

# **EMAKHAZENI LOCAL MUNICIPALITY**



## **FENCES AND FENCING BY-LAWS**

In terms of and under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), the Emakhazeni Local Municipality, enacts as follows:-

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### **1. Interpretation**

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

**“boundary”** means the real or notional line marking the limits of premises;

**“Council”** means the Highlands Municipal Council;

**“fence”** includes a fence which is not erected on a boundary.

## 2. Principles and objectives

The Council, aware of its duties under the National Health Act, 2003 (Act 61 of 2003) to prevent the occurrence of any condition which will or could be harmful or dangerous to the health of any person within its district, in these By-laws aims to protect the public, hereby adopts these By-laws to regulate fencing with the aim of safeguarding its residents in and visitors to the area.

## 3. Fences

(1) No person may, without the consent of the Council –

- (a) erect or cause, allow or permit to be erected a fence which is more than 2 meters in height on a boundary of a premises;
- (b) alter, make or cause, allow or permit to be altered or made an addition to an existing fence which is more than 2 meters in height on a boundary of premises;
- (c) erect or cause or permit to be erected on a boundary, or may have on a boundary, an electrified fence, electrified railing or other electrified barrier, unless –
  - i. the electrified fence, electrified railing or other electrified barrier on top of wall which may not be less than 2 meters high and built of brick, cement, concrete or similar material;
  - ii. electrified fence, electrified railing, or other electrified barrier is designed and installed in accordance with a standard issued in terms of the Standards Act, 1993 (Act 29 of 1993); and
  - iii. the person has obtained the prior written consent of the Council in terms of the National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977);
  - iv. erect or cause or permit to be erected on boundary a barbed-wire fence, railing, paling, wall or other barrier with spikes or other sharp or pointed protrusions.

(2) A person who wishes to obtain the consent of the Council must submit an application form similar to the form contained in the Schedule, which schedule refers, to the Building Inspector, and the Council may refuse or grant consent.

- (3) Should the Council refuse permission, it must, on request, supply the person in writing with the reasons for the refusal.
- (4) Should the Council grant consent, it may do so subject to such conditions, requirements or specifications which it may determine in each individual case, and subject to the provisions of SABS Code No. 1372, Prefabricated Concrete Components for Fences, made under the National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977), Notice No.1372 as published on May, 1985 in the Government Gazette, and the consent must entered in Item C of the form contemplated in subsection (2), and a person who has obtained consent, must at the request of an authorized official, immediately produce the form.
- (5) A person who has obtained consent in terms of subsection (4) must ensure that the fence is maintained in a good condition.
- (6) No person may –
  - (a) without the consent of the Council first having been obtained, demolish, interfere with or damage a fence for which consent has been granted in terms of subsection (4);
  - (b) having opened a gate in a fence, leave such gate open or unfastened;
  - (c) climb over or crawl through a fence without the permission of the owner or occupier of the land upon which such fence is situated, first having been obtained;
  - (d) may erect or cause to be erected a fence covered with –
    - (i) canvas, reeds, grass or any combustible material, except poles or split poles, or approved wood, which may not be erected within 4,5m of any street and which may not exceed 1,8 m in height; or
    - (ii) sheet iron, corrugated iron or any other sheeting along or within 4,5m of any street.
- (7) The Council may, whenever it appears that, in the interests of safety, vehicular, pedestrian or otherwise –

- (a) a fence needs to be erected or repaired, instruct the owner or occupier on whose premises such fence needs to be erected or repaired, to undertake such steps as stipulated in the instruction; or
  - (b) the height of wall, hedge or fence at a street corner needs to be reduced, by order in writing instruct the owner of occupier property to such wall, hedge or fence to a height specified in such order and being not less than one meter for distance not exceeding six meters along each side of such corner.”
- (8) A person commits an offence if he or she contravenes a provision of subsection (6) or fails to produce a form at the request of an authorized official as contemplated in subsection (2).
- (9) Should a person fail to comply with a provision of subsection (1), with a condition, requirement or specification contemplated in subsection (4), or subsection (5) or an instruction issued in terms of subsection (7), the Council may serve a notice of compliance or a demolition order on the person, as the case may be.

#### **4. Penalties**

A person who has committed an offence in terms of these By-laws contravenes is, on conviction liable to a fine or in default of payment, to imprisonment, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment, and in the case of a successive or continuing offence, to a fine for every day such offence continues, or in default of payment thereof, to imprisonment.

#### **5. Notice of compliance and representations**

- (1) The notice of compliance must state –
- (a) the name and residential or postal address of the affected person;
  - (b) the requirement which has not been complied with;
  - (c) having in detail the measures required to remedy the situation;
  - (d) that person must within a specified period take the measures to comply with the notice and complete the measures before a specified date; and
  - (e) that person may within 14 days make written representations in the form of a sworn statement or affirmation to the Council at a specified place.

- (2) The Council, when considering any measure or period envisaged in subsection (1)(c) or (d), must have regard to the principles and objectives of these By-laws, the nature of non-compliance, and other relevant factors.
- (3) Where person does not make representations in terms of subsection (1)(e), and the person fails to take measures before the date contemplated in subsection (1)(d), he or she commits an offence, and the Council may, irrespective of any penalty which may be imposed under section 4, act in terms of subsection (5).
- (4)
  - (a) Representations not lodged within the time contemplated in subsection (1) (e) will not be considered, except where the person has shown good cause and the Council condones the late lodging of the representations
  - (b) The Council must consider the timely representations and any response thereto by an authorized official.
  - (c) The Council may, on its own volition, conduct any further investigations to verify the facts if necessary, and the results of the investigation must be made available to the permit holder, who must be given an opportunity of making a further response if he or she so wishes, and the Council must also consider the further response.
  - (d) The Council must, after consideration of the representations and any response make an order in writing and serve a copy of it on the person, which order must confirm, in whole or in part, alter, or set aside the notice of compliance is confirmed, in whole or in part, or altered, the Council must inform the person that he or she must, within the period specified in the order, discharge the obligation set out in the order and that failure to do so constitutes an offence.
  - (e) Where a person fails to discharge the obligations contemplated in subsection (4)(d), he o she commits an offence and the Council may, irrespective of any penalty which may be imposed under section 4, act in terms of subsection (5).
- (5) The Council may take such measures as it deems necessary to remedy the situation, including the demolition of the fence, and the cost thereof must be paid to the Council in accordance with section 6.

## **6. Costs**

- (1) Should a person fails to take the measures required of him or her by a notice of compliance contemplated in section 5, the Council may, subject to subsection (3) recover, as a debt, all costs incurred as a result of it acting in terms of section 5(5) from that person and any or all the following persons:]
  - (a) the owner of the land, building or premises or
  - (b) the person or occupier in control of the land, building or premises or any other person who has or had a right to use the land at the time when the situation came about.
- (2) The costs recovered must be reasonable and may include, without being limited to, costs relating to labour, water, equipment, administrative and overhead costs incurred by the Council under section 5(5).
- (3) If more than one person is liable for costs incurred, the liability must be apportioned as agreed among the persons concerned according to the degree to which each was responsible for the emergency resulting from their respective failures to take required measures

## **7. Demolition order**

- (1) A person on whom a demolition order as been served in terms of sections 3(9), must demolish the fence and removed the materials.
- (2) Should the Municipality demolish a fence, it may dispose of the whole or any partly removed or demolished, by public auction or public auction or public tender.
- (3) The Municipality may deduct from the proceeds of any materials so disposed of the costs of any such pulling down, removal or demolition and the surcharge thereon and shall thereon and shall thereafter pay any balance to the fence removed or demolished.
- (4) The exercise of any powers set forth in subsection (2) and (3) shall not prejudice or diminish the rights of the Municipality to recover in terms of other provisions of these By-laws.

## **8. Authentication and service of notices and other documents**

- (1) A notice issued by the Council in terms of these By-laws is deemed to be duly issued if it is signed by an officer authorized by the Council.
- (2) Any notice or other document that is served on a person in terms of these By-laws is regarded as having been duly served –
  - (a) when it has been delivered to that person personally;
  - (b) when it has been left at that person's place of residence or business in the republic with a person apparently over the age of 16 years;
  - (c) when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic, and an acknowledgment of the posting thereof from the postal service is obtained
  - (d) if that person's address in the Republic is known, when it has been served on that person's agent or representative in the Republic in the manner provided by paragraphs (a), (b) or (c);
  - (e) if that person's address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the land or business premises to which it relates;
  - (f) in the event of a body corporate, when it has been delivered at the registered office of the business premises of such body corporate; or
  - (g) when it has been delivered, at the request of that person, to his or her e-mail address.
- (3) Service of a copy is deemed to be service of the original.
- (4) When any notice or other document is served on the owner, occupier, or holder of any property, it is sufficient if that person is described in the notice or other document as the owner, occupier, or holder of the property or right in question, and it is not necessary to name that person.

## **9. Appeal**

- (1) A person whose rights are affected by a decision of official of the Council acting in terms of these By-laws may appeal against that decision by giving written notice of the appeal and reasons to the municipal manager within 21 days of the date of the notification of the decision.

- (2) The appeal authority contemplated in subsection (3) must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.
- (3) When the appeal is against decisions a decision taken by –
  - (a) a staff member other than the Municipal Manager, the Municipal Manager is the appeal authority;
  - (b) the Municipal Manager, the Executive Mayor is the appeal authority; or
  - (c) a political structure or political officer bearer, or a Councilor the Council is the appeal authority.
- (4) The appeal authority must commence with an appeal within six weeks of receipt of the notice of appeal and decide the appeal within a reasonable time>

## **10. Implementation and enforcement**

- (1) The Council must appoint and mandate an official to administer the implementation and enforcement of these By-laws.
- (2) Upon appointment the Council must issue the official with an identity card which must state the name and function of the official, and which includes a photograph of the official.
- (3) An official, acting within the powers vested in him or her by these By-laws, must on demand by a trader produce the identity card and proof of identity.
- (4) An official within his or her mandate in terms of subsection (1) –
  - (a) must monitor and enforce compliance with these By-laws;
  - (b) may investigate an act or omission which on reasonable suspicion may constitutes an offence in terms of these By-laws;
  - (c) may, for the purposes of paragraph (a) and (b), enter upon premises on which a business is carried on with the aim of ascertaining if an offence in terms of these By-laws has been or is being committed; and
  - (d) may request the owner or occupier to provide such information as he or she deems necessary.
- (5) A person commits an offence if he or she

- (a) hinders or interferes with an official in the execution of his or her official duties;
  - (b) falsely professes to be an official;
  - (c) furnishes false or misleading information when complying with a request of an official; or
  - (d) fails to comply with a request official.
- (6) A person who contravenes a provision of subsection (5) commits an offence.

### **11. Saving and transitional provision**

An owner or occupier whose premises, at the provisions of these By-laws, do not comply with the provisions of these By-laws must, within a period of six months, ensure that his or her premises comply with the provisions of these By-laws

### **12. Revocation of by-laws**

The following are hereby revoked:

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

These By-laws are called the Highlands Fences and Fencing By-laws, 2005, and commence on a date determined by Council.

**SCHEDULE**

**(Section 3(2))**

**APPLICATION ON ERECT FENCE**

**A. OWNER OR OCCUPIER**

**Surname and first names of the person**

.....

**I.D. Number.....**

**Address: Postal address:**

.....  
.....  
.....

**Telephone number: Business..... Residential.....**

**B. PARTICULARS OF PREMISES AND FENCE**

**Erf Number.....**

**Address where the premises can be inspected**

.....  
.....  
.....

**NATURE OF FENCE TO BE ERECTED/ ALTERED**

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.....  
.....

**C. ISSUED LOCAL AUTHORITY**

**Consent is hereby granted in terms of section 5(4) of the.....**

**Fences and Fencing By-Law, 2004 that the above-mentioned fence  
may be erected on above-mentioned premises**

**Conditions, requirements or specifications in terms of section 5 (4):**

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**SIGNATURE OF INSPECTOR**

**DATE**

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**Name of inspector:**

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**Official designation:**

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DRAFT