Winnie Madikizela-Mandela, South Africa

Establishment and Control over Commonages By-law, 2017

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South Africa

Establishment and Control over Commonages By-law, 2017

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The Municipal Manager hereby publishes, in terms of section 13 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) read with section 162 of the Constitution of the Republic of South Africa Act 1996 (Act No. 108 of 1996) the By-laws Relating to the Establishment and Control over Commonages which by-laws come into operation on the date of publication thereof.

WHEREAS the Council of the Municipality is vested with legislative authority in terms of the Constitution of the Republic of South Africa, 1996;

AND WHEREAS the Council in the exercise of its functions has the right to control commonages on land in the jurisdiction of the Municipality and matters connected therewith;

NOW THEREFORE be it enacted by the Council as follows:

1. Definitions

In these by-laws, words used in the masculine gender include the femine, the singular includes the plural and vice versa and unless the context indicates otherwise –

"**administrative unit**", for the purpose of these by-laws, means a former municipality contemplated in section 14(3) of the Local Government: Municipal Structures Act, 1998 (Act No. 177 of 1998);

"**Municipality**" means the _____ Municipality, a local municipality established in terms of section 12 of the Local Government: Municipal Structures Act, 1998;

"**Municipal land**" means land situated inside the area of jurisdiction of the Municipality, but outside the boundaries of any township of which the Municipality is the owner, or of which the control, to the entire exclusion of the owner, is vested in the Municipality;

"**Municipal Manager**" means the person appointed as such in terms of section 82 of the Local Government: Municipal Structures Act, 1998;

"**these by-laws**" includes the prescripts issued in terms of section (7); and

"**township**" means a township as defined in section 1 of the Land Survey Act, 1997 (Act No. 8 of 1997) or any similar legislation.

2. Reservation of land as common pasture

(1) The Municipality may, in respect of land owned by the Municipality and subject to the provisions of any law or any restriction regarding the use of land in the title deed of that land, by notice in the Provincial Gazette and with effect from a date mentioned in such notice –

(a) reserve such land as common pasture;

(b) at any time add any additional defined piece or pieces of municipal land to the common pasture so reserved; and

(c) at any time withdraw partly or wholly any land which forms part of the common pasture from the reservation thereof as a pasture.

(2) The Municipality may not alienate or deal with the land referred to in subsection (1), except after notice in the Provincial Gazette –

(a) stipulating which piece or pieces of land it intends to withdraw or alienate;

(b) calling on interested persons to attend a meeting at a venue and on a date mentioned in the notice, to discuss the intended withdrawal or alienation; and

(c) stating –

(i) the intended date or dates of withdrawal or alienation of any such piece or pieces of land has been published; and

(ii) the Municipality has considered all representations received in response to such notice;

(3) The alienation or dealing in land and the public notice referred to in subsection (2) may occur only after the lapse of any permit for grazing of stock on the piece or pieces of land that the Municipality intends to withdraw or alienate.

3. Office of the commonage manager

(1) The Municipality must appoint a person as commonage manager, who must report to a manager designated by the Municipal Manager.

(2) The commonage manager must be responsible for the proper management and maintenance of all land forming part of the commonage.

(3) In the office of the commonage manager, the Municipality must appoint –

(a) for each piece of land forming part of the commonage, a ranger who must deal with the day-to-day administration of that piece of land;

(b) such persons as may be necessary to maintain proper records regarding land forming part of the commonage, maps, camps, allocation of stock, movement of stock, holders of grazing permits on the commonage, marking of stock, stock disease, payments and other matters regarding the administration of the commonage;

(c) a veterinary surgeon on a full-time or part time basis, to fulfill the functions prescribed by or under any law relating to stock.

(4) A single ranger may be appointed for more than one piece of land if the pieces of land are so situated that it is practically possible for one ranger to maintain proper control over each of the pieces of land.

(5) A ranger must visit the land for which he is appointed on a regular basis and must be present on the land for at least one full working day during each week of the year.

(6) On a regular basis, but at least once every three months, the veterinary surgeon appointed by the Municipality must do an inspection on, report on and make recommendations to the commonage manager regarding the state of health of each animal on the commonage.

4. Grazing permit required to graze stock on common pasture

No person may graze stock on the common pasture of the Municipality, unless –

(a) he is the holder of a grazing permit issued by the Municipality and subject to the conditions of such permit;

(b) the animal is the progeny of a female animal grazed in terms of a grazing permit contemplated in subsection (1) (a) and is not older than 6 months; and

(c) he has paid the commonage fees, determined by the Municipality, in respect of the period for which the grazing permit was issued; provided that a permit holder may partly or wholly be exempted of such payment in terms of the Indigent Policy of the Municipality.

5. Application for and issue of grazing permit

(1) An application for a grazing permit must –

(a) be directed to the Municipal Manager;

(b) be in writing on the form made available by the Municipality for that purpose;

(c) contain adequate proof that the applicant is a permanent resident within the area of jurisdiction of the Municipality; and

(d) contain such further particulars as the Municipality may require.

(2) On receipt of an application for a grazing permit, the Municipal Manager must refer it to the commonage manager, who must verify the particulars contained in the application and report thereon to the Municipal Manager.

(3) When considering the application, the Municipal Manager must take into account –

(a) the report of the commonage manager;

(b) the availability and condition of land in the common pasture of the Municipality to accommodate the required number of stock for which application is made;

(c) the criteria for categories of preference that applicants must take as set out in a notice published by the Municipality in a newspaper circulating in its area of jurisdiction and by such other means as the Municipal Manager may determine.

(4) After consideration of the application, the Municipal Manager must –

(a) issue the permit as applied for by the applicant;

(b) issue a permit for a lesser number of stock than applied for; or

(c) in writing notify the applicant that his application was not successful with stated reasons.

(5) A person whose rights are affected may appeal to the Municipality against a finding of the Municipal Manager and, in respect of such appeal, the provisions of section 62 of the Local Government: Municipal Systems Act, 2000 are applicable.

(6) A permit for the grazing of stock on the municipal common pasture is issued –

(a) for a period of one year or less and will lapse on the last day of June of each year;

(b) subject to the conditions set out in the permit;

(c) subject to prior payment of the fees determined by the Municipality in accordance with the applicable schedule of tariffs;

(7) A permit for the grazing of stock on the municipal common pasture may be renewed twice without the submission of a new application provided that the permit holder has paid –

(a) all fees due to the Municipality under these by-laws; and

(b) a permit renewal fee as determined by the Municipality no later than the last day of May of the year in which the permit lapses;

6. Refusal to renew, withdrawal and transfer of grazing permits

(1) The Municipal Manager may refuse to renew the permit referred to in subsection (5) (6) if he is of the opinion that –

(a) due to the condition of the land to which the permit holder's stock is allocated, the permit should not be renewed; or

(b) there is sufficient evidence that the circumstances of the permit holder have changed to such an extent that the application of any new applicant must take preference in terms of a notice referred to in subsection (5) (3) (c).

(2) A permit for the grazing of stock on the municipal common pasture may be withdrawn by the Municipality if the holder of the permit contravenes or fails to comply with –

(a) a condition subject to which the permit was issued;

(b) any provision of these by-laws; or

(c) a lawful direction by –

(i) the ranger in charge of the land on which his stock is grazed; or

(ii) the veterinary surgeon appointed by the Municipality.

(iii) A permit to graze stock on the common pasture of the Municipality may not be transferred.

7. Duties of the commonage manager

The commonage manager must –

(a) divide each piece of land reserved as common pasture in terms of section 2 (2) (a) in camps suitable for the grazing of stock and allocate a number to each camp;

(b) provide, in each camp, such facilities as may be necessary for the maintenance of stock in that camp;

(c) draft, or cause to be drafted, proper maps of each piece of land reserved as part of the common pasture, indicating at least the boundaries of camps, gates and waterholes;

(d) allocate the stock of each permit holder to a specific camp or camps and notify such permit holder accordingly;

(e) develop, implement and adjust according to changing circumstances, a proper program of rotation of grazing on land reserved as common pasture by the Municipality; and

(f) keep proper records, open for inspection by any person who has an interest therein, regarding –

(i) all permit holders;

(ii) dates of expiry of all permits;

(iii) payments or exemptions of payment of all permit holders; and

(iv) any other matter which, in his opinion, needs to be recorded.

8. Prescripts

(1) The Municipality may issue prescripts relating to the control, management and use of the municipal common pasture, including –

(a) the construction and maintenance of dipping tanks, the monies payable in connection with the use thereof, and the persons responsible for the payment thereof;

(b) the marking of stock kept thereon;

(c) the prohibition of the keeping of dangerous and undesirable animals thereon, and the definition of such animals;

(d) the prevention and treatment of stock diseases in respect of stock kept thereon, and the exclusion of stock which in the opinion of the veterinary surgeon appointed by the municipality may spread such diseases;

(e) the destruction of carcasses of animals;

(f) the impounding of animals trespassing thereon or grazed thereon without a permit;

(g) the planting, care and protection, and the destruction, chopping or cutting off of grass, trees, shrubs or any other plants or crop, and the sale thereof;

(h) the burning of grass and the eradication of noxious weeds;

(i) the hunting of game thereon by any means, including the use of firearms or dogs;

(j) the duties and functions of rangers;

(k) the prohibition to put out poison; and

(l) generally, any matter which the Municipality deems necessary or expedient in connection with the control, management or use of the common pasture or the achievement of the objects of these by-laws.

(2) A prescript issued in terms of subsection (1) must be –

(a) published in a newspaper circulating in the area of jurisdiction of the Municipality;

(b) placed on the official notice board of the Municipality; and

(c) filed in the municipal code of the Municipality.

(3) If the Municipal Manager is of the opinion that it is in the public interest, he may, for such period and subject to such conditions he may deem fit, exempt any person, group or category of persons in writing from compliance with any prescripts issued in terms of subsection (1).

9. Waiver of provisions

(1) The Municipality may, if it deems it desirable to do so in the public interest, waive compliance with or relax the provisions of these by-laws; provided that any person whose rights are adversely affected by such waiver or relaxation will not be bound thereby.

(2) In each case in which such waiver or relaxation has been granted to any person, the Municipality must serve a written notice upon such person citing the relevant provision waived or relaxed and the extent to which such provision has been waived and, in addition, the Municipality must keep a record containing an identical copy of each such notice, which record must be available for inspection by members of the public at the offices of the Municipality.

10. Appeal

(1) A person whose rights are affected by a decision of an official 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 Municipal Manager 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 Committee is the appeal authority; or

(c) a political structure or political officer bearer, or a Councillor Council is the appeal authority.

(4) The appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable time.

11. Penalty clause

(1) Any person who contravenes or fails to comply with any provision of these by-laws or any requirement or condition there-under is guilty of an offence.

(2) Any person convicted of an offence in terms of subsection 11(1) is liable to a fine or to imprisonment for a period not exceeding one year, or to both a fine and such imprisonment.

12. Repeal of by-law

(1) All by-laws relating to a matter regulated in these by-laws proclaimed by an administrative unit now forming part of the Municipality are, with effect from the date of promulgation of these by-laws, hereby repealed.

(2) Any permission obtained, right granted, condition imposed, activity permitted or any thing done under a repealed law, are deemed to have been obtained, granted, imposed, permitted or done under the corresponding provision (if any) of these by-laws, as the case may be.