

**ETHEKWINI MUNICIPALITY: WAYLEAVES AND EXCAVATIONS BY-LAW, 2022**



Adopted by Council on the:

## **EXCAVATIONS BY-LAW, 2021**

**To provide for the regulation of all works to be executed in any public road reserve and municipal servitudes; to provide for wayleave application approval, rejection and withdrawal procedures; to provide for the regulation of protected precincts; to provide for matters relating to costs; to provide for existing and planned services; and to provide for matters incidental thereto.**

### **PREAMBLE**

**WHEREAS** the Municipality has competence in terms of section 156 (2) of the Constitution of the Republic of South Africa to make and administer By-laws for the effective administration of the matters which it has the right to administer;

**WHEREAS** the Municipality has competence in terms of Part B of Schedules 4 and 5 of the Constitution relating to municipal public works, municipal roads and public places;

**WHEREAS** the Municipality is required to provide uninterrupted services to residents and remains committed to continuously improve its developmental service delivery; and

**WHEREAS** the Municipality is required to manage, protect and safeguard municipal assets and infrastructure to ensure a sustainable provision of service and a safe municipal environment;

**NOW THEREFORE** the Municipal Council of the eThekweni Municipality, acting in terms of section 156 read with Schedule 4 (Part B) and Schedule 5 (Part B) of the Constitution of the Republic of South Africa, 1996, read with section 11 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), hereby makes the following By-law:

**CHAPTER 1**  
**INTERPRETATION**

1. Definitions
2. Interpretation of By-law

**CHAPTER 2**  
**OBJECTS OF BY-LAW**

3. Object of by-law

**CHAPTER 3**  
**APPLICATION**

4. Application of by-law

**CHAPTER 4**  
**WAYLEAVES**

5. Basic wayleave procedure
6. Works in the public road reserve and municipal servitudes
7. Wayleaves

**CHAPTER 5**  
**ROADS**

8. Road categories
9. Protected road surfaces
10. Protected precincts
11. Traffic control
12. Temporary road closures for construction
13. Lane rental

## **CHAPTER 6**

### **EMERGENCY WORKS AND EXCAVATIONS**

14. Emergency works
15. Excavations
16. Trenchless methods
17. Backfilling and reinstatement
18. Completion notice and certificate of completion

## **CHAPTER 7**

### **LAWFUL INSTRUCTIONS AND VICARIOUS LIABILITY**

19. Lawful instructions
20. Vicarious liability
21. Recovery of costs

## **CHAPTER 8**

### **COSTS OFFENCES AND PENALTIES**

22. Costs
23. Offences
24. Penalties

**CHAPTER 9**  
**MISCELLANEOUS PROVISIONS**

- 25. Delegations
- 26. Appeals
- 27. Short title and commencement

**CHAPTER 1**  
**INTERPRETATION**

**Definitions**

1. In this By-law, unless the context otherwise indicates—

“**authorised official**” means a person authorised to implement the provisions of this By-law, including but not limited to –

- (a) peace officers as contemplated in section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- (b) municipal or metropolitan Police Officers as contemplated in the South African Police Service Act, 1995 (Act No. 68 of 1995); and
- (c) such employees, agents, delegated nominees, representatives and service providers of the municipality as are specifically authorised by the Municipality in this regard: Provided that for the purposes of search and seizure, where such person is not a peace officer, such person must be accompanied by a peace officer;

“**backfilling**” refers to the replacement of the road layerworks in the trench or excavation and excludes the surfacing layers and crushed stone base layer, refer to see Reinstatement;

“**certificate of completion**” means the document issued by the service coordinator as proof that works in the public road reserve or municipal servitudes was completed according to the requirements of this By-law;

**“completion notice”** means the document submitted by the wayleave holder to the service coordinator when the works in the public reserve or municipal servitudes has been completed;

**“cross cut”** means the excavation of a trial hole, proving trench or trench by hand to identify and/or confirm the positions of existing services in the public reserve or municipal servitudes

**“distance of excavation”** means the shortest horizontal distance between an existing service nearest to the excavation;

**“emergency works”** is defined as any works that is required to prevent or end an unplanned interruption in the supply of a service, or to avoid any substantial losses;

**“excavation”** means the making of any man-made cavity, trench pit, depression or hole formed by cutting, digging, scooping, drilling, directional boring, piling, hammering, and knocking by any means (manual or mechanical). This includes proving holes, trenches drill pits of any solid object or material into the ground and all backfilling activities;

**“excavation permit”** means the legal permission that allows the service agency or contractor to excavate within the public reserve or municipal servitude;

**“excavation permit number”** means the unique number provided by the wayleaves and excavation office upon approval of an application to excavate activities and for which a wayleave is not required;

**“lane rentals”** means the rentals determined by the Council from time to time to be paid to the Municipality in respect of works in public road reserve provided that departments of the Municipality shall be excluded from the liability to pay the same;

**“municipal council”** or **“council”** means the eThekweni Municipal Council, a municipal council referred to in section 157(1) of the Constitution;

**“municipal departments”** means any Department of the Municipality;

**“Municipality”** means the eThekweni Municipality, a category a municipality as envisaged in terms of section 155(1) of the Constitution of South Africa;

**“newly surfaced”** means any road that has been constructed, re-constructed or re-surfaced in the past 5 years;

**“outdoor advertising”** means the act of notifying, warning, informing or making known or any other act of transferring information in a visual manner, primarily to attract the attention of road users;

**“public agency”** means a state agency, public office board, commission department authority which is authorised to exercise governmental powers;

**“protected precincts”** means:

(1) an area within the jurisdiction of the Municipality which falls under the management of a private entity; or

(2) National key points and other areas of interest under government management;

**“protected road surfaces”** are roads across which no digging of trenches will be permitted;

**“public road reserve”** means the full width of a public road, and includes the verge and the roadway;

**“reinstatement”** refers to replacing the surfacing and crushed stone layers or paving blocks in the case of roads, or the paving blocks, paving slabs, bituminous surfacing, concrete surfacing or grass in the case of footways and verges;

**“service”** means any infrastructure in the public reserve or municipal servitudes that is used for supplying a product or service that is intended for public or private use and that is the property of a Service Agency;

**“service agency”** means any Municipal Department, public agency or private company that owns a service in the public reserve;

**“service coordinator”** means the official within the Wayleaves and excavation office who has the responsibility to coordinate and regulate any works undertaken in those sections of the public road reserve that fall within the jurisdiction of the Municipality provided that these responsibilities may be delegated to an official within the administration;

**“service enquiry”** is the process that must be followed by a wayleave applicant to obtain positions of existing services from all service agencies whilst applying for a wayleave;

**“trenchless method”** are methods used to place services under the road without excavating trenches through the surfacing and road layers. Specialised drilling equipment is normally used;

**“wayleave”** means a right of way granted by the Municipality to a private service agency to install infrastructure for a specific purpose;

**“wayleave agreement”** is a legally binding agreement between the land owner and service agency which permits the wayleave holder to install infrastructure for the intended service;

**“wayleave agreement number”** means a unique number that is generated and assigned to each wayleave application or approval;

**“wayleave applicant”** means the, Public agency or private company who applies for a wayleave;

**“wayleaves and excavation office”** means the office that manages wayleave applications and excavation approvals on behalf of the Municipality;

**“wayleave holder”** means the private company who is in possession of a wayleave agreement approved by the service coordinator;

**“work”** in the public road reserve means any activity related to a service, carried out within the public road reserve. It includes but is not limited to, any project related activities, irrespective of the size of the project; and

**“works not requiring a wayleave”** means all types of works which do not require excavation or drilling under the structural layer of the public road reserve, traffic control or reinstatement.

### **Interpretation of By-law**

2.If there is a conflict of interpretation between the English version of this By-law and a translated version, the English version prevails.

## **CHAPTER 2 OBJECTS OF BY-LAW**

### **Objects of By-law**

3. The objects of this By-law are to–



- (a) create an effective system for the control of excavations within the municipal road reserve and municipal servitudes;
- (b) regulate way leave agreements; and
- (c) ensure co-operative process within the municipality.

### **CHAPTER 3 APPLICATION**

#### **Application of By-law**

- 4.(1) This By-law applies to all areas which fall under the jurisdiction of the eThekweni Municipality and is binding on all persons to the extent applicable.
- (2) This By-law applies to municipal roads, road reserves and municipal servitudes.

### **CHAPTER 4 WAYLEAVES**

#### **Basic wayleave procedure**

- 5.(1) Any person who seeks to install services within the public road reserve or municipal servitudes must make such application through the Municipality's wayleave and excavation office.
- (2) The wayleave applicant must conduct a service enquiry.
- (3) The control section on the wayleave application form must be signed by each service agency, indicating the following:
  - (a) the service agency has, in principle, no objection to the issuing of the wayleave approval;
  - (b) the service agency has given the applicant details of its services in the immediate area where the applicant proposes to install services or infrastructure;

- (c) the wayleave applicant has been given the conditions for working in the vicinity of the service agency's services; and
- (d) whether the service agency has a need to review the detail design before commencement of works.

(4) The approval of the wayleave application will be subject to technical compliance with the standards of the service agencies involved as well as compliance with the works planned by the Municipality within the area under consideration.

(5) Once the control section has been signed by all the service agencies, the application must be submitted for the issuing of a wayleave in accordance with the procedure set out in this By-law.

(6) No works in the public reserve or municipal servitude may commence before a wayleave agreement has been approved and issued by the Municipality for such works.

(7) If the wayleave application complies with the provisions of these By-laws and all service agencies have approved the application in principle, then the service coordinator will review the wayleave for approval.

(8) A wayleave application will be rejected if the provisions of this By-law are not met or if there are conflicts with existing or planned future Services.

(9) Where a wayleave application has been approved and there is subsequent non-compliance such approval will be withdrawn.

(10) Where there has been a withdrawal of the wayleave approval the applicant must re-apply using the application process set out in this By-law.

(9) If the Wayleave application is approved then the service coordinator will issue a wayleave agreement and unique "wayleave agreement number".

(10) The approval of a wayleave means that:

(a) the wayleave holder has permission to:

- (i) place a new service in the public reserve or Municipal servitudes;
- (ii) perform maintenance, upgrading or alterations of the existing service;
- (iii) do excavations in the public road reserve;
- (iv) do vehicular and pedestrian control in the public reserve or Municipal servitudes; and

- (v) do reinstatement works on the road and pavement surfaces where excavations have been made;
- (b) the Municipality shall endeavour to publish the position of the new service in the public road reserve on the Municipality's geographical information system, subject to the compulsory submission of an accurate built information by the wayleave holder to the service co-ordinator;
- (c) the Municipality shall not be liable for damages or consequential loss as a result of damage to the service; and
- (d) any service which is not installed, upgraded or removed according to the Wayleave and approved drawings, will be relocated at the wayleave holder's cost, the wayleave holder's responsibility in this regard will remain, even after a certificate of completion has been issued.
- (11) The approval of a wayleave by the service coordinator will not in any way be interpreted as an approval for the waiving of any of the conditions or requirements of a service agency.
- (12) All conditions contained in the wayleave application shall be deemed to be part of the wayleave agreement, it is the responsibility of each service agency, and not the service coordinator, to ensure that the information given to the wayleave applicant is accurate and up to date.
- (13) The works must be carried out according to the procedures and specifications as referred to in the wayleave document, the conditions under which the works was approved and any other requirements of affected service agencies.
- (14) A copy of the wayleave agreement and the approved service plans of the service agencies must be kept on site at all times while the works is in progress.
- (15) Upon request by an authorised official, failure to produce the wayleave and service plan on request may result in the work being stopped with immediate effect.
- (16) The wayleave applicant must be issued with one copy of the approved wayleave, additional copies may be obtained at a cost from the service coordinator if the wayleave is applicable to more than one work area or work team.
- (17) On completion of the works (service laying) or sections thereof, all trenches and excavations in the public road reserve must be backfilled and reinstated according to the specifications referred to in these by-laws and to the satisfaction of the service coordinator.

(18) Subject to subsection 2 in the event that the wayleave holder requests to perform permanent re-instatement at his or her own costs, then it is the responsibility of the wayleave holder to ensure the conditions are adhered to.

(19) Where permanent reinstatement is to be done by the Municipality's wayleave and excavation office, a request must be submitted within 24 hours after backfilling or temporary reinstatement has been completed to specification.

(20) The service co-ordinator must inspect and approve the completed work.

(21) On completion of the works and temporary or permanent reinstatement, as may be applicable, a completion notice must be sent to the service coordinator by the wayleave holder.

(22) Any requirements by the service agencies with regard to interim notices after completion of certain activities must be adhered to.

(23) The applicable guarantee period will be 12 months from the date of completion.

### **Work in public road reserve and municipal servitudes**

6.(1) Works in the public reserve and municipal servitudes includes the digging of trenches, tunnelling, erection of outdoor advertising signs, erection of structures, street shaping and landscaping, planting and maintenance of ground covers and trees in the public road reserve and any other works that may affect motorists, cyclists, pedestrians, the road, footways, kerbing, traffic signs, traffic signals, street lighting, underground or overhead services or any other structure or service that is contained within the public reserve and municipal servitudes.

(2) The types of works that require approval from the relevant service agencies before a wayleave is granted and that will be conducted according to the procedures contained in this by-law, in general refer to the positioning of a new service (or maintenance of an existing service), excavation in the public road reserve, traffic control and reinstatement of the roadway and pavements. Examples include *inter alia*:

- (a) works relating to the installation or maintenance of underground or overhead Services by Municipality's Service Agencies like Roads and Stormwater, Water and Sanitation, Electricity, Land Environmental Planning and Town Planning;
- (b) works relating to the installation or maintenance of underground or overhead Services done by non-Municipal Service Agencies involved in telecommunication, electricity, gas, oil and regional water supply;

- (c) the erection of structures that require approved building plans like in terms of the National Building Regulations and Building Standards Act, 1997 (Act No 103 of 1997);
- (d) the erection of advertising signs and structures that require approval in terms of the relevant By-laws;
- (e) Road works, such as construction of new roads, road widening, or accesses to developments, undertaken by developers;
- (f) the installation of new connection points for municipal services, such as water, sewers, electricity and stormwater drainage from developments;
- (g) erection of hoardings in the Public Road Reserve;
- (h) installation of Services by private concerns, such as data cables to connect different buildings;
- (i) installation or construction of kerbing, paving, bollards, walls, gardens, etc. on sidewalks by property owners or occupiers;
- (j) the planting of trees or any other plants and the installation of irrigation pipes;
- (k) temporary road closures for construction purposes;
- (l) traffic calming devices; and
- (m) any works not listed within this by-law which require an excavation.

## **WAYLEAVES**

7.(1) All works in the public reserve and municipal servitudes is controlled by an excavation permit.

(2) By agreement with the service coordinator, a single wayleave application may be submitted for a large project that covers works in multiple streets, provided that positions and expected commencement or completion dates of all works in the public reserve and municipal servitudes are adequately described in the application.

(3) Each street and position where works will be carried out must be clearly identified in the wayleave application.

(4) General conditions are stated on the wayleave form and may include, but are not restricted to the following:

- (a) Description of work to be done;
- (b) Timeframe within which the works or sections thereof must be undertaken; and

- (c) Location of works to be done. (Provision can be made for big projects with multiple locations. The scope of big projects must be limited to manageable portions from the wayleave perspective. The service coordinator will be able to advise project managers in this regard).

(5) Additionally, there may be specific conditions relating to the wayleave which will be tested on or referred on the wayleave. Such conditions may include:

- (a) specific working conditions required in terms of Occupational Health and Safety Act, 1993 (Act no 85 of 1993) and regulations;
- (b) methods of works execution in protected roads and precincts;
- (c) specific conditions required by the service agencies; and
- (d) reinstatement requirements.

(6) As part of the undertaking/indemnity in the wayleave application form, the applicant has to confirm that the necessary information has been obtained from the service agencies and undertakes to adhere to additional conditions laid down by the various service agencies. The control section on the wayleave application form, signed by the service agencies, will serve as proof that the service agencies approved that a wayleave may be issued.

(7) To obtain a wayleave agreement, a wayleave application form must be submitted, together with:

- (a) design drawing showing details of the proposed services or infrastructure;
- (b) digital and printed photographs clearly showing the area of the proposed works;
- (c) where applicable written proof that Environmental Impact Assessment (EIA) and Water Use Licenses Application (WULA) requirements have been met;
- (d) the payment of the required deposit or submission of proof of financial guarantees;
- (e) payment of the prescribed processing fee; and
- (f) approval from all affected agencies.

(7) The details required on the design drawing referred to in subsection 6(a) are:

- (a) a clear depiction of the proposed works;
- (b) an indication where services are to be installed and the depth of the service below the surface level of the relevant portion of the public reserve or municipal servitudes;
- (c) positions and extent of all underground structures, traffic signals, trees and street furniture;

(d) the location of all other service in the public reserve or municipal servitudes. services are located by obtaining information from the service agencies and by doing cross cuts, trial holes or any other method approved by the municipality which are required in all cases where excavations form part of the works; and

(e) are completed in accordance with information as provided by corporate geographical information system.

(8) The service coordinator must limit the duration of the application process to 30 calendar days for a new wayleave application and 14 calendar days for a review application.

(9) The wayleave holder must accept full responsibility for all costs associated with and resulting from the works carried out in the public reserve or municipal servitudes.

(10) Only works described in the wayleave may be executed. If the conditions on site necessitate a deviation from the planned Works, the service coordinator must be informed before any works is done.

(11) The deviations in subsection (10) may be in relation to the position of the Service or the timing of the Works. The service coordinator may inform the wayleave holder of additional approvals that must be obtained from the service agencies affected by deviation as well as further requirements in terms of drawings and specifications.

(12) Works will only be allowed to continue once the service coordinator is satisfied all the additional requirements have been met.

(13) The wayleave holder must complete the works within the time specified on the wayleave or the approved time extension.

(14) A wayleave holder who fails to complete the works within the specified time window must be given a written notice to either complete the works or apply for a time extension within two (2) days.

(15) If upon expiry of the notice period of two days referred to above the wayleave holder has not completed the works or applied for an extension, the works must be stopped and made safe by the service coordinator at the expense of the wayleave holder.

(16) The wayleave holder must submit electronic as built drawings to the wayleave and Excavation Office within five working days of the completion notice.

## CHAPTER 5

### ROADS

#### ROAD CATEGORIES

8.(1) All roads are classified under one of the functional categories described below. The functional category of a road determines the backfilling and reinstatement specifications applicable to the road.

(2) The following road categories will be applicable:

TABLE 1

Category	Road Type
UA	Trunk roads, primary distributors, freeways, major arterials and bypasses used for primary urban distribution and linking urban districts or sectors. (upper <u>road</u> layers consists of 150mm compacted G2 crushed stone base and 240mm compacted bituminous asphalt)
UB	District and local distributors, freeways, minor arterials and collectors, industrial and CBD roads, goods loading areas and bus routes used for district distribution and link to communities (upper <u>road</u> layers consists of 150mm compacted G2 crushed stone base and 160mm compacted bituminous asphalt)
UC	Urban access collectors used for local distribution and to link neighbourhoods
UD	Local access roads (residential): loops, access ways, access courts, access strips and cul-de-sacs
UF	Footpaths



(3) All roads have been categorised into one of the above by the Council. For any specific road this information can be obtained from the service coordinator.

(4) Footpaths are made up of 100mm compacted G2 crushed stone base and 30mm compacted bituminous asphalt

## **PROTECTED ROAD SURFACES**

9.(1) Protected Road Surfaces are road surfaces where excavation of trenches is not permitted. A road surface is protected if it has been designated a Protected Road Surface by the Municipality. A road surface is designated as protected when the road is of particular strategic importance (Categories UA, UB and UC roads in the Table 1 in section 8(2) above), if it poses special engineering difficulties or if it has been newly constructed or resurfaced.

(2) Any road surface that has been newly constructed, reconstructed or resurfaced must be protected for a minimum of 5 years. A longer period may be applicable, depending on the type of surfacing and pavement layers. A list of roads that fall in this category is available from the service coordinator.

(3) The Service Coordinator may relax or reduce the protected period, depending on specific circumstances and after consultation with the relevant Roads Department.

(4) If a road surface is protected it will be indicated as such in the wayleave by the service coordinator.

(5) Protected Road Surfaces or such other road surfaces as may be indicated on the wayleave at the discretion of the Municipality, may only be crossed using trenchless methods. If such methods cannot be used for some reason, special permission to excavate must be obtained from the service coordinator.

(6) For the purpose of planning works by service agencies, Category UD in Table 1 above may be regarded as unprotected unless they have been newly constructed or resurfaced provided that the first 20m from an intersection with any other road category is considered to be protected.

## **PROTECTED PRECINCTS**

**10.**(1) Works in a protected precinct is subject to special trenching methods and care to ensure minimal damage to specialised and expensive material and furniture. The service coordinator will inform the service agency of the required methods and may request that a third party contractor be used to carry out the works.

(2) A list of protected precincts is available from the service co-ordinator of the Municipality.

## **TRAFFIC CONTROL**

**11.**(1) It is the responsibility of the service agency to ensure that all laws regarding traffic, safety, traffic signs and barricading are complied with while executing works in the public reserve or municipal servitudes.

(2) The person working in the public reserve or municipal servitudes must therefore take all necessary precautions and measures and provide all necessary facilities to ensure that an adequately safe and easy passage for traffic and pedestrians through areas in which works is in progress, or is uncompleted.

(3) An approved traffic control plan must be kept available on site as part of the conditions under which the excavation permit is approved.

(4) Traffic signs and barricading must be done according to the latest edition of the Southern African Development Community Roads Traffic Signs Manual as amended from time to time.

(5) The services agency must contact the relevant traffic authority to ensure that all requirements have been met for the particular location where works is being done and whether traffic control will be required.

(6) (a) works carried out on arterials, major collectors and central business district roads and such other roads as may be determined by the Municipality or the service coordinator will be restricted to outside peak traffic periods.

(b) Week day peak periods are from 6:30 to 8:30 and 15:30 to 18:00. The service coordinator may allow works to be done during peak periods in cases where traffic and/or pedestrian flow will not be affected by the works.

## **TEMPORARY ROAD CLOSURES FOR CONSTRUCTION PURPOSE**

12.(1) The granting of an excavation permit does not give the service agency the authority to close the road or road lane completely to traffic. Methods of construction and programmes of works must therefore be determined on the basis that no road, or portion of the road may be closed to traffic for any appreciable period.

(2) In exceptional circumstances permission may be granted for the temporary closure of a road or portion of road to traffic. The service agency must apply to the Municipality separately for approval four weeks prior to the road being closed. A road closure will be approved for a specific period only (time and date) and will only be valid for that specific period. If the works are not carried out in that period, an application for a new road closure will have to be made.

(3) The approved closures must be communicated by service co-ordinator to the Municipality's communications office.

## **LANE RENTAL**

13.(1) Lane rental refers to the rental of space in the Public Road Reserve for any purpose other than providing a service to road users.

(2) The payment of lane rentals for works in public road reserve is mainly aimed at encouraging wayleave holders to reduce the impact on road users by limiting construction time to a minimum.

(3) Lane rentals will be payable from the date that works commences in the road reserve up to the date that a certificate of completion has been issued.

## **CHAPTER 6**

### **EMERGENCY WORKS AND EXCAVATIONS**

#### **EMERGENCY WORKS**

14.(1) Emergency Works is defined as any works that is required to prevent or end a dangerous situation, to prevent or end an unplanned interruption in the supply of a service.

(2) A categorised list of Emergency Works will be maintained by the service coordinator and will serve as a guideline for service agencies as well as the service coordinator in determining whether the works are an emergency. Examples of Emergency Work include but are not limited to:

- (a) electricity supply failures;
- (b) burst water pipes;
- (c) wastewater blockages resulting in overflows;
- (d) flooding damage;
- (e) sinkholes and other serious road failures;
- (f) maintenance to infrastructure; and
- (g) any other work which requires an excavation.

(3) The Service Coordinator must provide an emergency number for the use of service agencies that require information on the position of services in the area where emergency work is to be carried out.

(4) All service agencies and their contractors must contact the wayleaves and excavations office call centre prior to any excavations.

(5) An Excavation Permit number must be provided to the competent person on behalf of the Service Agency.

(6) Emergency works must be done in accordance with all procedures and specifications applicable to the type of works as set out in this By-laws and as required by other service agencies who's services are affected.

(7) Service agency must ensure that they have checked all services on gis and have arranged for required approvals from affected service agencies prior to contacting the call centre.

## **EXCAVATIONS**

**15.(1)** All excavations must comply with the statutory requirements for health and safety standards. The service agency must pay specific attention to:

- (a) excavations that need to be executed in accordance with the occupational Health and Safety Act, 1993 (Act 85 of 1993) and its Regulations, as amended from time to time;
- (b) excavations deeper than 1.5m must be shored or V-cut according to the said Occupational Health and Safety Act, 1993; and
- (c) excavations deeper than 1.5m must be registered with the Department of Labour prior to commencement of the works. The registration includes the scope of the works, depth of trench and the construction method (shoring of V-

cut method according to the said Occupational Health and Safety Act, 1993 (Act no 85 of 1993).

(3) For all new works where excavations are required, a construction board (wayleave name board) must be conspicuously displayed at the site indicating the approved wayleave number, the name of wayleave holder and name of construction company with contact details of the project manager. The said name board layout must be in accordance with the standard specifications of the Municipality.

(4) The minimum depth at which any service may be placed under a road surface or at any other place in the public road reserve must be according to the standards and specifications of the Municipality.

(5) All excavated material and equipment must be placed and demarcated in such a way as to cause the minimum disruption to people, vehicles and structures.

(6) The view of motorists must be kept clear at all times and not be affected by any obstruction such as excavated material, road signs or hoardings.

(7) A safe passage must be kept open for pedestrian traffic at all times.

(8) Excavation areas must be clearly demarcated with warning signs that allow ample time for motorists and pedestrians to alter their routes when necessary.

(9) The service agency is held responsible for any damage to existing services. The services indicated on the drawings or on site by representatives of the relevant service agencies, must be opened by careful hand excavating.

(10) If the services cannot be found, the relevant service agency must be contacted by the service agency again for further clarity and instructions.

(11) Under no circumstances may a Service Agency excavate with mechanical equipment or use drilling equipment (Trenchless Methods) before known Services have been identified, found and clearly marked.

(12) When services are found, services must be marked and protected or supported as required by the service agency. If services need to be relocated, instructions from the service agency must be complied with as if the same were the instructions and requirements of the Municipality.

(14) Adequate preventative measures must be taken to ensure that no water flows into the open trenches since this will result in the weakening of the surrounding layer works or adjacent ground conditions.

(15) Any water that is present in the trenches must be pumped out before backfilling. Water must be pumped into the stormwater system and not into sewer manholes.

(16) Any material that has become wet must be removed from the bottom of the trench before backfilling may commence.

(17) The service agency must prevent foreign materials from entering the drains and ensure that silting does not occur either from pumping operations or as a result of rain. If any silting or other contamination does occur, the service agency or responsible wayleave holder must clean the drains or request the service coordinator to do it at the cost of the service agency.

(18) If any street furniture such as street names, traffic sign, bus shelters or other services such as cables and pipes, have to be removed, arrangements must be made with the relevant service agency for the removal, storage and re-erection thereof. The cost specified by the relevant authority will be for the service agency's account.

(19) Where excavations are made through entrances to properties, access must be maintained by using steel plates, planks or other temporary bridges of sufficient strength that are properly secured against movement. The occupants of the property must be kept informed at all times of how their access will be affected.

(20) The finishing, cleaning up and reinstatement of the construction site to its previous condition is considered part of the works and must be completed within 10 days after reinstatement of the trench, per agreed section of works, has been done. If the service agency fails to do so, action will be taken by the Municipality as stated in these By-laws.

(21) Only the holder of a valid wayleave (service agency) may order works to be carried out in the public road reserve.

## **TRENCHLESS METHODS**

**16.(1)** A Service Agency using trenchless methods must ensure that he or she has all the necessary equipment and expertise to complete the Works successfully. These methods can

be used for all road categories but shall be used for all roads classified as “protected” as defined in these By-laws.

## **BACKFILLING AND REINSTATEMENT**

17.(1) Any trenching activity inevitably disturbs the structural integrity of a road, footway, embankment or natural ground therefore, backfilling and reinstatement must be undertaken as per relevant service agency specifications.

(3) Reinstatement refers to replacing the surfacing, crushed stone layers or paving blocks in the case of roads, or the paving blocks, paving slabs, bituminous surfacing, concrete surfacing or grass in the case of footways and verges.

(4) Service Agencies, whose services were exposed by the service agency must be contacted to inspect their assets for damages that may have been caused by the construction works undertaken by the service agency holder’s activities prior to backfilling.

(15) Temporary reinstatement must be done where the wayleave holder leaves site with the view of returning to complete the works. The wayleave holder must maintain the temporary reinstatement during the period. The wayleave holder may not leave the site for more than 14 working days if a reinstatement is not done.

(16) The use of temporary reinstatement is generally not desirable, and the use thereof must be kept to a minimum. The wayleave holder must send a request for permanent reinstatement to the wayleave and excavation office as soon as the permanent backfilling of the pavement layers has been completed.

## **COMPLETION NOTICE AND CERTIFICATE OF COMPLETION**

18.(1) Upon completion of the work, the service agency must fill in the completion notice and return it to the service coordinator within two working days thereafter.

(2) The wayleave holder must also notify all other service agencies as specified in the wayleave. Notifications may also be required by some service agencies before final completion.

(3) After receipt of the completion notice, the service coordinator must do an inspection of the completed work and inform all service agencies that a completion notice has been issued.

(4) Completion of the works means that all works has been completed according to the specification document(s), and that all materials, equipment and rubble have been removed and the site is completely cleared and cleaned to the satisfaction of the service coordinator and that either permanent or temporary reinstatement, as the case may be, was duly executed by the wayleave holder

(5) All applicable documentations and as-built information as specified on the wayleave must be handed to the service coordinator for proper and accurate recording purposes.

(6) When the service coordinator is satisfied that works has been completed according to the requirements of the wayleave, a certificate of completion will be issued to the wayleave holder.

(7) The 12-month guarantee period for permanent reinstatements respectively, must be applicable from the issue of the completion certificate.

(7) Where a single wayleave has been issued for works in more than one street or area, a completion notice must be submitted after completion of each street or area.

## **CHAPTER 7**

### **LAWFUL INSTRUCTIONS AND VICARIOUS LIABILITY**

#### **Lawful instructions**

**19.(1)** Failure to comply with a lawful request by an authorised official in accordance with the provisions of this By-law constitutes a contravention of this By-law.

(2) Upon the request of an authorised official, the failure by the service agency or their agent to provide the authorised official with a copy of the wayleave agreement constitutes a contravention of this by-law.

(3) Where an authorised official has given an instruction to halt the excavation and the service agency or its agent has failed to comply, the failure to comply constitutes a contravention of this by-law.

#### **Vicarious liability**

**20.(1)** Where there has been a contravention of this By-law or a condition of a wayleave agreement, the service agency is deemed to have committed such contravention.

#### **Recovery of costs**



21.(1) Where the Municipality undertakes any remedial action, the service agency and their agent shall be liable jointly and severally for the costs incurred by the Municipality in taking such action.

(2) The recovery of costs contemplated in subsection (1) is in addition to any fine which may be imposed on those persons.

(3) No person shall be entitled to compensation for any loss or damage arising out of any *bona fide* action or decision taken by the Municipality or any authorised official in terms of this By-law.

## CHAPTER 8

### COSTS, OFFENCES AND PENALTIES

#### COSTS

22.(1) A processing fee will be charged on the following basis:

- (a) the processing fee is a fixed amount that is payable by the Wayleave Applicant upon submission of a Wayleave application form. This fee amount will be determined by the Municipality in its by-law dealing with tariffs;
- (b) The processing fee covers the Municipality's cost for works done by the Service Coordinator as well as the cost to provide geographical information records of all underground services in the Municipality. Processing fees will not be payable by National, Provincial or Local Government bodies;
- (c) The processing fee will only be applicable from the 1<sup>st</sup> of July of any particular year and such fee may be revised annually by the Council; and
- (d) Supervision cost monitoring works will be recovered.

(2) In relation to security deposits the following arrangements will apply:

- (a) for new services and or infrastructure installations the Municipality will require a security deposit. A refundable security deposit will be charged for each wayleave being issued. Security deposits will not be charged for works done departmentally by Municipal departments;

- (b) the deposit amount will be based on a percentage of the works to be carried out for large works, and a fixed amount for smaller works;
- (c) as an alternative to a security deposit a guarantee may also be submitted, subject to approval by the service coordinator. The guarantee can be used for more than one approved wayleave, provided that the validity period and the guaranteed sum are sufficient for the multiple wayleaves;
- (d) The Municipality will have the right to use the deposit to cover costs by the service coordinator in relation to the wayleave under consideration; and
- (e) The responsibility remains with the wayleave holder to ensure that the contractor engaged in the implementation of the works has valid and sufficient public liability insurance.

(3) Other Costs can result from any of the following: Damages to existing Services;

- (b) relocation of existing services;
- (c) costs claimed by the Metro Police from external service agencies for loss in revenue due to removed parking meters;
- (d) lane rentals;
- (e) claims that may result from the works, e.g. third party claim;
- (f) cost to provide security to safeguard exposed strategic municipal infrastructure, for example high voltage cables that may be exposed during construction works undertaken by the wayleave holder; and
- (g) cost will be recovered at twice the normal tariff rates.

(6) A party wishing to dispute the costs charged to him as a result of any of the above reasons must do so at their own cost.

## **OFFENCES**

**23.(1)** Any person is guilty of an offence if he or she-

- (a) contravenes or fails to comply with any provision of these By-laws;
- (b) does or causes to be done, or permits to be done, or is concerned in doing, anything whatsoever contrary to or otherwise than as provided by this By-law;
- (c) omits, or neglects to do, or permits to remain undone, anything which according to the true intent and meaning of this By-law ought to be done at the time and in the manner provided therein;
- (d) knowingly permits or allows any condition of things to exist or continue exist contrary to this By-law;
- (e) does not cease any action which that person is required to cease under this By-law;
- (f) fails or refuses, neglects to comply and/or continuously fails, refuses and/or neglects to comply even after notices of breach or lawful institutions have been issued in terms of this By-law;
- (g) fails to comply with any notice, or direction, or conditions contained in any approval granted by the Municipality; or
- (h) obstructs an authorised official in the execution or performance or attempted execution or performance of any duty to be discharged by such authorised official in the exercise of any power conferred by this By-law.

(2) A person is guilty of a continuing offence if he or she continues with an offence after notice has been served on him or her in terms of this By-law requiring him or her to cease committing such offence, or after he or she has been convicted of such offence.

(13) Any wrong information that is wilfully wrong or withheld shall constitute a criminal offence in terms of these By-laws.

## **PENALTIES**

**24.(1)** Any person who is convicted of contravening sections of this By-law shall be liable to a fine of an amount not exceeding R300 000 or to imprisonment for a period not exceeding 3 years, or to both such fine and imprisonment.

(2) Failure to comply with the terms of this By-law or any terms of any condition or notice shall constitute a continuing offence and a person failing to comply with the terms of such condition or notice shall be guilty of a separate offence for day during which he or she fails to comply with such terms.

(3) A person who commits an offence stated in subsection (1) or (2) shall be liable, in addition to the penalties prescribed in this By-law and any other law, to such charges as an authorised officer may assess as the full cost including the costs incurred by the Municipality as a result of that offence.

## **CHAPTER 9**

### **MISCELLANEOUS**

#### **Delegations**

**25.(1)** Subject to the Constitution and applicable national and provincial laws, any –

- (a) power, excluding a power referred to in section 160(2) of the Constitution;
- (b) function; or
- (c) duty,

conferred, in terms of these By-laws, upon the Council, or on any of the Municipality's other political structures, political office bearers, councillors or staff members, may be delegated or sub-delegated by such political structure, political office bearer, councillor or staff member, to an entity within, or a staff member employed by, the Municipality.

(2) A delegation in accordance with subsection (1) must be effected in accordance with the system of delegation adopted by the Council in accordance with section 59(1) of the Systems Act, subject to the criteria set out in section 50(2) of the said Act.

(3) Any delegation contemplated in this section must be recorded in the register of delegations, which must contain information on the-

- (a) entity or person issuing the delegation or sub-delegation;
- (b) recipient of the delegation or sub-delegation; and
- (c) conditions attached to the delegation or sub-delegation.

#### **Appeals**

**26.(1)** A person whose rights are affected by a decision taken by the Municipality in terms of these By-laws may appeal against the decision in terms of the appeals provision contained

the Systems Act by giving written notice of the appeal and reasons to the Municipal Manager within 21 days of the date of the notification of the decision.

(2) The Municipal Manager must promptly submit the appeal to the appropriate appeal authority.

(3) The appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable period.

(4) The appeal authority must confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights which may have accrued as a result of the decision.(5) The appeal authority must furnish written reasons for its decision on all appeal matters.

(6) All appeals lodged are done so in terms of the Systems Act and not in terms of this By-law.

(7) Where a conviction has been affirmed by a court of law and the accused wishes to appeal such conviction, the appeal must take place in terms of the court's appeal process and not in terms of subsections (1) to (5).

#### **SHORT TITLE AND COMMENCEMENT**

**27.** These By-laws will be called the “eThekweni Municipality: Excavations By-law 2022 and takes effect six months from the date of publication hereof in the Provincial Government Gazette.