

Marondera Municipal Council (Wayleave) By-laws, 2024

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IT is hereby notified that the Minister responsible for Local Government has, in terms of section 229 of the Urban Councils Act [*Chapter 29:15*], approved the following by-laws made by Marondera Municipal Council:—

Title

1. These by-laws may be cited as the Marondera Municipal Council (Wayleave) By-laws, 2024.

Application

2. These by-laws shall apply within the Marondera Municipal Council area.

Interpretation

3. In these by-laws:—

“applicant” means a person applying for a permit in terms of these by-laws;

“council” means the Marondera Municipal Council;

“council property” means council property that, for the purposes of these by-laws, can be used or is required for the roll out of operators networks or the installation of operators facilities on roads and road reserves, pavements and curbs, drainage facilities, bike paths, ducts poles, pavements, high sites (such as water towers) council water and sewer lines or other council utility facilities, 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, by operation of law, of which the Council shall have control and management over;

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

“operators” means service providers that provide essential services including, but not limited to, Zimbabwe Electricity Supply Authority (ZESA), Zimbabwe National Water Authority (ZINWA), National Railways Zimbabwe (NRZ), ZOL, TelOne, POTRAZ, ECONET, NetOne, TELECEL;

“operators 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, operators, including where applicable, collocation space, buildings or structures, 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 operators facilities or otherwise necessary for controlling connectivity of the various operators facilities for proper functionality, control, integration and utilisation of such operators facilities;

“operator” means any person who provides essential services;

“operators network” means any system of operators facilities (excluding subscriber equipment), including but without limitation to; satellite systems, fixed systems, mobile systems, fibre optic cables (undersea and land-based), electric cable systems, rail, pipes, electricity poles, buildings, canals and other transmission systems, used for conveyance of operators;

“permit” means a wayleave permit granted in terms of these by-laws authorising the permit holder to locate operators facilities or network on council property;

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

“the relevant Act” includes, National Railways Act [*Chapter 13:09*], the Postal and Telecommunications Act [*Chapter 12:05*], Electricity Act [*Chapter 13:19*], ZINWA Act [*Chapter 20:25*], Water Act [*Chapter 20:24*], Regional Town and Country Planning Act [*Chapter 29:12*], Roads Act [*Chapter 13:12*];

“wayleave” means an easement consisting of permission to cross or use land or of a right of way across land. For the purposes of these by-laws, wayleave and servitude shall be used interchangeably.

Wayleave permit

4. (1) All operators and or persons, whether licensed or exempted under the relevant Act, must obtain a permit from the council to enter onto property within the council area and to install, trench, construct and operate equipment, facilities and or networks.

(2) All operators or persons shall be required to obtain permits within sixty (60) days of publication for enactment of these by-laws

for existing facilities and networks located on property within the council area.

(3) Permits may only be granted upon receipt of proof by the council that the operator is duly authorised, to the extent necessary, to install and provide the facilities or network in terms of the relevant Act.

Application for a Wayleave permit

5. (1) An operator shall apply for a permit in writing to council and shall at the same time provide such information as may be required by the council 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.

(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 (CR05);
- (b) a demonstration of the applicant's technical, legal and financial ability to install, construct and operate the proposed facility;
- (c) proof that all the equipment being used has been approved by POTRAZ or relevant authorities to the extent necessary;
- (d) a description of the physical facility proposed, the area to be served, a description of technical characteristics, a map of the proposed system service area and distribution scheme;
- (e) a description of how any installation, construction and operation will be implemented, identification of areas having aboveground or below ground facilities;

- (f) the proposed construction schedule which construction schedule shall be coordinated with the council water, sewer, roads and other improvement plans and council infrastructure needs as may be further required by the council;
- (g) a description of the services to be provided over the system.

(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 seven days and for that purpose may request any person to furnish such information as it may deem necessary and expedient.

Approval or rejection of application

6. (1) Having considered the application in terms of section 5, the council may approve or reject 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 rejected, an applicant shall have the right to appeal against such rejection to the Administrative Court within a period of thirty (30) days from date of such decision.

Wayleave lease agreement and payment of lease rentals

7. (1) Upon approval of the application for a permit, the council shall enter into a wayleave lease agreement with the permit holder for the use of the council property to install, trench or construct operators' facilities.

(2) The period of the wayleave lease agreement shall not exceed the period of the 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 and any other fees as prescribed by the council 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 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, the aesthetics of the 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 property should any damage occur to it during installation and operation of the operators facilities—

- (a) upon expiry of the permit, the permit holder shall rehabilitate the property to the satisfaction of the council.
- (b) the permit holder shall adopt environmentally friendly approaches in the development of the operators' facilities in order to avoid emission of harmful substances.

Indemnity

10. The permit holder shall indemnify the council against any and all claims howsoever arising out of access to council property and the location of operators' facilities or networks on council property.

Sharing of operators' facilities

11. In circumstances where demand by 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 lease the operators' facilities or networks shall be removed by the 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 operators' 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 property.

(3) The council may cancel a permit or lease agreement if the holder is guilty of any contravention of the provisions of these bylaws.

(4) Any permit or lease agreement cancelled shall not be renewed until a period of 1 (one) year has lapsed from the date of cancellation.

Removal of facilities by designated officers

13. (1) The council shall be entitled to disconnect or remove operators' 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 facilities or networks are located on Council property without a permit;
- (d) any 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 facilities or network shall be borne by the permit holder or the person who in-

stalled 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, along or across any public road, or hang, or place anything whatsoever on council's property without the prior written permission of the council.

(3) Any person who—

- (a) knowingly gives false information in an application for a permit in terms of section 5(1) and wayleave lease agreement in terms of section 7(1); or
- (b) alters or falsifies any permit of wayleave 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;

shall be guilty of an offence and liable to a fine prescribed by council.

Offences and penalties

15. Any person who 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 to a fine prescribed by council.