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## SPECIAL

NO. 11 THURSDAY, 21 APRIL 2011	NO. 11 DONDERDAG, 21 APRIL 2011
<b>PROVINCIAL NOTICE</b>	
<p><b>07</b> NOTICE IN TERMS OF SECTION 12 AND 16, READ WITH SECTIONS 14, 15 AND 17 OF THE LOCAL GOVERNMENT: MUNICIPAL STRUCTURES ACT, 1998: IMPLEMENTATION OF THE MUNICIPAL DEMARCATION BOARD DETERMINATION NO DEM 387, PUBLISHED AS NOTICE NO 231 IN THE FREE STATE PROVINCIAL GAZETTE OF 1 AUGUST 2008 ..... <b>2</b></p>	

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**PROVINCIAL NOTICE**

[NO. 07 OF 2011]

**NOTICE IN TERMS OF SECTION 12 AND 16, READ WITH SECTIONS 14, 15 AND 17 OF THE LOCAL GOVERNMENT: MUNICIPAL STRUCTURES ACT, 1998: IMPLEMENTATION OF THE MUNICIPAL DEMARCATION BOARD DETERMINATION NO DEM 387, PUBLISHED AS NOTICE NO 231 IN THE FREE STATE PROVINCIAL GAZETTE OF 1 AUGUST 2008**

1. I, **MG Qabathe**, Member of the Executive Council responsible for Cooperative Governance, Traditional Affairs and Human Settlements in the Free State Province, acting in terms of section 16 and 17 of the Local Government: Municipal Structures Act, 1998 (Act No 117 of 1998) hereby publishes the notice as set out in the Schedule for public notice.

**SCHEDULE**

**PART 1**

**PREAMBLE**

**GENERAL**

1. The Municipal Demarcation Board has in terms of the provisions of section 21(5) of the Local Government: Municipal Demarcation Act, 1998 (Act No 27 of 1998), read with sections 2 and 4 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998) by means of Notice No 231 as published in the Free State Provincial Gazette of 1 August 2008, confirmed its earlier decision to determine and redetermine certain municipal boundaries as set out in Determination No DEM 387 published in Notice No 160 in Free State Provincial Gazette of 13 June 2008.
2. The determination and redeterminations of the Municipal Demarcation Board as mentioned above, include the following:
  - 2.1 the re-determination of boundaries by excluding Mangaung (FS172) from the municipal area of Motheo District Municipality (DC17);
  - 2.2 the determination of the current boundaries of Mangaung (FS172) as a category A municipal area;
  - 2.3 the re-determination of the boundaries of Xhariep district municipality (DC16) by including Naledi (FS171) into Xhariep (DC16);
  - 2.4 the re-determination of the boundaries of Thabo-Mofutsanyane District Municipality (DC19) by including Mantsopa (FS173) into Thabo-Mofutsanyane District Municipality (DC19);
3. To implement these determinations:
  - 3.1 Provincial Notice No 182 of 28 September 2000 as amended, is hereby repealed and replaced by the provisions contained in Part 2;
  - 3.2 Provincial Notice No 181 of 28 September 2000 as amended, is hereby amended as provided for in Part 3;
  - 3.3 Provincial Notice No 184 of 28 September 2000 as amended, is hereby amended as provided for in Part 4;

**DEFINITIONS**

4. In this Schedule, unless inconsistent with the context, a word or expression to which a meaning has been assigned in the Act has the same meaning and:

**“affected district municipalities”** means the district municipalities of Xhariep (DC16) and Thabo Mofutsanyane (DC19);

**“demarcation notice”** means Provincial Notice No. 231 as published in the Provincial Gazette, Free State Province of 1 August 2008;

**“disestablished municipality”** means the Motheo District Municipality disestablished in terms of paragraph 7;

**“effective date”** means -

- (1) the day on which the results of the next general municipal elections are declared in terms of the applicable electoral legislation; or
- (2) if the results cannot be declared, and a re-election must be held, the day on which the results of the re-election are declared;

**“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);

**“the Types Act”** means the Determination of Types of Municipalities Act, 2009 (Act No.2 of 2009)

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

**PART 2****ESTABLISHMENT OF MANGAUNG METROPOLITAN MUNICIPALITY****DISESTABLISHMENT OF EXISTING MUNICIPALITY**

5. (1) The Motheo District Municipality (DC17) is disestablished with effect from the effective date.
- (2) Until it is disestablished on the effective date, the council of the disestablished municipality referred to in paragraph (1) remains competent to function for its area.

**VACATION OF OFFICE**

6. **The councillors of the disestablished municipality vacate office on the effective date.**

*ESTABLISHMENT OF MUNICIPALITY*

7. (1) A metropolitan municipality is hereby established for the metropolitan area as set out in the demarcation notice.
- (2) The establishment of the metropolitan municipality takes effect in terms of section 12(2)(b) of the Act at the commencement of the first election of the council of this metropolitan municipality.

**LEGAL SUCCESSION**

8. (1) (a) The metropolitan municipality, the Xhariep district municipality (DC16) and the Thabo Mofutsanyane district municipality (DC19) the Naledi local municipality (FS171) and the Mantsopa local municipality (FS173) become the successors-in-law of the disestablished municipality and depends on the specific assets, liabilities, rights and obligations allocated to the municipalities in terms of a determination by the MEC for local government of a notice published in the Provincial Gazette after consultation with the Transitional Facilitation committee established in terms of section 15.

- (b) The metropolitan municipality becomes the successor-in-law of the Mangaung local municipality (FS172).
- (2) The municipal manager of the disestablished municipality must, not later than two days after the publication of this notice, compile and submit to the Head: Cooperative Governance and Traditional Affairs-
  - (a) a list containing the names and particulars of all persons who, on the date of the list being submitted, are in the employ of the disestablished municipality; and
  - (b) an inventory of all the assets and liabilities of the disestablished municipality as at that date:
    - Provided that-
      - (i) the name and other particulars of any person whose employment terminates before or on the effective date in terms of a contractual operation, must be omitted from such list; and
      - (ii) such list and inventory must, in respect of each entry there-on, indicate the specific function or power in respect of which an employee, asset and liability, as the case may be, is deployed and utilised.

#### TRANSFER OF ASSETS, RIGHTS, LIABILITIES AND OBLIGATIONS

- 9. (1) The assets, rights, liabilities and obligations (excluding investments, cash and cash balances) in so far as they were, immediately before the effective date, predominantly deployed in respect of, or related to, the performance by the disestablished municipality and the Mangaung local municipality (FS172) of a function or functions in a specific area, will be transferred in terms of a determination by the MEC for local government as published by notice in the Provincial Gazette to the metropolitan municipality, the Xhariep district municipality (DC16), the Thabo Mofutsanyane district municipality (DC19), the Naledi local municipality (FS171) and the Mantsopa local municipality (FS173) after consultation with the TFC established in terms of paragraph 15 which, on the effective date, have responsibility for the performance of the said function or functions in the said area.
- (2) For the purpose of sub-paragraph (1), "function" includes a power.
- (3) Administrative and other records (including minutes) relating to the assets, rights, liabilities and obligations referred to in sub-paragraph (1) vest, as from the effective date, in the metropolitan municipality, the Xhariep district municipality (DC16), the Thabo Mofutsanyane district municipality (DC19), the Naledi local municipality (FS171) and the Mantsopa local municipality (FS173) as determined by the MEC for local government as published by notice in the Provincial Gazette, to which the respective assets, rights, liabilities and obligations are transferred in terms of the said sub-paragraph.

#### INVESTMENTS, CASH AND CASH BALANCES

- 10. As from the effective date all investments and all cash and cash balances in a bank account of the disestablished municipality accrue to the metropolitan municipality, the affected district municipalities, the Naledi local municipality (FS171) and the Mantsopa local municipality (FS173) in terms of a determination by the MEC published by notice in the Provincial Gazette:
  - Provided that the full value of –
    - (a) the remuneration of every employee of a disestablished municipality whom is transferred to the metropolitan municipality, the affected district municipalities, the Naledi local municipality (FS171) and the Mantsopa local municipality (FS173) for the remainder of the current financial year must accrue to the municipality to which an employees is transferred;
    - (b) the annual leave to the credit of every employee so transferred on the date of the transfer must accrue to the municipality to which an employee is transferred; and
    - (c) money appropriated by a disestablished municipality for insuring an asset must accrue to the municipality to which the relevant asset is transferred.

#### TRANSFER OF STAFF

- 11. A person who on the effective date, is an employee of the disestablished municipality or the Mangaung local municipality (FS172) becomes an employee of the metropolitan municipality, either of the affected district municipalities, the Naledi local municipality (FS171) or the Mantsopa local municipality (FS173) in terms of a determination by the MEC published by notice in the Provincial Gazette after consultation with the TFC and in accordance with the following rules:

- (1) Employees of the disestablished municipality and the Mangaung local municipality (FS172) who are for most of their normal working day occupied with work directly related or incidental to the performance of a specific municipal function are transferred to, and become employees of the metropolitan municipality, either of the affected district municipalities, the Naledi local municipality (FS171) or the Mantsopa local municipality (FS173) which as from the effective date is responsible for the performance of that specific function;
- (2) For the purposes of sub-paragraph (1) "function" includes a power;
- (3) Employees are employed by the metropolitan municipality, the affected district municipalities, the Naledi local municipality (FS171) or the Mantsopa local municipality, as the case may be, on conditions of service that are not less favourable than those applicable to them as employees of the disestablished municipality which previously employed them;
- (4) Service by a person so transferred is deemed to be service as an employee of the metropolitan municipality, the affected district municipality, the Naledi local municipality (FS171) or the Mantsopa local municipality (FS173) 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 the disestablished municipalities must be deemed to have accrued in favour of such a person by virtue of service with the metropolitan municipality, the affected district municipality, the Naledi local municipality (FS171) or the Mantsopa local municipality (FS173) to which she or he is transferred;
- (5) Where an employee transferred in terms of sub-paragraph (1) was a member of a medical aid scheme, pension or provident fund immediately before the effective date –
  - (a) 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 metropolitan municipality, the affected district municipality, the Naledi local municipality (FS171) or the Mantsopa local municipality (FS173) to which the employee is transferred and the employee, after consultation with the fund or scheme, agree otherwise; and
  - (b) the metropolitan municipality, the affected district municipality, the Naledi local municipality (FS171) or the Mantsopa local municipality (FS173) must deduct the necessary employee's contributions to the scheme or fund from the remuneration of the employee and pay it over to the scheme or fund in question together with the employer's contribution.

#### **TRANSITIONAL PROVISIONS RELATING TO EXISTING BY-LAWS AND RESOLUTIONS**

12. (1) By-laws and resolutions (including standing delegations) of the disestablished municipality and the Mangaung local municipality (FS172) that are in force on the effective date continue in force in the area in which they were applicable subject to any amendment or repeal by the municipality for that area.
- (2) Unless inconsistent with the context or clearly inappropriate, a reference in any such by-law or resolution (including standing delegations) to the disestablished municipality or the Mangaung local municipality (FS172) must be construed as a reference to the municipality which has to apply the by-law or resolution (including standing delegations): Provided that-
  - (a) the Metropolitan municipality must comply with the By-laws relating to the Rules and Orders of the Mangaung local municipality (FS172) promulgated under Local Government Notice No 41 of 29 June 2001; and
  - (b) whenever a By-law or resolution (including standing delegations) of the disestablished municipality regarding the same subject matter which must be applied by the metropolitan municipality is inconsistent with each other, the by-law or resolution (including standing delegation) as the case may be of the Mangaung local municipality (FS172) must prevail.

#### **TRANSITIONAL FACILITATION COMMITTEE**

13. (1) A Transitional Facilitation Committee (TFC) is hereby established.
- (2) The TFC automatically ceases to exist and dissolves on the day immediately preceding the local government elections.
- (3) The TFC must advise the MEC with regard to the exercise of her powers, performance of her functions and discharge of her duties in terms of this notice.

- (4) The TFC consists of-
- (a) the Chairperson of SALGA Free State, who must be the chairperson; and
  - (b) the mayors of each of the disestablished municipality, the Mangaung local municipality (FS172) the affected district municipalities and Mantsopa local municipality (FS173) and the speaker of Naledi local municipality.
- (5) The TFC must be assisted by a Technical Task Team consisting of-
- (a) the Head: Cooperative Governance and Traditional Affairs who must be the chairperson;
  - (b) the Provincial Director of SALGA Free State;
  - (c) the municipal managers of the disestablished municipalities, the affected district municipalities and of Naledi local municipality (FS171) and Mantsopa local municipality; and
  - (d) such officials of the Department of Cooperative Governance and Traditional Affairs as the head of that department may designate.
- (6) The Department of Cooperative Governance and Traditional Affairs must provide an administrative service to the TFC.

#### **FUNCTIONS OF THE TFC**

14. The functions of the TFC are, subject to and for the purposes of section 14 of the Act, be to recommend to the MEC for Cooperative Governance and Traditional Affairs:
- (1) Which of the assets, rights, liabilities and obligations that have been transferred from the disestablished municipality should be transferred to the metropolitan municipality and the affected municipalities;
  - (2) Subject to sub-paragraph (1), the implication of a process of reorganizing the employees transferred to the metropolitan municipality and the affected municipalities;
  - (3) The legal, practical and other consequences of the disestablishment of the district municipality and the establishment of the metropolitan municipality and also including vacation of office by councillors and implications thereof, and
  - (4) The name of the metropolitan municipality.

#### **PROCEDURES OF THE TFC**

15. The TFC may determine its own procedures, subject to the following:
- (1) A question before the TFC is decided with supporting vote of the majority of the members present at the meeting;
  - (2) At least one half of the members must be present at a meeting before a vote may be taken on any matter.

#### **DISPUTE RESOLUTION**

16. (1). Whenever the TFC cannot resolve a question before it for any reason, the matter must be submitted to the MEC who may, in her discretion-
- (a) resolve the matter; or
  - (b) submit it to arbitration by an arbitrator appointed by her,
- (2) A decision by an arbitrator must be deemed a decision of the TFC.

#### **EXPENSES OF THE TFC**

17. Any expense incurred by the TFC in the discharge of its functions or in respect of the costs of mediation in terms of paragraph 16 must be borne, in equal in proportion by the municipalities and the department who are members of the TFC.

#### **DUTIES OF MUNICIPAL MANAGERS**

18. The municipal manager of the disestablished municipality must not later than two days after the MEC has published a determination in terms of this notice compile and submit to the municipal manager of the metropolitan municipality, and affected district municipality, Naledi local municipality (FS171) or Mantsopa local municipality (FS173) as the case may be,-

- (1) a list containing the names and particulars of all the employees of the disestablished municipality who must be transferred to that municipality in terms of the MEC's determination; and
- (2) an inventory of all the assets and liabilities of the disestablished municipality which must be transferred to that municipality in terms of the MEC's determination.

#### **MUNICIPAL MANAGER**

- 19 Until his or her employment contract expires the person who, on the effective date occupied the post of municipal manager of the Mangaung local municipality (FS172) is designated with effect from that date, the municipal manager for the metropolitan municipality.

#### **ESTABLISHMENT OF METROPOLITAN MUNICIPALITY**

20. For the metropolitan municipal area as a whole as set out in the demarcation notice, a metropolitan municipality is hereby established.

#### **CATEGORY**

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

#### **TYPE**

22. The metropolitan municipality is a municipality with a mayoral executive system combined with a ward participatory system as contemplated in section 2(g) of the Types Act.

#### **BOUNDARIES**

23. The boundaries of the metropolitan municipality are as indicated by Map DEM 387\_A of the demarcation notice.

#### **NAME**

24. The MEC must determine the name of the metropolitan municipality by notice in the Provincial Gazette.

#### **COUNCILLORS**

25. The council of the metropolitan municipality consists of 48 proportionally elected councillors and 49 ward councillors as determined in Provincial Notice No 175 of 31 July 2009.

#### *FULL-TIME COUNCILLORS*

26. The council of the metropolitan municipality may designate the executive mayor, speaker, members of the mayoral committee and council whip as full-time.

#### **WARDS**

27. The metropolitan municipality has 49 wards with boundaries as indicated in the Notice published in the Free State Provincial Gazette No 99 of 31 August 2010.

### **PART 3**

#### **AMENDMENT OF ESTABLISHMENT NOTICE NO 181 OF 2000 OF THE DC 16 DISTRICT MUNICIPALITY AND THE FS 161, FS 162 AND FS 163 LOCAL MUNICIPALITIES**

28. Part 2 of Provincial Notice 181 of 2000 is hereby substituted for the following Part 2 and Part 6 is hereby inserted in Provincial Notice 181 of 2000, with effect from the effective date:-

**“PART 2****ESTABLISHMENT OF DISTRICT MUNICIPALITY**

16. For the district municipal area as a whole, a district municipality is hereby established.

**CATEGORY**

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

**TYPE**

18. The district municipality is a municipality with a mayoral executive system contemplated in section 4(b) of the Types Act.

**BOUNDARIES**

19. The boundaries of the district municipality are as indicated by Map DEM 387\_B of the demarcation notice

**NAME**

20. The name of the district municipality is Xhariep.

**COUNCILLORS**

21. The council of the district municipality consists of 16 councillors as determined in Provincial Notices No 175 and 176 of 2009 dated 31 July 2009 of whom;

- (a) 7 must be proportionally elected councillors,
- (b) 2 must be appointed by the local municipality of Letsemeng,
- (c) 3 must be appointed by the local municipality of Kopanong,
- (d) 2 must be appointed by the local municipality of Mohokare, and
- (e) 2 must be appointed by the local municipality of Naledi

**FULL-TIME COUNCILLORS**

22. The council of the district municipality may designate the executive mayor, speaker and mayoral committee as full-time.”

**“PART 6****ESTABLISHMENT OF LOCAL MUNICIPALITY**

47. For that part of the district municipal area determined in the demarcation notice published under Provincial Notice Number 231 of 1 August 2008 a local municipality is hereby established.

**CATEGORY**

48. The local municipality is a Category B municipality as determined by the Demarcation Board in terms of section 4 of the Act.

**TYPE**

49. The local municipality is a municipality with a plenary executive system combined with a ward participatory system as contemplated in section 3(f) of the Types Act.

**BOUNDARIES**

50. The boundaries of the local municipality are as indicated by Map DEM387\_B of the demarcation notice.



**NAME**

51. The name of the local municipality is Naledi.

**COUNCILLORS**

52. The council of the local municipality consists of 4 proportionally elected councillors and 4 ward councillors as determined in Provincial Notice No 175 dated 31 July 2009.

*FULL-TIME COUNCILLORS*

53. The council of the municipality may designate the speaker as full-time.

**WARDS**

54. The local municipality has 4 wards with boundaries as indicated in the Notice published in the Free State Provincial Gazette No 74 of 31 August 2010 on the Map showing the boundaries of municipality FS 164."

**PART 4****AMENDMENT OF ESTABLISHMENT NOTICE NO 184 OF 2000 OF THE DC 19 DISTRICT MUNICIPALITY AND THE FS 191, FS 192, FS 193, FS195 AND FS196 LOCAL MUNICIPALITIES**

29. Part 2 of Provincial Notice 184 of 2000 is hereby substituted for the following Part 2 and Part 8 is hereby inserted in Provincial Notice 184 of 2000, with effect from the effective date,:-

**"PART 2****ESTABLISHMENT OF DISTRICT MUNICIPALITY**

16. For the district municipal area as a whole, a district municipality is hereby established.

**CATEGORY**

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

**TYPE**

18. The district municipality is a municipality with a mayoral executive system contemplated in section 4(b) of the Determination of Types of Municipality Act, 2000 (Act No. 1 of 2000).

**BOUNDARIES**

19. The boundaries of the district municipality are as indicated by Map DEM387\_C of the demarcation notice.

**NAME**

20. The name of the district municipality is Thabo Mofutsanyane.

**COUNCILLORS**

21. The council of the district municipality consists of 43 councillors as determined in Provincial Notice No 175 and 176 of 31 July 2009 of whom;

- (a) 17 must be proportionally elected councillors,
- (b) 4 must be appointed by the local municipality of Setsoto,
- (c) 4 must be appointed by the local municipality of Dihlabeng,
- (d) 2 must be appointed by the local municipality of Nketoana,
- (e) 12 must be appointed by the local municipality of Maluti-A-Phofung,
- (f) 2 must be appointed by the local municipality of Phumelela, and
- (g) 2 must be appointed by the local municipality of Mantsopa.

**FULL-TIME COUNCILLORS**

22. The council of the district municipality may designate the executive mayor, speaker and mayoral committee as full-time."

**"PART 8****ESTABLISHMENT OF LOCAL MUNICIPALITY**

63. For that part of the district municipal area determined in the demarcation notice published under Provincial Notice Number 231 of 1 August 2008 a local municipality is hereby established.

**CATEGORY**

64. The local municipality is a Category B municipality as determined by the Demarcation Board in terms of section 4 of the Act.

**TYPE**

65. The local municipality is a municipality with a collective executive system combined with a ward participatory system as contemplated in section 3(b) of the Types Act.

**BOUNDARIES**

66. The boundaries of the local municipality are as indicated by Map DEM387\_C of the demarcation notice.

**NAME**

67. The name of the local municipality is Mantsopa.

**COUNCILLORS**

68. The council of the local municipality consists of 8 proportionally elected councillors and 9 ward councillors as determined in Provincial Notice No 175 dated 31 July 2009.

**FULL-TIME COUNCILLORS**

69. The council of the municipality may designate the mayor and speaker as full-time.

**WARDS**

70. The local municipality has 9 wards with boundaries as indicated in the Notice published in the Free State Provincial Gazette No 54 of 31 July 2009 on the Map showing the boundaries of municipality FS 196 in the Notice published in Provincial Gazette No. 99 of 31 August 2010."