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**MUNICIPAL NOTICES • MUNISIPALE KENNISGEWINGS**

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**MUNICIPAL NOTICE 16 OF 2019****MSUNDUZI MUNICIPALITY****WAYLEAVE BYLAWS**

The Msunduzi Municipality, acting in terms of section 98 of the Local Government: Municipal Systems Act, 32 of 2000, read with section 13 of the said Act, hereby publishes the Wayleave Bylaws.

These by-laws regulate the exercise of the rights of Electronic Communications Network Service Licensees in terms of Section 22 and 24 of the Electronic Communications Act 36 of 2005 and the carrying out of work on municipal property by persons other than the aforesaid licensees.

1. Definitions

- 1) In these by-laws the following words shall carry the following meanings :-

“Act” refers to the Electronic Communications Act 36 of 2005.

- “Council” refers to the Council of the Msunduzi Municipality or any other duly delegated committee or official.
- “Municipality” refers to the Msunduzi Municipality.
- “Municipal property” includes all public roads, road reserves, sidewalks, verges and land owned by the Municipality.
- “licensee” refers to an Electronic Communications Network Service Licensee as described in the Act.
- “Wayleaves Unit” means the municipal department established to administer the applications by licensees under these by-laws and to regulate the work done thereunder under the direction of the Service Co-ordinator.
- “Service Co-ordinator” means the official appointed or otherwise delegated by the Council with the responsibility to carry out the administrative functions of receiving and processing applications for wayleaves, obtaining comments from the various internal and external service agencies, and following the

decision by the Council, conveying this decision in writing to the applicant, namely to approve with conditions, or reject with reasons, any application, and to provide record-keeping of each application and installation, provided that this bylaw shall not be interpreted to prohibit the Council to delegate to the Service Co-Ordinator the authority to decide on applications submitted by licensees in terms of these bylaws.

2. These by-laws regulate the exercise of the power of licensees contained in Sections 22 and 24 of the Act and the carrying out of work by persons other than licensees on municipal property.

#### **PART A: LICENSEES**

3. Any licensee who wishes to exercise its rights in terms of Sections 22 and 24 of the Act and carry out work in relation thereto on municipal property must submit an application to the Service Co-ordinator at least thirty (30) days prior to the intended exercise of such rights.
4. Such application shall be made in a form approved and determined by the Council provided that such application shall not require the licensee to obtain the consent of the municipality to the licensee's rights in terms of Sections 22 and 24 of the Act.

5. The application may require the following from a licensee: -
- a) Proof of payment of the premiums of public liability insurance cover in an amount determined by the Service Co-ordinator for the planned duration of the work,
  - b) Proof of the licensee and its contractor being possessed of indemnity insurance,
  - c) Proof that the licensee has engaged with all other licensees, internal and external agencies regarding the location and extent of any existing services and the proposed location, timing, duration and scope of the proposed work, to ensure the proper planning, coordination and execution of work by licensees,
  - d) The provision of the contact numbers and names of all responsible officials who will be managing the work, including the licensees' officials, delegated project managers and contractors and sub-contractors,
  - e) A safety plan for the work, including the nomination of Safety Representatives and the provision of their personal contact details,
  - (e) A detailed planning programme for the work, including the commencement and completion dates for each section of the work and the matters referred to in bylaw 7 below, provided that any

changes to this programme shall be approved by the Service Coordinator in writing,

- (f) Proof of advertising of the work in a newspaper circulating in the municipality giving the public warning and detailed notice of the extent, duration and precise location of any project, provided that the Service Coordinator, may in his or her discretion, exempt the licensee from this requirement where the proposed work will have minimal impact on other persons, including other licensees,
- (g) A physical plan of the work including the intended placement of any wires, cables, pipes, tubes or the like, and the coordinates of the beginning, end, and all bend points in between, in Shape File or other format required by the Council from time to time,
- (h) The giving of notice specifically to all residents, businesses and other concerns in the path of or adjacent to the work.

6. The Council may approve the application in respect of conditions, time and manner of the exercise of the rights of the licensee or may in consultation with the licensee determine a different programme than that applied for, in order to avoid duplication or coincidence of work programmes submitted by other licensees.

7. The Service Co-ordinator may attach conditions to the approval aforesaid including the following: -
- a) the manner and method of doing the sub-surface work;
  - b) the provision of access crossings for vehicles and pedestrians;
  - c) the provision of health and safety requirements of the Municipality;
  - d) the prohibition on the use of mechanical trenching equipment;
  - e) the provision of signage stating the name of the licensee and its contractor;
  - (f) the phasing of the work programme;
  - (g) the provision of warning signs, barriers, and hoarding around the work;
  - (h) the execution of any preliminary works and cross-cuts to establish the precise position of existing services when information on such services is unclear; the provision of storage for rubble, sand or soil during the work;
  - (i) the days and times during which any work or certain work may or may not take place;
  - (j) the presence of a Project Manager, or where necessary, a Professional Engineer, on the site of the work;
  - (k) the provision of inspections of the work in progress and the results of compaction tests at intervals during the work;



- (l) the provision of a completion certificate at the completion of the work;
  - (m) the maximum width, length and depth of open trench;
  - (n) the maximum duration of work in any given area or locality;
  - (o) the provisions of measures to ensure that roads are not obstructed and the access of motor vehicles and pedestrians are not unnecessarily impeded;
  - (p) conditions relating to re-instatement of municipal property.
  - (q) the conclusion of any agreements with the Municipality or the provision of undertakings;
  - (r) the payment of refundable and non-refundable deposits prior to commencement of work;
  - (s) the payment of a tariff charge in respect of and for the use of the Municipality's land.
8. The Service Co-ordinator shall be empowered to stop work being done without his authority or in contravention of the conditions attached to the approval.
9. The Municipality shall be entitled to impose a tariff charge, determined in terms of s75A of the Local Government: Municipal Systems Act, 32 of 2000 in respect of the use of its land for the installation of telecommunication infrastructure.

10. The Municipality shall be entitled, but not obliged, to undertake remedial works to work done where the quality of the work is below the standards imposed by the municipality or any other applicable legislation, provided that notice shall be given to the licensee before commencing with such remedial works, and provided further that if the Municipality is of the opinion that steps should forthwith be taken to protect life or property, it may undertake such remedial work without giving such notice to the licensee. The cost of such remedial works may be recovered from any security deposit paid to the municipality, or in the event that such security deposit is insufficient, from the licensee on the basis of the reasonable and necessary costs of such remedial works.

## **11. Penalties**

11.1 Any licensee, or any other person, including the licensees' officials, agents or contractors who:

- (a) fail to comply with the provisions of any condition imposed in terms of bylaw 7,
  - (b) fail to stop work when so instructed by the Service Coordinator; or
  - (c) otherwise fail to comply with any provisions of these bylaws,
- shall be guilty of an offence.

11.2 Any person who is convicted of an offence under these By-laws is liable to –

- (a) a fine of an amount not exceeding R1 000 000;
- (b) imprisonment for a period not exceeding three years;
- (c) both such fine and imprisonment contemplated in paragraphs (a) and (b).

11.3 In the case of a continuing offence, such person shall be liable to –

- (a) an additional fine of an amount not exceeding R5 000; or
- (b) imprisonment for a period not exceeding 10 days,

for each day on which such offence continues, or both such fine and imprisonment, will be imposed.

## **PART B: PERSONS OTHER THAN LICENSEES**

12.1 These bylaws apply *mutatis mutandis* to persons other than licensees, provided that:

(a ) such persons shall submit a written application to and obtain the prior written consent from the Municipality to carry out any work on Municipal property;

(b) the Municipality shall, upon written prior application, be entitled to exempt, with or without conditions, and partly or in full, any particular person from submitting a written application and obtaining its prior written consent,

(c ) the Municipality shall be competent to exempt, with or without conditions, and partly or in full, by publication in the Provincial Gazette, categories of persons or works that shall not require its prior written consent;

(d) the Municipality shall be entitled to refuse, or approve, subject to such conditions it may deem fit, any application by such a person.

## **13. Short title and commencement**

These By-laws may be referred to as the Msunduzi Municipality Wayleaves By-laws, 2019 and take effect on the date on which it is published in the Provincial Gazette of KwaZulu-Natal.

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