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STEVE TSHWETE LOCAL MUNICIPALITY

FENCES AND FENCING BY-LAWS



STATE TSHUVETI LOCAL MUNICIPALITY
TECHNICAL AND FINANCIAL SERVICES

NOTICE 61 OF 2007

STEVE TSHWETE LOCAL MUNICIPALITY
FENCES AND FENCING BY-LAWS

Notice is hereby given in terms of Section 13 of the Local Government: Municipal Systems Act, 32 of 2000, as amended, read with Sections 156 and 162 of the Constitution of the Republic of South Africa Act, 108 of 1996, that the Steve Tshwete Local Municipality resolved to adopt the following Fences and Fencing By-laws with effect from the date of publication.

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Schedule 1**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 – (a) the Steve Tshwete Local Municipality as established by the Provincial Notice No. 28 of 2004, exercising its legislative function through its Municipal Council;

(b) its successor in title;

(c) a structure or person exercising a delegated power.

“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 metres 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 metres in height on a boundary of a 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 –
 - (a) the electrified fence, electrified railing or other electrified barrier is erected on top of a wall which may not be less than 2 metres high and built of brick, cement, concrete or similar material;
 - (b) the 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
 - (c) 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);
 - (d) erect or cause or permit to be erected on a 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 1, to the Council 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 20 May, 1985 in the Government Gazette, and the consent must be entered in Item C of the 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 galvanized iron or any other sheeting along or within 4,5 m 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 a wall, hedge or fence at a street corner needs to be reduced, by order in writing instruct the owner or occupier property to such wall, hedge or fence to a height specified in such order and being not less than one metre for a distance not exceeding six metres 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

Any person found guilty of a contravention of these by-laws shall be guilty of an offence and liable on conviction to a fine not exceeding R1000.00 or in default on payment, to imprisonment for a period not exceeding 3 months and in the event of a continued offence to a further fine not exceeding R200.00 for everyday during the continuance of such offence after a written notice from the Council has been issued, and in the event of a second offence to a fine not exceeding R2000.00 or, in default on payment to imprisonment for a period not exceeding 6 months.

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 the person must within a specified period take the measures to comply with the notice and to complete the measures before a specified date; and
 - (e) that the 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 the non-compliance, and other relevant factors.
- (3) Where a person does not make representations in terms of subsection (1)(e), and the person fails to take the 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 investigations 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 and further 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, and where 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 obligations 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 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).
- (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 fail 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 of 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 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 and any 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 the required measures.

7. Demolition order

- (1) A person on whom a demolition order has been served in terms of section 3(9), must demolish the fence and remove the materials.
- (2) Should the Council demolish a fence, it may dispose of the whole or any part of the materials from any fence, whether wholly or partly removed or demolished, by public auction or public tender.
- (3) The Council may deduct from the proceeds of any materials so disposed or the costs of any such pulling down, removal or demolition and the costs incurred in so disposing of the said materials and the surcharge thereon and shall thereafter pay any balance to the owner of 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 Council 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 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 or 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, postal or business address in the Republic, and an acknowledgement of the posting thereof from the postal service is obtained;
- (d) if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided by paragraph (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, or right in 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 an 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 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 office bearer, or a Councillor 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 officials to administer the implementation and enforcement of these By-laws.

- (2) Upon appointment the Council must issue the officials 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 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 constitute an offence in terms of these By-laws;
 - (c) may, for the purpose c.f paragraphs (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 of an official.
- (6) A person who contravenes a provision of subsection (5) commits an offence.

11. Availability of the by-laws

- (1) A copy of these by-laws shall be included in the Council's Municipal Code as required in terms of Section 15 of the Municipal Systems Act, 32 of 2000.
- (2) A copy of these by-laws shall be available for inspection at the municipal offices at all reasonable times.
- (3) A copy of these by-laws may be obtained in accordance with the provisions of the Council's Manual on the Promotion of Access to Information Act, 2 of 2000.

12. Saving and transitional provision

An owner or occupier whose premises, at the date of commencement of these By-laws, do not comply with the provisions of these By-laws must, within a period of 12 (twelve) months, ensure that his or her premises comply with the provisions of these By-laws.

13. Repeal of by-laws

The following by-laws are hereby repealed:

Municipality of Middelburg: By-laws relating to walls, hoarding and fences published on 30 September 1987.

14. Short title and commencement

These By-laws are called the Steve Tshwete Local Municipality: Fences and Fencing By-laws, 2006, and commence on a date of publication thereof in the Provincial Gazette.

STEVE TSHWETE LOCAL MUNICIPALITY

SCHEDULE 1 (Section 3 (2))

APPLICATION TO ERECT FENCE

A. OWNER OR OCCUPIER

Surname and first names of person

I.D. Number: _____

Address: Postal Address:

Residential Address:

Telephone No.: Business _____ Residential _____

B. PARTICULARS OF PREMISES AND FENCE

Erf Number: _____

Address where the premises can be inspected

NATURE OF FENCE TO BE ERECTED / ALTERED

C. ISSUING LOCAL AUTHORITY

Consent is hereby granted in terms of section 5(4) of the Fences and Fencing By-laws, 2006 that the above-mentioned fence may be erected on above-mentioned premises

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

SIGNATURE OF INSPECTOR

DATE

Name of inspector:

Official designation:
