Swartland, South Africa

Installation of Telecommunications Infrastructure By-law, 2019

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Swartland
South Africa

Installation of Telecommunications Infrastructure By-law, 2019

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Under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996, Swartland Municipality enacts as follows:-

Chapter 1
Definitions and purpose

1. Definitions

In this by-law, and unless the context otherwise indicates-

"**administration fee**" means the fee that must be paid in advance for a permit to be processed and considered;

"**annual permit fee**" means the fee that must be paid as a condition of issue and continuing validity of a permit issued by the municipality in terms of this by-law;

"**as-built information**" means information relating to how infrastructure has been installed by an operator;

"**authorised official**" means an employee of the municipality responsible for carrying out any duty or function or exercising any power in terms of this by-law and includes a person or agent delegated to carry out or exercise such duty or function;

"**competent person**" means a person who is qualified by virtue of his or her education, training, experience and contextual knowledge to decide regarding the performance of an operator in the provision of electronic communications infrastructure;

"**completion of work**" means the work has reached a state where the permit conditions are met to the satisfaction of the authorised official;

"**ECA**" means the Electronic Communications Act, 2005 (Act No 36 of 2005);

"**electronic communications**" has the meaning in the ECA, namely the emission, transmission or reception of information, including without limitation, voice, sound, data, text, video, animation, visual images, moving images and pictures, signals or a combination thereof by means of magnetism, radio or other electromagnetic waves, optical, electromagnetic systems or any agency of a like nature, whether with or without the aid of tangible conduct, but does not include content service;

"**electronic communications facility**" has the meaning in the ECA, namely any wire, cable including undersea and land-based fibre optic cables, antenna, mast, satellite transponder, circuit, cable landing station, international gateway, earth station, and radio apparatus or other thing, which can be used for, or in connection with, electronic communications, including-

(a) collocation space;

(b) monitoring equipment;

(c) space on or within poles;

(d) ducts;

(e) cable trays;

(f) manholes;

(g) hand holds and conduits; and

(h) associated support systems, sub-systems and services, ancillary to such electronic communications facilities or otherwise necessary for controlling connectivity of the various electronic communications facilities for proper functionality, control, integration and utilisation of such electronic communications facilities, and "telecommunications infrastructure" has a corresponding meaning;

"**electronic communications network**" means any system of electronic communications facilities, excluding subscriber equipment, including without limitation-

(a) satellite systems;

(b) fixed systems (circuit- and packet-switched);

(c) mobile systems;

(d) fibre optic cables (undersea and and-based);

(e) electricity cable systems (to the extent used for electronic communications services); and

(f) other transmission systems, used for conveyance of electronic communications;

"**electronic communications operator**" means any person who operates an electronic communications network, provides electronic communications services or network services and is either licensed or exempted in terms of the ECA, including that person's agents and contractors and "operator" has a similar meaning;

"**fees**" mean charges or tariffs in respect of any function or service of the municipality as determined in terms of section 75A of the Municipal Systems Act, 2000 (Act 32 of 2000);

"**ICASA**" means Independent Communications Authority of South Africa;

"**municipality**" means the Swartland Municipality, established in terms of Section 12 of the Municipal Structures Act, 1998 (Act 117 of 1998), and includes any political structure, political office bearer, councillor, duly authorized agent or any employee acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, councillor, agent or employee;

"**municipal property**" means property that, for the purposes of this by-law, can be used or is required for the roll-out of electronic communications networks or the installation of electronic communications facilities including but not limited to-

(a) roads and road reserves;

(b) pavements, curbs, pedestrian walks and cycle paths;

(c) drainage facilities;

(d) buried ducts, pipes, conduits and tunnels;

(e) poles, gantries, signs and similar structures;

(f) other high sites such as water towers, buildings, masts etc;

(g) municipal water and sewer lines;

(h) municipal utility facilities;

(i) municipal traffic signals and signs;

(j) street lighting poles and similar street installations including overhead cables;

(k) trees on municipal property;

(l) land and buildings owned by the municipality; and

(m) any structure owned by the municipality;

"**permit**" means a document in terms of which the municipality grants an electronic communications operator the right to use or occupy municipal property for the purposes of installation of electronic communications facilities;

"**permit conditions**" means the conditions associated with a permit, including the rights, obligations and liabilities of the operator as well as the payment of fees determined by the municipality;

"**service consumption**" means the use of municipal services, including but not limited to, water and sanitation, electricity and refuse removal while municipal property is used or occupied by the electronic communications operator;

"**work**" means the electronic communications network or electronic communications facility to be installed by an electronic communications operator, and includes any pipe, duct, cable, manhole, jointing pit, draw box, equipment cabinet or any electronic communication infrastructure which forms part of the installation of the service on municipal property.

2. Purpose

The purpose of this by-law is to provide for mechanisms to regulate and manage the installation of electronic communication facilities that may affect the municipality's own services infrastructure by-

(a) requiring electronic communication operators to notify the municipality of their intention to undertake the installation of electronic communication facilities in the jurisdictional area of the municipality prior to commencement of such installation;

(b) requiring such operators to furnish the municipality with all information about the location and nature of the work to be undertaken, including plans and drawings;

(c) requiring such operators to obtain a permit for the right to occupy municipal property and to locate and operate electronic communications facilities on such property; and

(d) giving the municipality the right to impose conditions upon issuing of a permit envisaged in subparagraph (c) and to levy fees and changes as envisaged in terms of section 75A of the Municipal Systems Act, 2000 (Act 32 of 2000);

Chapter 2
Notification and permit considerations

3. Notification and information required

(1) An operator, whether licensed or exempted under the ECA, who intends to undertake the installation of an electronic communications facility in the municipal area, must notify the municipality at least 90 days prior to the commencement of such installation.

(2) The notification must be accompanied by the following information-

(a) name and contact details of the operator;

(b) proof of license or exemption issued by ICASA;

(c) a description of the facilities proposed, including-

(i) the area to be served;

(ii) a description of the technical characteristics of the facility;

(iii) maps or diagrams of the proposed location on the scale required by the municipality;

(iv) technical drawings with descriptive layers and legend indicating in detail the proposed works in a file format as prescribed by the municipality;

(d) date of commencement of the intended work;

(e) estimated date of completion of the work; and

(f) any other information required by the municipality.

4. Permit considerations

The issue of a permit to the operator in terms of section 3, shall be considered and decided against the following factors-

(a) whether the physical space the operator intends to occupy is available and suitable for the purpose;

(b) whether the operator has existing similar infrastructure occupying the same physical space;

(c) whether the proposed occupation of the physical space may limit or prevent the future occupation of the same space by other electronic communications operators, the municipality or other entities;

(d) whether similar infrastructure owned by other electronic communications operators already occupies the same physical space; or

(e) any other consideration that the municipality may find necessary.

5. Issue of permit

(1) Upon receipt of a notification in terms of section 3, the municipality may, subject to the considerations in section 4, furnish the operator with a permit, setting out the conditions, specifications and standards for the work to be undertaken by the operator.

(2) The issue of the permit does not derogate from the municipality's right to impose additional requirements relating to-

(a) entering into lease agreements and to levy rental for the right to make use of municipal property for purposes of-

(i) installation of telecommunications infrastructure; or

(ii) the storage of equipment or the establishment of site offices and workshops;

(b) payment of fees and other costs associated with occupation such as the cost for service consumption; or

(c) compliance with-

(i) environmental or other impact studies required by the municipality;

(ii) heritage protection policies; or

(iii) any other applicable law or municipal policy;

(3) No operator may commence with the installation of electronic communications facilities until the permit has been issued by the municipality and all required fees have been paid.

(4) The issue of the permit does not confer or transfer any proprietary or exclusive rights in respect of municipal property to the operator.

(5) The transfer of a permit to another party shall be subject to the provisions of section 12.

Chapter 3
Specific permit conditions

6. Payment of annual permit fees

(1) The operator must pay the prescribed annual permit fee in advance, provided that the municipality and the operator may agree that use of the electronic communications facility, or capacity of the network which it supports, shall be made available to the municipality in lieu of payment, or in part-payment of the fee.

(2) The payment of the annual permit fee by the operator shall not replace any once-off installation fee, ongoing service fee for service consumption or other similar charge which the municipality may levy to recover costs incurred as a result of the installation, construction or operation of the operator's facilities.

7. Provision of bank guarantee

(1) The operator must furnish the municipality with an irrevocable bank guarantee, in the amount specified in the permit, to provide for damages caused by the operator to other municipal services or property and not repaired to the original condition.

(2) The guarantee shall allow for individual claims payable within 30 days to repair damages and must be submitted to the municipality for approval prior to issue by the financial institution.

(3) The guarantee shall remain valid for a period of 12 months after completion of the work by the operator and no work may commence prior to approval of the guarantee by the municipality.

8. Commencement and execution of work

(1) The operator must-

(a) exercise the rights granted in terms of the permit within 180 days of the date of issue, provided that if the permitted occupation of municipal property is not taken up, the municipality may revoke the permit;

(b) preserve, as far as is possible, the aesthetics of the municipality's property;

(c) take responsibility for the cost of any loss, including the repair of the municipality's property or facilities, should any damage occur during construction or operation;

(d) not endanger any person in exercising its rights in terms of the permit; and

(e) maintain the upkeep of its facilities, at its own cost.

(2) The operator must execute all work as prescribed in the permit, and repair and reinstate to the original condition, all existing services and surfaces affected by the work undertaken, including sidewalks, roads, water pipes, storm water ducting, sewerage pipes, electrical cables, electrical panels and enclosures and street lighting poles,

(3) Upon failure by the operator to comply with subsection (2), the municipality may undertake the repairs or appoint a contractor to undertake the repairs and to recover the total cost from the operator or by means of the bank guarantee referred to in section 7 of this by-law.

9. Construction and sharing of infrastructure

(1) The municipality may, upon issuing a permit-

(a) require the operator to delay construction and co-ordinate with other operators, telecommunications infrastructure owners or municipal departments to minimize road trenching or other disruptions;

(b) require the operator to co-ordinate with other operators or municipal departments to share installation work, especially road trenching;

(c) require the operator to share infrastructure with another operator particularly in circumstances where demand by electronic communications operators for access to municipal property exceeds availability;

(d) require the operator to install additional infrastructure as supplied by the municipality; or

(e) impose any other condition that the municipality may deem necessary.

(2) The municipality may, at any time, install or construct new services infrastructure or modify, re-locate or remove any of its existing infrastructure.

(3) In such event, if necessary, for the proper provision of services infrastructure, the municipality may request an operator, within specified time frame, to remove, re-locate or modify existing telecommunications infrastructure at the cost of the operator.

(4) In the event of a private developer or other institution wishing to install services infrastructure, the municipality may request an operator to relocate existing telecommunications infrastructure at the cost of such developer or institution.

(5) To ensure fairness to the parties involved, the municipality shall determine the reasonablness of the cost for any work to be undertaken in terms of subsection (4), and if necessary, appoint another operator to undertake such work.

(6) The municipality shall not be liable for any loss of income suffered by the operator whose infrastructure has to be re-located in terms of subsection (4), or for any claims for damages resulting from such removal or re-location.

10. Sharing of existing municipal services infrastructure

(1) Subject to the provisions of section 5(2)(a), the municipality may consider and approve the installation of telecommunications infrastructure on insulated electrical overhead infrastructure or in municipal underground ducting, provided that the municipality may reject such application on the grounds of safety considerations.

(2) If the municipality finds it necessary to upgrade, remove or renew infrastructure referred to in subsection (1), the operator shall, at own cost, be responsible to remove or re-locate its installation.

(3) The municipality shall not be responsible for damages to the operator's installation as result of maintenance done or any failure of the associated electrical infrastructure.

(4) The installation referred to in subsection (1) must be undertaken by an electrician qualified to do work on energised electrical lines and no work may commence without a permit referred to in section 5 of this by-law.

11. Sharing of information

(1) The municipality shall avail its geographical information system database to the operator insofar as it is needed for the installation of electronic communications facilities.

(2) The operator may use such information for the purposes of the permit issued in terms of this by-law only and may not share such information with any other party without the permission of the municipality.

(3) The operator must-

(a) provide the municipality with as-built information pertaining to the operator's installed facilities, in a file format as may be prescribed by the municipality and that this information be updated by the operator if any modifications are made;

(b) allow the municipality to provide as-built information to other electronic communications operators and or electronic communications facility owners, municipal departments, entities, and other occupants of municipality property, for the purpose of limiting damage to or disruption of the facilities and other assets of those involved; and

(c) allow the municipality to use the as-built information pertaining to the operator's installed facilities in any other way that it may deem necessary.

12. Period of validity of permit

A permit issued in terms of this by-law shall remain valid for a period of two years from date of issue of the permit, provided that the operator pays the annual permit fees and complies with the conditions applicable to the permit issued.

13. Transfer of permit

(1) The operator may transfer a permit with the permission of the municipality on condition that-

(a) there has been no transgression of the conditions set out in the permit;

(b) payment of the annual permit fee is up to date;

(c) the party to which the operator wishes to transfer the permit is an electronic communications operator, properly licensed or exempted by ICASA; and

(d) the operator provides the municipality with all the relevant information about the new operator as envisaged in section 3.

(2) The new operator must, once the municipality has approved transfer of a permit, apply to the municipality for the issue of a new permit and the municipality reserves the right to change or add new conditions to the re-issued permit.

14. Revocation of permit

(1) The municipality may, upon prior written notice, revoke a permit if-

(a) the annual permit fee is not paid, or the operator does not comply with the conditions applicable to the permit;

(b) the operator fails to obtain approval of the municipality for the transfer of a permit to another party as required in terms of section 13 of this by-law; or

(c) continued occupation of the property by third parties is no longer viable due to changes in circumstances relating to the physical nature of the municipality's property;

(2) In the case of changes as contemplated in subsection (1)(c), the municipality may offer the operator an alternative to relocate infrastructure, where possible, and all costs relating to the consequent relocation of the facilities shall be at the operator's cost.

(3) If a permit is revoked-

(a) any outstanding annual permit fees shall remain due *pro rata* to the time of revocation;

(b) annual permit fees already paid for the portion of the twelve-month period after revocation shall not be refunded;

(c) the operator shall be required to remove the electronic communication facilities, where possible, from the municipality's property within 30 days unless the municipality directs otherwise, and reinstate the condition of the municipality's property to its original condition;

(4) Facilities not removed within the specified time shall become the property of the municipality, and any subsequent removal or rehabilitation required shall be at the cost of the operator, and the municipality shall not be liable for any damages that may be caused as a result of such removal.

15. Expiry of permit

(1) The permit shall expire if-

(a) the electronic communications operator's license expires, is revoked or transferred without informing the municipality;

(b) if the operator fails to obtain approval of the municipality to transfer the permit as required in terms of section 13 of this by-law;

(c) the operator is liquidated or otherwise wound up.

(2) Upon expiry of a permit, the operator or the liquidator may be required to remove the electronic communication facilities, where possible, from the municipality's property within 30 days unless the municipality directs otherwise.

(3) The operator or liquidator shall also be required to reinstate the property to its original condition, unless the liquidator applies to the municipality to transfer the permit.

(4) Facilities not removed within the specified time period shall become the property of the municipality, and any removal or rehabilitation subsequently required will be at the cost of the operator, and the municipality shall not be liable for any damages that may be caused as a result of such removal.

Chapter 4
Compliance and enforcement

16. Compliance with legislation

A permit granted in terms of this by-law does not exempt the operator from complying with any other law, or by-law or zoning provisions of the municipality.

17. Right of access and inspection

An authorised official of the municipality shall have unlimited access to the work undertaken by the operator to inspect such work for compliance with the provisions of this by-law.

18. Supervision, inspection and testing

(1) The relevant user department of the municipality shall determine the level of supervision and supervise the work undertaken by the operator at a fee determined by the municipality, which fee shall be payable by the operator monthly in advance.

(2) The supervision of works refened to in subsection (1) shall include inspection of the work and testing of samples where necessary.

(3) The municipality may, where necessary, appoint an independent competent person at the cost of the operator, to do quality assurance on work undertaken by the operator to ensure compliance with the standards set out in the permit.

19. Notice of compliance

(1) Where an authorised ofticial has reasonable grounds to believe that the operator failed to comply with any provision of this by-law, or is in breach of any of the conditions of the permit, he or she may serve a written notice of compliance on the operator, which notice must state-

(a) the provision of the by-law or permit which is not complied with;

(b) the steps or measures to be taken by the operator to comply with the notice;

(c) the time frame within which the operator must comply with the notice;

(d) that the operator may submit representations to the municipal manager within the time specified in the notice, provided that the right to submit representations may be waived in case of an emergency.

(2) The authorised official, when considering any measure or period envisaged in subsection (1) must have regard to the objectives of this by-law, the nature of the non-compliance, and other relevant factors.

(3) Where the operator fails to comply with the notice within the stipulated time frame, the municipality may-

(a) deny the operator physical access to the permitted electronic communications facilities;

(b) upon prior written notice revoke the permit; or

(c) where necessary, approach a competent court for an order to stop the work undertaken by the operator or any other form of relief.

Chapter 5
General provisions

20. Fees and tariffs

(1) The municipality shall determine fees or deposits necessary to recover costs, including but not limited to-

(a) administration fees;

(b) fees for supervision, inspection and testing; or

(c) any other fees as contemplated in section 75A of the Municipal Systems Act, 2000 (Act 32 of 2000).

(2) Prior to the commencement of work, the operator shall pay the deposits or fees as determined by the municipality which shall be reflected in the permit issued to the operator.

21. Indemnity

The operator shall indemnify the municipality against claims in respect of-

(a) damages caused to the work and or disruption of services by the municipality or any other third party or cost incurred by the operator to relocate, remove or protect the facilities: or

(b) damages or injury caused to a third party by the operator during the installation of electronic communications facilities.

22. Offences and penalties

(1) A person who-

(a) contravenes or fails to comply with the provisions of this by-law;

(b) refuses to give effect to a lawful directive by an authorised official or obstructs such official in the execution of his or her duties: or

(c) fails to comply with any notice issued in terms of this by-law,

is guilty of an offence and liable on conviction to a fine or imprisonment, and in the case of a continuing offence, to an additional fine for each day on which such offence is continued.

(2) Failing to comply with a notice issued in terms of section 19 shall constitute a continuing offence.

(3) In addition to the penalties in subparagraph (c), a further amount equal to any costs and expenses found by the court to have been incurred by the municipality a result of such contravention or failure.

23. Appeal

An operator who feels aggrieved by a delegated decision of the municipality may appeal against such decision by giving written notice of the appeal and the reasons therefor in terms of section 62 of the Municipal Systems Act, 2000 (Act 32 of 2000) to the municipal manager within 21 days of the date of the notification of the decision.

24. Short title and commencement

This by-law shall be known as the Swartland Municipality: By-law Relating to the Installation of Telecommunications Infrastructure and shall come into operation on the date of publication thereof in the *Provincial Gazette*.