

The Council of Msukaligwa Local Municipality has in terms of section 156 of the Constitution, 1996 (Act No. 108 of 1996), read in conjunction with sections 11 and 98 of the Local Government : Municipal Systems Act, 2000, (Act No. 32 of 2000), made the following By-law:

MSUKALIGWA LOCAL MUNICIPALITY **POUND BY-LAW**

1. DEFINITIONS

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

“**animal**” means and includes any equine or bovine animal or any donkey, sheep, goat, geese, turkeys, ducks or similar, pig or domesticated ostrich, or any hybrid of such animals, or any poultry;

“**area**” means the area of jurisdiction of the Msukaligwa Local Municipality;

“**Council**” means a municipal council referred to in section 157(1) of the Constitution, 1996 (Act No. 108 of 1996).

“**impounded animal**” means any animal received into a pound as contemplated in section 5;

“**owner**” in relation to any animal includes the agent of the owner or any other person having lawful custody of the animal;

“**owner**” in relation to –

(a) any animal includes the owner and any other person having lawful custody or possession of such animal, or the authorised agent of such owner or other person;

(b) any land includes the owner, lessee or lawful occupier of such land, or the agent of such owner, lessee or lawful occupier, and

(c) a pound includes the person, body, tribal authority or municipality who or which establishes or has established such pound;

“**pound**” means any premises on which a pound has been established by or on behalf of the municipality for the impounding of animals under these By-laws; and

“**poundkeeper**” means the person appointed from time to time by the municipality to manage a pound established by the municipality or person permitted by the Municipality to operate a private pound or person in control of an organisational private pound permitted by the Municipality and includes such person’s deputy and any other person appointed by such person to act in his stead during his absence from the pound.

(2) Words applying to any individual shall include persons, companies and corporations, and the masculine gender shall include females as well as males, and the singular number shall include the plural and *vice versa*.

2. ESTABLISHMENT OF POUND

(1) The municipality may establish a pound at any convenient place within its area of jurisdiction

and, whenever the municipality deems it necessary, may disestablish such pound.

- (2) The municipality shall give notice of the establishment of a pound, or the disestablishment thereof, by publishing a notice in a newspaper circulating in the area of jurisdiction of the municipality.
- (3)
 - (a) The Municipality may in terms of section 76(b)(v) of the Municipal Systems Act no 32 of 2000 provide a Municipal service through an external mechanism, by entering into a service delivery agreement.
 - (b) Before the Municipality decide to provide the service as in sub-section 3(a), the Municipality must comply with section 78 of the Municipal Systems Act.
 - (c) If the Municipality decides to provide the service as in sub-section 3(a), the Municipality must select the service provider through competitive bidding as prescribed in section 83 of the Municipal Systems Act no 32 of 2000.
 - (d) This by-law will be applicable on the private pound.
 - (e) The Municipality will have the right to disestablish a private pound appointed as in sub-section 3(a) when ever the Municipality deems it necessary.

3. RIGHT TO IMPOUND

1. Any owner of land within the area of finding animals trespassing thereon may send the trespassing animals to the pound.
2. An authorised official of Council may send any animal to the pound.
3. The Poundmaster will accept all animals delivered where possible or make alternative arrangements for the keeping of an animal.

4. NOTICE TO POUNDKEEPER

Every person who sends any animal to the pound, shall be obliged to send therewith a note signed by himself setting out the number of animals sent, a description thereof and stating at the same time the land upon which the trespass occurred and the distance there from to the pound.

5. TRESPASSING OR STRAYING ANIMAL MAY BE IMPOUNDED

- (1)
 - (a) The owner of any land upon which any animal is found to be trespassing may detain such animal and may thereafter impound such animal in the manner contemplated in subsection (2) and (3): Provided that where there are reasonable grounds to indicate that the animal is the property of a person or body owning land in the nearby vicinity, or where the owner of the animal is known to the owner of the land, the latter must give notice to the person or body concerned that, unless satisfactory arrangements are made for the payment of trespass fees and damages payable in terms of prescribed fees, and the animal is removed within seventy-two hours from the time on which such notice is given, such animal will be impounded in the manner contemplated in subsection (2).
 - (b) Any animal found straying upon any public road or in any public place may be impounded as contemplated in subsections (2) and (3) by any person.

- (2) Subject to the provisos to subsection (1)(a), any person contemplated in subsections (1)(a) or (b) who impounds an animal must deliver it to the nearest accessible pound by the shortest practicable route and in the most practicable and economical manner : Provided that if such person knows or reasonably suspects that such animal is infected with any disease or is injured, he or she must not move or permit such animal to be moved from the land where it has been detained and must report the detention of a diseased or injured animal to the nearest veterinarian, stock inspector, or station commissioner who may issue an instruction contemplated in section 14.
- (3) Notwithstanding the provisions of subsection (1)(a), where the shortest practicable route to the nearest accessible pound exceeds a prescribed distance, the person detaining an animal may, instead of delivering such animal to the nearest accessible pound, impound such animal on land owned by him or her, subject to the provisions, *mutatis mutandis*, of sections 6, 9 and 10.
- (4)
 - (a) Any person contemplated in this section, must, within twenty-four (24) hours after detaining an animal or impounding it in terms of subsection (3) report its presence to the nearest poundkeeper and to the nearest station commissioner and furnish him or her with a clear description of the animal.
 - (b) Upon receipt of the report contemplated in paragraph (a), the poundkeeper must record the relevant information, and the provisions of sections 6, 7 and 19 must *mutatis mutandis* apply in respect of such animals.
- (5) No animal which has been impounded at a place other than a pound and has been reported in terms of subsection (4)(a), may be removed by the owner of such animal or any other person save with the consent of the owner of the land upon which it is impounded and the poundkeeper, who may, before giving consent, require payment of the prescribed fees and charges.

6. PUBLICATION REGARDING DETAINED OR IMPOUNDED ANIMALS

- (1) In addition to compliance with the requirements of section 17 of the Livestock Brands Act, 1962 (Act No. 87 of 1962), the poundkeeper must, whenever the name of the owner of any impounded animal is known to him or her, immediately send by the quickest practical means a written notice to such owner and to the station commissioner informing him or her that such animal has been impounded.
- (2) Whenever an animal is impounded in terms of section 5 the poundkeeper must advise the nearest stock theft unit of the South African Police Service and ensure publication, in the prescribed manner, of:
 - (a) the date and place of such impoundment; and
 - (b) the numbers, breed, sex, the brand, if any, and distinguishing features of the impounded animals.

7. DEATH OF OR INJURY TO IMPOUNDED ANIMALS

- (1) If any impounded animal dies or is destroyed or is injured, the poundkeeper must follow the prescribed procedure.
- (2) Subject to the provisions of any other law, the poundkeeper must sell the carcasses or hides of any impounded animal which dies or is destroyed, except for those of an infected animal contemplated in section 14 and the proceeds of such sale becomes the property of the owner of the dead or destroyed animal to the extent that such proceeds exceed any fees, disbursements, damages and expenses payable in respect of the animal in terms of these By-laws.

- (3) Any proceeds contemplated in subsection (2) which are not claimed by the owner of the animal within six (6) months of its death, shall vest in the owner of the pound.

8. LIMITED DETENTION

Any person who has seized animals for the purpose of impounding same, shall send such animals to the pound within one (1) hour of their seizure, if apprehended during the hours between sunrise and sunset, and if apprehended during the hours of darkness, then within one (1) hour of sunrise following their seizure. Every such person is hereby prohibited from tying up such animals or confining them to any kraal or other enclosure without food for a longer period than one (1) hour during the daytime.

9. CARE OF IMPOUNDED ANIMALS

- (1) The poundkeeper is responsible for the proper care and feeding of all impounded animals and is liable to the owner of every animal for any loss, damage or injury sustained by the owner by reason of any neglect or default by the poundkeeper or his or her servants.
- (2) If any impounded animal is or becomes dangerous, vicious or in the opinion of the poundkeeper is worthless owing to any serious and incurable defect, disablement, disease or injury, the poundkeeper must submit a report in writing to the nearest veterinarian, stock inspector or station commissioner, who must make a decision regarding such animal and, if in the opinion of the veterinarian, stock inspector or station commissioner, it is desirable or advisable humanely to destroy the animal, he or she must give instructions with regard to the humane destruction and disposal of such animal: Provided that no such destruction or disposal may take place until –
- (a) all reasonable steps have been taken by the poundkeeper to ascertain the identity of the owner of such animal and advise him or her of the proposed destruction or other disposal; and
- (b) the owner, if identified, has been afforded a reasonable time within which to obtain the release from impoundment of such animal:

Provided further that the provisions of this subsection shall be subject to the provisions of the Animals Protection Act, 1962 (Act No. 71 of 1962).

10. IMPOUNDED ANIMALS NOT TO BE WORKED

The poundkeeper must not work or make use in any way of any impounded animal, or permit any such animal to be worked or made use of by any other person: Provided that, if an animal is in milk, it must be milked in order to alleviate any discomfort that may be experienced by it: Provided further that such milk becomes the property of the poundkeeper.

11. ABSENCE OF POUNDKEEPER

No poundkeeper may be absent from a pound without providing a responsible person to act as his or her agent in the performance of his or her duties and functions as poundkeeper during such period of absence: Provided that the poundkeeper is responsible for any act or omission of such person in relation to such performance.

12. FEES PAYABLE TO POUNDKEEPER

- (1) The poundkeeper is entitled to charge the owners of impounded animals fees at the prescribed rate: Provided that no fees must be charged for herding and tending for any period in excess of forty-two (42) days reckoned from the day of impounding of the animal concerned.
- (2) If any animal is required to be dipped, dressed, innoculated, sprayed or otherwise treated in accordance with any law, the actual reasonable cost thereof may be claimed from the owner.

13. WHEN PAYMENT REPUDIATED

In every case where the owner or other duly authorised person claiming animals from the pound refuses to pay fees in accordance with these By-laws, the poundkeeper shall be obliged to retain one or more animals sufficient in his/her opinion to cover the amount of such fees, and he/she shall continue to retain such animal until –

- (a) the fees be paid; or
- (b) it be released by order of a magistrate:

Provided that the fees shall be paid for the whole of the period during which such animals shall remain in the pound.

14. ISOLATION OF INFECTED ANIMAL

Where a poundkeeper has reason to believe that an animal impounded is infected with any disease referred to in the Animal Diseases and Parasites Act, 1956 (Act No. 13 of 1956), or the Animal Diseases Act, 1984 (Act No. 35 of 1984), the poundkeeper must immediately isolate the animal and report such suspicion to the nearest veterinarian or stock inspector, whose instructions regarding the treatment, destruction or disposal of such animal must be complied with by the poundkeeper without delay: Provided that, should the veterinarian or stock inspector to whom the report was made fail to provide instructions to the poundkeeper within twenty-four (24) hours, the poundkeeper may treat, destroy or dispose of the infected animal in the manner deemed by him or her to be the most appropriate.

15. TO RESCUE FORBIDDEN

No person shall take impounded animals out of the pound or from the field under the supervision of a herdsman, without the consent of the poundkeeper, or rescue any animal when being lawfully taken to the pound or when lawfully detained for trespass. Any person who by threats or otherwise rescues or assists in rescuing any animal when being taken to the pound or lawfully seized for such purpose, or damages any pound, fence, gate or structure, or commits any breach whatsoever whereby any animal shall escape or be at large, or in any manner interferes with any animal under the charge of the poundkeeper or his herdsman, shall be guilty of an offence.

16. SALE OF IMPOUNDED ANIMAL BY PUBLIC AUCTION

- (1) The poundkeeper must, from time to time sell by public auction those animals which have been impounded for a period of thirty (30) days unless a reporting authority authorises a longer period of impoundment.
- (2) The poundkeeper must advertise and conduct the public auction in the prescribed manner.

17. SALES OF IMPOUNDED ANIMALS

- (1) Sales of animals under this By-law must be conducted by the poundkeeper or any other person acting on behalf of the poundkeeper, by public auction and for cash to the highest bidder.

- (2) All animals advertised for sale, unless previously released, must on the day appointed for their sale be effectively marked, on the right shoulder, with the letter "P", by or at the instance of the poundkeeper.
- (3) The poundkeeper may, whenever he or she deems it proper, place a reserve upon any animal offered for sale: Provided that such reserve must not exceed the amount which the owner of such animal would have been required to pay in terms of this By-law to effect release of that animal to him or her.
- (4) The poundkeeper must deliver to the purchaser of the animal a certificate authorising such purchaser to take possession thereof, and for that purpose such person or his or her authorised agent has the authority to enter upon the land on which the animal is detained, where such animal is impounded at a place other than the pound.

18. PROCEEDS OF SALE

The poundkeeper shall hold such proceeds for a period of three (3) months, hereafter, if unclaimed, the same shall be paid into the fund to operate and maintain the pound.

19. POUND REGISTER

The poundkeeper shall keep a book, which shall be open to public inspection during office hours by any person making application, in which shall be entered the following details –

- (a) a description of all animals impounded;
- (b) the names of the known or supposed owners;
- (c) the date of receiving and restoring or selling of such animals;
- (d) the monies received and paid in respect thereof;
- (e) the name and address of the persons by whom and to whom such monies were paid;
- (f) the land on which the animals trespassed.

If the pound is privately owned then the Municipality will have the right to regularly inspect the pound plus the pound register and all documentation in connection with sales of impounded animals.

20. PENALTY

Any person who shall contravene any of these By-laws shall be guilty of an offence and liable, upon conviction, to a fine not exceeding the amount of two thousand rand (R2 000.00) in default of payment of any fine imposed in either case, to imprisonment, for any period not exceeding six (6) months: Provided that in the case of a continuing offence a fine not exceeding the amount in the schedule of tariffs for each day upon which the contravention continued may be prescribed, but no such fine shall in any one (1) prosecution or within any one (1) month exceed the amount stated in the schedule of tariffs.

21. APPLICATION

Nothing prevents any animal detained in terms of these By-laws from being impounded in a pound or any similar facility established by any other municipality, the provincial government or other lawful authority.

22. RECEIPT OF ANIMALS

- (1) Any person removing an animal to the pound shall provide the poundkeeper with -
 - (a) his or her name and permanent residential address;
 - (b) the time and place of detention; and
 - (c) the capacity in which he or she detained the animal.
- (2) The poundkeeper shall, upon receipt of a detained animal –
 - (a) record the particulars furnished in terms of section 5(1) and enter the same in a book maintained for the purpose;
 - (b) furnish the person delivering the animal with a receipt reflecting –
 - (i) his or her name;
 - (ii) a description of the animal; and
 - (iii) the date and time of receipt of the animal at the pound; and
 - (c) keep a copy of each receipt issued .
- (3) No person shall release or attempt to release, otherwise than in accordance with these By-laws, any animal which has been received at a pound.

23. RELEASE OF ANIMALS

- (1) The poundkeeper shall release an impounded animal to any person who has -
 - (a) satisfied the poundkeeper that he or she is the owner of the impounded animal;
 - (b) paid the conveyance and pound fees prescribed by resolution of the Council of the municipality from time to time; and
 - (c) paid any veterinary or other expenses incurred in the impounding of the animal.

24. INDEMNITY

The municipality, the poundkeeper and any officer, employee, agent or councillor of the municipality shall not be liable for the death of or injury to any animal arising as a result of its detention, impounding or release, or arising during its impoundment.

25. REPEAL OF BY-LAWS

The By-laws relating to a Pound for the Kwa Sani Local Municipality, are hereby repealed and replaced by these By-laws, which are to become effective on promulgation hereof.

TARIFF OF CHARGES

POUNDING OF ANIMALS

1. Pounding fees payable according to section 12 of these By-laws:
 - (a) R20.00 per equine or bovine animal, plus R10.00 per animal per additional day for which the animal is pounded.
 - (b) R10.00 per other animal, plus R5.00 per animal per additional day for which the animal is pounded.