

MUNICIPAL ? COURTS AND BY-LAW ENFORCEMENT (21/07/2016)

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Ekurhuleni
METROPOLITAN MUNICIPALITY

a partnership that works

Prosecution at Municipal Courts

- Section 179 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), read with the National Prosecuting Authority Act, 1998 (Act 32 of 1998), as amended, provides for a single national prosecuting authority in the Republic of South Africa. Section 112 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), provides as follows:
- "Prosecution of offences – A staff member of a Municipality authorized in terms of section 22(8)(b) of the National Prosecuting Authority Act, 1998 (Act 32 of 1998), to conduct the prosecutions, may institute criminal proceedings and conduct the prosecutions in respect of a contravention of or failure to comply with a provision of
- a by-law or regulation of the Municipality
- other legislation administered by the Municipality
- other legislation as the National Director of Public Prosecutions may determine in terms of section 22(8) (b) of the National Prosecuting Authority Act, 1998."

A by-law is a law that is passed by the Council of a municipality to regulate the affairs and the services it provides within its area of jurisdiction. A municipality derives the powers to pass a by-law from the Constitution of the Republic of South Africa, which gives certain specified powers and competencies to local government as set out in Part B of Schedules 4 and Part B of 5 to the Constitution.

Schedule 4, Part B

- The following local government matters to the extent set out in section 155(6)(a) and (7):
 - Air pollution
 - Building regulations
 - Child care facilities
 - Electricity and gas reticulation
 - Firefighting services
 - Local tourism
 - Municipal airports
 - Municipal planning



Schedule 4, Part B

- Municipal health services
- Municipal public transport
- Municipal public works only in respect of the needs of municipalities in the discharge of their responsibilities to administer functions specifically assigned to them under this Constitution or any other law
- Pontoons, ferries, jetties, piers and harbours, excluding the regulation of international and national shipping and matters related thereto
- Stormwater management systems in built-up areas
- Trading regulations
- Water and sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems



Schedule 5 Part B

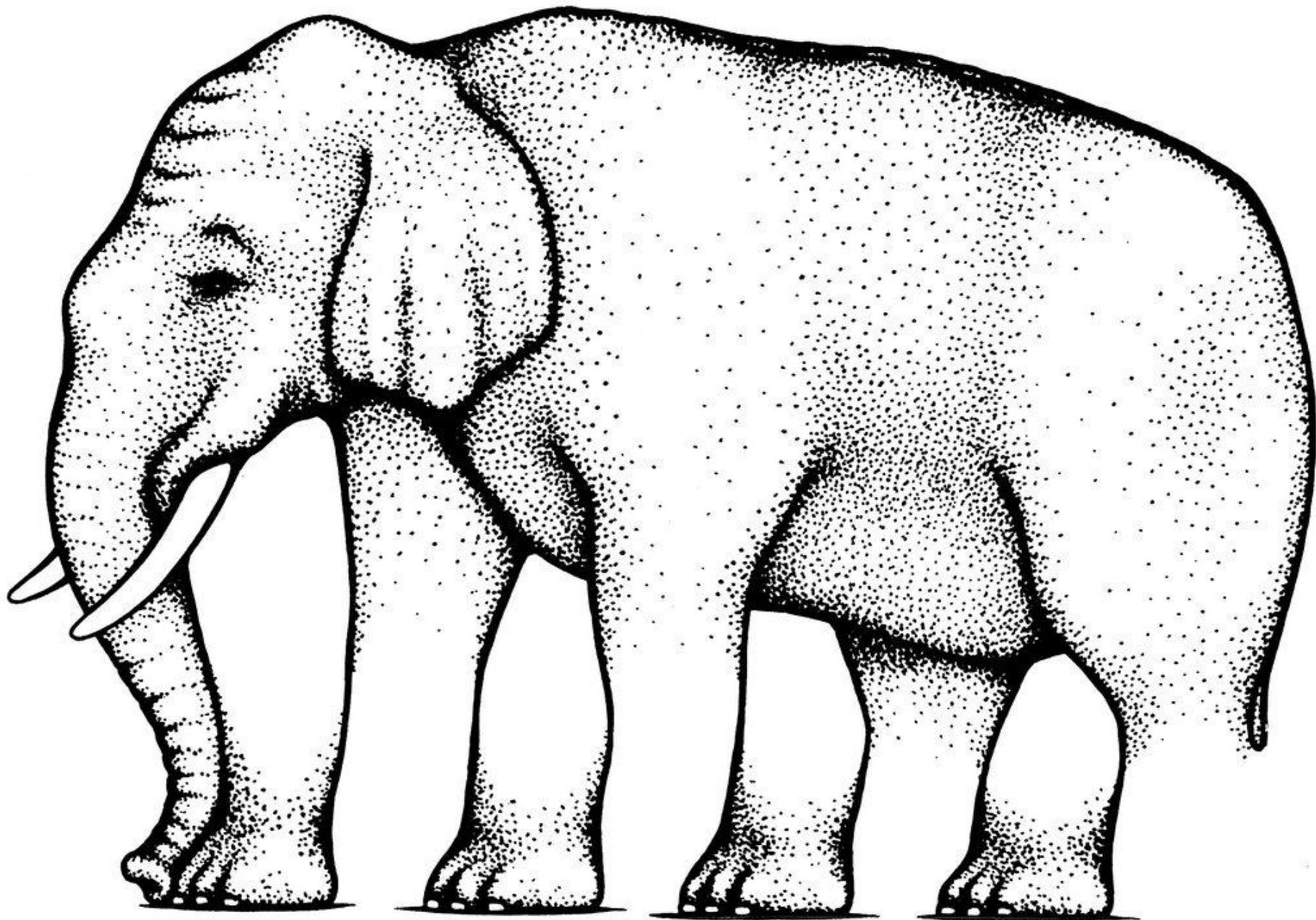
- The following local government matters to the extent set out for provinces in section 155(6)(a) and (7):
- Beaches and amusement facilities
- Billboards and the display of advertisements in public places
- Cemeteries, funeral parlours and crematoria
- Cleansing
- Control of public nuisances
- Control of undertakings that sell liquor to the public
- Facilities for the accommodation, care and burial of animals
- Fencing and fences
- Licensing of dogs

- Licensing and control of undertakings that sell food to the public
- Local amenities
- Local sport facilities
- Markets
- Municipal abattoirs
- Municipal parks and recreation
- Municipal roads
- Noise pollution
- Pounds
- Public places
- Refuse removal, refuse dumps and solid waste disposal
- Street trading
- Street lighting
- Traffic and parking



EMM: COURTS

- DEC. 2014 (FOUR MAGISTERIAL DISTRICTS
- STAKEHOLDER ENGAGEMENT
 - DEPTS.
 - NPA
 - DOJ
 - CHIEF MAGISTRATES
- TRAINING INTERVENTIONS



CONTENT

- COURTS AVAILABLE TO LODGE CASES
- EMM CLS PROSECUTORS
- PROCESS
- NOTICES AND EVIDENTIARY MATERIAL ISSUES
- INTER-DEPARTMENTAL SYNERGY
- CONTACTS IN CLS



*“Don’t spread it around, but on the really tough ones,
I just go with ‘eenie, meenie, minie, moe.’”*

COURTS AVAILABLE TO LODGE CASES

- Ekurhuleni Metropolitan Municipality has a Constitutional and moral obligation to create a safe environment for its residents by legislating by-laws and enforcing them.
- December 2014, the Department of Justice and Correctional Services rationalised the Magisterial Districts in Ekurhuleni to four main districts being:
 - **Ekurhuleni Central** (**Palm Ridge**, Main Seat and **Germiston** Sub District);
 - **Ekurhuleni East** (**Springs** Main Seat and **Nigel** Sub District);
 - **Ekurhuleni North** (**Kempton Park** Main Seat and **Boksburg** and **Tembisa** Sub Districts);
 - **Ekurhuleni South East** (**Benoni** Main Seat and **Brakpan**, **Daveyton** and **Tsakane** Sub Districts).

PROCESS

STEP 1

- Receive complaint and investigation report from initiating Department.
- This to include all evidentiary material, witness statements, photographic evidence, real evidence etc.

STEP 2

- Interaction by EMM Prosecutor (CLS) with initiating department official on outstanding issues such as additional witness statements, outstanding evidentiary material and preparation for presentation of evidence.

STEP 3

- Electronic capturing/ scanning of all evidentiary material into EMM databank (Integrated CLS Solution) as well as storage of data at CRM.

STEP 4

- Liaise with SAPS to open docket (if necessary) and determine method of securing Accused attendance at Court i.e. Arrest/ Summons.

STEP 5

- EMM/ State Prosecutor enrolling matter at Court, interaction with Private Attorney or Accused directly (if unrepresented) in exchange of documents and criminal proceedings.

STEP 6

- Verdict
- Sentence (if guilty)
- Recovery of fines imposed and data capturing
- Involvement with SAPS if imprisonment.

STEP 7

- Review
- Appeal
- Filing



NOTICES AND EVIDENTIARY MATERIAL PRE-REQS

- **Notices must provide the full names of transgressor of the by-law as opposed to initials.**
- **That service by registered post & A/R Card? Peace Officer?**

Options:

- **a. That we must resort to the use of the service of the sheriff to effect service as he/she can provide a return of service after having served with the notice.**
- **b. That if the service is effected by the EMM inspector, he/she must be accompanied by another person who can attest to an affidavit stating that notice was served on the intended recipient and that the recipient has confirmed receipt of the notice or that he/she has refuse to acknowledge receipt of the notice.**

- That the affidavit from the Inspector should reflect the following:
 - a. in terms of which Act and Section was he/she appointed or delegated as an inspector
 - b. his/ her experience;
 - c. his/ her qualifications.
- Affidavit from building control that if it's a building regulations contravention that the structure which is contravention has not been approved.
- That the contents of the notice should be explained to the intended recipient in the language that he/she understand and that same should include an affidavit from the inspector that the intended recipient understood the content of the notice.

- That the inspector conduct a further inspection that after expiry date of the served notice, the transgressor had still not complied as requested in the notice.
- That we must develop our own cas system e.g. Springs 1/3/2016 (NG) which is to be used as reference number and case number in court. Boksburg area is different i.e S G wants us to open docket with SAPS.
- On the photographic evidence (best evidence (colour) the portion of property which is in contravention must be visibly marked by the inspector.
- We need to index and paginate all the documents which form part of our docket. For example the affidavit from the inspection will be marked annexure B1 .

- Our designated official who serves the notice must at all material times sign the notice given to the perpetrators. We shall provide example from the files that went to court.
- Lastly need to be certain that the notice is served to the owner of the property or that the person who receives the notice on behalf of the owner has the legal capacity.
- Criminal Summons (J175)

FUTURE DEVELOPMENTS

- PARTNERSHIP WITH OTHER MUNICIPALITIES AND STAKEHOLDERS
- MUNICIPAL COURTS ACT



INTER-DEPARTMENTAL SYNERGY

FINISHED FILES ARE THE
RESULT OF YEARS AND YEARS
OF SCIENTIFIC RESEARCH
COMBINED WITH THE
EXPERIENCE OF YEARS