

PROVINCE OF THE EASTERN CAPE
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PROVINCIAL NOTICE

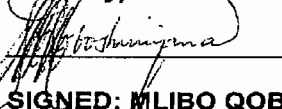
No. 20

16 May 2011

PROVINCE OF THE EASTERN CAPE**DEPARTMENT OF LOCAL GOVERNMENT AND TRADITIONAL
AFFAIRS**

REPEAL, AMENDMENT OR REPLACEMENT OF PROVINCIAL NOTICE NO. 106 DATED 02 DECEMBER 2000, AS AMENDED, ISSUED IN TERMS OF SECTION 12 OF THE LOCAL GOVERNMENT: MUNICIPAL STRUCTURES ACT, 1998 (ACT NO. 117 OF 1998)

I, **MLIBO QOBOSHIYANE**, Member of the Executive Council responsible for Local Government in the Province of the Eastern Cape hereby publish a Provincial Notice in terms Section 12 and 17 of the Local Government : Municipal Structures Act, 1998 (Act 117 of 1998), for the establishment of municipalities within the province as reflected in the new boundary demarcations published under Notice No. 166 of 2008 in the Provincial Gazette No. 1905 (Extra-ordinary) dated 30 May 2008 read with Notice No. 261 of 2008 in the Provincial Gazette No. 1951 (Extra-ordinary) dated 06 August 2008 and as set out in the schedule attached hereto.



SIGNED: MLIBO QOBOSHIYANE

**MEMBER OF THE EXECUTIVE COUNCIL RESPONSIBLE FOR LOCAL
GOVERNMENT – PROVINCE OF THE EASTERN CAPE**

DATE: 11 May 2011

SCHEDULE**PART 1****1. Definitions**

In this schedule, unless the context otherwise indicates or unless redefined herein, a word or expression to which meaning has been assigned in the Local Government: Municipal Structures Act, 1998, or Chapter 2 of the Local Government: Municipal Systems Amendment Act, 2000 has the same meaning and -

“Constitution” means the Constitution of the Republic of South Africa, 1996

“demarcation notice” means “Provincial Notice 22 of 2000 published in *Provincial Gazette* No 486 dated 28 February 2000, as amended;

“disestablished municipality” means an existing municipality disestablished in terms of paragraph 2 of Part 1 of this schedule;

“effective date” means

The day on which the results of the local government elections are declared in terms of section 190(1)(c) of the Constitution ;

“MEC” means the Member of the Executive Council responsible for local government affairs in the Province of the Eastern Cape;

“metropolitan municipal area” means the area indicated by Map No 1 of the demarcation notice;

“Metropolitan municipality” means the Category A municipality established in terms of Part 2 of this schedule;

“proportionally elected councillors” means councillors elected to proportionally represent the parties that contested the election in the municipality concerned;

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

“ward councillor” means a councillor elected to directly represent a ward.

2. Disestablishment of existing municipalities

(1) The following municipalities are disestablished with effect from the effective date to the extent that the municipality falls within the metropolitan municipality: **Amathole District Municipality and Buffalo City Local Municipality**

3. Vacation of Office

The councillors of the municipalities referred to in paragraph 2(1) vacate office on the effective date.

4. Establishment of municipality

(1) Municipalities are hereby established for the municipal areas as set out in parts 2 and 3 of this schedule. The established municipalities are as follows:

- (a) Buffalo City Metropolitan Municipality as set out in Part 2 of this Schedule.
- (b) Amathole District Municipality as set out in Part 3 of this Schedule.

(2) The establishment of the municipalities mentioned in sub-paragraph (1) takes effect in terms of section 12(2)(b) of the Act at the commencement of the next election of the council of the municipality.

5. Legal succession

- (a) The metropolitan municipality supersedes the existing municipality (Buffalo City Local Municipality) to the extent that the existing municipality falls within that area, and the metropolitan municipality becomes the successor in law of the existing municipality.
- (b) The new district municipality that excludes Buffalo City supersedes the existing district municipality which included Buffalo City Municipality

6. Transfer of assets, rights, liabilities and obligations

(1) The assets, rights, liabilities and obligations of disestablished municipalities, are hereby transferred to the municipalities which, on the effective date, have sole responsibility for the performance of the municipal functions in the separate areas of jurisdiction.

(2) For the purpose of sub-paragraph (1), "function" includes a power.

(3) Administrative and other records relating to the assets, rights, liabilities and obligations referred to in sub-paragraph (1) vests, as from the effective date, in the metropolitan municipality and district municipality.

7. Investments, cash and cash balances

As from the effective date all investments and all cash and cash balances in a bank account of the disestablished municipalities accrue to the municipalities established in terms of paragraph 4(1) in accordance with the following rules:

- a) the investments, cash and cash balances of the disestablished municipalities referred to in paragraph 2(1), accrue to the established municipalities
- b) notwithstanding the afore going, all cash and cash balances constituting funded reserves underpinning obligations or liabilities of disestablished municipalities shall accrue to the established municipalities if they had assumed those liabilities, or in proportion to the extent to which such liabilities had been assumed.

8. Transfer of staff

(1) A person who on the effective date is an employee of a disestablished municipality becomes an employee of the established municipality in accordance with the following rules:

- a) the employment of employees by a new municipality is subject to any collective agreement and the Labour Relations Act, 1995 (Act No. 66 of 1995);
- b) an employee referred to is transferred to the metropolitan or district municipality on terms and conditions no less favourable than those under which such employee served immediately before the effective date;
- c) service by a person so transferred is deemed to be in the service as an employee of the new municipality to which the person is transferred and any leave, pension and other benefits that may have accrued to that person by virtue of service with a disestablished municipality shall be deemed to have accrued in favour of such a person by virtue of service with the new municipality to which she or he is transferred;
- d) where an employee was a member of a medical aid scheme, pension or provident fund immediately before the effective date-
 - i. that employee continues as such a member unless continued membership is contrary to the rules of the scheme or fund in question or unless the new municipality to which the employee is transferred and the employee, after consultation with the fund or scheme, agree otherwise,

- ii. the new municipality must deduct the necessary employee's contribution to the scheme or fund from the remuneration of the employee and pay over to the scheme or fund in question together with the employer's contribution.
- e) the council of the employer municipality must appoint a person who became an employee of the municipality concerned in terms of sub-paragraph (1) , in a post on the established municipality, provided that such a person remains subject to any decisions, proceedings, rulings and directions applicable to that person immediately prior to becoming such an employee, but subject further to any amendments concluded locally or in the applicable bargaining council. All funded vacancies existing on the staff establishments of disestablished municipalities shall become vacancies within the staff establishment of the newly established municipality responsible for the function to which such vacancy relates, *mutatis mutandis* in accordance with the rules contained herein;
- f) nothing contained herein shall preclude a Municipality from implementing a scheme to re-organize its staff subject to provisions of the Labour Relations Act.

9. Continued application of by-laws and resolutions

- (c) (1) All by-laws, regulations and resolutions that apply in the area of a disestablished municipality immediately before the effective date, continue to apply in such area from the effective date subject to any amendment or repeal by council of the new municipality.

(2) Unless inconsistent with the context or clearly inappropriate, reference in any such by-law, regulation or resolution to-

- a) a disestablished municipality, must be construed as a reference to the new municipality; and
- b) a structure or functionary of a disestablished municipality, must be construed as a reference to the corresponding structure or functionary in the newly established municipality.

10. Transitional Facilitation Committee

1. A Transitional Facilitation Committee (TFC) is hereby established for the district and metropolitan area to take effect from 01 July 2010.
 - (a) A TFC should consist of 5 councillors designated by Amathole District Municipality and Buffalo City Local Municipality, which should include governance, finance, corporate services and infrastructure

- (b) The TFC must be assisted by a Technical Task Team co-chaired by the Municipal Managers and relevant managers representing the portfolios from the affected municipalities and officials from the department.
2. The functions of the TFC shall, subject to and for the purposes of section 14 and 84 of the Act, be to recommend to the relevant authority:
- (a) On the temporal adjustment of the division of powers and functions between the district and the local municipality, if the need to do so exists;
 - (b) Which of the assets, rights, liabilities and obligations that have been transferred from the disestablished municipality should remain vested in the transferee and which should be transferred from the transferee to another municipality;
 - (c) The implication of a process of re-organizing the employees transferred to each new municipality;
 - (d) A process of reviewing the continued application of by-laws, regulations and resolutions of the disestablished municipalities and to make recommendations to the respective new municipalities for the rationalization of such by-laws, regulations and resolutions as contemplated in section 15 of the Act.
 - (e) The legal, practical and other consequences of the partial disestablishment and establishment of the existing municipalities and also including vacation of office by councilors and implications thereof.
3. The councilor designated by the district will be the chairperson of the TFC
- a. The chairperson of the TFC decides when and where the TFC meets, but a majority of members may request the chairperson in writing to convene a meeting of the TFC at a time and place set out in the request;
 - b. The chairperson presides at meetings of the TFC, but if the chairperson is absent from a meeting, the members present must elect another member to preside at the meeting.
4. The TFC may determine its own procedures, subject to the following
- a. A question before the TFC is decided with supporting vote of the majority of the members present at the meeting;
 - b. At least one half of the members must be present at a meeting before a vote may be taken on any matter.
5. Dispute resolution
- a. Where the TFC has before it any matter within its functions that cannot within sixty days of such matter being brought before it reach a decision thereon, the matter shall be referred to independent mediation and the mediation process shall be completed within thirty (30) days of such referral. The rules, governing such mediation and the list of approved mediation shall be as agreed upon by the TFC within fifteen (15) days of the expiry of the afore mentioned period of sixty (60) days;
 - b. The Mayor as elected by the new district municipality shall be deemed to be responsible for the appointment of the mediator;

- c. Where the TFC cannot, within the said period of fifteen (15) days reach agreement as contemplated in (a) above or where the mediation process does not resolve the matter within the afore mentioned period of thirty (30) days, the matter must be submitted to the MEC for local government who may, in his discretion, decide on the matter, or may submit it to the arbitration by an arbitrator appointed by the MEC, whose decision shall be final and shall be deemed to constitute a recommendation of the TFC on the matter.
6. Any expense incurred by the TFC in the discharge of its functions or in respect of the costs of mediation in terms of sub-paragraph (5) shall be borne, in equal proportion by the municipalities who are members of the TFC.

11. Intervention powers of the MEC

- (1) The MEC for local government may at any time intervene in the proceedings of the TFC referred to in paragraph 10 and request the committee to refer a matter before the committee to the MEC for resolution.
- (2) The MEC for local government may reconsider a matter on which the Committee has taken a decision and confirm, vary or withdraw the decision of the Committee.
- (3) The district municipality and the metropolitan municipality, including affected employees are bound by the decision of the MEC.

PART 2**1. ESTABLISHMENT OF METROPOLITAN MUNICIPALITY**

A metropolitan municipality is hereby established for the new metropolitan municipal area.

2. CATEGORY

The metropolitan municipality is a Category A municipality as determined by the Demarcation Board in terms of section 4 of the Act.

3. TYPE

The metropolitan is of a type described in section 2(g) of the Determination of Types of Municipality Act, Act 2000 (Act 5 of 2000 (EC)).

4. BOUNDARIES

The boundaries of the metropolitan municipality are as indicated on Map No. DEM 388A published in provincial Gazette No. 1951 (extraordinary) dated 6 August 2008 and/or any subsequent amendment by the Demarcation Board.

5. WARDS

The metropolitan municipality has 50 wards determined by the Demarcation Board

6. NAME

The name of the metropolitan municipality is Buffalo City Metropolitan Municipality

7. COUNCILLORS

(1) The council of the metropolitan municipality consists of 50 proportionally elected councillors and 50 wards councillors as determined in Provincial Notice No 2182 (Extraordinary) dated 24 August 2009.

(2) Full time councillors, if any, are designated in accordance with policy framework contemplated in section 18(4) of the Act, subject to the following conditions:

(a) That the municipality submits to the MEC a motivation for further fulltime councilors in the event that there be a need to exceed the already approved fulltime councilors, on the following --

(i) the functions and duties to be performed by full-time office bearers.

(ii) the municipality's financial capacity to pay the remuneration attached to the full-time office bearers.

(b) That the final designation of full-time councilors be made by the MEC within 30 days after receipt of the above-mentioned motivation by way of notice in the Provincial Gazette.

8. FULLTIME COUNCILLORS.

The council of the metropolitan municipality will continue to have the following office bearers as fulltime:

- (a) Speaker
- (b) Executive Mayor
- (c) Deputy Executive Mayor
- (d) Members of the Mayoral Committee
- (e) Chief Whip

9. SEAT OF FIRST MEETING

The seat of the new municipality for the purpose of the first meeting of its council after effective date shall continue to be East London which shall be deemed to be the seat of the municipality until determined otherwise in terms of this Act.

10. ACTING MUNICIPAL MANAGER

The acting municipal manager or municipal manager in terms of section 82 of the Act; the following person is designated in terms of section 29(2) of the Act to call the first meeting of the council of the new municipality and such person shall be deemed to be acting municipal manager from the effective date until the council appoints a municipal manager.

11. STANDING RULES FOR FIRST MEETING

The standing rules and order for the first meeting of the new municipality shall be as follows:

a) Definitions

In these rules, unless inconsistent with the context –

A word or expression to which a meaning has been assigned in the Municipal Structures Act has the same meaning;

‘acting municipal manager’ means the existing acting municipal manager;
‘existing seat’ means the existing seat of the local municipality; and
‘Municipal Structures Act’ means the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

b) Notice convening first meeting

- (1) The acting municipal manager must, within 4 days after council has been declared elected, inform the elected councillors in writing of the venue, date, and time of the first meeting of council.
- (2) The first meeting of the council must take place at the existing seat of the municipality within 14 days after the council has been declared elected, or if it is a district councils, after all members to be appointed by local councils, have been appointed.

c) Convening notice read and oath or affirmation

- (1) At the commencement of proceeding of the council at the first meeting after it has been convened in terms of section 29 of the Municipal Structures Act, the acting municipal manager must read the notice convening the council.
- (2) After the notice convening the council has been read, the councillors must swear or affirm faithfulness to the Republic and obedience to the Constitution.

d) Election of Speaker

- (1) At its first meeting after its election the council must elect its speaker from among its councillors.
- (2) The acting municipal manager presides over the election of the Speaker.
- (3) The procedure set out in Schedule 3 of the Municipal Structures Act applies to the election of the speaker
- (4) The elected speaker presides over the remainder of the first meeting of the council and the councilors from different political parties may express a sense of honour conferred upon him or her.

e) Election of Executive Mayor

(1) At its first meeting after its election, the council which has chosen to have an executive mayor in terms of Rule 7, must elect an executive mayor.

(2) The procedure set out in Schedule 3 of the Municipal Structures Act applies to the election of the executive mayor.

f) Quorums and decisions

The quorums and determinations required by section 30 of the Municipal Structures Act apply to the first meeting of council.

g) Procedure for matters not dealt with in the Rules

The existing Rules of Order, subject to the provision of the Municipal Structures act, applies to any procedural matter not provided for in the rules.

PART 3**1. ESTABLISHMENT OF AMATOLE DISTRICT MUNICIPALITY**

A district municipality is hereby established for the district municipal area as whole excluding Buffalo City Municipality .

2. CATEGORY

The district municipality is a Category C municipality as determined by the Municipal Demarcation Board in terms of section 4 of the Act.

3. TYPE

The district municipality is of a type described in section 4(b) of the Determination of Types of Municipality Act, 2000 (Act 5 of 2000 (E,C.)

4. BOUNDARIES

The boundaries of the district municipality are as indicated on Map No. DEM 388B as published in the Provincial Gazette of 30 May 2008 under notice No.166 and/or any subsequent amendment by the Demarcation Board.

5. NAME

The name of the district municipality is Amathole.

6. COUNCILLORS

(1) The council of the district municipality consists of 50 councillors as determined in Provincial Notice No. 49 published in Provincial Gazette No. 2182 (Extraordinary) dated 24 August 2009.

(2) Full time councilors, if any, are designed in accordance with the policy framework contemplated in section 18(4) of the Act, subject to the following conditions

(a) That the municipality submits to the MEC a motivation for further fulltime councilors in the event that there be a need to exceed the already approved fulltime councilors, on the following –

(i) the functions and duties to be performed by full-time office bearers.

(ii) the municipality's financial capacity to pay the remuneration attached to the full-time office bearers.

(b) That the final designation of full-time councilors be made by the MEC within 30 days after receipt of the above-mentioned motivation by way of notice in the Provincial Gazette.

7. FULLTIME COUNCILLORS

The council of the district municipality will continue to have the following office bearers as fulltime:

- (f) Speaker
- (g) Executive Mayor
- (h) Members of the Mayoral Committee
- (i) Chief Whip

8. SEAT OF THE MUNICIPALITY

The seat of the existing district municipality is deemed to be the seat of the district until the district changes such seat.

9. MUNICIPAL MANAGER

The existing municipal manager is designated in terms of section 29 (2) of the Act to call the first meeting of the council of the district municipality.

10. STANDING RULES FOR THE FIRST MEETING

The existing standing rules and orders of the municipality shall continue to exist whilst mechanisms to review the same are established. The standing rules and orders for the first meeting of the new municipality shall be as follows:

(a) Definitions

In these rules, unless inconsistent with the context-

A word or expression to which a meaning has been assigned in the Municipal Structures Act has the same meaning

“municipal manager” means the existing municipal manager

“seat of the municipality” means the existing seat of the district municipality.

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

(b) Notice convening first meeting

(1) The municipal manager must, within 3 days after council has been declared elected, inform the elected councilors in writing of the venue, date, and time of the first meeting of the council

(2) The first meeting of the district council must take place at the seat of the municipality within a period that will not exceed twenty one (21) days after all members to be appointed by local councils, have been appointed.

(c) Convening notice read and oath or affirmation

(1) At the commencement of proceedings of the council at the first meeting after it has been convened in terms of section 29 of the Municipal Structures Act, the municipal manager must read the notice convening the council.

(2) After the notice convening the council has been read, the councilors must swear or affirm faithfulness to the Republic and obedience to the Constitution

(d) Election of the Speaker

(1) At its first meeting after its election the council must elect its speaker from among its councilors.

(2) The municipal manager presides over the election of the speaker

(3) The procedure set out in Schedule 3 of the Municipal Structures Act applies to the election of the speaker.

(4) The elected speaker then presides over the remainder of the first meeting of the council.

(e) Election of executive mayor

(1) At its first meeting after its election, the council must elect its executive mayor.

(2) The procedures set out in Schedule 3 of the Municipal Structures Act, applies to the election of the executive mayor.

(f) Quorums and decisions

The quorum and determination required by section 30 of the Municipal Structures Act apply to the first meeting of the council.

(g) Procedure for matters not dealt with in these Rules

The existing Rules of Order, subject to the provision of the Municipal Structures act, applies to any procedural matter not provided for in the rules.
