Winnie Madikizela-Mandela, South Africa

Municipal Pound By-law, 2019

Legislation as at 21 October 2019

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South Africa

Municipal Pound By-law, 2019

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To give effect to the Municipalities Municipal By Law and the implementation thereof i.e. it is the process utilised by the municipality to ensure responsible services rendered in terms of the application of this by law.

WHEREAS section 24(a) of the Constitution provides that everyone has the right to an environment that is not harmful to their health and well-being; and

WHEREAS in terms of section 11(3)(m) of the Local Government; Municipal Systems Act 32 of 2000, read with section 162 of the Constitution of the Republic of South Africa Act 108 of 1996, municipalities have the legislative power to promulgate by laws regarding any matter which falls within its functional competence;

NOW THEREFORE the Council of the Mbizana Local Municipality, acting in terms of section 156 read with Schedule 5 (Part B) of the Constitution of the Republic of South Africa Act 108 of 1996, and read with section 1 of the Local Government: Municipal Systems Act 32 of 2000, hereby effects the above by law.

1. Definitions

"**animal**" means any equine, bovine, cow, bull, oxen, sheep, donkey, goat, pig, fowl, ostrich, dog, cat or other domestic animal or bird, or any wild animal, cattle, wild bird or reptile, including the young of such animal and includes also both sexes of such animal.

"**animal disease**" has the meaning assigned to it in terms of the Animal Diseases Act No. 35 of 1984.

"**animal health scheme**" has the meaning assigned to it in terms of the Animal Diseases Act No. 35 of 1984.

"**auction sale**" means a public sale in which members of the public are invited to bid for the animal or animals being offered for sale, the animal or animals being sold to the highest bidder at the fall of the hammer, and which sale constitutes a legally binding contract and which complies with the provisions of the Consumer Protection Act No 68 of 2008, where applicable.

"**contagious disease**" means any disease, sickness, or illness which is capable of being transferred or transmitted from an infected animal, carcass or other thing to another animal, plant or human either through physical contact or by being airborne.

"**Council**" means the Council of the Mbizana Local Municipality.

"**department**" means the Department of Agriculture, Forestry and Fisheries.

"**hooves**" means horny covering protecting the ends of digits in the foot of certain animals, such as horses or donkeys.

"**identification mark**" has the meaning assigned to it in terms of the Animal Identification Act, 2002.

"**municipality**" means the Mbizana Local Municipality

"**mane**" means hair that grows from the top of the neck of a horse that naturally grows to cover the neck and forehead.

"**owner**" in relation to any animal or animals includes any person having possession, charge, custody or control of such animal or animals in relation to land includes the registered owner, lessee or any lawful occupier of such land

"**pound**" means a fenced-off area consisting of one or more camps and which meets the requirements of the local Society for the Prevention of Cruelty to Animals for the keeping of animals established by the municipality and placed under the control of the pound master, for the housing and care of animals which are astray, lost or at large.

"**pound master**" means a person who may be a part-time or full-time employee of the municipality and appointed as such in terms of these by laws

"**public place**" means any place to which the public has access including, but not limited to, any square, park, recreational ground, sports grounds, open space, shopping centre on municipal land, used or vacant municipal land or cemetery

"**public road**" means a public road as described in Section 1 of the National Road Traffic Act No 93 of 1996

"**ranger**" means any person appointed as such by the municipality in terms of these bylaws to patrol public places and roads with the intention of impounding stray or lost animals and to maintain the pound

"**SPCA**" means the local Society for the Prevention of Cruelty to Animals

"**ticks**" means small ectoparasites living by feeding on the blood of aniamls

"**vaccine**" means any injectable solution that provides immunity to a particular disease

"**veterinary surgeon**" means a person who is qualified as such in accordance with the provisions of the Veterinary and Para-Veterinary Professions Act No 19 of 1982

2. Revocation of by laws

2.1 The provisions of any by-laws previously promulgated by the municipality or by any of the disestablished municipalities now incorporated in the municipality are hereby repealed as far as they relate to matters provided for in this by-law, and insofar as it has been made applicable to the municipality by the authorisation for the execution of powers and functions in terms of section 84(3) of the Local Government: Municipal Structures Act, Act 117 of 1998.

2.2 Any by laws relating to this by law as adopted by the municipality or any erstwhile municipal council now comprising an administrative unit of the municipality shall be repealed from the date of promulgation of this by law.

3. Application of by law

34.1 This by law shall be binding on all persons and property within the jurisdiction of the municipality.

4. Legislation

4.1 Constitution of the Republic of South Africa

4.2 Local Government: Municipal Systems Act No 32. Of 2000.

4.3 National Road Traffic Act No 93 of 1996

4.4 Animal Identification Act No.6 of 2002.

4.5 Animal Diseases Act No. 35 of 1984.

4.6 Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act No 36 of 1947.

4.7 Criminal Procedure Act No 56 of 1955.

4.8 Animal Protection Act No 71 of 1962.

4.9 The legislation listed in sub-paragraphs 4.1. to 4.8 above do not represent an exhaustive list of legislation to which these by laws may be subject.

4.10 In the event of any ambiguity between any provision of this bylaw and the provision of any national or provincial legislation, the provision of such legislation shall prevail.

5. Objects of bylaw

5.1 To promote the effective monitoring and control of impounded animals within the jurisdiction of the municipality.

5.2 To ensure that the established pound as well as its administration is in line with applicable legislative requirements and requirements of the SPCA.

5.3 To foster a culture of stock responsibility among the communities of the municipality.

5.5 To administer the pound in a manner that is fair to stock owners, especially rural stock owners whose livelihood and status in their communities depend largely on their stock count.

6. Establishment of pound

6.1 The Council may establish a pound at any convenient place within its area of jurisdiction and, whenever the Council deems it necessary, may disestablish such pound.

6.2 The pound shall meet the following criteria, as well as any criteria required by the SPCA and or other legislation with regards to the keeping of animals:

6.2.1. The pound area shall be well-fenced, secure with lockable gates (barbed wire fencing is discouraged as it poses a danger to impounded animals);

6.2.2. The pound area shall be reasonably large enough to allow for free mingling of animals, provided different categories of animals shall be kept separate from one another if so dictated by the SPCA or other applicable legislation;

6.2.3. The pound shall be large enough to allow for adequate grazing;

6.2.4. The pound area shall be sub-divided into enclosures to accommodate animals according to their feeding adaptations, behaviour and state of health, provided that there are separate enclosures as follows:

6.2.4.1. cattle

6.2.4.2. sheep, goats and pigs

6.2.4.3. dogs; and

6.2.4.4. cats;

6.2.5. Where there is insufficient ground for grazing, there must be alternative provision for feeding;

6.2.6. The pound must have adequate shelter for the provision of shade and protection against adverse weather conditions, for both animals and pound personnel;

6.2.7. The pound must have adequate supply of clean water at all times;

6.2.8. The pound must be clean and well-maintained at all times;

6.2.9. Animal droppings must be removed from the enclosures as they pollute the area and serve as breeding ground for diseases;

6.2.10. A poisonous plant species must also be identified and destroyed;

6.2.11. The pound must have a constructed off-ramp for off-loading of animals from delivery vehicles;

6.2.12. Animals must be transported strictly in accordance with the transportation guidelines laid down for different categories of animals by the SPCA to ensure no harm is caused to any animal.

6.2.13. The pound shall have a separate quarantine section.

6.3 The Council shall give notice of the establishment of a pound, or the disestablishment thereof, by publishing a notice in at least two newspapers circulating in the area of jurisdiction of the Council.

7. Pound master

7.1 The municipality shall appoint a fit and proper person to be the pound master.

7.2 It is the duty of the pound master to receive into his or her charge, for impoundment, all animals brought to the pound, during such hours as the municipality may determine.

7.3 The pound master is responsible for the overall administration and management of the pound.

7.4 The pound master shall keep and manage the pound register.

7.5 The pound master shall liaise with the state veterinary surgeon or equivalent officer with regards to injured, sick or dead animals.

7.6 In the absence of the pound master, the municipality may appoint another person to act in such position, and such person shall assume all duties of the pound master as contained in this bylaw during the time of his or her acting as such.

8. Rangers

8.1 The municipality shall appoint one or more persons to be rangers.

8.2 Rangers shall patrol all public and municipal spaces within a prescribed radius.

8.3 Rangers shall deliver stray, lost or trespassing animals to the pound.

8.4 Rangers shall mark all animals upon delivery to the pound. The rangers shall ensure that the markings envisaged in this section are done in a safe, and non-harmful manner.

8.5 Rangers shall remove all dead or injured animals, provided that injured animals shall only be removed upon consultation with a veterinary surgeon, from roads, public spaces and the pound.

9. Pound Assisstants

9.1 The municipality may appoint as many pound assistants as it deems necessary to support the pound master in his or her duties.

9.2 Pound assistants shall be responsible for:

9.2.1. cleaning and maintenance of the pound;

9.2.2. provision of water and feed;

9.2.3. removal of animals from the pound upon instruction by the pound master;

9.2.4. tendering of animals in preparation for sale;

9.2.5. maintenance of enclosures and grazing land;

9.2.6. feeding of impounded animals;

9.2.7. destruction and disposal of sick or injured animals upon instruction by the pound master.

10. Detention and removal of animals

10.1 Any animal-

10.1.1. found trespassing on land; or

10.1.2. straying or wandering unattended in a public road or other public place, may be detained and removed to a pound by the owner of such land, a ranger, a member of the South African Police Services , the pound manager or his or her designee, or any other person.

10.2 Any person who has detained an animal for the purpose of impounding shall-

10.2.1. remove such animals to a pound within 24 hours after seizure; and

10.2.2. ensure that proper care is taken of the seized animal until the animal is received at the pound.

11. Impoundment

11.1 Any person removing an animal to a pound shall provide the pound manager with-

11.1.1. his or her name and permanent residential address;

11.1.2. the time and place of detention of the animal; and

11.1.3. the capacity in which he or she detained the animal.

11.2 The pound manager shall, upon receipt of a detained animal-

11.2.1. record the particulars furnished in terms of section 5(1) and enter the same in a book maintained for the purpose, which book shall be known as the pound register;

11.2.2. record in the pound register the number of animals impounded, a description of each animal, whether such animal has an identification mark and the general state of health as of time of impoundment as observed by the pound master.

11.2.3. furnish the person delivering the animal with a receipt reflecting-

11.2.3.1. his or her name;

11.2.3.2. a description of the animal or animals; and

11.2.3.3. the date and time of receipt of the animal(s) at the pound; and

11.2.3.4. keep a copy of each receipt issued in terms of section 5(2)(b).

11.3 No person shall release or attempt to release, otherwise than in accordance with these bylaws, any animal(s) which has been received at a pound.

11.4 Where it is clear that any animal is sick or injured, the pound master shall immediately consult the state veterinary surgeon or other equivalent person, with a view to securing medical treatment for the animal.

11.5 The pound master shall comply with any animal health scheme pertaining to any sick or diseased animal.

11.6 Within 24 hours of the impoundment of any animal, the pound master shall cause a notice to be put up on the pound notice board, which notice shall contain a description of the animal or animals impounded, the vicinity in which such animal(s) was found wandering or trespassing, and advising owners to claim such animals within a period of 14 days, failing which the animal may be considered for sale by the municipality. Provided that where such animal is so sick or injured it may be disposed off, in accordance with these bylaws prior to or within the 14 day notice period.

11.7 If an animal or animals impounded at the same time exceeds the fair market value of R10 000-00, the pound master must publish a copy of the notice referred to in clause 11.5 above in a newspaper published in the area in which the impounded animal was found, or if there is no such newspaper then in any newspaper circulating in the area.

12. Impounded animals bearing identification mark or animals for which the owner is known to Pound Master

12.1 In accordance with Regulation 8 of Government Notice R1683 dated 21 November 2003, issued in terms of section 14 of the Animal Identification Act, 2002, the pound master shall follow the following procedures with respect to animals bearing an identification mark or where the pound master is aware of the identification of the owner:

12.2.1 . The pound master shall send by certified post to the owner of the animal a notice containing the following details:

(a) the name and address of the pound;

(b) the name and address of the owner of the identification mark;

(c) the description of the identification mark;

(d) the description of the animals in the pound;

(e) the number of animals of each description;

(f) the date on which the animals of each description were impounded;

(g) the date on which the animals of each description will be auctioned; and

(h) the date of issue of such notice.

13. Claim by owner

13.1 Where a person has satisfied the pound master that he or she is the legal owner of an impounded animal, the pound master may release such animal to such person only upon the following condition:

13.2.1 . The claimant has paid the amount of an invoice issued by the pound master which reflects the costs incurred for the feeding, veterinary care and accommodation of the animal charged for the period of impoundment.

13.2 The pound master shall issue an invoice of charges to the claimant, such invoice to be paid at the municipality cashier's office.

13.3 Upon proof of payment issued by the municipal cashier, the pound master issue a payment receipt in triplicate. One receipt shall be given to the owner, one receipt shall be kept by the pound master and one receipt shall be filed in a payments receipts book to be handed over to the municipality treasury department once a month.

13.4 The pound master will thereafter facilitate the safe removal of the claimed animal from the pound.

14. Unclaimed animals

14.1 Where any impounded animal remains unclaimed for a period of more than 14 days from date of impoundment, such animal may be put up for sale by way of auction.

15. Procedure and notice of sale

15.1 If an animal has not been claimed by its owner or if the owner of the animal is unknown, the pound master must within 5 days from the end of the notice period of the notice contemplated in clause

11.4 above, apply to the magistrates court in terms of the procedure prescribed by that court for an order to sell the animal on public auction.

15.2 After the court grants the order contemplated in 15.1 above, the pound master must publish the prescribed notice of sale of the animal.

15.3 The notice of sale must be displayed for 5 days in three public places on the municipality and must specify the time and place at which the animal will be publicly sold.

15.4 If the animal has not been claimed by the owner or someone on behalf of the owner after 5 days of the publication of the notice of sale, the pound master can proceed to dispose of the animal by way of public auction.

15.5 The animal must be sold to the highest bidder at the time and place mentioned in the notice.

15.6 Every sale of impounded animals must be conducted by the pound master or some other person duly authorised thereto by the municipality.

15.7 Every sale of impounded animals must commence at the time and date mentioned in the notice in terms of clause 15.3 above.

15.8 No person conducting a sale may have any direct or indirect interest in any purchase at any sale so held by him or her.

15.9 At every sale no animal may be put up for sale unless impounded for at least 14 consecutive days.

15.10 No animals, except sheep and goats must be sold individually.

15.11 Sheep and goats must be sold in lots of not more than ten, and sheep and goats, or sheep and goats with different marks or brands may not be sold together in the same lot.

15.12 Animals must be sold for cash, and proceeds, less the amount of the pound fees and other costs incurred must be handed by the pound master to the municipality, to be paid to the owners of the animals sold.

15.13 Any monies, being the proceeds of the sale of any impounded animal, not being claimed by the owner of such animal within twelve months from the date of sale, accrues to the municipality.

15.14 The municipality may fix a reserve price for any animal offered for sale; and

15.15 The pound master may withdraw any animal from the sale if the highest bid received is not satisfactory, irrespective of whether a reserve price has been fixed by the municipality.

15.16 If the owner claims the animal after 5 days of the notice of sale but before the animal is auctioned, the owner of the animal will be liable for the amount-

(a) claimed for damages caused by the animal to the property of the person who impounded the animal

(b) for veterinary fees;

(c) for the service fee of the pound master as prescribed;

(d) for the publication of the notice of sale; and

(e) any other expense as may be prescribed by law.

15.17 The owner is entitled to the remittance of the net proceeds of sale contemplated in this section by application in the prescribed manner.

15.18 The pound master shall keep a record of every court order authorising an auction, as well as the purchase price of every animal sold in terms of such auction.

15.19 No animal shall be sold otherwise than in accordance with this section.

16. Costs of impoundment which municipality is entitled to recover from owner

16.1 Any owner who claims an impounded animal shall be responsible for the tariff of charges in respect of feed, accommodation and or veterinary costs and any other related costs for which a tariff has been prescribed by the municipality, for the duration in which the animal has been impounded.

17. Care and treatment of animals

17.1 A temporary mark shall be applied to every impounded animal within 24 hours upon arrival at the pound.

17.2 The pound master shall ensure that the temporary marking is done in a humane manner and shall not in any way harm or injure the animal.

17.3 Where there is adequate grazing ground, animals must be allowed to graze for at least 2 hours per day after which they must be returned to their enclosures.

17.4 Young who are still suckling must not be separated from their mothers.

17.5 Provision for adequate water must be provided in the grazing area as well as in the enclosures.

17.6 Where there is insufficient grazing ground alternative and appropriate feed must be provided for each type of animal.

17.7 Male and female animals must be accommodated separately, provided that young sucklings must not be separated from their mothers.

17.8 Pound enclosures must provide sufficient protection from the elements, such as rain, sunshine or wind.

17.9 The pound must be kept in a clean and hygienic state at all times.

17.10 The pound perimeter fences must always be in a state of good repair to prevent animals escaping from the pound.

17.11 No animal shall be ill-treated, beaten, ridden, caused to work, milked for human benefit, teased, played with , denied food or water, chained, tied, whipped or in any other manner treated cruelly or in an inhumane manner. Any official found contravening this section shall be immediately disciplined which may include dismissal for a first offence.

17.12 The pound master shall ensure that any animal that is visibly sick or injured shall receive veterinary attention as soon as possible.

17.13 Whenever any animal is transported it shall be so transported in a manner that complies with the SPCA's guidelines on the transportation of animals.

17.14 No pound official or other person may administer medical treatment to any animal otherwise than in accordance with the advice of a veterinary surgeon or other equivalent person.

17.15 The pound assistants shall ensure that the pound area and grazing areas are free of any alien or poisonous plant species or any other things or objects that may be harmful to the animals.

17.16 The pound master must ensure that grazing rotation is practised to avoid overgrazing of a particular area.

17.17 Before any animal is sold as provided for in clause 14 above, the pound master and rangers shall ensure that each animal is tendered. This will include the trimming of manes, hooves and branding.

17.18 The pound master shall not release any animal into the care of any person who is visibly under the influence of alcohol or other substance such as drugs. This provision shall apply equally to the owner who claims any animal.

18. Duties of owners of animals

18.1 Each owner of animals must-

(a) apply for registration of an identification mark in terms of section 5(1) of the Animal Identification Act, 2002;

(b) mark his or her animal in the prescribed manner;

(c) where an identification mark on an animal is invisible or indistinct, mark the animal clearly with his or her identification mark, within 14 days after he or she is directed to do so by any official of the municipality;

(d) notify the pound master of him or her being a registered owner, and providing the pound master with his or her names, identity number and permanent place of residence

(e) notify the pound master in writing of any changes of his or her address

(f) any owner of animals may apply for registration contemplated in sub-paragraph{a) above, with the assistance of the pound master who shall assist the owner with the filling in of necessary application forms and liaison with the department.

18.2 No person may -

(a) within 14 days of the date on which he or she becomes the owner of an animal with an identification mark, sell, barter, give away or in any other manner dispose of that animal to another person, unless he or she furnishes a document of identification to the person who acquires that animal; or

(b) after 14 days of the date on which he or she becomes the owner of that animal unless

(i) such animal has been marked in the prescribed manner with the identification mark of the owner disposing of that animal; and

(ii) he or she furnishes the person acquiring that animal with a document of identification.

18.3 A person acquiring an animal from a person disposing of an animal as contemplated in subsection (2) must retain the document of identification obtained from that person for a period of one year.

19. Destruction of sick or injured animals

19.1 No animal may be destroyed unless authorised by a veterinary surgeon or equivalent person.

19.2 Where a veterinary surgeon or equivalent person has authorised the destruction of an animal, he or she shall also prescribe the manner of destruction which shall be via medical means administered by a qualified person.

19.3 No animal shall be destroyed in a cruel or inhumane manner.

19.4 Prior to the destruction of such animal the pound master shall apply to the magistrates court for an order authorising such destruction in line with the recommendations of the veterinary surgeon or equivalent person. Such application shall be made not more than 3 days after receipt of the recommendations of the veterinary surgeon or equivalent person. Where it is necessary for the immediate destruction of the animal in order to prevent further contamination or spread of disease to other animals or humans, such application must be made on an urgent basis.

19.5 The remains of the destroyed animal shall be buried (unless the veterinary surgeon or equivalent person specifically prescribes a cremation) in accordance with any applicabl e legislation in an area specifically demarcated outside the perimeter of the pound.

19.6 For each burial lime must be applied to the pit.

20. Appeal

20.1 Any person whose rights are affected by a decision of the municipality may appeal against that decision by giving written notice of the appeal and the reasons therefore in terms of section 62 of the Municipal Systems Act, 2000 to the municipal manager within 21 days of the date of notification of the decision.

21. Offences and penalties

21.1 Any person who-

(a) contravenes or fails to comply with a provision of this bylaw;

(b) deliberately obstructs or interferes with any person in the exercise of any power or the performance of any duty or function in terms of this bylaw; or

(c) furnishes false, incorrect or misleading information, commits an offence and is liable upon conviction to-

(i) a fine or imprisonment, or to both such fine and such imprisonment; and

(ii) in the case of a continuing offence, to an additional fine or an additional period of imprisonment or to such additional imprisonment without the option of a fine, or to both such additional fine and imprisonment for each day on which such offence is continued; and

(iii) a further amount equal to any costs and expenses found by the court to have been incurred by the municipality as a result of such contravention or failure.

22. Revocation of by laws

22.1 The provisions of any bylaws previously promulgated by the municipality or by any of the disestablished municipalities now incorporated in the municipality if applicable, are hereby repealed as far as they relate to matters provided for in this bylaw, and insofar as it has been made applicable to the municipality by the authorisation for the execution of powers and functions in terms of section 84(3) of the Local Government: Municipal Structures Act 117 of 1998.

35. Short title and commencement

35.1 This by-law is called the Municipal Pound By Law, 2019 and shall come into operation on the date of publication thereof in the Provincial Gazette.