



PROVINCE OF THE EASTERN CAPE
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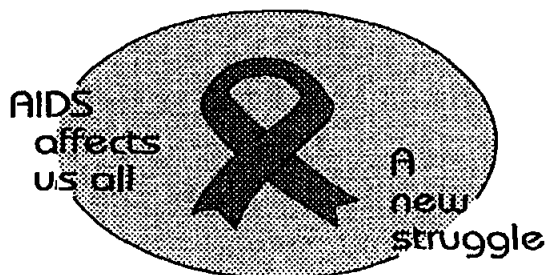
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DEPARTMENT OF HEALTH

PROVINCIAL NOTICES

No. 104

2 December 2000

PROVINCE OF THE EASTERN CAPE

**DEPARTMENT OF HOUSING, LOCAL GOVERNMENT AND
TRADITIONAL AFFAIRS**

**AMENDMENT OF PROVINCIAL NOTICE NO 85 DATED 27/9/2000 AS
AMENDED ISSUED IN TERMS OF SECTION 12 OF THE LOCAL GOVERNMENT:
MUNICIPAL STRUCTURES ACT, (ACT NO. 117 OF 1998)**

I, **GUGILE ERNEST NKWINTI**, Member of the Executive Council of the Province of Eastern Cape responsible for local government, hereby amends Provincial Notice No 85 dated 27 September 2000, as amended as follows:

By substituting the Schedule of Notice No 85, as amended with the Schedule attached hereto.

SIGNED G.E. NKWINTI
MEMBER OF THE EXECUTIVE COUNCIL RESPONSIBLE FOR LOCAL
GOVERNMENT - PROVINCE OF THE EASTERN CAPE
DATE: 29 November 2000

SCHEDULE**PART 1****Definitions**

1. In this Schedule, unless the context otherwise indicates or unless redefined herein, a word or expression to which a meaning has been assigned in the Local Government: Municipal Structures Act, 1998, or Chapter 2 of the Local Government: Municipal Structures Amendment Act, 2000 has the same meaning and -

“administrative unit” means the administrative unit referred to paragraph 9 of Part 1;

“Constitution” means the Constitution of the Republic of South Africa;

“demarcation notice” means Provincial Notice 22 of 2000 published in *Provincial Gazette* No. 486 dated 28 February 2000, as amended;

“disestablished municipality” means an existing municipality disestablished in terms of paragraph 2 of Part 1 of this Schedule;

“effective date” means -

- (a) the day on which the results of the first election of the council of the metropolitan municipality in the metropolitan municipal area is declared in terms of section 190(1)(c) of the Constitution; or

“MEC” means the Member of the Executive Council responsible for local government affairs in the Province of the Eastern Cape;

“metropolitan municipal area” means the area indicated by Map No 1 of the demarcation notice;

“metropolitan municipality” means the Category A municipality established in terms of Part 2 of this Schedule;

“proportionally elected councillors” means councillors elected to proportionally represent the parties that contested the election in the municipality concerned;

“the Act” means the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

“ward councillor” means a councillor elected to directly represent a ward.

Disestablishment of existing municipalities

2. (1) The following municipalities are disestablished with effect from the effective

date to the extent that these municipalities fall within the metropolitan municipality:

- (a) Port Elizabeth Transitional Local Council established by Provincial Proclamation of the Province of the Cape of Good Hope, No 40 dated 6 May 1994.
 - (b) Despatch Transitional Local Council established by Provincial proclamation of the province of the East Cape Government, Gazette No. 6 of 30 September 1994.
 - (c) Uitenhage Transitional Local Council established by Provincial Proclamation, of the East Cape Government, Gazette No 23 of the 18 November 1994.
 - (d) Seaview Transitional Local Council, established by the Provincial Notice 816, of 24 December 1993.
 - (e) Blue Horizon Bay Transitional Local Council, established by the Provincial Notice 21, of 6 May 1994.
 - (f) Portions of the Port Elizabeth Transitional Rural Council established by Section 15 of Proclamation 20 as amended by Proclamation 48 of 1995, of 3 August 1995.
 - (g) Portions of the Uitenhage Transitional Rural Council established by Section 15 of Proclamation 20 as amended by Proclamation 48 of 1995.
 - (h) Portions of the Western District Council, established Section 5(1) of Proclamation 20, of the 3 August 1995..
- (2) Until it is disestablished on the effective date, a municipality referred to in subparagraph (1) -
- (a) continues after the establishment of the superseding municipalities; and
 - (b) remains competent to function as the municipality for its area.

Vacation of Office

3. The councillors of the municipalities referred to in paragraph 2(1) vacate office on the effective date.

Establishment of municipalities

4. (1) A municipality is hereby established for the metropolitan municipal area as set out in Part 2 of this Schedule.

- (2) The establishment of the municipality mentioned in sub-paragraph (1) takes effect in terms of section 12(2)(b) of the Act at the commencement of the first election of the councils of those municipalities.

Legal succession

5. The metropolitan municipality supersedes the existing municipalities to the extent that the existing municipalities fall within that area, and the metropolitan municipality becomes the successor in law of the existing municipalities.

Transfer of assets, rights, liabilities and obligations

6.
 - (1) The assets, rights, liabilities and obligations of a disestablished municipality, are hereby, subject to section 16(1) of the Act, transferred to the metropolitan municipality which, on the effective date, has sole responsibility for the performance of the said function or functions in the said area.
 - (2) For the purpose of sub-paragraph (1), "function" includes a power.
 - (3) Administrative and other records relating to the assets, rights, liabilities and obligations referred to in sub-paragraph (1) vest, as from the effective date, in the metropolitan municipality.
 - (4) Assets, rights, liabilities and obligations other than those referred to in sub-paragraph (1) are hereby transferred as from the effective date to the metropolitan municipality.
 - (5) If a disestablished municipality only partially falls within the metropolitan area, the following rules apply:
 - (a) All the assets and liabilities and all the administrative and other records of a disestablished municipality are vested in the metropolitan municipality if the disestablished municipality's main administrative office is situated within the metropolitan area, except those assets used, liabilities incurred and records kept wholly or principally in connection with an area which falls outside the metropolitan area. Delictual liabilities shall accrue to the municipality within the geographic area of which the event giving rise to the claim occurred,
 - (b) Only those assets used, liabilities incurred and records kept in connection with an area which falls within the metropolitan area are vested in the metropolitan municipality if the disestablished municipality's main administrative office is situated outside the metropolitan area.
 - (c) The metropolitan municipality may by agreement with an adjoining municipality or must, if the MEC so requests, transfer or cede any assets, liabilities or records transferred to it in terms of this paragraph to that other municipality.

Investments, cash and cash balances

7. As from the effective date all investments and all cash and cash balances in a bank account of a disestablished municipality accrue to the metropolitan municipality established in terms of paragraph 4(1) in accordance with the following rules:
- (a) the investments, cash and cash balances of the disestablished municipality referred to in paragraph 2(1), accrue to the metropolitan municipality: Provided that where the area of the disestablished municipality falls in more than one newly established municipal area, the portions of such investments, cash and cash balances as determined by the MEC, will accrue to the new municipalities concerned;
 - (b) notwithstanding the foregoing, all cash and cash balances constituting funded reserves underpinning obligations or liabilities of a disestablished municipality shall accrue to the metropolitan municipality if it has assumed that liability, or in proportion to the extent to which such liability has been assumed.

Transfer of staff

8. (1) A person who on the effective date is an employee of a disestablished municipality becomes an employee of the metropolitan municipality in accordance with the following rules:
- (a) the employment of employees by a new municipality is subject to any collective agreement and the Labour Relations Act, 1995 (Act No. 66 of 1995);
 - (b) an employee referred to is transferred to the metropolitan municipality on terms and conditions no less favourable than those under which such employee served immediately before the effective date;
 - (c) service by a person so transferred is deemed to be in the service as an employee of the new municipality to which the person is transferred and any leave, pension and other benefits that may have accrued to that person by virtue of service with a disestablished municipality shall be deemed to have accrued in favour of such a person by virtue of service with the new municipality to which she or he is transferred;
 - (d) where an employee was a member of a medical aid scheme, pension or provident fund immediately before the effective date –
 - (i) that employee continues as such a member unless continued membership is contrary to the rules of the scheme or fund in question or unless the new municipality to which the employee is transferred and the employee, after consultation with the fund or scheme, agree otherwise;
 - (ii) the new municipality must deduct the necessary employee's

contributions to the scheme or fund from the remuneration of the employee and pay it over to the scheme or fund in question together with the employer's contribution.

- (e) the council of the employer municipality must appoint a person who became an employee of the municipality concerned in terms of sub-paragraph (1), in a post on the establishment of the municipality, provided that such a person remains subject to any decisions, proceedings, rulings and directions applicable to that person immediately prior to becoming such an employee, but subject further to any amendments concluded locally or in the applicable bargaining council. All funded vacancies existing on the staff establishments of disestablished municipalities shall become vacancies within the staff establishment of the municipality responsible for the function to which such vacancy relates, *mutatis mutandis* in accordance with the rules contained herein;
- (f) a municipality to which an employee is transferred in terms of the rules contained in sub-paragraph (1) may, by agreement with another municipality within the province transfer the employee, with that employee's consent to that other municipality;
- (g) nothing contained herein shall preclude a Municipality from implementing a scheme to reorganise its staff subject to the provisions of the Labour Relations Act.
- (h) If a disestablished municipality only partially falls within the metropolitan area, sub-clauses (a) to (g) above apply only to –
 - (i) those employees of the said disestablished municipality who are directly engaged in the physical performance of a specific line function of the said disestablished municipality which is wholly or principally performed and will continue to be performed within the metropolitan area.;
 - (ii) those employees of the said disestablished municipality who are substantially engaged in activities incidental to those of the employees in (i) above

Administrative units

9. (1) The staff of a disestablished municipality transferred to a new municipality in terms of paragraph 8 of this Part forms an administrative unit that functions as such in terms of the administrative, accounting, human resource management and other like structures, systems, rules and regulations which were applicable immediately prior to the establishment of the said new municipality until changed by the new municipality.

- (2) The head of an administrative unit shall act under the direction of and be responsible and accountable to the municipal manager or acting municipal manager (as the case may be) of the new municipality with regard to all aspects of the continued operation of the said administrative entity.
- (3) For the purposes of section 16 of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), the head of an administrative unit shall be deemed to be the Chief Executive Officer in respect of the activities of the administrative unit.

Continued application of by-laws and resolutions

10. (1) All by-laws, regulations and resolutions that apply in the area of a disestablished municipality immediately before the effective date, continue to apply in such area from the effective date subject to any amendment or repeal by the council of the new municipality.
- (2) Unless inconsistent with the context or clearly inappropriate, reference in any such by-law, regulation or resolution to -
 - (a) a disestablished municipality, must be construed as a reference to the new municipality; and
 - (b) a structure or functionary of a disestablished municipality, must be construed as a reference to the corresponding structure or functionary in the administrative unit.

Dispute Resolution

11. (1) In the event of a dispute arising between the metropolitan municipality and any adjoining district municipality regarding the application of clauses 6,7 and 8, the MEC must, upon written request by any party to the dispute, convene a dispute resolution committee.
- (2) The Committee shall consist of -
 - (a) The municipal manager and a councillor of the metropolitan municipality.
 - (b) The municipal manager and a councillor of the district municipality.
 - (c) A person appointed by the MEC who shall be chairperson.
- (3) (a) The chairperson of the committee decides when and where the committee meets, but a majority of the members may require the chairperson in writing to convene a meeting of the committee at the time and place set out in the requisition.

- (b) The chairperson presides at meetings of the committee but if the chairperson is absent from a meeting the members present must elect another member to preside.
- (3) The committee shall determine its own procedure provided:
- (a) Only councillors and the chairperson shall have a vote.
- (b) A question before the committee is decided with a majority vote.
- (c) In the event of an equality of votes the chairperson must exercise a casting vote in addition to a vote as a member.
- (4) All parties shall be bound to the decision of the committee.

Duties of Chief Executive Officers of Existing Municipalities

12. (1) The person who was the chief executive officer of a disestablished municipality must-
- (a) by not later than two days after the effective date draw up -
- (i) a list containing the names and particulars of all persons who on that date were in the employ of the municipality; and
- (ii) an inventory of all the assets and liabilities of the municipality as at that date; and
- (b) submit that list and inventory to the interim municipal manager referred to in Clause 10 of Part 2 within one day after that person's appointment as acting municipal manager.
- (2) Nothing in sub-clause (1) shall imply that disestablished municipalities falling fully within the new metropolitan municipal area are required to finalise accounts and produce financial statements on the effective date.
- (3) Notwithstanding the foregoing, the list and inventory referred to in Clause 12(1)(a)(i) and (ii) above in respect of a disestablished municipality that partly falls within the metropolitan area shall be compiled by the chief executive officer of that partially disestablished municipality and presented by him to the Pedu Facilitation Committee for its consideration and acceptance by no later than 14 days prior to the effective date.

Insurance of Assets and Liabilities

13. The interim municipal manager referred to in Clause 10 of Part 2 below must ensure that adequate insurance of all assets and liabilities of the metropolitan municipality is in place. For this purpose -
- (a) the risks covered by the disestablished municipalities will continue to be covered at the levels existing as at the effective date and be extended to include any assets and liabilities as may become the responsibility of the metropolitan municipality on the effective date.

- (b) All existing insurance policies will remain in force at the date of the establishment of the metropolitan municipality.
- (c) The insured referred to in all such policies and arrangements shall include the metropolitan municipality and all disestablished municipalities and such other parties or beneficiaries as are covered in terms of the existing policies or the arrangements of their respective rights and interests and/or others for whom there exists a requirement to arrange insurance, as advised to insurers from time to time.

PART 2

ESTABLISHMENT OF METROPOLITAN MUNICIPALITY

1. A metropolitan municipality is hereby established for the metropolitan municipal area.

CATEGORY

2. The metropolitan municipality is a Category A municipality as determined by the Demarcation Board in terms of section 4 of the Act.

TYPE

3. The metropolitan municipality is of a type described in section 2(g) of the Determination of Types of Municipality Act, 2000 (Act 5 of 2000 (EC)).

BOUNDARIES

4. The boundaries of the metropolitan municipality are as indicated on Map No. 1 published in Provincial Notice No 22 of 2000, published in the Provincial Gazette No. 486 dated 28 February 2000 and/or any subsequent amendment by the Demarcation Board.

WARDS

5. The metropolitan municipality has 54 wards determined by the Demarcation Board in terms of Notice 73 of 2000 in *Provincial Gazette* No 529 dated 12 May 2000.

NAME

6. The name of the metropolitan municipality is Nelson Mandela Metropolitan Municipality.

COUNCILLORS

7. (1) The council of the metropolitan municipality consists of 54 proportionally elected councillors and 54 ward councillors as determined in Provincial Notice 36 of 2000 published in Provincial Gazette No. 510 dated 17 April 2000, as amended.
- (2) Full time councillors, if any, are designated in accordance with the policy framework contemplated in section 18(4) of the Act, subject to the following conditions:
- (a) That the municipality submit to the MEC a motivation within 30 days of the effective date on the following –
- (i) the functions and duties to be performed by the full-time speaker;
 - (ii) the functions and duties to be performed by full-time office bearers if the number of full-time office bearers exceeds the total of six;
 - (iii) the municipality's financial capacity to pay the remuneration attached to the full-time office bearers.
- (b) That the final designation of full-time councillors be made by the MEC within 30 days after receipt of the above-mentioned motivation by way of notice in the Provincial Gazette.

FULL TIME COUNCILLORS

8. The council of the metropolitan municipality may, subject to the conditions contained in paragraph 6(2) in this Part, designate any of the following office-bearers as full time:
- (a) Speaker
 - (b) Executive Mayor
 - (c) Members of the Mayoral Committee.

SEAT OF FIRST MEETING

9. The seat of the new municipality for the purposes of the first meeting of its council after the effective date shall be Port Elizabeth which shall be deemed to be the seat of the municipality until otherwise determined in terms of the Act.

INTERIM MUNICIPAL MANAGER

10. (1) Pending the appointment by the municipal council of an acting municipal manager or municipal manager terms of section 82 of the Act, the following person is designated in terms of section 29(2) of the Act to call the first meeting of the council of the new municipality and such person shall be

deemed to be the acting municipal manager from the effective date until the council appoints an acting municipal manager or municipal manager:

MR J G RICHARDS

- (2) The interim municipal manager must be assisted by MR P VAN ROOY and MS T MALI to act as an interim management team until the appointment of the acting municipal manager or municipal manager as contemplated in subparagraph (1).
- (3) The designations of an interim management team is an interim measure and may not be taken in account by a municipality when appointing an acting municipal manager or municipal manager or other official.

STANDING RULES FOR FIRST MEETING

11. The standing rules and orders for the first meeting of the new municipality shall be as follows:

RULES FOR FIRST MEETING OF MUNICIPAL COUNCIL

Definitions

1. In these rules, unless inconsistent with the context –

A word or expression to which a meaning has been assigned in the Municipal Structures Act has the same meaning;

“**interim municipal manager**” means the interim municipal manager as determined in the section 12 Notice;

“**interim seat**” means the interim seat of a municipality as determined in the section 12 Notice; and

“**Municipal Structures Act**” means the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

Notice convening first meeting

2. (1) The interim municipal manager must, within 3 days after the council has been declared elected, inform the elected councillors in writing of the venue, date, and time of the first meeting of the council.
- (2) The first meeting of the council must take place at the interim seat of the municipality within 14 days after the council has been declared elected, or if it is a district council, after all the members to be appointed by local councils, have been appointed.

Convening notice read and oath or affirmation

3. (1) At the commencement of proceedings of the council at the first meeting after it has been convened in terms of section 29 of the Municipal Structures Act, the interim municipal manager must read the notice convening the council.
- (2) After the notice convening the council has been read, the councillors must swear or affirm faithfulness to the Republic and obedience to the Constitution.

Election of Speaker

4. (1) At its first meeting after its election the council must elect its speaker from among its councillors.
- (2) The interim municipal manager presides over the election of the speaker.
- (3) The procedure set out in Schedule 3 of the Municipal Structures Act applies to the election of the speaker.
- (4) The Speaker of a council of a municipality of the type mentioned in sections 9(e) or (f) or 10(c) of the Municipal Structures Act must be called the mayor.
- (5) The elected speaker presides over the remainder of the first meeting of the council and may express a sense of honour conferred upon him or her.

Establishment of Executive Committee

5. (1) At its first meeting after its election, the council of a municipality of the type mentioned in sections 8(a) – (d), 9(a) –(b) and 10(a) which chooses to establish an executive committee, must establish an executive committee by way of motion.
- (2) The motion, which may be moved without notice must –
 - (a) state the number of councillors to serve on the executive committee in accordance with of section 43(1) of the Municipal Structures Act;
 - (b) state the number of councillors of each party and interest represented in the council to proportionally represent such party or interest in accordance with section 43(2) of the Municipal Structures Act.

Election of Executive Committee

6. (1) At its first meeting after its election, the council which has established an executive committee in terms of Rule 5, must elect the members of its executive committee from among its members.

- (2) When the executive committee is elected, the council elect a member of the executive committee as its mayor.
- (3) The procedure set out in Schedule 3 of the Municipal Structures Act applies to the election of the executive committee and the mayor.

Choice to have an executive mayor

7. (1) At its first meeting after its election, the council of a municipality of the type mentioned in sections 8(e) – (g), 9(c) –(d) and 10(b) which chooses to have an executive mayor, must adopt a motion to that effect.
- (2) The motion may be moved without notice.

Election of Executive Mayor

8. (1) At its first meeting after its election, the council which has chosen to have an executive mayor in terms of Rule 7, must elect an executive mayor.
- (2) The procedure set out in Schedule 3 of the Municipal Structures Act applies to the election of the executive mayor.

Quorums and decisions

9. The quorums and determinations required by section 30 of the Municipal Structures Act apply to the first meeting of the council.

Procedure for matters not dealt with in these Rules.

10. The Standard by-law relating to the procedure and maintenance of order at meetings, published as Provincial Notice 411/1988 and published in the *Provincial Gazette* No 4532 of 20 May 1988, subject to the provisions of the Municipal Structures Act, applies to any procedural matter not provided for in these rules.