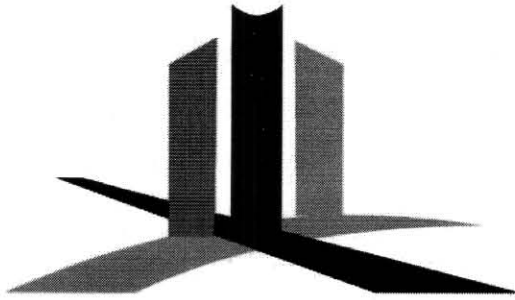


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DEPLOYMENT OF FIBRE NETWORKS ON MUNICIPAL INFRASTRUCTURE POLICY

MANGAUNG METROPOLITAN MUNICIPALITY	
POLICY TITLE: DEPLOYMENT OF FIBRE NETWORKS ON MUNICIPAL INFRASTRUCTURE POLICY	COUNCIL ITEM:
DIRECTORATE: ENGINEERING AND CORPORATE SERVICES	DATE APPROVED:
SUB-DIRECTORATE:	EFFECTIVE DATE:



2. INTERPLAY BETWEEN THE RIGHTS OF LICENSED OPERATORS AND THE MUNICIPALITY'S FUNCTIONS

Section 75(A)(1)(a) of the Local Government: Municipal Structures Act sets out the municipal functions as, *inter alia*, provision and maintenance of structurally sound municipal roads in a financially sustainable manner, the protection of the municipal road infrastructure from degradation and damage.

In order to harmonize the rights of licensees or operators with the municipal functions which are constitutionally prescribed, it is incumbent that the municipality within its powers develop, formulate and enact "applicable law" which would interplay with relevant national legislation as envisaged in Section 22(2) of the ECA.

Accordingly, MMM seeks to arrest the trajectory of this unregulated practice and to vindicate its rights pertaining to maintenance and control of its walkways and roadways. In view of the fact that service providers deploys the infrastructure for a pecuniary benefit for themselves, the municipality is entitled to treat this as a revenue generating activity, to be indemnified against potential lawsuits emanating from damages suffered as a result of degraded public amenities that had caused harm to members of the public and road users.

The policy is calculated to ultimately protect house owners, residents, users of the municipal facilities and members of the public in general. On the part of the network providers it heralds a new era in that there would be a structured way which they would use to arrange their business affairs, accordingly.

3. PURPOSE AND SCOPE

The purpose of this policy to:

- 3.1 Control and govern the installation of fiber and radio networks by a licensed network provider,
- 3.2 Impose necessary levies for permits, use, maintenance and exploitation of municipal infrastructure, and
- 3.3 Provide appropriate penalties, in the case of non-compliance with the said guidelines by service providers.

6.1 Terms and conditions

- 6.1.1 No person may deploy fibre or radio wave network on municipal infrastructure without written Wayleave permit by the municipality.
- 6.1.2 A network provider may in a prescribed form and providing payment of a prescribed application fee, apply for the wayleave permit to deploy fibre or radio wave in the municipal infrastructure.
- 6.1.3 The municipal may grant permit with or without conditions or decline permit considering the nature, vulnerability, oversubscription of networks on the infrastructure.
- 6.1.4 Rehabilitation of the land, the roads and filling up of pits, re-alignment of pavements and general damage caused during the building, excavation, construction and or deployment of networks on the municipal infrastructure shall be done at the sole expense of the network provider.
 - 6.1.4.1 To cater for the short-term maintenance of the municipal infrastructure, there will be an inspection of the site by the Municipality's officials upon completion of the project to determine whether the infrastructure has been rehabilitated to the required standards.
 - 6.1.4.2 If it is found that the infrastructure has not been rehabilitated or has been rehabilitated not to the satisfaction of the municipality, and not in line with engineering standards, costs of such rehabilitation will be calculated by the relevant municipality officials and be presented for the liability of the relevant network provider.
 - 6.1.4.3 The network provider must pay costs mentioned in 6.1.4.2 above before leaving the construction and deployment site.
- 6.1.5 The permissible sizes and depth of trenches shall be as per requirements of the specific site where the optic fiber cables are to be deployed. The trenches shall be refilled and shall be compacted as per engineering specifications. The trenches shall be restored to the original state within 48hours of

trenching, failing which, a penalty fee shall be levied by the municipality.

- 6.1.6 The long-term management contribution to the maintenance of the roads and sidewalk degradation shall be done at the proportional contribution of the service provider beyond completion of the project, through an annual maintenance levy payable to municipality.
- 6.1.7 The guidelines of the Engineering Council of South Africa shall be used to determine the formula for costs required for restoration and maintenance of the municipal infrastructure. The estimated short- and long-term damage as well as the estimated amount to fix the damage shall be considered.
- 6.1.8 The municipality reserves the right to declare a specific area or infrastructure oversubscribed and deny any new or further Wayleave for deployment of fibre or radio networks in that area.

6.2 Specific terms and conditions for the installation of optic fibre

- 6.2.1 Location and geographical area of the trenches shall not be in contravention of any national, provincial or by-laws.
- 6.2.2 The relevant community shall be notified through a public participation process by the municipality and network provider at least a month prior to the commencement of deployment of fiber in their area,
- 6.2.3 The manner, mode and tools of trenching applicable to a specific Wayleave will be considered and approved or prescribed by the municipality,
- 6.2.4 Local communities shall be employed for specific general work of trenching and rehabilitation and as far as possible other technical work.

6.2A Oversubscription of pathway in the infrastructure

- 6.2A.1 The municipality reserves its right to declare a pathway or infrastructure oversubscribed.
- 6.2A.1.1 The infrastructure or area is oversubscribed if there are three or

temper with or damage the existing fibre networks deployed by other network providers. The municipality shall not be liable for any such damage or resultant loss suffered by other network provider.

6.2 The cost of relocating all networks

6.2.1 Whenever necessary, relocation shall be done at the sole cost of the service provider, and the instruction by the municipality to affect the network re-locations shall be complied with, within a reasonable fixed period.

6.2.2 The municipality shall not be liable for any damages caused to any infrastructure due to any act/s of government employees or municipality, while performing official duties, except where such acts are negligent.

6.2.3 For all underground infrastructure, the service provider shall make proper arrangements for access control of the chambers to avoid misuse or illegal use of the trenches.

7. APPLICATION FOR PERMITS AND MINIMUM REQUIREMENTS

7.1 The municipality shall grant a right of way (Wayleave) permit in terms of this policy authorizing the network provider to build or deploy fibre or radio wave network on the municipal infrastructure.

7.2 All network providers and/or persons, whether licensed or exempted under the relevant legislation, must obtain a permit from the municipality to enter into the municipal infrastructure and to deploy, install, construct and operate networks, equipment, facilities and/or networks.

7.3 Permits may only be granted upon receipt of proof by the municipality that the service provider is duly authorized or licensed, to the extent necessary, to build infrastructure, install the facilities or deploy network.

7.4 The period of the permit may not exceed the period of the network provider license under which the facilities or network are installed and the network provider shall not be entitled to an automatic renewal of the permit.

7.5 All permits are not transferable in any way.

7.6 The municipality may require the removal or relocation of the facilities or network if it is reasonable to do so including circumstances where;

- 7.6.1 The network provider is no longer legally entitled, under the relevant legislation to operate a network, provide electronic communications services, provide private sewer treatment or to provide any services applied for in terms of any enabling legislation,
- 7.6.2 The facilities or network poses a risk to public health and safety
- 7.6.3 The network unreasonably detracts from the aesthetic of municipal infrastructure.
- 7.6.4 The network provider must preserve, insofar as is possible, the aesthetics of municipal infrastructure.
- 7.7 Upon expiry of the permit, the permit holder shall rehabilitate the property in accordance with engineering specifications and to the satisfaction of MMM.

8. INFORMATION TO BE SUBMITTED WITH THE APPLICATION FOR PERMIT

8.1 Relating to the Developer and Professional Engineer / Technologist

- 8.1.1 Name and address of the developer or network provider.
- 8.1.2 Name, address and professional registration number of professional engineer / technologists
- 8.1.3 Confirmation that his / her appointment covers the design / selection and supervision of the installation, construction, and commissioning of the network.
- 8.1.4 Confirmation that the developer agrees to issue the financial guarantee for rehabilitation of the land due to any environmental degradations that maybe/may have been caused by the proposed infrastructure.
- 8.1.5 Confirmation that the professional engineer / technologist has been contracted to provide an operation and maintenance service for the first five years of operation of the plant to minimize the adverse environmental impacts caused by the proposed network.

9. APPLICATION PROCESS AND EVALUATION

The network provider shall, for building or construction of network under any infrastructure owned or controlled by the municipality, make an application in the prescribed form, supported by such documents as prescribed by the

engineering standards.

11. POWERS OF THE MUNICIPALITY

- 11.1 The compliance officer may supervise the execution of the work to ascertain if the conditions imposed by this policy are being observed.
- 11.2 The compliance officer may impose such other reasonable conditions as it deems fit, based on such supervision.
- 11.3 The network provider may forfeit in full or in part, the amount of deposit for maintenance if the municipality is of the view that the network provider with intent or negligence violated any of the conditions of the license or Wayleave permit. The municipality may revoke such Wayleave permit after providing reasons in writing to the network provider.
- 11.4 If municipality deems it fit to relocate any infrastructure, a notice to that effect shall be issued and sent to the network provider, and such relocation will be done at the sole expense of the network provider.
- 11.5 On receipt of the notice mentioned in 11.4 above, the service provider shall, forthwith, within a period of 30 days, proceed to submit to municipality a detailed plan for relocation of the said infrastructure.
- 11.6 The municipality shall grant the network provider a period of not less than ninety (90) days for relocation of the said infrastructure by the network provider.
- 11.7 The municipality may add more conditions to the wayleave permit, to the extent that it deems fit.

12. CONSTRUCTION OF OVER-HEAD NETWORK

In difficult terrains or rocky and hilly areas, where underground network deployment is not feasible, the network provider may be granted permission for structured aerial network in such areas by using the already existing municipality's infrastructure, and by building new network on behalf of the municipality where such is lacking. The said infrastructure will be rented per annum at an amount determined from time to time.

13. INDEMNITY

- 14.1 The municipality shall be indemnified from any third-party claims which arise from damage caused or linked to the disturbance of already



existing municipal infrastructure by the construction of new network the service providers.

- 14.2 The service provider shall indemnify the municipality against any and all claims howsoever arising out of the access to the municipality's Property and the location of the facilities or networks on infrastructure.

14. LEVIES AND PENALTIES

The tariff amounts for levies and penalties covering application for wayleave, application for wayleave deposit, advance maintenance, annual maintenance levy, compensation for infrastructure use (where applicable) and penalties shall be determined annually.

15. REVIEW

This policy will be reviewed from time to time when there is a need.

16. POLICY OWNERSHIP

The directorate of Corporate and Engineering Services are the owners of this policy.

18. BY-LAWS TO EFFECT TO POLICY

The Municipality must adopt a By-law that will give effect to the provisions of this Policy.

19. COMMENCEMENT

This Policy comes into operation on the date of approval by the Municipal Council.