Statutory Instrument 2022 **[CAP. 29:13]**

**Manyame Rural District Council (Establishment of Electronic Communications Facilities) By-Laws, 2022 [CAP. 29:13]**

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IT is hereby notified that the Minister of Local Government and Public Works has in terms of Section 90 of the Rural District Councils Act [Chapter 29:13], approved the following By-Laws made by the :-

***Title***

1. These By-Laws may be cited as the Manyame Rural District Council (**Establishment of Electronic Communications Facilities**) By-Laws, 2022.

***Application***

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

***Interpretation***

1. In these by-laws

“Applicant” means a person or electronic communication company applying for a Site, Permit or wayleave in terms of these by-laws;

“Council” means the Manyame Rural District Council;

“Council area” means the area under the Jurisdiction of Manyame Rural District Council

“Authority” includes the local authority and statutory body as specified in section 64 of the Postal and Telecommunications Act (Chapter 12:05);

“Conduit” includes a tunnel or subway;

“relevant conduit” means as defined in Postal and Telecommunications Act (Chapter 12:05);

(a) any conduit which, whether or not it is itself an electricity transmission line, is maintained by an electricity authority or

(b) a water main or any other conduit maintained by a water authority for the purpose of conveying

water from one place to another; or

(c) a public sewer.

“building” includes a structure or erection of any kind, whether permanent or temporary, and any extension or alteration thereto.

“Development permit” means a permit issued by Council authorising development of electronic communication facilities in the Council area as specified in part V of the Regional Town and Country Planning Act Chapter 29: 12.

“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;

“Wayleave 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.

1. **Application for site acquisition** 
   1. Any person or organisation intending to carry out any development related to the establishment of electronic communication facilities within the Council area shall lodge with the Chief Executive Officer—
2. An application form specifying the nature and intended use and location for each electronic communication facility.
3. A map showing the coordinates and area where the facility is to be located.
4. In the case of leased or private land a lease agreement with the owner or lessor or written consent.
   1. Council shall carry out the necessary consultations with the affected stakeholders subject to payment of a consultation fee prescribed in the approved Council budget. In the case of planning authorities other than Council as in the case of Ministry of Environment, Parks and cultural heritage and monuments and ZINWA consent and approval shall be sought before an application can be considered.
   2. Council shall obtain a site plan from the Department of Physical Planning at a fee prescribed in the approved Council budget.
   3. In instances where the intended development falls within private land or land already leased out to other clients, the applicant needs to obtain the consent of the land owner or lease first before an application specified in subsection one can be submitted.
   4. In the case of resettlement land, a lease agreement with the Ministry of Lands, Water, Fisheries and Rural Resettlement before an application specified in subsection one can be submitted.
   5. Within thirty days of the receipt of an application lodged with the Chief Executive Officer in terms of section 1, the Council shall, in writing, notify the applicant of the outcome of their application.
   6. **Approval or refusal of site**

Council shall decline applications where the establishment of electronic facilities in the Council area interferes with infrastructure such as roads, railway lines, water lines or incompatible with building and health regulations in place.

1. **Lease agreement** 
   1. Council shall enter into a lease agreement with all electronic communication companies for all sites established in the Council area for a fee prescribed in the approved Council budget.
   2. In the case of private, leased or resettlement land, electronic communication companies shall lodge with Council a copy of the lease agreement for the land housing the facilities.
2. **Development permit** 
   1. In order for electronic communication companies to develop, construct or erect electronic communication facilities on leased land, communal land, resettlement, land under title, land other specified planning authorised and any other land in the Council area they should be in possession of a development permit issued by Council in line with part V of the Regional Town and Country Planning Act Chapter 29:12
   2. When applying for a development permit, the applicant shall submit to Council a copy of the lease agreement and plans showing the nature of the structure, building or equipment to be erected or constructed subject to a plan approval fee prescribed in the approved Council budget.
   3. In cases were the land specified in section 4.1 of these by laws is zoned for other land uses, Council shall carryout the necessary processes specified in section 26 of the Regional Town and Country Planning Act Chapter 29:12 at a fee prescribed in the approved Council budget before issuance of a development permit.
   4. The development permit shall specify all the development conditions to be observed by electronic communication companies during the construction, erection, establishment or development of electronic communication facilities in the Council area.
   5. Any electronic communication company, agent or successor who engages in any development of electronic communication facilities without a development permit from Council shall be guilty of an offense and liable to a fine prescribed in the approved Council budget as read with section 32 and 34 of the Regional Town and Country Planning Act Chapter 29:12
3. **Application for wayleave Permit**
   1. Any person or organisation intending to carry out any development related to the establishment of electronic communication facilities which requires a wayleave within the Council area shall lodge with the Chief Executive Officer—
4. An application form specifying the nature, intended use and route to be taken by the service requiring the wayleave.
5. A map showing the routes, size of wayleave and areas to be affected.
6. In the case of leased or private land a lease agreement with the owner or lessor or written consent.
   1. Council shall carry out the necessary consultations with the affected stakeholders subject to payment of a consultation fee prescribed in the approved Council budget. In the case of planning authorities other than Council as in the case of Ministry of Environment, Parks and cultural heritage and monuments and ZINWA consent and approval shall be sought before a wayleave application can be considered.
7. **Wayleave Permit** 
   1. Council shall grant a wayleave permit to applicants who meet all the conditions specified in 7.1 after payment of a wayleave application fee prescribed in the approved Council budget except in cases where the wayleave fees have been exempted due to national interests.
   2. Pioneer companies requiring conduits shall be required to provide the requisite infrastructure which may be shared or rented by other succeeding companies.
   3. Any applicant who engages in any development for which a wayleave is required without the consent of Council shall be guilty of an offense and liable to a fine prescribed in the approved Council budget.
8. **Way leave Lease agreement** 
   1. Council shall enter into lease agreements with all applicants granted wayleaves on Council land at a fee prescribed in the approved Council budget for the land reserved for the wayleave.
   2. All applicants granted wayleaves on land other than Council land shall submit copies of the wayleave lease agreements with Council.
9. **Development levies**
   1. All electronic communication companies shall pay development levies to Council for each facility including those riding on facilities constructed by other electronic communication companies.
   2. All electronic communication companies who fail to honour their obligation for payment of development levies shall be subjected civil litigation and shall meet the costs of law suits borne by the Council in the process.
10. **Period of Permit**
    1. The permit shall subsist for the duration of the license as specified in the Postal and Telecommunications Act (Chapter 12:05);

1. **Indemnity**

The Permit Holders 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 in the Council area.

1. **Sharing of electronic communications facilities**

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.

1. **Removal of facilities by permit holder**
   1. Upon expiry of the permit the electronic communications facilities or networks must be removed by the electronic telecommunications operators 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,

1. the facilities or network pose a risk to public health and safety, and
2. the facilities or network, in the Council's opinion, unreasonably detract from the aesthetics of the Council Property.

1. **Removal of facilities by designated officers** 
   1. A designated officer shall be entitled to disconnect or remove electronic communications facilities or network where-
2. the Permit Holder fails to pay the lease rentals in terms of section 7 (3),
3. the Permit Holder breaches the terms of the Permit,
4. any electronic telecommunications facilities or networks are located on Council

Property without a permit,

1. any electronic telecommunications facilities or networks remain on Council

Property after expiry of the Permit, and

1. a Permit holder fails to comply with sections 15 (1a) and 15(1b).
   1. 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.

1. **General**
   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.
2. **Offences and Penalties**
   1. Any person who-
3. knowingly gives false information in an application for a permit; or
4. alters or falsifies any permit of right of way lease agreement; or
5. 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
   1. 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 fine prescribed in the approved Council budget. In the case of a continuing offence civil proceedings shall be instituted against the offender.
   2. The Council may cancel a permit or lease agreement if the holder is guilty of any contravention of the provisions of these by–laws.