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MUNICIPAL NOTICES • MUNISIPALE KENNISGEWINGS**Municipal Notice XXX OF 2020****uMhlathuze Animal Pound Bylaw**

Be it enacted by the Council of the City of uMhlathuze Municipality, in terms of section 156(2) of the Constitution of the Republic of South Africa, 1996, read with section 11(3)(m) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), as follows:

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Definitions

1. In this by-law, unless inconsistent with the context –

“**animal**” includes a horse, bovine, donkey, sheep, goat, pig, ostrich, dog, cat or the hybrid of any such animal, and “**animals**” will have a corresponding meaning;

“**Council**” means —

- (a) the Municipality, exercising its legislative and executive authority through its municipal council;
- (b) its successor-in-title;
- (c) a structure or person exercising a delegated power or carrying out an instruction, where any power in this By-law has been delegated or sub-delegated, or an instruction given, as contemplated in section 59 of Systems Act; and
- (d) a service provider fulfilling a responsibility under this By-law;

“**Court**” means a Magistrate’s Court as referred to in section 166(d) of the Constitution, 1996, having jurisdiction in the area in which the pound is situated;

“**Gazette**” means the official Provincial Gazette of KwaZulu-Natal;

“**municipality**” means the City of uMhlatuze municipality established in terms of section 155(6) of the Constitution, 1996, and established by and under sections 11 and 12 of the Structures Act, read with sections 3, 4 and 5 of the KwaZulu-Natal Determination of Types of Municipality Act, 2000 (Act No. 7 of 2000);

“**owner**” includes an owner who is known, or whose identity, with the exercise of reasonable diligence, can be ascertained, and in relation to any –

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

(b) land, includes the owner, lessee or lawful occupier of such land or his or her agent;

"**pound**" means a pound established as contemplated in section 3;

"**poundkeeper**" means the person appointed from time to time as contemplated in section 4 and includes any person acting for or on behalf of the appointed poundkeeper;

"**public place**" means any place to which the public has access including, without limiting the generality of the foregoing any –

- (a) square;
- (b) park;
- (c) recreation ground;
- (d) sports ground;
- (e) open space;
- (f) beach;
- (g) shopping centre on municipal land;
- (h) unused or vacant municipal land; or
- (i) cemetery;

"**public road**" means a public road as contemplated in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996); and

"**service delivery agreement**" means a service delivery agreement as defined in section 1 of the Systems Act.

"**Structures Act**" means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

"**Systems Act**" means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

Application

2. This By-law applies to the area of jurisdiction of the Municipality: Provided that nothing prevents any animal detained in terms of this By-law from being impounded in a pound or any similar facility established by any other municipality, or other lawful authority.

Establishment of pound

3.(1) The Municipality must establish a pound at any convenient place within its area of jurisdiction: Provided that the Municipality may, on application, enter into a service delivery agreement with an institution or person mentioned in section 76(b) of the Systems Act, to provide for the establishment and operation of a pound to service its area of jurisdiction.

(2) The Municipality must give notice of the establishment of a pound by publishing a notice in at least two newspapers circulating in the area of jurisdiction of the Municipality.

(3) A person who intends to establish a pound, as contemplated in subsection (1), must apply in the prescribed manner to the Council as contemplated in subsection (4).

(4) Council must within 90 days of receipt of an application contemplated in subsection (1) and any other information at his or her disposal, if any, relating to the application –

- (a) approve an application for registration and issue a registration license;
- (b) approve an application for registration and issue a registration license subject to conditions determined by the Council; or
- (c) reject an application and provide written reasons for the rejection of the application.

(5) Council may at any time revoke a license after due consideration of the circumstances and consultation with the owner of the pound and must notify the owner of the pound in writing with reasons for such a decision.

Appointment of poundkeeper

4. The Municipality must, in terms of its human resource policy, appoint a suitably skilled and experienced person as a poundkeeper, unless the pound is established and operated in terms of a service level agreement contemplated in section 3(1).

Trespassing or straying animals may be impounded

5.(1) The owner of land upon which any animal is found trespassing may seize such animal: Provided that such animal may not be removed to a pound before notice is given to the owner in writing no less than 48 hours prior to the removal to the pound.

(2) Any animal found straying untended upon any public road or public place may be seized for impounding by –

- (a) a member of the South African Police Services;
- (b) a member of the South African National Defence Force;
- (c) a member of the KwaZulu-Natal Road Traffic Inspectorate;
- (d) a member of the municipal protection services; or
- (e) the owner of any land through or alongside which such road passes or which abuts on such public place.

(3) A person may not keep an animal, seized for purposes of impounding in terms of subsections (1) and (2), for a period longer than six hours without supplying such animal with adequate food and water.

(4) Any person who has seized an animal for purposes of impounding must comply with the provisions of the Code of Good Practice on the Handling and Transportation of Impounded Animals contained in Schedule 1.

Animals too vicious, intractable or wild to be impounded

6. If a State Veterinarian or official contemplated in section 5(2)(a) to (d) is satisfied that an animal found trespassing on any land, or straying untended upon any public road or public place, is too dangerously vicious, intractable or wild to be impounded, he or she may authorise the humane destruction or other disposal of the animal, after giving written reasons and written notice thereof to the owner of the animal.

Release of animals before removal to pound

7.(1) The owner of an animal, seized in terms of section 5(1) may apply to the owner of land contemplated in section 5(1) for the release of such animal prior to its removal to the pound.

(2) The owner of land referred to in section 5(1) –

- (a) may release such animal forthwith; or

(b) may refuse the release of the animal, whereupon he or she may apply to Court for authority to impound the animal or to claim any damages he or she may have suffered, in which event the Court may make any order, including an order as to costs that the Court deems just and equitable.

(3) The owner of an animal seized in terms of section 5(2) may apply for the release of such animal prior to its removal to the pound, in which event the person who seized the animal must release such animal forthwith.

Care of trespassing animals

8. A person may not work, use or ill-treat an animal found trespassing on any land or whilst it is in the process of being removed to a pound.

Pound to which animals must be taken

9. An animal seized for the purposes of impounding as contemplated in section 5, must be removed to the nearest accessible pound, by the shortest practical route, and within the shortest practical time: Provided that animals of different species must be separated at all times according to their species.

Information to be supplied to poundkeeper

10. A person sending animals to the pound must advise the poundkeeper in writing of –

- (a) the number and descriptions of the animals;
- (b) the land upon which they were found trespassing; and
- (c) the distance in kilometers, by the shortest practical route, between the place on such land where they were seized and the pound.

Acceptance at pound of animals to be impounded

11.(1) The poundkeeper may not refuse to accept an animal for impounding.

(2) The pound manager must, upon acceptance of a detained animal –

- (a) record the particulars furnished in terms of section 10 above 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.

Pound register

12.(1) The poundkeeper must –

- (a) maintain a pound register containing the information contemplated in Schedule 2, which must be available for public inspection at all reasonable times; and
- (b) complete the pound register immediately upon the acceptance into the pound of any animal.

(2) If the poundkeeper –

- (a) neglects or refuses to comply with any of the provisions of subsection (1);
 - (b) knowingly makes a false entry in the pound register;
 - (c) fraudulently destroys or erases any previous entry in the pound register; or
 - (d) wilfully delivers a false copy or extract from the pound register to any person,
- he or she is guilty of an offence.

Notice to owners of animals

13. The owner of an animal contemplated in sections 5(1), 6, 14(2)(b), 17(b), 21(1)(b), and 23(a), must be notified by –

- (a) addressing a written notice to him or her; or
- (b) placing a copy of the notice to the owner on the Municipal Notice Board; and
- (c) publishing a copy of the notice on at least two consecutive days in a newspaper of general circulation in the Municipality.

Care of impounded animals

14.(1) The poundkeeper –

- (a) is responsible for the proper care of all impounded animals;
- (b) must ensure that fresh water and sufficient food is available to impounded animals at all times; and
- (c) is liable to the owner of an impounded animal for any damage caused by his or her wilful or negligent acts or omissions.

(2)(a) If the poundkeeper is of the opinion that an impounded animal is dangerously vicious, permanently disabled or terminally ill, he or she must apply to the Court, which may authorise the destruction or other disposal of the impounded animal, if the Court is satisfied that the condition of such animal warrants its destruction or disposal.

(b) Where the Court authorises the destruction or disposal of an animal on application by the poundkeeper, the poundkeeper must immediately notify the owner in writing of the order of Court and the destruction or disposal of the animal.

Isolation of infected animals

15. If the poundkeeper suspects, or is aware, that an impounded animal, or an animal to be impounded, is infected with any disease contemplated in the Animal Diseases Act, 1984 (Act No. 35 of 1984), he or she must –

- (a) provide separate accommodation for such animal;
- (b) immediately isolate the animal, and report the disease to the nearest State Veterinarian; and
- (c) immediately notify the owner of the animal of such disease in writing.

Treatment of impounded animals

16. The poundkeeper –

- (a) may not work or in any way make use of an impounded animal or permit any such animal to be worked or made use of by any other person; and
- (b) must ensure that all impounded male animals are at all times kept apart from female animals.

Death of or injury to impounded animals

17. If an impounded animal is injured or dies, the poundkeeper must –

- (a) record the injury or cause of death in the pound register referred to in section 12; and
- (b) notify the owner of the animal in writing of the injury or death.

Copies of by-laws

18. The poundkeeper must ensure that copies of this By-law in English and *isiZulu* are available at the pound for inspection.

Fees and costs payable

19. The poundkeeper must –

- (a) charge the owner of an impounded animal the fees as set by the Municipality from time to time as contemplated in section 75A of the Systems Act; and
- (b) recover the cost of any dipping, medical treatment, inoculation or other treatment that may be necessary or required in terms of this By-law or in accordance with any other law.

Release of impounded animals

20.(1) The poundkeeper must immediately release an impounded animal, and give the owner a receipt, upon the owner –

- (a) providing proof of ownership of such animal; and
- (b) paying the fees and costs contemplated in section 19.

(2) If the owner of an impounded animal is unable to pay the fees or costs contemplated in section 19, the poundkeeper may retain such animal in order to recover such fees or costs as may be due and payable.

Sale of impounded animals

21.(1) The poundkeeper must –

- (a) within 14 days of the impounding of an animal, apply to the Court for authority to sell the animal; and
- (b) in the application contemplated in paragraph (a), provide the Court with proof that he or she lodged a statement as contemplated in sub-section (2) with the owner.

(2) The statement contemplated in subsection (1)(b) must include –

- (a) the fees and costs due in terms of this By-law; and
- (b) the amount of any damages that the owner of the land on which the impounded animal trespassed, may have suffered.

- (3) The Court, whether the amounts set forth in the statement contemplated in subsection (1)(b) are disputed or not, must –
- (a) summarily enquire into the matter;
 - (b) enquire whether notice was given to the owner of the animal by the poundkeeper; and
 - (c) make such order as it considers just and equitable, including an order –
 - (i) as to costs; and
 - (ii) on the process to be followed by the poundkeeper in the sale of the animal.

Poundkeeper may not purchase impounded animals

22. The poundkeeper, or a family member, or a close associate of the poundkeeper, may not purchase an animal offered for sale at a pound sale, either personally or through any other person, directly or indirectly.

Animals unsuccessfully offered for sale

- 23.** In the event that any animal is not sold as contemplated in section 21 –
- (a) the poundkeeper must immediately advise the Court and the owner of its estimated value and the fees and costs incurred; and
 - (b) the Court may make such order as it may deem just and equitable.

Proceeds

24. All proceeds from the collection of fees and costs contemplated in section 19 must be paid into the municipal revenue fund: Provided that in the event that any impounded animal is sold at a price in excess of –

- (a) the fees and costs incurred; and
- (b) any damages awarded in terms of section 21(3)(c),

such excess must be paid to the owner within 30 days of the sale, unless the identity of the owner has not been established, in which event the excess must be paid into the municipal revenue fund.

Action for recovery of damages

25. Nothing in this By-law prevents the owner of land or any other person from instituting action against the owner of a trespassing animal, in any court with jurisdiction, for the recovery of damages suffered by reason of such trespassing animal.

Procedure to be followed in application to Court

26. An application to Court for –

- (a) the impoundment of an animal in terms of this By-law, must comply with the procedure contemplated in Rule 55 of the Rules of Court; and
- (b) the sale of an impounded animal in terms of this By-law, must comply with the procedure contemplated in section 66 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and Rule 41 of the Rules of Court,

made by the Rules Board for Courts of Law in terms of section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), and published under Government Notice No. R.1108 in Regulation Gazette No. 980 of 21 June 1968, as amended from time to time, read with the necessary changes.

Indemnity

27. The Municipality, poundkeeper and any officer, employee, or agent of the Municipality will 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.

Offences and penalties

28. A person who –

- (a) releases an animal that was lawfully seized for the purpose of being impounded or which has been lawfully impounded;
- (b) unlawfully seizes an animal for the purpose of impounding it;
- (c) unlawfully impounds an animal; or
- (d) contravenes any provision of this By-law,

is guilty of an offence and is liable on conviction to a fine, or to imprisonment for a period not exceeding one year.

Schedules 1 and 2 form part of this By-laws

29. Schedules 1 and 2 to this By-law form part of this By-law for all purposes.

Repeal of existing By-laws

30. The Municipality's existing Pound by-laws are hereby repealed.

Short title

31. This by-law will be called the City of uMhlatuze Animal Pounds By-Law, 2019.

SCHEDULE 1**Code of Good Practice on the Handling and Transportation of Impounded Animals***(Section 5(4))***PART I****Paddock requirements**

1. Different species of animals must be kept in separate paddocks.
2. Animals may not be penned in overcrowded paddocks, and penning space provided for in each paddock must be sufficient to permit all animals to lie down at the same time and must not be less than 1,5 square metres of floor area for each animal.
3. Fractious animals may not be kept with other animals.
4. Young, weaned juvenile animals, may not be penned with adult animals, except in the case of mother and offspring.
5. Provision must be made in paddocks for –
 - (a) facilities such as racks, mangers or other suitable feed containers that are easy to clean, which will allow the feeding of an animal off the floor, and which can be serviced without disturbing the animals;
 - (b) water troughs with an adequate supply of suitable fresh water at all times;
 - (c) sufficient facilities for the adequate cleaning of paddocks; and
 - (d) facilities for the safe handling of animals.
6.
 - (a) The paddocks must at all times be maintained in a good state of repair.
 - (b) Sharp points such as wire ends, broken boards, jagged ends or protruding hinges or bolts, which could cause injury to animals, must be removed or otherwise suitably covered.
7. The floor of the entire paddock, including the off-loading banks, races, and passages, must be so constructed as to provide adequate non-slip surfaces that can be efficiently and suitably cleaned and kept dry and in a condition fit for the holding of animals.

PART II

Handling of animals

8. Animals must at all times be handled humanely and with patience and tolerance.
9. The following must be kept in mind when handling animals –
 - (a) animals respond more readily to being driven when the driver stands behind the animal but within its field of vision; and
 - (b) herd animals respond more readily to being driven when in a group rather than singly.
10. Animals may not be dragged by their legs, or carried by their head, ears or tail.
11. Young calves must be carried if they cannot walk with ease, by lifting the calf around the chest and hindquarters, alternatively they must be guided with one hand on the hindquarters and the other near shoulder or neck, and walked in the required direction at an appropriate and comfortable pace.
12. Only sticks with canvas or belting flaps may be used when driving animals and it is preferable to strike the ground behind the animal rather than to hit the animal.
13. Electric prodders, sticks or goads may not be used on young calves.
14. Electric prodders may not be used excessively or indiscriminately or applied to the face, anal or genital areas of animals.

PART III

Movement of animals

15. Animals driven on the hoof must at all times be under proper and competent supervision.
16. Animals on the hoof must be driven in a calm manner at a gait that is relaxed and comfortable, natural to that animal, and not faster than the pace of the slowest animal.

17. Animals may not be driven for periods in excess of 10 hours without being given rest of at least one hour and provided with sufficient suitable fresh water that is available to all the animals.

18. No animal on the hoof may be moved in excess of the following distances –

(a) during a journey of not more than one day's duration –

(i) 20 kilometres for sheep and goats; and

(ii) 30 kilometres for cattle; and

(b) during a journey of more than one day's duration –

(i) 20 kilometres during the first day and 15 kilometres during each subsequent day for sheep and goats; and

(ii) 25 kilometres during the first day and 20 kilometres during each subsequent day for cattle.

19. Animals must be watered and fed immediately on reaching their night camp or final destination, with sufficient food of a quality and of a type compatible with the species.

20. Animals may not be moved in the dark.

21. No sick, injured or disabled animal may be moved on the hoof.

PART IV

Vehicles used in transporting animals

22. Vehicles and all trailers used in the transport of hoofed animals must be suitable for the transport of such animals and in a roadworthy condition.

23. All vehicles and trailers referred to in item 22 must have –

(a) a suitable non-slip floor which may not impede the cleaning of the floor of the vehicle, with hinged or removable battens or steel grids being permissible;

(b) adequate ventilation and light whilst in motion as well as when stationary, with no vehicle being totally enclosed;

(c) adequate protection from exhaust gasses, as exposure to exhaust fumes could interfere with the animals' respiration or cause distress;

(d) sidewalls high enough to prevent animals from escaping or falling out of the vehicle:
Provided that –

- (i) the sides and partitions, when used in a vehicle to separate animals carried therein, must be of a height not lower than the shoulder joint of the largest animal being transported;
 - (ii) in the case of cattle other than calves, the minimum height must be 1 800 millimetres; and
 - (iii) the minimum height must be 750 millimetres in the case of any smaller animals;
- (e) in multi-tier vehicles, heights between decks must be adequate, and in case of sheep and pigs not less than 1 000 millimetres, to enable the largest animals to stand naturally, freely and fully erect and to allow adequate space for the free flow of air above the animals;
- (f) floors that are solid and impervious;
- (g) loading and offloading openings at the rear of the vehicle that are the full width of the vehicle or, if at the sides, a width not less than 2 400 millimetres; and
- (h) gates, with or without partitions –
- (i) of a design and construction strong enough and suitable for the conveyance of the intended consignment; and
 - (ii) that open and close freely and are able to be well-secured.
- 24.** The density of animals packed into any given space must be such as to ensure the safety and comfort of the animals during transport, and the recommended floor space per animal is –
- (a) 1,4 square metres per large animal; and
 - (b) 0,5 square metre per small animal.

PART V

Watering and feeding of live animals prior to loading

25. Animals must be provided with sufficient and suitable food and fresh water until the commencement of the journey.

Loading and off-loading procedure

26. Loading and off-loading into or out of a vehicle must be accomplished as quietly and calmly as possible, with patience and tolerance and without undue harassment, terrifying of the animals, bruising, injury, suffering or undue stress.

27. No animal may be loaded or off-loaded by lifting by the head, fleece, skin, ears, tails, horns or legs.

28. No animals may be loaded or off-loaded otherwise than –

(a) by means of a ramp with a non-slip surface, sturdy enough to support the weight of the species of animals being handled, with side panels or bars adequate to prevent animals escaping or falling off the ramp and of an incline not steeper than 25 degrees; or

(b) at a loading bank equal to the height of the floor of the vehicle or, at off-loading, not more than 310 millimetres below the level of the off-loading vehicle and with an incline not exceeding 25 degrees.

29. Where a truck is equipped with an onboard removable loading ramp it must have a non-slip surface and be of a sufficient length when lowered, that the inclination is no steeper than the inclines referred to in item 28, with the distance from the ground to the heel of the ramp not exceeding 120 millimetres.

30. Ramps must be correctly adjusted to the exact height of the vehicle's floor.

31. Journeys must commence as soon as possible after the live animals have been loaded and the animals must be promptly off-loaded upon arrival at the destination.

32. Unless adequate provision has been made for effective separation, different species of animals may not be loaded and transported in the same vehicle.

33. Animals of different ages, sizes and sexes may not be loaded and transported in the same vehicle unless adequate provision has been made for the effective separation of such animals.

34. Adult horned cattle may not be transported with polled cattle and they must also be penned separately.

35. When there is reason to believe that an animal is likely to give birth in the course of a proposed journey, the animal may not be loaded onto a vehicle.

36. In the case of an animal giving birth during transport, the necessary measures must be taken to ensure the protection of the mother and offspring from being trampled or otherwise injured or harassed by other animals.

37. In the event of –

- (a) a breakdown of the transport vehicle;
- (b) an accident or collision in which the transport vehicle is involved; or
- (c) injury to, or death of, any animal in transit,

the carrier must immediately report the details to, and request assistance from –

- (i) in the case of paragraph (a), a breakdown service;
- (ii) in the case of paragraph (b), the South African Police and the traffic authorities; or
- (iii) in the case of paragraph (c), a veterinarian.

PART VI

Restraining of animals during transportation

38. Where the transport of any animal may cause injury to itself or any other animal, it must be restrained in such a manner as to prevent such injury.

39. No animals may be kept in restraint for more than 4 hours in any 24-hour period.

40. No wire or bailing twine may be used for tying the animal's legs or feet.

41. To avoid strangulation or neck-break, a slipknot may not be used where animals are secured to the vehicle by horns or neck, and the rope must be attached to the vehicle at the level of the animal's knees so that in the event of the animal falling, the possibility of serious injury or death is reduced, with the rope being long enough to allow the animal to lie comfortably in a natural position with its head upright.

SCHEDULE 2
Pound register information
(Section 12)

A pound register must, at least, contain the following information –

1. Name of pound
2. Date of receipt of animal
3. Number and description of animals
4. Brands or markings on animal
5. Ear tag number assigned by the poundkeeper
6. Name and address of person who seized the animal
7. Name and address of person who delivered the animal to the pound
8. Name and address of owner of land
9. Name and address of owner of animal
10. Name and address or description of place where animal was found
11. Distance from location where animal was seized to pound
12. Particulars of damage caused by the animal
13. Transport fees payable
14. Details of destruction or disposal of animal
15. Cause of death or injury of impounded animal
16. Description and amount of pound fees
17. Damages awarded by Court
18. Date of release of animal
19. Date of sale of animal
20. Proceeds of sale of animal
21. Name and address of purchaser
22. Excess amount (if any) paid to owner or municipality
23. Receipt number
24. Details of Order of Court with regard to animal not sold in execution