

Mberengwa Rural District Council (Rights of Way for Electronic Communications Facilities) By-laws, 2023

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Title

1. These By-Laws may be cited as the MBERENGWA Rural District Council (Rights of Way for Electronic Communications Facilities) By-Laws, 2023.

Application

2. These by –laws shall apply within the MBERENGWA Rural District Council area and any local government area the administration, control and management of which is vested in the Council of MBERENGWA.

Interpretation

3. In these by-laws

“Applicant” means a person applying for a Permit in terms of these by-laws;

“The Council/ local authority” means the MBERENGWA Rural District Council;

“Council Property” means municipal property that, for the purposes of these by-laws, can be used or is required for the roll out of electronic communications networks or the installation of electronic communications facilities including roads and road reserves, pavements and curbs, drainage facilities, bike paths, ducts poles, pavements, high sites (such as water towers) municipal water and sewer lines or other municipal utility facilities, municipal traffic signal, street lighting and communications facilities, street trees, land and buildings or structure owned by the Council; including any property or public places which have been or shall be at any time be set apart and appropriated by proper authority and vested in the Council, *ex lege* of which the Council shall have control and management over;

“The Act” means the Postal and Telecommunications Act (Chapter 12:05);

“designated officer” means any person employed by the Council and authorized to carry out any functions in terms of these by-laws;

“electronic communications” means the emission, transmission or reception of information, including but without limitation to; 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, electro-magnetic 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” means 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 where applicable, collocation space, monitoring equipment, space on or within poles, ducts, cable trays,

manholes, hand holds and conduits, and 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 utilization of such electronic communications facilities;

“electronic communications operator” means any person who operates a electronic communications network, provides electronic communications services or network services and is either licensed or exempted in terms of the Act including that person's agents and contractors;

“electronic communications network” means any system of electronic communications facilities (excluding subscriber equipment), including but without limitation to; satellite systems, fixed systems (circuit- and packet-switched), mobile systems, fibre optic cables (undersea and land-based), electric Council cable systems (to the extent used for electronic communications services), and other transmission systems, used for conveyance of electronic communications;

“Permit” means a right of way permit granted in terms of these by-laws authorizing the Permit Holder to locate electronic communications facilities or network on Council Property;

“Permit Holder” means a person granted a permit in terms of these by-laws;

“POTRAZ” means the Postal and Telecommunications Regulatory Authority of Zimbabwe.

Right of Way Permit

4 (1) All electronic communications operators and or person, whether licensed or exempted under the Act, must obtain a permit from the Council to enter onto Council Property (area) and to install, trench, construct and operate electronic communications equipment, facilities and/or networks.

- (2) Electronic communications operators or persons shall be required to obtain permits within sixty (60) days of publication for enactment of these by-laws for existing electronic communications facilities and networks located on Council Property. (area)
- (3) Permits may only be granted upon receipt of proof by the Council that the electronic communications operator is duly authorized, to the extent necessary, to install and provide the facilities or network in terms of the Act.

Application for a right of way permit

5. (1) An electronic communications operator shall apply for a permit in writing to the local authority and shall at the same time provide such information as may be required by the Council from time to time to assess the said application.
 - (2) The application for a permit shall be accompanied by an application fee as prescribed by the Council.
 - (3) An application fee for the permit may be reviewed by the Council from time to time.
 - (4) On submission of an application in terms of section 5(1), the Applicant shall supply the following information-
 - (a) full name and address and, if the applicant is a corporate person, the names and addresses of all shareholders (CR14);
 - (b) a demonstration of the applicant's technical, legal and financial ability to install, construct and operate the proposed communications facility;
 - (c) proof that all the equipment being used has been type approved by POTRAZ to the extent necessary;
- (d) a description of the physical facility proposed, the area to be served, a description of

technical characteristics, and a map of the proposed system service area and distribution scheme;

(d) a description of how any installation, construction and operation will be implemented, identification of areas having aboveground or below ground facilities;

(e) the proposed construction schedule which construction schedule shall be coordinated with the Council water, sewer, roads and other improvement plans and municipal infrastructure needs as may be further required by the Council;

(f) a description of the services to be provided over the system;

(g) the proposed rates to be charged including rates for each service offered to the public and charges for installation, the equipment and other services and whether such rates are subject to regulatory or informational tariff or other rate regulation requirements from any other jurisdictional agency.

(5) On receipt of the application and after the provisions of section 5 (4) have been complied with, the Council shall consider the application for a permit within a period of fourteen (days) and for that purpose may request any person to furnish such information as it may deem necessary and expedient.

Approval or refusal of application

6. (1) Having considered the application in terms of section 5 above the Council may approve or refuse the application and give reasons thereof.

(2) If an application has been granted, the Council may attach any conditions it may deem necessary to the permit.

(3) If an application has been refused, an applicant shall have the right to appeal against such refusal to the Administrative Court within a period of thirty (30) days from date of such decision.

Right of Way Lease agreement and payment of Lease rentals

7. (1) Upon approval of the application for a permit, the Council shall enter into a right of way lease agreement with the Permit holder for the use of the Council property to install, trench or construct electronic communications facilities.
 - (2) The period of the right of way lease agreement shall not exceed the period of the electronic communication operator's licence issued by POTRAZ or any other regulatory authority under which the facilities or network are installed.
 - (3) The permit holder and lessee shall be required to pay the monthly lease rentals as prescribed by the Council from time to time for the use of Council Property.
 - (4) The permit holder shall not acquire any proprietary or exclusive rights in respect of the Council Property.

Period of the Permit

8. (1) The period of the permit may not exceed the period of the electronic communication operator's licence issued by POTRAZ or any other regulatory authority under which the facilities or network are installed.
 - (2) The permit holder shall not be entitled to an automatic renewal of the permit.
 - (3) The permit shall not be transferrable in any way and attaches to the applicant only.

Obligations of the Permit holder

9. (1) The permit holder shall preserve, insofar as is possible, the aesthetics of the Council Property and shall not endanger any person in exercising its rights under the permit.
 - (2) The permit holder shall maintain the facilities or network installed.
 - (3) The Permit Holder shall be responsible for the costs of repair of the Council's engineering services should any damage occur to it during installation and operation of the electronic communications facilities.

- a. Upon expiry of the permit, the permit holder shall rehabilitate the property to the satisfaction of the Council.
- b. The Council may require that a permit holder constructing, relocating, or placing ducts, conduits or fibre optic cables on Council Property provide the Council with additional duct or conduit or fibre optic cable at a rate equal to the incremental cost to the permit holder of the additional facility in which whereupon the permit holder shall comply.
- c. The Council may impose such additional requirements on the permit holder as may be reasonable in the circumstances including the requirement that the permit holder give security for the discharge of its obligations in terms of the permit whereupon the permit holder shall comply.
- d. The permit holder shall adopt environmentally friendly approaches in the development of the electronic communications facilities in order to avoid emission of harmful substances.

Indemnity

10. (1) The Permit Holder shall indemnify the Council against any and all claims howsoever arising out of access to Council Property and the location of electronic communications facilities or networks on Council Property.

Sharing of electronic communications facilities

II. (1) In circumstances where demand by electronic communications operators for access to Council Property exceeds availability, the Council may require that the service providers share the facilities.

Removal of facilities by permit holder

12 (1) Upon expiry of the permit the electronic communications facilities or networks must be removed by the electronic telecommunications operator within thirty (30) days unless the Council directs otherwise.

(2) The Council may require the removal or relocation of the facilities or network by the permit holder if it is reasonable to do so including circumstances where-

- (a) the Permit Holder is no longer legally entitled under the Act to operate a network or provide electronic communications services,
- (b) the facilities or network pose a risk to public health and safety, and
- (c) the facilities or network, in the Council's opinion, unreasonably detract from the aesthetics of the Council Property.

Removal of facilities by designated officers

13 (1) A designated officer shall be entitled to disconnect or remove electronic communications facilities or network where-

- (a) the Permit Holder fails to pay the lease rentals in terms of section 7 (3),
- (b) the Permit Holder breaches the terms of the Permit,
- (c) any electronic telecommunications facilities or networks are located on Council Property without a permit,
- (d) any electronic telecommunications facilities or networks remain on Council Property after expiry of the Permit, and
- (e) a Permit holder fails to comply with sections 12(1) and 12(2).

(2) The costs of disconnecting or removing the electronic telecommunications facilities or network shall be borne by the Permit Holder or the person who installed them and the Council shall not be liable for any damages that may have been caused as a result of such removal.

General

14 (1) A permit granted in terms of these by-laws does not exempt the applicant or any other person to comply with any other law, by-law or zoning provisions of the Council's

Property or in any manner deal with the property for any other purpose other than that specified in the permit.

(2) No person may place any rope, wire or pole on, under or across any public road, or hang, or place anything whatsoever on Council's property without the prior written permission of the Council.

Offences and Penalties

15 (1) Any person who-

- (a) knowingly gives false information in an application for a permit in terms of section 5 (1) and right of way lease agreement in terms of section 7 (1); or
- (b) alters or falsifies any permit of right of way lease agreement; or
- (c) unlawfully attempts to obstruct, hinder or prevent or causes to be obstructed, hindered or prevented, a designated officer in the exercise of his or her duties under these by-laws; or
- (d) contravenes or fails to comply with the provisions of these By-laws or fails to comply with any notice issued in terms of these By-Laws;

shall be guilty of an offence and liable on conviction to a fine equivalent to level 14 or, in event of default, to imprisonment for a period not exceeding six months. In the case of a continuing offence a further fine, not exceeding level 12 may be imposed for every day during the continuance of the offence.

- (2) A conviction for an offence referred to in section 15 (1) shall not be a bar to further prosecution(s) for a continuation of the offence.
- (3) The Council may cancel a permit or lease agreement if the holder is guilty of any contravention of the provisions of these by-laws.
- (4) Any permit or lease agreement cancelled in terms of subsection (3) shall not be renewed until a period of 1 (one) year has lapsed from the date of cancellation.