquor to retailers at wholesale price
- Beer Whole Sale : Sells liquor to retailers at wholesale price
- Beer Manufacture : One who manufactures liquor for sale
- The Act : Eastern Cape liquor Act. No. 10 of 2003
- Liquor : a) Liquor product
b) Beer of additional African beer
c) Any other substance declared to be liquor
- Registered Premises : Means premises registered under the Act Includes exchange, offer, deliver or dispose, authorize, direct or allow a sale.
- Council ; Means Intsika Yethu Municipality Council

3. TRADING HOURS

Not with standing the provisions of any other law and pursuant to the provisions of section 42 of the Act, liquor trading hours within the jurisdiction of the council are determined as follows:

TAVERN

WEEKDAYS	: 07H00-21H00
SATURDAYS	: 08H00-22H00
PUBLIC HOLIDAY	: 08H00-22H00
SUNDAY	: 14H00-23H00
POLLING DATE	: 18H00-23H00
WEEK DAY	: 07H00-22H00

OFF SALES

WEEKDAYS	: 08H00-18H00
SATURDAYS	: 08H00-13H00
PUBLIC HOLIDAYS	: CLOSED
ELECTION DATY	: CLOSED
SUNDAY	: CLOSED

BOTTLE STORE

WEEKDAYS	: 08H00-18H00
SATURDAY	: 08H00-13H00
POLLING DAY	: CLOSED
PUBLIC HOLIDAY	: CLOSED
SUNDAY	: CLOSED

BEER WHOLESALE

WEEKDAYS	: 08H00-18H00
SATURDAY	: 08H00-13H00
POLLING DAY	: CLOSED
SUNDAY	: CLOSED
PUBLIC HOLIDAY	: CLOSED

BEER HALL

WEEKDAYS	: 08H00-18H00
SATURDAY	: 08H00-18H00
SUNDAY	: 14H00-20H00
POLLING DATE	: 18H00-21H00
PUBLIC HOLIDAY	: 08H00-21H00

4. APPLICATION

- i. The above provisions shall apply to the license holder trading at registered premises.
- ii. Any license holder at any registered premises who contravenes any provision of this by-law shall have his/her trading licence cancelled at the instance of the council.
- iii. An inspection shall be conducted from time to time on instruction to an authorized person or persons by the council on all registered premises.
- iv. This by-law shall apply to all the areas within the jurisdiction of Intsika Yethu Municipality.

No. 2

INTSIKA YETHU MUNICIPALITY

EC-135



FINAL DOCUMENT
STREET TRADING BY-LAW

DATE: JUNE 2006

MUNICIPALITY OF INTSIKA YETHU**DRAFT STREET TRADING BY-LAWS**

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-Laws Relating to the Street Traders which shall come into operation on the date of publication thereof

Purpose of By Law

The purpose of this by law is to regulate street trading for the benefit of the public residing and carrying on business within the boundaries of the municipality.

[1] **Definitions**-In this by-law, unless the context otherwise indicated, words used in the masculine gender includes the feminine, the singular includes the plural and vice versa and unless the context otherwise indicates-

“approval” means approval by the Council and **“approved”** has a corresponding meaning;

“authorised official” means-

- 1) an official of the Council who has been authorized by it to administer, implement and enforce the provisions of this by-laws;
- 2) a traffic officer appointed in terms of Section 3A of the National Road Traffic Act, 1996 [Act No 93 of 1996];
- 3) a member of the police service, as defined in terms of section 1 of the South African Police Service Act, 1995 [Act No 68 of 1995]; or
- 4) a peace officer, contemplated in terms of section 334 of the Criminal Procedure Act, 1977 [Act No. 51 of 1977];

“Council services” means any system conducted by or on behalf of a local authority, for the collection, conveyance, treatment or disposal of refuse, sewage, or storm water, or for the generation, impounding, storage or purifying, or supply of water, gas or electricity, or municipal services;

“Council service works” means all property or works of whatever nature necessary for or incidental to any Council services;

“foodstuff” means foodstuff as defined in section 1 of the Foodstuff Cosmetics and Disinfectants Act, 1972 [Act No. 54 of 1972];

“**garden or park**” means a garden or park to which the public has a right of access;

“**goods**” means any movable property and includes a living;

“**intersection**” means an intersection as defined in the regulations promulgated in terms of the Road Traffic Act, 1996 [Act No. 93 of 1996];

“**litter**” includes any receptacle, container or other matter, which has been discarded, abandoned or left behind by a street trader or by his or her customers;

“**municipality**” means the municipality of **Intsika Yethu** established in terms of Section 12 of the Local Government: Municipal Structures Act, 1998 [Act No. 117 of 1998]; and includes any political structure, Political office bearer, councilor, duly authorized agent thereof or any employee thereof acting in connection with this by-law by virtue of a power vested in the municipality and delegated to such political structure, political office bearer, council, agent or employee;

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

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

“**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 in which he or she trades;

“**public building**” means a building belonging to or occupied solely by the sphere of government including the municipality;

“**public monument**” means any one of the “**public monuments and memorials**” as defined in terms of Section 2 of the National Heritage Resources Act, 1999 [Act No. 25 of 1999];

“**public place**” means any square, park, recreation ground or open space which 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**” includes -

[a] barter, exchange or hire out;

[b] display, expose, offer or prepare for sale;

[c] store on a public road or public place with a view to sell; or

[d] provide a service for reward;

and “**sale**” or “**selling**” has a corresponding meaning;

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

“**street furniture**” means any furniture installed by the municipality on the street for the 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 business Act, 1999 [Act No. 71 of 1991] and includes the regulations promulgated thereunder; and

“**verge**” means a verge as defined section 1 of the National Road Traffic Act, 1996;

[2] Meaning of words and expressions in Businesses Act incorporated in this By-laws

In this by-law, unless the context otherwise indicates, any words or expressions to which a meaning has been assigned in the Businesses Act, 1991 [Act No. 71 of 1971], shall have a corresponding meaning in this by-law.

[3] Single act constitutes street trading

For the purpose of this by-law a single act of selling or offering or rendering of services in a public road or shall constitute street trading.

[4] Reference to legislation includes regulations made under

For the purpose of this by-law a reference to any legislation shall be a reference to that legislation and the regulations promulgated thereunder.

[5] Assigning responsibilities of a municipal employee to an employee of a service provider, where a service provider has been appointed- if any provision in this by-law imposes any responsibility of the municipality in or on an employee of the municipality

and such a responsibility has, in terms of Section 76(b) of the Local Government: Municipal Systems Act, 2000 [Act No. 32 of 2000], or any other law, been assigned to a service provider, then the reference in such a provision to such employee must be read as a reference to the service provider or a duly authorized employee of the service provider.

[6] Prohibited conduct

[1] No person shall 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 contiguous to –

[i] a building belonging to, or occupied solely by, the sphere of government or the Council;

[ii] a church or other place of worship;

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

[iv] an auto teller bank machine;

[d] at a place where it causes an obstruction in front of -

[i] a fire hydrant;

[ii] an entrance to or exit from the building;

[e] at a place where it could obstruct vehicular traffic;

[f] at a place where it could substantially obstruct a pedestrian in his or her use of the sidewalk;

[g] on that half of a public road contiguous to a building used for residential purposes, if the owner or person in control, or any occupier of that building objects thereto and such objection is made known to street trader by an authorised official;

[h] on a stand or in any area demarcated by the Council in terms of section 6A [3][b] of the Act, if he or she is not in possession of a written proof that he or she has hired that stand or area from the municipality, or that such stand has otherwise been allocated to him or her;

[i] within five metres of any intersection as defined in regulation 322 of the Road Traffic Act 1996 and;

[j] on a sidewalk contiguous to a building in which business is being carried on by any person who sells goods of the same or of a similar nature to the goods being sold on such sidewalk by the street trader if the goods are sold without the prior consent of such person or and an authorised official has informed the street trader that such consent does not exist;

[2]a person who has hired a stand from, or been allocated a stand by the municipality under subsection [1][h], may not trade in contravention of the terms and conditions of such a lease or allocation.

[7] Restricted conduct

A person carrying on the business of a street trader -

[a] may not sleep overnight at the place of such business;

[b] may not erect any structure for the purpose of providing shelter, other than a device approved by the Council;

[c] may not place his or her property on a public road or public place with the exception of his or her motor vehicle or trailer from which trade conducted, and provided that such vehicle or trailer does not obstruct pedestrian and vehicular traffic movement, and complies with the provisions of the National Road Traffic Act, 1996;

[d] must ensure that his or her property or area of activity does not cover an area of a public road or public place which is greater in extent than six square metres [with a maximum length of three meters] or unless otherwise approved by the Council, and which on any sidewalk leaves an obstructed space for pedestrian traffic, the length of the property or area of activity, and not less than 1,5 metres wide, measured from any contiguous building to the obstructed area, and unobstructed space, the length of the property or area of activity, and not less than 0,5 metres wide, measured from the kerb of the roadway;

[e] may not trade on a sidewalk where the width of such sidewalk is less than four metres;

[f] may not place or stack his or her 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;

[g] may not display his or her 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;

[h] must on a request by an authorised official of the municipality , or supplier of telecommunication or electricity or other municipal services, move his or her property so as to permit carrying out of any work in relation to a public road, public place or any such service;

[i] may not attach any of his or her property by any means to any building, structure, pavement, tree, parking meter, lamp, pole, electric pole, telephone booth, post box, traffic sign, bench or any other street furniture in or on a public road or public place;

[j] may not carry on such 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.

[k] may not make an open fire on a public road or public place;

[l] may not interfere with the ability of a person using a sidewalk to view the goods displayed behind a shop display window, or obscure goods from view;

[m] may not obstruct access to a pedestrian crossing, a parking or loading bay or other facility for vehicular or pedestrian traffic;

[n] may not obstruct access to, or the use of, street furniture and any other facility designed for the use of the general public;

[o] may not 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 this by-law;

[p] may not carry on business, or take up a position, or place his or her 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 this by-law-laws;

[q] may not, other than in a refuse receptacle approved or supplied by the Council, 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;

[r] may not place on a public road or public place, his or her 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;

[s] must on concluding business for the day remove his or her property, except any structure permitted by the municipality, to a place which is not a part of a public road or public place

[t] may not store his or her property in a manhole, storm water drain, public toilet, and bus shelter or in a tree; and

[u] may not 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.

[8] Cleanliness

A street trader must -

[a] Keep the area or site occupied by him or her for the purposes of such business in a clean and sanitary condition;

[b] Keep his or her property in a clean, sanitary and well-maintained condition;

[c] Dispose of litter generated by his or her 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 or her for the purposes of of trade is free of litter;

[f] Take such precautions in the course of conducting his or her business as may be necessary to prevent the spilling onto a public, or public place, or into a storm water drain, of any fat, oil or grease;

[g] Ensure that no smoke, fumes or other substance, odours, or noise emanating from his or her activities causes pollution of any kind;

[h] On request by an authorised official of the municipality, move his or her property so as to permit the cleansing of the space of the area or site where he or she is trading, or the effecting of council services.

[9] Signs indicating restricted and prohibited areas

[a] 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

[i] specified hours, places, goods or services in respect of which street trading is restricted or prohibited;

[ii] the locations of boundaries of restricted or prohibited areas;

[iii] the boundaries of a stand or area set apart for the purposes of the carrying on of the business of street trading;

[iv] the fact that any such stand or area has been let or otherwise allocated; and

[v] any restriction or prohibition against street trading in terms of this by-law;

[b] The municipality may display any such sign, 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;

[c] Any sign erected in terms of this by-law or any other law, shall serve as sufficient notice to a street trader of the prohibition or restriction of the area concerned; and

[d] Any sign may be amended from time to time and displayed by the municipality for the purposes of this by-law, and shall have the same effect as a road sign in terms of the Road Traffic Act 1996.

[10] Designated areas

[1] The municipality may, by resolution and in terms of Section 6A(3) (b) of the Act, set apart and demarcate stands or areas for the purposes of street trading on any public road, the ownership or management of which is vested in the municipality, or on any other property in the occupation and under the control of the municipality.

[2] Any such stands or areas may be extended, reduced or disestablished by the resolution of the municipality

[11] Removal and impoundment

[1] An authorised official may remove and impound any property of a street trader -

[a] which he or she reasonably suspects is being used or which intended to be used or has been used in or in connection with street trading; and

[b] which he or she is found at a place where street trading is restricted or prohibited, and which, constitutes an infringement of any such restriction or prohibition whether or not such property is in possession or under the control of any person at the time of such removal or impoundment.

[2] Any authorised official acting in terms of section 1 above 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 -

[i] itemise the property to be removed and impounded;

[ii] provide the address where the impounded property will be kept, and the period thereof;

[iii] state the conditions for the release of the impounded property;

[iv] state the terms and conditions relating to the sale of unclaimed property by public auction; and

[v] 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.

[3] 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, then any authorised official of the municipality may order such person to remove the property, and if such person refuses or fails to comply, he or she shall be guilty of an offence.

[4] When any person fails to comply with an order to remove the property referred to in subsection [3], any authorised official of the municipality may take such steps as may be necessary to remove such property.

[12] Vicarious responsibility of persons carrying on business

[1] When an employee or an agent of a street trader contravenes a provision of this by-law the street trader shall be deemed to have committed such contravention him or herself unless such street trader satisfies the court that

[a] he or she neither connived at nor permitted such contravention and;

[b] he or she took reasonable steps to prevent such contravention.

[2] The fact that the street trader issued instructions prohibiting such contravention, shall not in itself constitute sufficient proof of such reasonable steps.

[13] Offences and Penalties Any person who -

[a] Contravenes or fails to comply with any provision of this by-law;

[b] fails to comply with any notice issued in terms of this by-law; or

[c] fails to comply with any lawful instruction given in terms of this by-law; or

[d] who obstructs or hinders any authorised representative of the municipality in the execution of his or her duties under this by-law-

is guilty of an offence and liable on conviction to a fine not exceeding R1000 or default of payment, to imprisonment for a period not exceeding 3 (three) months, and in the case of a continuing offence, to a further fine not exceeding R50, or in default of payment, to

imprisonment not exceeding one day, for every day during the continuance of such offence, after a written notice has been issued by the Council, and served on the concerned, requesting the discontinuance of such offence.

[14] Regulations

[1] The municipality may make regulations regarding –

[a] The declaration of any place to be an area in which street trading is restricted or prohibited and the prescription or making of signs, markings or other devices, as contemplated in terms of section 9;

[b] the setting apart and demarcation of stands or areas for the purposes of street trading and extension, reduction or disestablishment thereof, as contemplated in terms of section 10;

[c] [i] the disposal of any property which has been removed and impounded, as contemplated in terms of section 11; and

[ii] the liability of any person for any reasonable expenses incurred in connection with such removal, impoundment and disposal;

[d] [i] the prescription of penalties for the offences contemplated in terms of section 13 ;and

[ii] the amendment of such penalties from time to time;

[e] any matter which may be prescribed in terms of this by-law and any matter may facilitate the application of this by-law.

[2] [a] The municipality shall, not less than 1 (one) month before promulgating a regulation in terms a subsection [1], cause a draft of the regulation to be communicated to the local community and to be made public in terms of section 21 and 21A of the local Government : Municipal Systems Act , [Act No. 32 of 2000], together with a notice declaring the intention of the municipality to issue such a regulation and inviting comments or presentations.

[b] if the municipality decides to alter the draft regulation as a result of comments or presentations received pursuant to such invitation, then it shall not be necessary to communicate and make public the alteration before the amended draft is promulgated as a regulation

[15] Repeal of by-laws

Any provision of by-laws relating to Street Trading adopted by the Council or any erstwhile Council of a municipality now comprising an administrative unit of the municipality pertaining to any matter regulated I n this by law shall be repealed from the date of promulgation of this by-law.

[16] Short title

This by-law is called Street Trading By-law, 2006 and takes effect on a date determined by the municipality by proclamation in the Provincial Gazette.

No. 3**INTSIKA YETHU 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 and Littering comes 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 [Act No. 108 of 1996];

AND WHEREAS the Council of the Municipality in the exercise of its functions has an obligation to regulate dumping and waste collection and to prohibit littering in areas situated in its municipal area and to provide for incidental matters;

Be it therefore enacted by the Council as follows:

TABLE OF CONTENTS

- [1] Definitions
- [2] Dumping, littering and other contraventions
- [3] Provision of waste bins
- [4] Location of waste bins
- [5] Maintenance of waste bins
- [6] Collection of waste
- [7] Access to premises
- [8] Right of entry
- [9] Burning of waste

- [10] Access to disposal site
- [11] Off-loading of waste
- [12] Ownership of waste
- [13] Categories of waste
- [14] Separation of waste
- [15] Charges
- [16] Exemptions
- [17] Appeal
- [18] Offences
- [19] Penalties and convictions
- [20] Repeal of by-laws

[1] DEFINITIONS

In these by-laws words used in the masculine includes the feminine or any corporate entity, the singular includes the plural and, unless the context indicates otherwise –

“attendant” means an employee of the Municipality or agent of the Municipality duly authorised to be in charge of the disposal site;

“dump”, in relation to waste, means deposit, discharge, spill, release [whether or not the waste is in a container or receptacle] in any manner other than a manner permitted in terms of these by-laws and in or at any place whatsoever, whether publicly or privately owned, and including but not limited to vacant land, rivers and waterways and sewage and storm water systems;

“litter” means to drop waste material in a public place;

“dumping site” means an area determined and designated by the Municipality where dumping is allowed;

“Medical Officer of Health” means the official appointed in this capacity for the _____ municipal area in terms of the provisions of the

Health Act, 1977 [Act No. 63 of 1977], or any other Act, or his or her representative;

"Municipality" means the _____ Municipality, a local municipality established in terms of section 12 of the Local Government: Municipal Structures Act, 1998 and includes any duly authorised political structure, official or political office bearer thereof as defined in the Local Government: Municipal Structures Act, 1998;

"owner" also means lessee, occupier, resident or any person who obtains a benefit from the premises or is entitled thereto and also includes any insolvent estate, executor, administrator, trustee, liquidator judicial manager;

"person" includes a natural person, company, closed corporation, trust and partnership;

"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;

"removal day" means the day fixed by the Municipality for removal of waste from premises and depending on the case may be multiple removals per week;

"residential premises" means premises that are zoned for residential purposes in terms of the Zoning Scheme'

"waste" includes -

- [a] "business waste" which means any matter or substance arising out of the use of business premises but does not include, hazardous waste, material, domestic waste or garden waste;
- [b] "domestic waste" which means any fruit or vegetable peels, fruit or vegetable waste, general domestic waste as well as garden waste which is of such size that it may be deposited in a refuse bin;

- [c] "garden waste" which means waste originating from a gardening activity such as grass cutting, leaves, plants flowers or similar waste of such size that it can be placed in a refuse bin;
- [d] "hazardous waste" which means any waste, matter or substance which may be hazardous or harmful to the environment and residents or which may pollute the environment including asbestos, motor oils or lubricants, or any other waste, or substance that constitutes hazardous waste;
- [e] "materials" means any sand, rock, stone, building materials or building rubble or any other type of composite or artificial materials such as plastic pipes and similar materials as well as materials which are utilised in the erection of buildings or structures or any other types of materials that constitute materials;

"waste bin" means a mobile container with a capacity determined by the municipality, or alternatively plastic bags, that the Municipality may make available to each premises;

"waste-management activities" means the generation, reduction and minimisation of waste, waste handling, which includes the separation, storage, collection, and transfer of waste, and waste treatment, which includes the recovery of waste, recovery being the recycling, reclamation and re-use of waste, and disposal of waste, and any word to which a meaning has been assigned in the Environmental Conservation Act, 1989 [Act No. 73 of 1989] and in the Directives with regard to the Control and Management of General Communal and General Small Waste Disposal Sites issued under the Act and published per Government Notice R91 in Government Gazette No. 23053 dated 1 February 2002, bears that meaning.

[2] DUMPING, LITTERING AND OTHER CONTRAVENTIONS

[1] Nobody 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]** anybody 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]** anybody 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 [2][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] Nobody 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 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.

[3] **PROVISION OF WASTE BINS**

- [1] The Municipality may —
- [a] provide waste bins, or alternatively plastic bags, for the disposal of waste generated on premises; and

- [b]** authorise the use of bins and lids constructed of rubber or other material where the design and construction has been approved by the Municipality.
- [2]** Waste bins other than plastic bags provided in terms of subsection [1] remain the property of the Municipality.
- [3]** The Municipality may prescribe special waste bins for the reception and storage of such types of waste as the Municipality may specify and may by written notice on the owner of premises require the owner to provide at his or her own expense such number of special waste bins as are specified in the notice.
- [4]** The Municipality may by notice require the owner of any premises to provide, at his or her own expense, an additional number of waste bins or such other means of storing receptacles as may be necessary to comply with the provisions of this by-law when any waste bin provided on premises is —
- [a]** of a size likely to hinder the efficient removal of waste there from by the servants of the Municipality;
 - [b]** is insufficient for the reception of all waste which is to be removed from such premises by the Municipality;
 - [c]** dilapidated; or
 - [d]** likely to cause a nuisance.
- [5]** A waste bin must be replaced as and when it is necessary to do so, provided that where such waste bin has so been replaced as a result of the damage caused through the negligence of the owner, such owner is liable for the cost of replacing it.
- [6]** Nobody may dispose of any waste by placing it anywhere else than in a waste bin provided or approved by the Municipality or in such a manner as the Municipality may determine.
- [7]** In respect of a group development, the Municipality may provide less waste bins per household subject to the following conditions —

- [a] A central refuse collection point must be provided by the managing body;
 - [b] the managing body must apply in writing for the reduction of waste bins issued to the development;
 - [c] the reduced number of bins must be approved by the Municipality; and
 - [d] the managing body must be held liable for payment of the account for waste removal.
- [8] Anybody who contravenes a provision of section or who fails to comply with a notice issued in terms of these by-laws commits an offence.

[4] LOCATION OF WASTE BINS

- [1] The owner of premises must provide adequate space on the premises where a waste bin or other receptacle for the purpose of depositing waste or a specific category of waste are kept and the space must —
- [a] comply with requirements imposed by the Municipality by notice to the owner;
 - [b] where applicable, be constructed in accordance with the requirements of any applicable building regulations and be so located that the waste bin or receptacle is not visible from a street or public place;
 - [c] where applicable, be so located as to permit convenient access to and egress from such place for a waste collection vehicle; and
 - [d] be in a location convenient for the use by users or occupants of the premises so as to discourage littering or the unhealthy accumulation of waste.
- [2] In the case of multi-storey buildings, the Municipality may approve the installation of refuse chutes of an approved design and specification and subject to the submission and approval of the plans for such installations.

- [3] The owner of premises must place or cause the waste bin to be placed in the space provided and must at all times keep it there.
- [4] Owners of non-residential premises are responsible for making arrangements with the Municipal Manager or the Medical Officer for Health for the removal of refuse, hazardous waste, materials or waste from the premises: Provided that if the owner enters into an agreement with the Municipality for the removal of refuse and/or the provision of refuse bins to the premises, the service must be rendered subject to the conditions, costs and times agreed to.
- [5] A person who contravenes a provision of this section commits an offence.

[5] MAINTENANCE OF WASTE BINS

- [1] The occupier of premises must ensure that a waste bin other than plastic bags is –
 - [a] at all times maintained in good order and repair;
 - [b] emptied and cleaned when full, so that its contents do not become a nuisance; and
 - [c] protected against unauthorised disturbance or interference at all times when waste is not being deposited into it or discharged from it.
- [2] Nobody may –
 - [a] remove a waste bin from any premises to which it has been allocated, or destroy or damage it, or permit it to be removed, destroyed or damaged;
 - [b] deposit or cause to be deposited any hazardous waste and/or materials in a waste bin;
 - [c] deposit or permit to be deposited any waste in a waste bin in such a manner as to cause the lid of the waste bin not to close properly; or

- [d] put out, accumulate, dump, store or deposit in any manner whatsoever, waste, hazardous waste or material next to or on a waste bin, in a road or on a sidewalk or in any other place or permit it to be put out, accumulated, dumped, stored or deposited in any manner whatsoever next to or on a waste bin, in a road or on a sidewalk or in any other place.
- [e] A person who contravenes any provision of this section commits an offence.

[6] COLLECTION OF WASTE

- [1] The Municipality may indicate a position within or outside the premises where waste bins must be placed for the collection and removal thereof and may require certain kinds of waste, such as garden waste, to be bundled or packaged and be placed in that position at the times and for a period as the Municipality may require.
- [2] The Municipality must, on removal days, collect only waste placed in a waste bin or other container approved by it or is which bundled or packaged in a manner approved by the Municipality.
- [3] Where a particular kind of waste as stipulated by the Municipality is not collected by the Municipality from premises, the owner of the waste must arrange for the collection and transport of the waste as often as may be necessary to prevent undue accumulation or any nuisance arising there from, to a waste disposal or processing site under the control of the Municipality, or to such other place as may be approved by the Municipality.
- [4] The Municipality may decide on separate times on which particular categories of waste are to be collected.
- [5] The Municipality may –
 - [a] cause collections to be made at regular periods daily or otherwise, and may alter dates of collection;

- [b]** increase the number of collections as it may deem necessary or desirable; or
 - [c]** make additional collections should it be desirable to do so.
- [6]** In the event that any additional collection being required by the owner of premises, the additional collection will be subject to the approval of the Municipality and each additional collection must be paid for by the owner of premises from which the waste is collected at the tariff prescribed by the Municipality.
- [7]** The Municipality may, upon application by the owner of premises, approve alternative arrangements for removal of waste from such premises.
- [8]** A person who contravenes the provisions of this section commits an offence.

[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 or she —
 - [a] denies access to the premises to an authorised employee of the Municipality in the performance of his or her duties; or
 - [b] obstructs or impedes such employee of the Municipality in the performance of his or her duties.

[9] BURNING OF WASTE

Nobody may burn waste without the written approval of the Municipality.

[10] ESTABLISHMENT AND CONTROL OF DISPOSAL SITE

The Municipality may establish and control a disposal site, or may appoint agents or may contract some other person or body to control, manage and operate a disposal site on behalf of the Municipality in accordance with the provisions of this by-law and the provisions of any other legislation that may be applicable.

[11] ACCESS TO DISPOSAL SITE

- [1] Entry to a disposal site may be limited to persons intending to dump waste who —
 - [a] have paid the prescribed fees; and
 - [b] are in possession of written permission issued by the Municipality which permits him or her to dump such waste at a disposal site; and
 - [c] has obtained written consent from the Municipality to recycle any materials or objects on such a site.
- [2] Notwithstanding anything to the contrary contained in this by-law, any employee of the Municipality or anybody acting on behalf of the

Municipality and duly authorised thereto, may enter a disposal site at any time in exercising his or her duties.

- [3] Anyone making use of the disposal site or entering the disposal site does so at their own risk and the Municipality accepts no responsibility for their safety or any losses or damages they might sustain.
- [4] Anyone who enters a disposal site or who is found on such a site in contravention of the provisions of this section commits an offence.

[12] OFF-LOADING OF WASTE

- [1] Anyone off-loading waste at a waste disposal site must do so at such a place within the borders of the disposal site and in such a manner as the attendant may direct.
- [2] The Municipality may –
 - [a] set aside any part of the disposal site where waste only of a particular kind may be dumped or deposited;
 - [b] limit the type and size of vehicle from which waste may be dumped or deposited at any disposal site;
 - [c] limit the quantity of waste in general or the quantity of a particular type of waste that may be dumped or deposited at any disposal site; and
 - [d] limit the days when and hours during which dumping may take place at any disposal site.
- [3] Any requirement imposed in terms of this by-law must be indicated to the public by means of an appropriate notice erected at the entrance of the disposal site concerned and any instruction issued by an official of the Municipality, or someone acting on behalf of the Municipality in charge of access control at the dumping site, must be strictly complied with.
- [4] The Municipality reserves the right not to permit the dumping of hazardous or offensive waste at a disposal site.

[5] Anyone who contravenes any of the provisions of this section commits an offence.

[13] OWNERSHIP OF WASTE

[1] Waste dumped at a disposal site or left on a street curb for collection becomes the property of the Municipality and no person who is not duly authorised by the Municipality to do so may remove or interfere with such waste.

[2] A person who contravenes this section commits an offence.

[14] CATEGORIES OF WASTE

The Municipality may, for the purposes of this by-law, categorise waste into different categories.

[15] SEPARATION OF WASTE

The Municipality may, for the purposes of this by-law, require that waste be separated into different kinds and nature of waste.

[16] CHARGES

[1] The Municipality may fix the charges payable to it for the removal of waste from premises or the dumping of waste at a disposal site under the control of the Municipality.

[2] A person who fails or refuses to pay the charges contemplated in subsection [1] commits an offence.

[17] EXEMPTIONS

[1] Anyone may by means of a written application in which the reasons are given in full, apply to the Municipality for exemption from any provision of this by-law.

[2] The Municipality may –

- [a] grant an exemption in writing and the conditions in terms of which, if any, and the period for which such exemption is granted must be stipulated therein;
 - [b] alter or cancel any exemption or condition in an exemption; or
 - [c] refuse to grant an exemption.
- [3] An exemption does not take effect before the applicant has undertaken in writing to comply with all conditions imposed by the Municipality under subsection [2] and if an activity is commenced before such undertaking has been submitted to the Municipality, the exemption lapses.
- [4] If any condition of an exemption is not complied with, the exemption lapses immediately.

[18] APPEAL

Anyone whose rights are affected by a decision of the Municipality may appeal against that decision by giving written notice of the appeal and the reasons therefore in terms of section 62 of the Local Government: Municipal Systems Act, 2000 to the Municipal Manager within 21 days of the date of the notification of the decision.

[19] OFFENCES

- [1] Anyone is guilty of an offence who –
 - [a] contravenes section 2[1][a] or 2[1][e];
 - [b] obstructs the Municipality when it is taking steps in terms of section 2[3];
 - [c] fails to comply with the terms of any notice issued in terms of section 2[7].

[20] PENALTIES AND CONVICTIONS

- [1]** A court must, if it has convicted someone of an offence constituting a contravention of sections 2[1][b] or 2[1][c], impose a sentence of imprisonment for a period of not less than six months or a fine in accordance with the Adjustment of Fines Act, 1991 [Act No. 101 of 1991]: Provided that if the court is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence, the court must enter those circumstance on the record of the proceedings and may impose such a lesser sentence.
- [2]** Subject to the provisions of section 4[1], a court may impose a sentence of community service in place of a fine or imprisonment when convicting a person of an offence in terms of these by-laws and when considering sentence must take into account, inter alia, that –
- [a]** a convicted person has delayed complying with the terms of any notice or directions given in terms of these by-laws to such person; and
 - [b]** a financial advantage was or would have been gained by a convicted person in consequence of the commission of the offence.
- [3]** If a person is convicted by a court of an offence which has caused damage to or loss of property, then in addition to any other sentence it imposes, the court may –
- [a]** where the property belongs to another person upon the application of the injured person or of the prosecutor acting on the instructions of the injured person, forthwith award the injured person compensation for such damage or loss in accordance with the provisions of section 300 of the Criminal Procedure Act, 1977 [Act No. 51 of 1977] or any similar law;
 - [b]** order the convicted person to repair at his or her cost and to the satisfaction of the Municipality any damage caused to the site of

the offence or to the environment as a result of the commission of the offence.

- [4] If someone convicted by a court of a contravention of these by-laws or of any notice or directions issued under these by-laws, the court may, in addition to any punishment which it imposes, issue an order compelling that person to comply with the relevant provisions of these by-laws or of the notice or directions within a period determined by the court.
- [5] An employer or principal commits an offence if he or she failed to take all reasonable steps to prevent an act or omission of a manager, agent or employee whose act or omission is in contravention of these by-laws and proof of the act or omission by the said manager, agent or employee will be prima facie evidence that the employer is guilty under this subsection: Provided that no penalty other than a fine shall be imposed if a conviction is based on this subsection.

[21] REPEAL AND SAVINGS

- [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.

No. 4

**INTSIKA YETHU MUNICIPALITY
CREDIT CONTROL MANAGEMENT**

CREDIT CONTROL BY-LAW

TABLE OF CONTENTS

1. By-law Objectives.....	3
2. Expected Future Payments Levels	3
3. Notice of Default and Intended Termination or Restriction of Services.....	4
4. Reinstatement of Restricted Services.....	4
5. Period for Reinstatements	4
6. Illegal Reconnections.....	5
7. Restrictions of Services	5
8. Services not reinstated after four weeks.....	5
9. Arrangements for payment of arrear accounts.....	6
10. Service Contract.....	7
11. Payment of Deposits.....	8
12. Allocation of Part-payments and Appropriation of Deposits	8
13. Queries by Accountholders.....	8
14. Dishonored and other unacceptable cheques	9
15. Delegation of responsibilities by Municipal Manager.....	10
16. Role of Municipal Manager.....	10
17. Role of Councillors.....	11
18. Interest on arrears and other penalty charges	12
19. Indigency Management.....	12
20. Uncollectible Arrears.....	13
21. Arrears which have arisen prior to the adoption of the present by-law	13
22. By-Laws to be adopted.....	14
23. Annexure: Legal Requirements.....	15
23.1 Section I: Local Government : Municipal Systems Act No. 32 of 2000.....	16
23.2 Section 95: Customer Care and Management.....	16
23.3 Section 96: Debt Collection Responsibility of Municipalities.....	17
23.4 Section 97: Contents of By-law.....	17
23.5 Section 98: By-Laws to give effect to By-law	18
23.6 Section 99: Supervisory Authority.....	18

INTSIKA YETHU MUNICIPALITY CREDIT CONTROL MANAGEMENT

CREDIT CONTROL BY-LAW

23.7	<i>Section 100: Implementing Authority</i>	19
23.8	<i>Section 101: Municipality's Right of Access to Premises</i>	19
23.9	<i>Section 102: Accounts</i>	19
23.10	<i>Section 103: Agreements with Employees</i>	20
23.11	<i>Section 118: Restraint on Transfer of Property</i>	20
23.12	<i>Code of Conduct for Municipal Staff Members</i>	21
23.13	<i>Code of Conduct for Councillors</i>	21
23.14	<i>Section II: Local Government: Municipal Finance Management Act No. 56 of 2003</i>	21
23.15	<i>Section 64: Revenue Management</i>	22
23.16	<i>Note: Section 164: Forbidden Activities</i>	23
23.17	<i>Section III: Local Government: Municipal Property rates Act No. 6 of 2004</i>	23
23.18	<i>Section 28: Recovery of Rates in Arrears from Tenants and Occupiers</i>	23
23.19	<i>Section 29: Recovery of Rates from Agents</i>	23

INTSIKA YETHU MUNICIPALITY CREDIT CONTROL MANAGEMENT

CREDIT CONTROL BY-LAW

1. By-law Objectives

The council of the municipality, in adopting this by-law on credit control and debt collection, recognises its constitutional obligations to develop the local economy and to provide acceptable services to its residents. It simultaneously acknowledges that it cannot fulfill these constitutional obligations unless it receive payment for the services which it provides and for the taxes which it legitimately levies – in full from those residents who can afford to pay, and in accordance with its indigency relief measures for those who have registered as indigents in terms of the council's approved indigency management by-law.

2. Expected Future Payments Levels

In terms of the budgets approved by the council, and in accordance with commonly accepted best practice, this municipality aims to strive to its utmost ability to ensure that payment levels for the present and future financial years, in respect of all amounts legitimately owing to the municipality – that is, inclusive of the balance of the monthly accounts payable by registered indigents – are maintained at an annual average of at least 70%.

The only solution to the ongoing problem of non-payment by residents who can afford their monthly commitments to the municipality is to introduce a twofold approach: to promulgate credit control and debt collection by-laws which deal stringently with defaulters, but at the same time – through the formal political structures of the municipality, and in the administration's general dealings with the public – to make the community aware of its legal obligations towards the municipality, and to emphasise the negative consequences for all if non-payment continues. The municipality's ward committees can assist with this responsibility.

INTSIKA YETHU MUNICIPALITY CREDIT CONTROL MANAGEMENT

CREDIT CONTROL BY-LAW

3. Notice of Default and Intended Termination or Restriction of Services

- The municipal manager must dispatch notice of default within 7 (seven) calendar days to all the affected accountholders.
- Where the notice of default has been issued to a consumer and no steps have been taken to settle the debt, the municipal manager may restrict the provision of refuse removal service after 14 (fourteen) calendar days.

4. Reinstatement of Restricted Services

Services to defaulting accountholders restricted in terms of part 3 above shall be reinstated by the municipal manager only when all the following conditions have been met:

- the arrear account has been paid in full, including the interest raised on such account; or an acceptable arrangement has been made with the municipal manager for the payment of the arrear account, including the interest raised on such account;
- the charge(s) for the notice sent in terms of part 3 and for the reinstatement of the restricted service(s), as determined by the council from time to time, have been paid in full;
- a service contract has been entered into with the municipality, as contemplated in part 10 below; and
- a cash deposit has been lodged with the municipal manager in compliance with part 11, such deposit to be newly determined on the basis of currently prevailing consumption and usage of services in respect of the property concerned or, if insufficient data is available in regard to such consumption, of the currently prevailing consumption and usage of services in respect of a comparable property.

5. Period for Reinstatements

The municipal manager shall reinstate restricted services within 3 (three) working days after the date on which the conditions set out in part 4 have been met, unless the municipal manager is unable to do so because of circumstances beyond the control of the municipality. In the latter event the municipal manager shall promptly inform the mayor of such circumstances and of any actions required to overcome the circumstances concerned.

INTSIKA YETHU MUNICIPALITY CREDIT CONTROL MANAGEMENT

CREDIT CONTROL BY-LAW

6. Illegal Reconnections

The municipal manager shall, as soon as it comes to the notice of the municipal manager that any terminated service has been irregularly reconnected, report such action to the South African Police Service, disconnect such service(s), and not reconnect such service(s) until the arrear account, including the interest raised on such account, the charges for the notice sent in terms of part 3 and the charges for both the original and subsequent reconnection of the service(s) and the revised deposit have been paid in full, together with such penalty as may be determined by the council from time to time. In addition, all metered consumption since the date of the illegal reconnection or the estimated consumption if a reliable meter reading is not possible, shall also be paid full before any reconnection is considered.

7. Restrictions of Services

If the municipal manager is of the opinion that the termination of services, in the case of a particular property in respect of which the account is in arrear, is not in the best interests of the community – specifically because of the potential endangerment of the life of any person, whether resident in or outside the property concerned – the municipal manager may appropriately restrict rather than terminate the services in question.

8. Services not reinstated after four weeks

If services have been restricted in the case of a property in respect of which the account is in arrear, and the account holder has not paid such arrears, including the interest raised on such account, or made an acceptable arrangement with the municipal manager for the payment of the arrear account, including the interest raised on such account, within a period of 28 (twenty eight) calendar days after the date of termination or restriction of the service(s) concerned, the municipal manager shall forthwith hand such account over for collection and such further action as is deemed necessary to the municipality's attorneys or any debt collecting agency appointed by the council. Such further action shall include if necessary the sale in execution of such property to recover arrear property rates and service charges (if the account holder is also the owner of the property). All legal expenses incurred by the municipality shall be for the account of the defaulting account holder.

INTSIKA YETHU MUNICIPALITY CREDIT CONTROL MANAGEMENT

CREDIT CONTROL BY-LAW

9. Arrangements for payment of arrear accounts

Allowing defaulting accountholders to make arrangements for the payment of arrear accounts shall be at the discretion of the municipal manager.

Each defaulting accountholder shall be allowed a maximum period of 3 (three) months within which to pay an arrear account, together with the interest raised on such account, and it shall be a condition for the conclusion of any arrangement that the accountholder is bound to pay every current municipal account in full and on time during the period over which such arrangement extends.

If an accountholder breaches any material term of an arrangement, the balance of the arrear account, together with the balance of interest raised on such account, shall immediately become due and payable to the municipality, and if the accountholder defaults on such payment, the municipal manager shall terminate or restrict services to the property in question and shall forthwith hand such account over for collection as envisaged in part 8.

An accountholder who has breached an arrangement as set out above shall not be allowed to make any further arrangements for the payment of arrear accounts, but shall be proceeded against, after the dispatch of the initial notice of default as envisaged in part 3 and failure by the accountholder to pay the arrear account, together with interest raised on such arrears as required in terms of such notice, as though such accountholder had breached a material term of an arrangement.

INTSIKA YETHU MUNICIPALITY CREDIT CONTROL MANAGEMENT

CREDIT CONTROL BY-LAW

10. Service Contract

A service contract shall henceforth be entered into with the municipality for each property to which the municipality is expected to provide the following service:

- Refuse collection;
- Water; and,
- Sewerage.

Such contract shall set out the conditions on which services are provided and shall require the signatory to note the contents of the municipality's credit control and debt collection by-law, a copy of which shall be provided to such signatory, as well as the provision of the Municipal Systems Act in regard to the municipality's right of access to property.

Where the signatory is not the owner of the property to which the services are to be provided, a properly executed rental contract between the owner and the tenant confirming that the signatory is the lawful occupant of the property shall be attached to the service contract.

Current consumers and users of the municipality's services who have not entered in a service contract as envisaged above, must do so within 2 years from the date on which the by-laws to implement the present by-law are published, and failure to do so shall be considered as a default equivalent to non-payment in terms of part 3 above.

INTSIKA YETHU MUNICIPALITY CREDIT CONTROL MANAGEMENT

CREDIT CONTROL BY-LAW

11. Payment of Deposits

Whenever a service contract is entered into in terms of part 10, the signatory shall lodge a cash deposit with the municipality, such deposit shall be determined from time to time by the municipality.

12. Allocation of Part-payments and Appropriation of Deposits

If an accountholder pays only part of any municipal account due, the municipal manager shall allocate such payment as follows:

- firstly, to any unpaid charges levied by the municipality in respect of unacceptable cheques, notices, legal expenses and reconnections or reinstatements of services in respect of the account or property concerned;
- secondly, to any unpaid interest raised on the account;
- thirdly, to any unpaid sewerage charges;
- fourthly, to any unpaid refuse collection charges;
- lastly, to any unpaid property rates;

This sequence of allocation shall be followed notwithstanding any instructions to the contrary given by the accountholder. In the event of an accountholder's defaulting on the payment of an arrear account, as contemplated in parts 6, 8 and 9, the municipal manager shall forthwith appropriate as much of such deposit as is necessary to defray any costs incurred by the municipality and the arrear amount owing to the municipality in the same sequence that is applicable to the allocation of part payments, as contemplated above.

13. Queries by Accountholders

In the event of an accountholder reasonably querying any item or items on the monthly municipal account, no action shall be taken against the accountholder as contemplated in part 3 provided the accountholder has paid by due date an amount equal to the monthly average monetary value of the three most recent unqueried accounts in respect of the service under query, as well as all unqueried balances on

INTSIKA YETHU MUNICIPALITY CREDIT CONTROL MANAGEMENT

CREDIT CONTROL BY-LAW

such account, and provided further such query is made in writing by the accountholder or is recorded in writing by the municipal manager on behalf of the accountholder on or before the due date for the payment of the relevant account. Any query raised by an accountholder in the circumstances contemplated in part 14 below shall not constitute a reasonable query for the purposes of the present paragraph.

14. Dishonored and other unacceptable cheques

If an accountholder tenders a cheque which is subsequently dishonoured by or is found to be unacceptable to the accountholder's bankers, the municipal manager shall – in addition to taking the steps contemplated in this by-law against defaulting accountholders – charge such accountholder the penalty charge for unacceptable cheques, as determined by the council from time to time, and such charge shall rank equally with the costs and expenses incurred by the municipality for purposes of determining the sequence of allocations and appropriations contemplated in part 12.

INTSIKA YETHU MUNICIPALITY CREDIT CONTROL MANAGEMENT

CREDIT CONTROL BY-LAW

15. Delegation of responsibilities by Municipal Manager

The municipal manager, including any person acting in such capacity, shall be responsible to the council for the implementation of this by-law and its attendant by-laws but – without in so doing being divested of such responsibility – may delegate in writing all or any of the duties and responsibilities referred to in these by-laws to any other official or officials of the municipality, and may from time to time in writing amend or withdraw such delegation(s).

16. Role of Municipal Manager

Section 100 of the Municipal Systems Act 2000 (see part 24 below) clearly assigns the legal responsibility for implementing the credit control and debt collection policies and by-laws to the municipal manager.

It is also an integral feature of the present by-law that the municipal manager shall report monthly to the executive mayor or the executive committee, as the case may be, and quarterly to the council on the actions taken in terms of the by-laws, and on the payment levels for the periods concerned. Such reports shall, as soon as practicably possible, provide the required information both in aggregate and by municipal ward.

In addition, such monthly report shall indicate any administrative shortcomings, the measures taken or recommended to address such shortcomings, and any actions by councillors who could reasonably be interpreted as constituting interference in the application of the by-laws.

Notwithstanding all the foregoing references to the accountability of the municipal manager in regard to these by-laws, it is incumbent on all the officials of the municipality, certainly all those who are at management level, as well as more junior officials who are directly or indirectly involved with the community and the municipality's general customer relations, to promote and support both this credit control and debt collection by-law and the application of the attendant by-laws. The responsibilities of all

INTSIKA YETHU MUNICIPALITY CREDIT CONTROL MANAGEMENT

CREDIT CONTROL BY-LAW

officials include reporting to the municipal manager any evident breaches of these by-laws, whether by members of the community, other officials or councillors of the municipality.

17. Role of Councillors

Section 99 of the Systems Act 2000 places the important legal responsibility on the executive mayor or executive committee, as the case may be, of monitoring and supervising the application of the present by-law and the attendant by-laws, and of reporting to the council on the extent and success of credit control actions.

The present by-law further recommends that the municipality's ward committees be actively involved in implementing the credit control and debt collection programme, and should therefore receive monthly reports on the status of the municipal manager's credit control actions. The ward committees must also actively promote the present by-law, and ensure at the same time that the municipality's customer relations are of a standard acceptable to the community.

In order to maintain the credibility of the municipality in the implementation of the present by-law and the attendant by-laws, it is essential that councillors should lead by example. Councillors, by adopting this by-law, therefore pledge, not only their unqualified support for the by-law, but their commitment to ensuring that their own accounts will at no stage fall into arrears.

INTSIKA YETHU MUNICIPALITY CREDIT CONTROL MANAGEMENT

CREDIT CONTROL BY-LAW

18. Interest on arrears and other penalty charges

Interest shall be charged on all arrear accounts at 16.5% per annum. This rate shall be reviewed on an annual basis.

If the municipality uses more than one banking institution it shall for purposes of determining the interest on arrear accounts apply the overdraft rate offered by the institution with which its primary bank account is placed.

Interest shall be calculated on a daily basis. For purposes of determining arrear amounts, all amounts unpaid including interest previously raised and penalty charges, but excluding value added tax, shall be taken into account.

In considering each annual budget the council shall review the adequacy of its interest charges, and shall determine the following for the financial year concerned:

- charges for reinstatement of services (part 4)
- charges for notices of default (part 3)
- Penalty charges for dishonored cheques (part 15).

19. Indigency Management

In regard to the payments expected from registered indigents, and the credit control and debt collection actions contemplated in respect of such residents, this by-law must be read in conjunction with the municipality's approved by-law on indigency management.

**INTSIKA YETHU MUNICIPALITY
CREDIT CONTROL MANAGEMENT**

CREDIT CONTROL BY-LAW

20. Uncollectible Arrears

The effective implementation of the present by-law also implies a realistic review of the municipality's debtors' book at the conclusion of each financial year. The municipal manager shall as soon as possible after 30 June each year present to the council a report indicating the amount of the arrears which it is believed is uncollectable, together with the reasons for this conclusion.

The council shall then approve the write off of such arrears, if it is satisfied with the reasons provided.

21. Arrears which have arisen prior to the adoption of the present by-law

The council shall separately consider arrears which arose prior to the adoption of the present by-law, and shall advise accountholders of their respective obligations in regard to such arrears. In determining such obligations, the council shall have regard to the quantum of such arrears, to the period over which the default occurred, and to whether the accountholder concerned has registered as an indigent in terms of the municipality's by-law on indigency management. The council shall further consider an incentive scheme which will appropriately encourage accountholders to settle all or a stated percentage of these arrears.

INTSIKA YETHU MUNICIPALITY CREDIT CONTROL MANAGEMENT

CREDIT CONTROL BY-LAW

22. By-Laws to be adopted

By-laws shall be adopted to give effect to the council's credit control and debt collection by-law.

These by-laws deal severely with defaulters, and their application requires a considerable degree of commitment from the municipal manager and his or her administration, as well as from the municipality's political structures. For these by-laws to ensure the avoidance of financial misfortunes for the municipality, and to lead to sustained financial stability, their application will have to receive the constant attention of all the municipality's key role players and decision makers. If these by-laws are not constantly and consistently applied, from month to month and from year to year, the municipality's political and administrative credibility will be severely impaired, and it may not be able to avert financial collapse in the long run.

Although these by-laws envisage even the termination of basic services for defaulting accountholders this will not in itself – no matter how harsh it may seem to those Councillors and officials who are disposed to greater leniency – prevent the accumulation of arrears. The monthly billing for property rates, sewerage charges and refuse removal fees will continue in respect of defaulting accountholders, even though their consumption of electricity and water may have been terminated or restricted. The termination or restriction of services must therefore be seen merely as a vital first step in the credit control programme, and the commitment by the municipality to follow up such actions with the full force of the law at the municipality's disposal is an essential further step if the accumulation of debts is to be meaningfully curtailed.

The by-laws comply with the requirements of the Municipal Systems Act 2000, the Water Services Act 1997 and the Municipal Finance Management Act 2003.

The by-laws also deal with the determination and payment of consumer deposits, and in accordance with part 11 of the present by-law effectively differentiate in this respect between accountholders who are both the owners and occupiers of the fixed property concerned, on the one hand, and accountholders who are tenants of such properties, on the other. This differentiation is essential if the municipality wishes to

INTSIKA YETHU MUNICIPALITY CREDIT CONTROL MANAGEMENT

CREDIT CONTROL BY-LAW

protect its interests in so far as tenants are concerned, but – in any event – it is not believed that a degree of differentiation imposes an unreasonable financial burden on such tenants (effectively the deposit required from owners/occupiers represents three months average consumption whereas the deposit in the case of tenants represents four months consumption).

It is not proposed that accountholders who have currently not lodged deposits should be required to do so forthwith, but only within a two-year period, but that accountholders who default at any future date should be immediately obliged both to sign proper service contracts and to lodge the deposits required in terms of both such contract and the by-laws.

23. Annexure: Legal Requirements

It is essential for the protection of the municipality's interests that the provisions of particularly the Municipal Systems Act 2000 and the Property Rates Act 2004, in so far as they provide additional debt collection mechanisms for municipalities, be diligently enforced. At the same time, both the council and the administration must note the obligations, which the municipality has towards the community in respect of customer care and relations.

For ease of reference a paraphrase of the relevant extracts from the Municipal Systems Act, specifically Sections 95 to 103 and Section 118, are therefore appended to this by-law, as are Sections 28 and 29 of the Property Rates Act. The immediately relevant extracts from the Water Services Act 1997 and the Municipal Finance Management Act are also included in the annexure.

INTSIKA YETHU MUNICIPALITY CREDIT CONTROL MANAGEMENT

CREDIT CONTROL BY-LAW

23.1 Section I: Local Government : Municipal Systems Act No. 32 of 2000**23.2 Section 95: Customer Care and Management**

A municipality must, in relation to the levying of rates and other taxes, and the charging of fees for municipal services, within its financial and administrative capacity, do the following:

- establish a sound customer management system which aims to create a positive and reciprocal relationship between persons liable for these payments and the municipality itself or (where applicable) a service provider;
- establish mechanisms for users of services and ratepayers to give feedback to the municipality or other service provider with regard to the quality of the services and the performance of the service provider;
- take reasonable steps to ensure that users of services are informed of the costs involved in service provision, the reasons for the payment of service fees, and the manner in which moneys raised from the service are utilised;
- where the consumption of services is measured, take reasonable steps to ensure that the consumption by individual consumers of services is measured through accurate and verifiable metering services;
- ensure that persons liable for payments receive regular and accurate accounts which indicate the basis for calculating the amounts due;
- provide accessible mechanisms for those persons to query or verify accounts and metered consumption, as well as appeal procedures which allow such persons to receive prompt redress for inaccurate accounts;
- provide accessible mechanisms for dealing with complaints from such persons, together with prompt replies and corrective action by the municipality;
- provide mechanisms to monitor the response time and efficiency in complying with the aforementioned requirements; and
- provide accessible pay points and other mechanisms for settling accounts or for making prepayments for services.

INTSIKA YETHU MUNICIPALITY CREDIT CONTROL MANAGEMENT

CREDIT CONTROL BY-LAW

23.3 Section 96: Debt Collection Responsibility of Municipalities

A municipality must collect all moneys that are due and payable to it, subject to the requirements of the present Act and any other applicable legislation. For this purpose, the municipality must adopt, maintain and implement a credit control and debt collection by-law which is consistent with its rates and tariff policies and which complies with the provisions of the present Act.

23.4 Section 97: Contents of By-law

The municipality's credit control and debt collection by-law must provide for all of the following:

- credit control procedures and mechanisms;
- debt collection procedures and mechanisms;
- provision for indigent debtors in a manner consistent with its rates and tariff policies and any national by-law on indigents;
- realistic targets consistent with generally recognised accounting practices and collection ratios, and the estimates of income set in the budget less an acceptable provision for bad debts;
- interest on arrears (where appropriate);
- extensions of time for payment of accounts;
- termination of services or the restriction of the provision of services when payments are in arrears;
- matters relating to unauthorised consumption of services, theft and damages; and
- any other matters that may be prescribed by regulation in terms of the present Act.

The municipality, within its discretionary powers, may differentiate in its credit control and debt collection by-law between different categories of ratepayers, users of services, debtors, taxes, services, service standards and other matters, and, if so, must ensure that such differentiation does not amount to unfair discrimination.

INTSIKA YETHU MUNICIPALITY CREDIT CONTROL MANAGEMENT

CREDIT CONTROL BY-LAW

23.5 Section 98: By-Laws to give effect to By-law

The council of the municipality must adopt by-laws to give effect to the municipality's credit control and debt collection by-law, its implementation and enforcement.

Such by-laws may differentiate between different categories of ratepayers, users of services, debtors, taxes, services, service standards and other matters, and, if so, must ensure that such differentiation does not amount to unfair discrimination.

23.6 Section 99: Supervisory Authority

A municipality's executive mayor or executive committee, as the case may be, or – if the municipality does not have an executive committee or executive mayor – the council of the municipality itself, or a committee appointed by the council as the supervisory authority, must do all of the following:

- oversee and monitor the implementation and enforcement of the municipality's credit control and debt collection policies and any by-laws enacted in terms of the foregoing requirements, and the performance of the municipal manager in implementing the policies and by-laws;
- where necessary, evaluate or review the policies and by-laws, and the implementation of such policies and by-laws, in order to improve the efficiency of its credit control and debt collection mechanisms, processes and procedures; and
- at such intervals as may be determined by the council, report to a meeting of the council, except when the council itself performs the duties of the supervisory authority.

INTSIKA YETHU MUNICIPALITY CREDIT CONTROL MANAGEMENT

CREDIT CONTROL BY-LAW

23.7 Section 100: Implementing Authority

The municipal manager, or – where applicable – the service provider must:

- implement and enforce the municipality's credit control and debt collection policies and by-laws enacted in terms of the foregoing requirements;
- in accordance with the credit control and debt policies and any by-laws, establish effective administrative mechanisms, processes and procedures to collect moneys due and payable to the municipality; and
- at such intervals as may be determined by the council, report the prescribed particulars to a meeting of the supervisory authority referred to previously.

23.8 Section 101: Municipality's Right of Access to Premises

The occupier of premises in a municipality must give an authorised representative of the municipality or of a service provider access at all reasonable times to the premises in order to read, inspect, install or repair any meter or service connections for reticulation, or to disconnect, stop or restrict the provision of any service.

23.9 Section 102: Accounts

Except where there is a dispute between the municipality and the person from whom the municipality has claimed any specific amount, a municipality may:

- consolidate any separate account of such person;
- credit a payment by such person against any account of that person; and
- implement any of the debt collection and credit control measures provided for in the present Act in relation to any arrears on any of the accounts of such person.

INTSIKA YETHU MUNICIPALITY CREDIT CONTROL MANAGEMENT

CREDIT CONTROL BY-LAW

23.10 Section 103: Agreements with Employees

A municipality may, within its discretionary powers, but with the consent of any person liable to the municipality for the payment of rates or other taxes or fees for municipal services, enter into an agreement with such person's employer to deduct from the salary or wages of such person any outstanding amounts due by such person to the municipality or such regular monthly amounts as may be agreed to.

The municipality may further, within its discretionary powers, provide special incentives for employers to enter into such agreements and for employees to consent to such agreements.

23.11 Section 118: Restraint on Transfer of Property

The registrar of deeds or any other registration officer of immovable property may not register the transfer of any property other than on the production to such registration officer of a prescribed certificate issued by the municipality in which such property is situated, and which certificate certifies that all amounts due in connection with such property for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties during the two years preceding the date of application for the certificate have been fully paid.

A municipality may recover, as far as is practicable, all amounts due to it for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties, in preference to any mortgage bonds registered against any property which is to be transferred.

INTSIKA YETHU MUNICIPALITY CREDIT CONTROL MANAGEMENT

CREDIT CONTROL BY-LAW

23.12 Code of Conduct for Municipal Staff Members

Paragraph 10 of this Code of Conduct stipulates that if any staff member of a municipality is in arrears to the municipality for rates and service charges for a period longer than 3 months, the municipality may deduct any outstanding amounts from such staff member's salary after this period.

23.13 Code of Conduct for Councillors

Section 6A of this code requires councillors to pay all rates, tariffs, rents and other moneys due to the municipality promptly and diligently.

The municipal manager is further required to notify the speaker of the council and the MEC for Local Government, in writing, whenever a councillor has been in arrears with any of these payments for a period exceeding 30 days.

23.14 Section II: Local Government: Municipal Finance Management Act No. 56 of 2003

INTSIKA YETHU MUNICIPALITY CREDIT CONTROL MANAGEMENT

CREDIT CONTROL BY-LAW

23.15 Section 64: Revenue Management

The accounting officer of the municipality is responsible for the management of the municipality's revenues, and must, for this purpose, take all reasonable steps to ensure:

- that the municipality has effective revenue collection systems consistent with Section 95 of the Municipal Systems Act 2000 and the municipality's credit control and debt collection policies;
- that revenues due to the municipality are calculated on a monthly basis;
- that accounts for municipal taxes and charges for municipal services are prepared on a monthly basis, or less often as may be prescribed where monthly accounts are uneconomical;
- that all moneys received are promptly deposited in accordance with the requirements of the present Act, into the municipality's primary and other bank accounts;
- that the municipality has and maintains a management, accounting and information system which recognises revenues when they are due, accounts for debtors, and accounts for receipts of revenues;
- that the municipality has and maintains a system of internal control in respect of debtors and revenues, as may be prescribed;
- that the municipality charges interest on arrears, except where the council has granted exemptions in accordance with its budget related policies and within a prescribed framework; and
- that all revenues received by the municipality, including revenues received by any collecting agent on its behalf, is reconciled at least on a weekly basis.

The accounting officer must immediately inform the national treasury of any payments due by an organ of state to the municipality in respect of municipal taxes or for municipal services, if such payments are regularly in arrears for periods of more than 30 days.

INTSIKA YETHU MUNICIPALITY CREDIT CONTROL MANAGEMENT

CREDIT CONTROL BY-LAW

23.16 Note: Section 164: Forbidden Activities

Section 164(1)(c) lists as a forbidden activity the making by a municipality of loans to councillors or officials of a municipality, directors or officials of any municipal entity, and members of the public. It has been assumed for purposes of compiling the credit control and debt collection by-law that allowing any party to pay off arrears of rates and municipal service charges is not tantamount to the making of a loan in terms of Section 164.)

23.17 Section III: Local Government: Municipal Property rates Act No. 6 of 2004

23.18 Section 28: Recovery of Rates in Arrears from Tenants and Occupiers

If the rates owed by a property owner are unpaid by due date, the municipality may recover such rates, either in whole or in part, from any tenant or occupier of the property concerned.

However, the tenant or occupier of the property must first be given written notice of the municipality's intentions, and the amount which the municipality may recover is limited to the amount of rent and other moneys due and unpaid by the tenant or occupier to the property owner concerned.

23.19 Section 29: Recovery of Rates from Agents

If it is more convenient for the municipality to do so, it may recover the rates due on a property, either in whole or in part, from the agent of the property owner concerned.

However, the agent must first be given written notice of the municipality's intention, and the amount the municipality may recover is limited to the amount of any rent and other moneys received by the agent on behalf of such property owner, less any commission due to the agent.

No. 5

INTSIKA YETHU MUNICIPALITY



BY-LAW FOR THE CONTROL OVER BUILDING

INTSIKA YETHU 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 Control over Buildings that come into operation on the date of publication thereof.

BY-LAWS RELATING TO THE CONTROL OVER BUILDINGS

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 provide for the control over buildings erected on land within the area of jurisdiction of the Municipality and for matters connected therewith;

Be it therefore enacted by the Council as follows:

TABLE OF CONTENTS

- [1]** Definitions
- [2]** Building on land to be reflected on plans
- [3]** Application for the issue of statement
- [4]** Failure by the Municipality to act within a certain period
- [5]** Delegation of powers
- [6]** Penalties
- [7]** Repeal of by-laws

[1] DEFINITIONS

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

"Act" means the National Building Regulations and Building Standards Act, 1977 [Act No. 103 of 1977], and shall include any regulation made in terms of section 17 of the Act;

"building" includes –

- [a] any structure, whether of a temporary or permanent nature and irrespective of the materials used in the erection thereof, erected or used for or in relation to –
 - [i] the accommodation or convenience of human beings or animals;
 - [ii] the manufacture, processing, storage, display or sale of any goods;
 - [iii] the rendering of any service;
 - [iv] the destruction or treatment of refuse or other waste materials;
 - [v] the cultivation or growing of any plant or crop;
- [b] any wall, swimming bath, swimming pool, reservoir or bridge or any other structure connected therewith;
- [c] any fuel pump or any tank used in connection therewith;
- [d] any part of a building, including a building as defined in sub-section [a], [b] or [c] of this sub-section;
- [e] any facilities or system, or part or portion thereof, within or outside but incidental to a building, for the provision of a water supply, drainage, sewerage, storm-water disposal, electricity supply or other similar service in respect of the building.

"Building Control Officer" means any person appointed or deemed to be appointed as Building Control Officer by the Municipality in terms of section 5 and section A16. of the National Building Regulations and Building Standards Act, 1977 [Act No. 103 of 1977];

"Municipality" means the Intsika Yethu Municipality and includes any duly authorised political structure, political office bearer or official thereof; and
"Municipal Manager" means the person appointed as such in terms of section 82 of the Local Government : Municipal Structures Act, 1998 [Act No. 117 of 1998] and includes any person acting in this position.

[2] BUILDINGS ON LAND TO BE REFLECTED ON PLANS

[1] Subject to the provisions of these by-laws, the Municipality may not issue a certificate referred to in section 118[1] of the Local Government: Municipal Systems Act, 2000 [Act No. 32 of 2000] regarding land, unless the Municipality is satisfied that –

- [a]** any building erected on the land, in respect of which plans and specifications are to be drawn and submitted to the Municipality for approval in terms of the Act, is properly erected and maintained in accordance with such plans and specifications; and
- [b]** no building contemplated in subsection [1], in respect of which plans and specifications have not been approved by the Municipality, is erected on the land; and
- [c]** any building erected on the land complies with all the requirements of the National Building Regulations and Building Standards Act, 1977 [Act No. 103 of 1977]; or
- [d]** there is no building on the land.
- [e]** any person intending to undertake minor alterations to buildings such as the enlargement of a window or the insertion of a door instead of a window, or the erection of a fence shall make written application to the Council's Engineer to do so and may only effect such minor alterations on receipt of permission in writing from Council's Engineer, and if permission is not acted upon within six months from the date it shall lapse and determine.

- [f] no person shall erect or use temporary building or movable structure without the written permission of the Council. Such permission shall hold good for a period not exceeding six months .
- [2] The Municipality must, in respect of subsection 1[a] to [d], make a statement to that effect before issuing the certificate referred to in subsection [1].
- [3] An application to the Municipality for the issue of a certificate referred to in section 118[1] of the Local Government: Municipal Systems Act, 2000 [Act No. 32 of 2000], must, subject to section 4, be accompanied by the statement referred to in subsection [1].

[3] APPLICATION FOR AND ISSUE OF STATEMENT

- [1] Any application for the issue of a statement referred to in subsection [1] must –
 - [a] be directed to the Municipal Manager;
 - [b] be in writing on the form made available by the Municipality for that purpose; and
 - [c] be accompanied by the prescribed fees.
- [2] The Municipal Manager must refer the application to the Building Control Officer, who must do, or cause to be done, an inspection of the land concerned and make a recommendation regarding the application to the Municipality.
- [3] After the Municipality has considered the recommendations of the Building Control Officer, it must –
 - [a] make the statement referred to in section 2[1]; or
 - [b] refuse to make such statement, and forthwith, in writing, notify the applicant accordingly.

[4] If the Municipality refuses to make the statement, it must provide written reasons for its decision when notifying the applicant of the decision and indicate what steps must be taken before a new application in terms of subsection 3[b] could again be submitted.

[4] FAILURE BY THE MUNICIPALITY TO ACT WITHIN A CERTAIN PERIOD

Should the Municipality fail to act in accordance with section 3[4] within a period of 30 days after the application was made in terms of section 3[1], it will be deemed that the Municipality has made the statement referred to in section 2[1].

[5] DELEGATION OF POWERS

[1] The Council may, subject to such conditions as it may determine, delegate any of its powers:-

- [a] to the Municipal Manager, in accordance with sections 55 and 59 of the Local Government: Municipal Systems Act, 2000; or
- [b] to any committee appointed by it, or to any person in its employ in terms of section 28[4], of the National Building Regulations and Building Standards Act, 1977.

[6] PENALTIES

[1] Anyone who contravenes or fails to comply with any provision of these by-laws or any notice served in terms thereof is guilty of an offence and be liable upon conviction to –

- [a] a fine, not exceeding R4000, or imprisonment for a period not exceeding twelve months or to such imprisonment without the option of a fine or to both such fine and such imprisonment; and

- [b]** in the case of a continuing offence, to an additional fine or an additional period of imprisonment of 10 days or to such additional imprisonment without the option of a fine or to both such additional fine and imprisonment for each day on which such offence is continued: Provided that any such fine and/or imprisonment may not exceed the penalty provided for in section 24 of the National Building Regulations and Building Standards Act, 1977.
- [c]** 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.

[7] REPEAL AND SAVINGS

- [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.
-